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OFFICE OF PERSONNEL MANAGEMENT

5 CFR Part 211

RIN 3206–AM79

Veterans' Preference

AGENCY: U.S. Office of Personnel Management.

ACTION: Interim rule with request for comments.

SUMMARY: The U.S. Office of Personnel Management (OPM) is issuing an interim rule to implement statutory changes pertaining to veterans' preference. We are making this change in response to the Hubbard Act, which broadened the category of individuals eligible for veterans' preference; and to implement the VOW (Veterans Opportunity to Work) to Hire Heroes Act of 2011, which requires Federal agencies to treat certain active duty service members as preference eligibles for purposes of an appointment to the competitive service, even though the service members have not been discharged or released from active duty and do not have a Department of Defense (DD) Form 214, *Certificate of Release or Discharge from Active Duty.* In addition, OPM is updating its regulations to reference existing requirements for the order of consideration for traditional rating and ranking of candidates, as well as the alternative ranking and selection procedure called ''category rating;'' to more clearly state the existing requirements for order of consideration in excepted service hiring; and to add a reference to the end date of Operation Iraqi Freedom, which affected veteran status and preference eligibility. This action will align OPM's regulations with the existing statute.

DATES: Interim rule effective December 29, 2014; comments must be received on or before February 27, 2015.

ADDRESSES: You may submit comments through the Federal eRulemaking Portal at *http://www.regulations.gov.* All submissions received through the Portal must include the agency name and docket number or Regulation Identifier Number (RIN) for this proposed rulemaking.

You may also send, deliver, or fax comments to Kimberly A. Holden, Deputy Associate Director for Recruitment and Hiring, Employee Services, U.S. Office of Personnel Management, Room 6351D, 1900 E Street NW., Washington, DC 20415–9700; email at *employ@opm.gov* or fax at (202) 606–2329.

FOR FURTHER INFORMATION CONTACT: Michael Gilmore by telephone on (202) 606–2429, by fax at (202) 606–4430, by TTY at (202) 418–3134, or by email at *Michael.gilmore@opm.gov.*

SUPPLEMENTARY INFORMATION:

Implementation of the Hubbard Act

On August 29, 2008, the Hubbard Act (the ''Act'') was enacted as Public Law 110–317. The Act provides an amendment to the eligibility categories for veterans' preference purposes by adding subparagraph (H) to title 5, United States Code (U.S.C.) section 2108(3). The amendment provides a new preference eligible category that includes veterans discharged or released from a period of active duty from the armed forces by reason of sole survivorship. The Act applies with respect to any sole survivorship discharge or release from the armed forces granted after August 29, 2008.

Section 10(c) of the Act defines a ''sole survivorship discharge'' as the separation of a member from the armed forces, at the request of the member, pursuant to Department of Defense policy permitting the early separation of a member who is the only surviving child in a family in which the father or mother or one or more siblings (1) served in the armed forces; (2) was killed, died as a result of wounds, accident, or disease, is in a captured or missing in action status, or is permanently 100 percent disabled or hospitalized on a continuing basis (and is not employed gainfully because of the disability or hospitalization); and (3) death, status, or disability did not result from the intentional misconduct or willful neglect of the parent or sibling and was not incurred during a period of unauthorized absence.

The Act added 5 U.S.C. 2108(3)(H) to state that a subclass of ''veteran'' as defined in 5 U.S.C. 2108(1)—those with a sole survivorship discharge or release—must be treated as preference eligibles. Yet preexisting provisions, 5 U.S.C. 2108(3)(A) and (B), already stated that a ''veteran,'' as defined in 5 U.S.C. 2108(1), must be treated as a preference eligible. A plain-language reading of the statute therefore renders section 2108(3)(H) superfluous. This is contrary to the statute's clear purpose, however, which is to extend additional benefits to service members whose active duty service has been cut short by a sole survivorship discharge or release, as documented in the Act's legislative history. See 154 Cong. Rec. H7276 (Feb. 29, 2008); 154 Cong. Rec. S8004 (Aug. 1, 2008). It is also contrary to the principle that laws should not be interpreted to render them superfluous, and that veterans' statutes should be construed to the benefit of veterans. Pursuant to its interpretive authority in 5 U.S.C. 1302, OPM has therefore determined that 5 U.S.C. 2108(3)(H) affords preference to a service member who would meet the definition of a ''veteran'' in 5 U.S.C. 2108(1) if his or her qualifying periods of military service had not been interrupted by the sole survivorship discharge or release. OPM is adding a new paragraph (c) to section 211.102 of title 5, Code of Federal Regulations (CFR), to define a ''sole survivor veteran'' in accordance with this interpretation.

For example, 5 U.S.C. 2108(1)(D) requires 180 consecutive days of qualifying service, followed by a discharge or release under honorable conditions, for the individual to be a ''preference eligible'' under this part. Under paragraph (c) of this interim rule, an individual whose active duty is cut short at fewer than 180 days by a sole survivorship discharge or release, and who meets the other requirements for veterans' preference eligibility, would still be entitled to preference eligibility.

As described in greater detail below, OPM is revising 5 CFR 211.102 to add a new paragraph (d)(4) to explain how veterans' preference applies during examinations that use alternative ranking and selection procedures (category rating). OPM is also revising this section to renumber, as paragraph

(d)(1), a preexisting explanation of how veterans' preference applies during examinations that use traditional ranking and selection procedures, and to add, as paragraph (d)(2), a cross-reference to the existing provision, 5 CFR 332.401, that describes the order on registers in greater detail. OPM is adding paragraph (d)(3) to explain how veterans' preference applies when filling positions in the excepted service under 5 CFR part 302. This section also renumbers, as paragraph (d)(5), a preexisting explanation of how veterans' preference applies in reductions in force. Under these paragraphs, as prescribed by 5 U.S.C. 3309 and 3319, a person who acquires veterans' preference due to a sole survivorship discharge or release does not receive veterans' preference points, but is entitled to be listed ahead of non-preference eligibles under either numerical or category rating; and is also entitled to higher retention standing as a ''preference eligible'' in the event of a reduction in force as described in 5 CFR part 351 subpart E.

Although outside the scope of this rulemaking, OPM notes that a person who acquires veterans' preference due to a sole survivorship discharge or release also receives other important benefits, including, for example, the right to credit experience in the armed forces to meet the qualification requirements for Federal jobs under 5 U.S.C. 3311, and the right to ''pass over'' protections during the hiring process under 5 U.S.C. 3318 and 5 CFR 332.406.

OPM notes that to qualify for veterans' preference, a discharge or release from active duty must be under honorable conditions. OPM expresses no opinion on the circumstances under which a sole survivorship discharge or release could ever be under other than honorable conditions and therefore disqualifying for veterans' preference eligibility. The Department of Defense is responsible for administering and characterizing discharges from the armed forces, as we note in section 211.102(g) of our interim rule. OPM plans to provide updated guidance in its Delegated Examining Operations Handbook, VetGuide, and all related materials.

Implementation of the VOW (Veterans Opportunity To Work) To Hire Heroes Act

On November 21, 2011, President Obama signed the VOW to Hire Heroes Act of 2011 (title II of Pub. L. 112–56). This Act amends chapter 21 of 5 U.S.C. by adding section 2108a, ''Treatment of certain individuals as veterans, disabled veterans, and preference eligibles.'' In this section, Federal agencies are required to treat active duty service members as veterans, disabled veterans, and preference eligibles consistent with section 2108a when they submit, at the time they apply for a Federal job, a certification that they are expected to be honorably discharged or released from active duty within 120 days after the date of submission. Section 2108a applies, by its terms, to appointments in the competitive service, but the VOW to Hire Heroes Act did not amend 5 U.S.C. 3320, under which the veterans' preference requirements of 5 U.S.C. 3308 through 3318 also apply to the excepted service when possible. See 5 CFR part 302.

A member of the armed forces may start his or her civilian job search prior to discharge or release from active duty and thus will not have a Department of Defense (DD) Form 214, *Certificate of Release or Discharge from Active Duty,* when applying for Federal jobs. Section 2108a ensures that an individual does not lose the opportunity to be considered for Federal jobs (and awarded their veterans' preference entitlements) despite not having a DD Form 214 to submit along with a résumé.

Federal agencies must accept an application from, and consider for appointment and apply veterans' preference to, any service member who submits a ''certification'' in lieu of a DD Form 214, assuming he or she is otherwise eligible. Under 5 U.S.C. 2108a(a)(2) and (b)(2), the ''certification'' is a ''certification that the individual is expected to be separated from active duty service in the armed forces under honorable conditions not later than 120 days after the date of the submission of the certification.'' Also, under 5 U.S.C. 2108a(a)(1)(B) and (b)(1)(B), the submission must be made ''to the Federal officer making the appointment.'' To comply with 5 U.S.C. 2108a, OPM is amending the existing definitions of a ''veteran'' and a ''disabled veteran'' in 5 CFR 211.102(a) and 211.102(b) to include a service member with a certification, as described in a new paragraph (h) of this section, that he or she is expected to be discharged or released from active duty in the armed forces under honorable conditions within 120 days.

However, OPM does not construe the statute to require the submission to be made in the first instance to the officer who makes the appointment. Veterans' preference for Federal employment is not adjudicated and awarded by the appointing officer. Rather, by statute, veterans' preference is awarded earlier in the hiring process, at the time of examination. See 5 U.S.C. 3313(2) and 3319(b). The specific requirements for documenting veterans' preference, including the deadlines for submitting documentation, are prescribed by each agency in its job opportunity announcements under 5 U.S.C. 3330(c)(2) and 5 CFR 330.104(a)(13). Further, agencies operate under established application receipt procedures, pursuant to delegated examining agreements under 5 CFR 250.102. To require one class of applicants—those still in active duty service—to wait until the end of the appointment process to submit their veterans' preference documentation, after veterans' preference has already been awarded to the other applicants, would have the effect of either depriving this class of applicants of their preference, or of requiring disruptive retroactive corrections in the selection process. OPM therefore, in paragraph (h) of the regulations, construes the statute to require the submission of the certification at that stage of the examination when, by statute and regulation, it can actually be considered: during the hiring process, at the time of application and in the manner prescribed by the job opportunity announcement.

This rule supersedes OPM's previous guidance issued on June 15, 2012 in a Chief Human Capital Officer memorandum—VOW (Veterans Opportunity to Work) to Hire Heroes Act of 2011), which defines ''certification as any written document from the armed forces that certifies the service member is expected to be discharged or released from active duty service in the armed forces under honorable conditions not later than 120 days after the date the certification is *signed.''* To clarify, under the interim rule, as well as the statute, the certification is of an expected discharge or release within 120 days after the certificate is *submitted,* not within 120 days after the certificate is signed. Further, under paragraph (h) of the rule, agencies are required to verify a qualifying separation from military service prior to appointment, through the DD 214 or other appropriate documentation.

OPM plans to clarify in implementing guidance that the certification letter should be on letterhead of the appropriate military branch of the service and contain (1) the military service dates including the expected discharge or release date; and (2) the character of service. The service member's military service dates are necessary in order to determine whether

he or she meets the definition of ''veteran'' under 5 U.S.C. 2108(1).

In the definition of a ''disabled veteran,'' OPM is retaining the reference to service members who have been ''discharged or released,'' even though the term used in 5 U.S.C. 2108a(b) is ''separated.'' This conforms to OPM's longstanding interpretation that 5 U.S.C. 2108(2) extends disabled veterans' preference eligibility to qualifying individuals who have been ''discharged or released'' from active duty under honorable conditions, even though that section, like section 2108a(b), refers only to those who have ''separated.'' See 72 FR 12031, 12032 (March 15, 2007); 71 FR 33375, 33376 (June 9, 2006). OPM does not propose to amend the requirements for proof of disability in 5 CFR 211.102(b). The VOW to Hire Heroes Act did not change the requirements related to proof of disability prescribed by 5 U.S.C. 2108(2).

OPM is amending section 211.102(d) to state that for reductions in force (RIFs), veterans' preference does not apply to persons not yet discharged or released from active duty. This is because the VOW Act, in 5 U.S.C. 2108a(a)(1) and 2108a(b)(1), makes such persons eligible for veterans' preference only for purposes of ''making an appointment in the competitive service,'' not for retention standing during RIFs.

End of Operation Iraqi Freedom

Veterans' preference eligibility has also changed with President Obama's announcement of the official end of combat missions in Iraq (Operation Iraqi Freedom) as of August 31, 2010 (*see* Daily Comp. Pres. Docs., DCPD No. 201000716, p. 1). Under 5 U.S.C. 2108(1)(D), any individual serving on active duty for more than 180 days, any part of which occurred between September 11, 2001, and the end date of Operation Iraqi Freedom is entitled to veterans' preference, regardless of whether he or she was deployed to Iraq. Because the specific end date of August 31, 2010, has been set for Operation Iraqi Freedom, individuals whose initial active duty military service begins on or after September 1, 2010, will not be entitled to veterans' preference under section 2108(1)(D). OPM is therefore updating the definition of ''*Veteran*'' in 5 CFR 211.102(a)(6) by replacing the reference to the last day of Operation Iraqi Freedom with a specific reference to August 31, 2010. Veterans' preference is still available to service members whose initial active duty military service begins on or after September 1, 2010, under a separate provision of statute, 5 U.S.C. 2108(1)(A), if service is ''during a war, [or] in a campaign or expedition for which a campaign badge has been authorized.'' This is reflected in paragraphs (a)(1) and (a)(2) of section 211.102 of the interim rule.

Category Rating

OPM is amending 5 CFR 211.102 to reference, in new paragraph (d)(4), the existing requirements for veterans' preference under the alternative ranking and selection procedure called ''category rating.'' Under category rating, within each quality category established by the agency, preference eligibles are listed ahead of individuals who are not preference eligibles. For other than scientific and professional positions at GS–9 (or equivalent) grade level or higher, qualified preference eligibles who have a compensable service-connected disability of 10 percent or more are listed in the highest quality category. The regulations governing category rating are in 5 CFR part 337, subpart C.

Excepted Service Examinations

Under 5 U.S.C. 3313, ''[t]he names of preference eligibles shall be entered ahead of others having the same rating.'' By operation of 5 U.S.C. 3320, OPM's examining procedures in 5 CFR 302.304 for appointment in the excepted service must follow these requirements. Yet section 302.304 does not explicitly say that preference eligibles are to be listed ahead of persons with the same ratings who are not preference eligibles. OPM is adding a new paragraph (d)(3) in section 211.102 to state this requirement. Moreover, OPM notes its June 15, 2012 memo to agencies, titled ''VOW (Veterans Opportunity to Work) to Hire Heroes Act of 2011,'' stated that 5 U.S.C. 2108a does not apply to excepted appointments. OPM has reconsidered this position and has concluded that by operation of 5 U.S.C. 3320, section 2108a does apply to appointments in the excepted service. OPM has also clarified that preference eligibles are listed ahead of non-preference eligibles if numerical scores are not assigned.

Technical Amendments

OPM is amending the authority citation to add a reference to 5 U.S.C. 2108a. OPM is also amending 5 CFR 211.102(d) to state that a ''preference eligible'' is ''a veteran, disabled veteran, sole survivor veteran, spouse, widow, widower, or mother who meets the definition of 'preference eligible' in 5 U.S.C. 2108.'' This amendment expands the regulatory definition to better conform to the statutory definition. OPM is removing the definition of ''uniformed services.'' The definition is unnecessary because the term is not used anywhere else in the regulation. Finally OPM is internally renumbering section 211.102.

Waiver of Notice of Proposed Rulemaking

Pursuant to 5 U.S.C. 553(b)(B), I find that good cause exists for waiving the general notice of proposed rulemaking. Waiver of advance notice is necessary to ensure that the regulations become effective immediately, and that agencies understand their obligations under 5 U.S.C. 2108(3) and 2108a and do not unwittingly deny veterans' preference based upon the outdated existing regulations. If OPM's regulations were permitted to remain as written while OPM solicited comments upon its proposed revisions, service members who expect to be honorably discharged within 120 days, or whose prior release or discharge from active duty was on the basis of sole survivorship, may be inadvertently denied veterans' preference in Federal hiring based upon the current language in regulations. Accordingly, the notice otherwise required is impracticable because it would impede due and timely execution of agencies' functions. The revised language in this interim rule will ensure service members receive their statutory entitlement to veterans' preference.

E.O. 12866, Regulatory Review

This rule has been reviewed by the Office of Management and Budget in accordance with Executive Order 12866.

Regulatory Flexibility Act

I certify that this regulation would not have a significant economic impact on a substantial number of small entities because it affects only Federal employees.

List of Subjects in 5 CFR Part 211

Government employees, Veterans.

U.S. Office of Personnel Management.

Katherine Archuleta,

Director.

Accordingly, OPM revises part 211 of title 5, Code of Federal Regulations to read as follows:

PART 211—VETERAN PREFERENCE

Sec.
211.101 Purpose.
211.102 Definitions.
211.103 Administration of preference.

Authority: 5 U.S.C. 1302, 2108, 2108a.

§ 211.101 Purpose.

The purpose of this part is to define veterans' preference and the

administration of preference in Federal employment. (5 U.S.C. 2108, 2108a)

§ 211.102 Definitions.

For the purposes of preference in Federal employment, the following definitions apply:

(a) *Veteran* means a person who has been discharged or released from active duty in the armed forces under honorable conditions, or who has a certification as defined in paragraph (h) of this section, if the active duty service was performed:

(1) In a war;

(2) In a campaign or expedition for which a campaign badge has been authorized;

(3) During the period beginning April 28, 1952, and ending July 1, 1955;

(4) For more than 180 consecutive days, other than for training, any part of which occurred during the period beginning February 1, 1955, and ending October 14, 1976;

(5) During the period beginning August 2, 1990, and ending January 2, 1992; or

(6) For more than 180 consecutive days, other than for training, any part of which occurred during the period beginning September 11, 2001, and ending on August 31, 2010, the last day of Operation Iraqi Freedom.

(b) *Disabled Veteran* means a person who has been discharged or released from active duty in the armed forces under honorable conditions performed at any time, or who has a certification as defined in paragraph (h) of this section, and who has established the present existence of a service-connected disability or is receiving compensation, disability retirement benefits, or a pension because of a statute administered by the Department of Veterans Affairs or a military department.

(c) *Sole survivor veteran* means a person who was discharged or released from a period of active duty after August 29, 2008, by reason of a sole survivorship discharge (as that term is defined in 10 U.S.C. 1174(i)), and who meets the definition of a ''veteran'' in paragraph (a) of this section, with the exception that he or she is not required to meet any of the length of service requirements prescribed by paragraph (a).

(d) *Preference eligible* means a veteran, disabled veteran, sole survivor veteran, spouse, widow, widower, or mother who meets the definition of ''preference eligible'' in 5 U.S.C. 2108.

(1) Preference eligibles other than sole survivor veterans are entitled to have 5 or 10 points added to their earned score on a civil service examination in accordance with 5 U.S.C. 3309.

(2) Under numerical ranking and selection procedures for competitive service hiring, preference eligibles are entered on registers in in the order prescribed by section 332.401 of this chapter.

(3) Under excepted service examining procedures in part 302 of this chapter, preference eligibles are listed ahead of persons with the same ratings who are not preference eligibles, or listed ahead of non-preference eligibles if numerical scores have not been assigned.

(4) Under alternative raking and selection procedures, *i.e.,* category rating, preference eligibles are listed ahead of individuals who are not preference eligibles in accordance with 5 U.S.C. 3319.

(5) Preference eligibles, other than those who have not yet been discharged or released from active duty, are accorded a higher retention standing than non-preference eligibles in the event of a reduction in force in accordance with 5 U.S.C. 3502.

(6) Veterans' preference does not apply, however, to inservice placement actions such as promotions.

(e) *Armed forces* means the United States Army, Navy, Air Force, Marine Corps, and Coast Guard.

(f) *Active duty* or *active military duty:*

(1) For veterans defined in paragraphs (a)(1) through (3) and disabled veterans defined in paragraph (b) of this section, means active duty with military pay and allowances in the armed forces, and includes training, determining physical fitness, and service in the Reserves or National Guard; and

(2) For veterans defined in paragraphs (a)(4) through (6) of this section, means full-time duty with military pay and allowances in the armed forces, and does not include training, determining physical fitness, or service in the Reserves or National Guard.

(g) *Discharged or released from active duty* means with either an honorable or general discharge from active duty in the armed forces. The Departments of Defense is responsible for administering and defining military discharges.

(h) *Certification* means any written document from the armed forces that certifies the service member is expected to be discharged or released from active duty service in the armed forces under honorable conditions not later than 120 days after the date the certification is submitted for consideration in the hiring process, at the time and in the manner prescribed by the applicable job opportunity announcement. Prior to appointment, the service member's character of service and qualifying discharge or release must be verified through a DD form 214 or equivalent documentation.

§ 211.103 Administration of preference.

Agencies are responsible for making all preference determinations except for preference based on a common law marriage. Such a claim must be referred to OPM's General Counsel for decision.

[FR Doc. 2014–30295 Filed 12–24–14; 8:45 am]

BILLING CODE 6325–39–P

DEPARTMENT OF HOMELAND SECURITY

Office of the Secretary

6 CFR Part 37

RIN 1601–AA74

[Docket No. DHS–2006–0030]

Minimum Standards for Driver's Licenses and Identification Cards Acceptable by Federal Agencies for Official Purposes

AGENCY: Office of the Secretary, DHS.

ACTION: Final rule.

SUMMARY: Pursuant to REAL ID regulations, beginning December 1, 2014, federal agencies may not accept State-issued driver's licenses or identification cards for official purposes from individuals born after December 1, 1964, unless the license or card is REAL ID-compliant and was issued by a compliant State as determined by DHS. Also, beginning December 1, 2017, federal agencies may not accept driver's licenses or identification cards for official purposes from any individual unless the card is REAL ID-compliant and was issued by a compliant State as determined by DHS. This final rule changes both document enrollment dates to October 1, 2020. Nothing in this rule affects the prohibition against federal agencies accepting for official purposes licenses and identification cards issued by noncompliant States, pursuant to the REAL ID Act and in accordance to the phased enforcement schedule.

DATES: Effective on December 29, 2014.

FOR FURTHER INFORMATION CONTACT: Ted Sobel, Director, Office of State-Issued Identification Support, Screening Coordination Office, Department of Homeland Security, Washington, DC 20528, (202) 282–9570.

SUPPLEMENTARY INFORMATION:

I. Background

The REAL ID Act of 2005 [1] (the Act) prohibits federal agencies, effective May 11, 2008, from accepting a state-issued driver's license or identification card for any official purpose unless the license or card is issued by a State that meets the requirements set forth in the Act. Official purpose as defined in the Act includes accessing federal facilities, boarding federally regulated commercial aircraft, entering nuclear power plants, and any other purpose as determined by the Secretary of Homeland Security. *Id.* at § 201(3). Section 205(b) of the Act, however, authorizes the Secretary of Homeland Security to grant extensions of time for States to meet the requirements of the Act if the State provides adequate justification for noncompliance.

On January 29, 2008, DHS promulgated a final rule implementing the requirements of the Act. *See* 73 FR 5272, *also* 6 CFR part 37. The final rule extended the full compliance date from May 11, 2008, to May 11, 2011. *See* 6 CFR 37.51(a). Since promulgation of the final rule, States have made significant progress towards securing their document issuance and productions processes in accordance with the standards set forth in the REAL ID Act. DHS has worked closely with the States to assist with implementation and has provided states with more than $263 million in grants since fiscal year 2008. Notwithstanding the States' significant progress in meeting the requirements of the Act, many States continued to experience difficulties in satisfying all the requirements, especially in light of diminished budgets during the economic downturn. Because of this, DHS believed that additional time was warranted and, in March 2011, DHS changed the full compliance deadline to January 15, 2013. *See* 76 FR 12269.

In December 2012, DHS began issuing compliance determinations to States submitting certification materials; DHS also announced that DHS would enforce the Act through a phased approach and, in the fall of 2013, released its phased enforcement schedule. Phased enforcement ensures that REAL ID can be implemented in a strategic manner, taking into account the progress made by the States. Phased enforcement also provides DHS with an opportunity to evaluate the effects of enforcement in a measured way that can help inform the development and implementation of future phases as more States continue to work to come into full compliance. In order to inform the pathway to full enforcement, DHS plans to conduct an evaluation in 2015 to assess the effects of phased enforcement and States' progress in meeting the standards. This approach also can assist federal agencies in applying lessons learned as they consider future access control strategies.

II. Document Enrollment Periods

The REAL ID regulations include document enrollment dates after which time Federal agencies are prohibited from accepting for official purposes driver's licenses or identification cards from certain individuals, depending on their age, unless those documents are REAL ID-compliant and issued by a fully compliant State. The current regulatory text provides that, beginning December 1, 2014, federal agencies may not, for official federal purposes, accept any driver's licenses or identification cards from individuals born after December 1, 1964, unless such document is a REAL ID-compliant license or card issued by a State determined by DHS to be in full compliance. Furthermore, on or after December 1, 2017, federal agencies may not, for official federal purposes, accept a driver's license or identification card from *any* individual unless such document is a REAL ID-compliant license or card issued by a compliant State. *See* 6 CFR 37.5(b) and (c); 6 CFR 37.27.

With this rule, DHS is changing these document enrollment dates. Without the change, large portions of individuals from REAL ID-compliant jurisdictions would either need to renew their licenses before the end of this year or risk not being able to use them for official federal purposes beginning December 1, 2014. This is because although these individuals may hold licenses from compliant States, those licenses may have been issued prior to State compliance and, therefore, the document itself may not have been issued in accordance with REAL ID standards. Furthermore, the December 1, 2014, and December 1, 2017, document enrollment dates may complicate DHS's enforcement plan and diminish DHS's opportunity to reasonably evaluate the effects of the various enforcement phases.

Additionally, to enforce the December 1, 2014, document enrollment date would require compliant States to significantly accelerate their license issuance processes to accommodate large numbers of residents seeking to renew their licenses by December 2014. Enforcing the date also could result in these individuals seeking to obtain an alternative acceptable document to establish identity for official federal purposes. Because of these significant operational and cost burdens on both compliant states and their residents, DHS believes there is adequate justification to stay the document enrollment dates.

Thus, the Secretary of Homeland Security, under the authority granted under section 205(b) of the Act, is changing both document enrollment dates to October 1, 2020. Under the REAL ID Act, the maximum validity period for driver's licenses and identification cards may not exceed eight years. The new October 1, 2020 document enrollment date represents nearly a full eight-year enrollment cycle from the January 15, 2013 full compliance date and should give residents of compliant states sufficient time to obtain licenses that satisfy the REAL ID standards, which presumably they will do in accordance with their normal renewal schedule. DHS also is establishing a single document enforcement date, as opposed to a bi-furcated approach based on a person's age, to accommodate the phased enforcement schedule and to simplify the implementation process for federal agencies' access control personnel. Nothing in this rule affects the prohibition against federal agencies accepting licenses and identification cards issued by noncompliant States, pursuant to the REAL ID Act and in accordance to the phased enforcement schedule. DHS believes this rule balances the security objective of improving the reliability of identification documents presented for official purposes with the operational and cost burdens on compliant States and their residents.

III. Regulatory Analyses

A. Administrative Procedure Act

The Administrative Procedure Act (APA) provides that an agency may dispense with notice and comment rulemaking procedures when an agency, for ''good cause,'' finds that those procedures are ''impracticable, unnecessary, or contrary to the public interest.'' *See* 5 U.S.C. 553(b)(B).

Throughout REAL ID's implementation, DHS has engaged in extensive, ongoing discussions with the States regarding their ability to comply with the REAL ID Act and regulations. Based in part on those communications, DHS believes that phased enforcement offers States the best ability to obtain full compliance with REAL ID. As DHS is currently implementing phased

[1] The Emergency Supplemental Appropriations Act for Defense, the Global War on Terror, and Tsunami Relief, 2005, Public Law 109–13, 119 Stat. 231, 302 (May 11, 2005) (codified at 49 U.S.C. 30301 note).

enforcement, DHS believes it is contrary to the public interest to retain and enforce the document enrollment dates as REAL ID-compliant States would experience additional burdens by requiring the accelerated issuance of REAL ID-compliant driver's licenses and identification cards. Furthermore, to seek public comment prior to changing the age-based document enrollment dates is impracticable, given that such comments could not be received and acted upon prior to December 1, 2014, when the Federal government would decline to accept all legacy licenses and cards issued before a State became compliant held by individuals born after December 1, 1964.

Based on the above, DHS finds that notice and comment rulemaking in this instance would be impracticable, unnecessary, and contrary to the public interest. For the same reason, DHS finds good cause to make this rule effective immediately upon publication in the **Federal Register**. *See* 5 U.S.C. 553(d)(3). In addition, because this final rule relieves a restriction, and because compliant States will be able to renew driver's licenses and identification cards in accordance with their normal processes, States will now have more time to ensure that the documents they issue meet the security requirements of the REAL ID Act, there is good cause to make this rule effective immediately upon publication in the **Federal Register**.

B. Executive Order 13563 and Executive Order 12866

This rule constitutes a ''significant regulatory action'' under Executive Order 12866, as supplemented by Executive Order 13563, and therefore has been reviewed by the Office of Management and Budget (OMB). Executive Order 12866 defines ''significant regulatory action'' as one that is likely to result in a rule that may (1) have an annual effect on the economy of $100 million or more or adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or Tribal governments or communities; (2) create a serious inconsistency or otherwise interfere with an action taken or planned by another agency; (3) materially alter the budgetary impact of entitlements, grants, user fees, or loan programs or the rights or obligations of recipients thereof; or (4) raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in the Executive Order.

C. Regulatory Flexibility Act

The Regulatory Flexibility Act of 1980, 5 U.S.C. 601–612, as amended by the Small Business Regulatory Enforcement Fairness Act of 1996 (Pub. L. 104–121), requires Federal agencies to consider the potential impact of regulations on small businesses, small government jurisdictions, and small organizations during the development of their rules. This final rule, however, makes changes for which notice and comment are not necessary. Accordingly, DHS is not required to prepare a regulatory flexibility analysis. *See* 5 U.S.C. 603, 604.

D. Paperwork Reduction Act

This rule calls for no new collection of information under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520).

E. Executive Order 12132 (Federalism)

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

F. Unfunded Mandates Reform Act

The Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531–1538) requires Federal agencies to assess the effects of their discretionary regulatory actions. In particular, the Unfunded Mandates Reform Act addresses actions that may result in the expenditure by a State, local, or Tribal government, in the aggregate, or by the private section of $100 million (adjusted for inflation) or more in any one year. This final rule will not result in such an expenditure.

G. Executive Order 13175 (Tribal Consultation)

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.

H. Executive Order 13211 (Energy Impact Analysis)

DHS has analyzed this rule under Executive Order 13211, ''Actions Concerning Regulations that Significantly Affect Energy Supply Distribution, or Use.'' DHS has determined that it is not a ''significant energy action'' under that Order and is not likely to have a significant adverse effect on the supply, distribution, or use of energy. Therefore, it does not require a Statement of Energy Effects under Executive Order 13211.

List of Subjects in 6 CFR Part 37

Document security, Driver's licenses, Identification cards, Incorporation by reference, Motor vehicle administrations, Physical security.

The Amendments

For the reasons set forth above, the Department of Homeland Security amends 6 CFR part 37 as follows:

PART 37—REAL ID DRIVER'S LICENSES AND IDENTIFICATION CARDS

■ 1. The authority citation for part 37 continues to read as follows:

Authority: 49 U.S.C. 30301 note; 6 U.S.C. 111, 112.

■ 2. In § 37.5, remove paragraph (b), redesignate paragraph (c) as paragraph (b), redesignate paragraph (d) as paragraph (c), and revise redesignated paragraph (b) to read as follows:

§ 37.5 Validity periods and deadlines for REAL ID driver's licenses and identification cards.

* * * * *

(b) On or after October 1, 2020, Federal agencies shall not accept a driver's license or identification card for official purposes from any individual unless such license or card is a REAL ID-compliant driver's license or identification card issued by a State that has been determined by DHS to be in full compliance as defined under this subpart.

* * * * *

§ 37.27 [Amended]

■ 3. In § 37.27, remove the last two sentences.

Jeh Charles Johnson,

Secretary.

[FR Doc. 2014–30082 Filed 12–24–14; 8:45 am]

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DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

7 CFR Part 319

[Docket No. APHIS–2013–0079]

Khapra Beetle; New Regulated Countries and Regulated Articles

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Interim rule and request for comments.

SUMMARY: We are amending the khapra beetle regulations by adding additional regulated articles and regulated countries. We are also updating the regulations to reflect changes in industry practices that have affected the risk of khapra beetle being imported into the United States and country names that have changed since the regulations were originally published. Finally, we are removing the list of countries where khapra beetle is known to occur from the regulations and moving it to the Plant Protection and Quarantine Web site. These actions are necessary to prevent the introduction of khapra beetle from infested countries on commodities that have been determined to be hosts for the pest, reflect current industry practices, and make it easier to make timely changes to the list of regulated countries.

DATES: This interim rule is effective December 29, 2014. We will consider all comments that we receive on or before February 27, 2015.

ADDRESSES: You may submit comments by either of the following methods:

- *Federal eRulemaking Portal:* Go to *http://www.regulations.gov/#!docketDetail;D=APHIS-2013-0079.*
- *Postal Mail/Commercial Delivery:* Send your comment to Docket No. APHIS–2013–0079, Regulatory Analysis and Development, PPD, APHIS, Station 3A–03.8, 4700 River Road Unit 118, Riverdale, MD 20737–1238.

Supporting documents and any comments we receive on this docket may be viewed at *http://www.regulations.gov/#!docketDetail;D=APHIS-2013-0079* or in our reading room, which is located in room 1141 of the USDA South Building, 14th Street and Independence Avenue SW., Washington, DC. Normal reading room hours are 8 a.m. to 4:30 p.m., Monday through Friday, except holidays. To be sure someone is there to help you, please call (202) 799–7039 before coming.

FOR FURTHER INFORMATION CONTACT: Mr. George Apgar Balady, Senior Regulatory Policy Specialist, Regulatory Coordination and Compliance, PPQ, APHIS, 4700 River Road Unit 133, Riverdale, MD 20737–1236; (301) 851–2240.

SUPPLEMENTARY INFORMATION:

Background

The khapra beetle (*Trogoderma granarium*) is an insect native to India that has since become established in other countries within Africa, Asia, the Mediterranean, and the Middle East. It is a destructive pest of grain, stored products, and seeds. Infestations of khapra beetle are difficult to control because of the insect's ability to survive without food for long periods, its preference for dry conditions and low-moisture food, and its resistance to many insecticides.

The khapra beetle regulations in 7 CFR 319.75 through 319.75–9 (referred to below as the regulations) restrict the entry of certain articles, such as cucurbit seeds, used jute or burlap bags, goatskins, and chili peppers to prevent the importation of khapra beetle from countries where it is known to occur.

Regulated Articles

On July 8, 2011, the Animal and Plant Health Inspection Service (APHIS) issued a Federal Order (DA–2011–38) [1] to require a phytosanitary certificate of inspection for the entry of rice (*Oryza sativa*) in commercial shipments from countries where khapra beetle is known to occur. A second Federal Order (DA–2011–39) also issued on July 8, 2011, prohibited shipments of rice from those countries in passenger baggage and personal effects.

On December 14, 2011, APHIS issued another Federal Order (DA–2011–71) to expand the requirement for a phytosanitary certificate to commercial shipments of chick peas (*Cicer* spp.), safflower seeds (*Carthamus tinctorius*), and soybeans (*Glycine max*) from countries where khapra beetle is known to occur due to these commodities being repeatedly found to be infested with khapra beetle. Shipments of chick peas, safflower seeds, and soybeans from those countries in passenger baggage and personal effects were prohibited through a Federal Order (DA–2011–70) also issued on December 14, 2011.

We are codifying the requirements of these Federal Orders by adding rice, chick peas, safflower seeds, and soybeans to the list of regulated articles in § 319.75–2. However, because the current regulations require that all regulated articles be treated prior to entering the United States, we are amending § 319.75–2 to specify that rice, chick peas, safflower seeds, and soybeans are allowed entry into the United States if accompanied by a phytosanitary certificate with an additional declaration stating that the articles in the consignment were inspected and found free of khapra beetle in accordance with § 319.75–9.

We are also adding bulk, unpackaged seeds to the list of regulated articles in § 319.75–2 due to their potential for infestation by khapra beetle.

Regulated Countries

Areas of the world that are regulated for khapra beetle are listed in paragraph (b) of § 319.75–2. We have determined that khapra beetle is now present in Kuwait, Oman, Qatar, the United Arab Emirates, South Sudan, and Palestinian Authority, West Bank, none of which are currently listed as regulated countries or areas under a specific jurisdictional authority. In addition, since the regulations were last updated, some of the names of countries regulated for khapra beetle have changed. For example, Upper Volta is now known as Burkina Faso, and Sudan has split into two countries known as The Republic of Sudan and South Sudan.

Rather than amending the regulations to update the list of regulated countries in § 319.75–2(b), we are instead removing the list of regulated countries from the regulations and moving it to the Plant Protection and Quarantine (PPQ) Web site at *http://www.aphis.usda.gov/import_export/plants/manuals/ports/downloads/kb.pdf.* Section 319.75–2(c) will detail the notice-based process by which we will add countries to the list of regulated areas. Countries will be added to the list of regulated areas when we receive official notification from the country that it is infested or when we intercept the pest in a commercial shipment from that country. Any future additions to the list of regulated areas will be conveyed through publication of a notice in the **Federal Register**.

Industry Practices

We are also updating the regulations for certain commodities due to changes in industry practices that have affected the risk of khapra beetle being introduced into the United States. Currently, brassware and wooden screens from Bombay, India, are listed as regulated articles in § 319.75–2(a)(2), as these commodities have traditionally been shipped in used jute or burlap bags, which are known hosts of the

[1] *http://www.aphis.usda.gov/import_export/plants/plant_imports/federal_order/index.shtml#beetle.*

khapra beetle. However, industry practices have changed and brassware and wooden screens are now shipped in material that is not a host of khapra beetle. Consequently, khapra beetle is no longer being detected in shipments of brassware and wooden screens. In addition, brassware and wooden screens may be imported from other countries infested with khapra beetle, and not just from India. Therefore, we are amending the regulations to remove the specific reference to brassware and wooden screens in § 319.75–2(a)(2) as these items are already restricted when shipped in or packed with used jute or burlap bagging.

The regulations currently list goatskins, lambskins, and sheepskins from Sudan and India, except those that are fully tanned, blue-chromed, pickled in mineral acid, or salted and moist, as regulated articles in § 319.75–2(a)(3). However, it is possible that untreated goatskins, lambskins, and sheepskins may be imported into the United States from other countries where khapra beetle is found. Therefore, we are amending the regulations to restrict these host materials from all countries where the Administrator has determined khapra beetle is present. We are also redesignating § 319.75–2(a)(3) as § 319.75–2(a)(2).

Currently, whole chilies (*Capsicum* spp.), whole red peppers (*Capsicum* spp.), and cumin seeds (*Cuminum cyminum*) in new jute or burlap bags from Pakistan are listed as regulated articles in § 319.75–2(a)(8). Because these commodities may be shipped in other khapra beetle host material and from other countries that are infested with khapra beetle, we are amending the regulations to specify that the importation of whole chilies, whole red peppers, and cumin seeds is restricted from all countries infested with khapra beetle when packed in new jute or burlap bagging. We are also redesignating § 319.75–2(a)(8) as § 319.75–2(a)(6).

Miscellaneous

The regulations in paragraphs (a)(5) through (a)(7) of § 319.75–2 currently restrict the importation of used jute or burlap bagging not containing cargo, used jute or burlap bagging that contains cargo and the cargo in such bagging, and used jute or burlap bagging used as packing material and the cargo for which the jute and burlap bagging is used as packing material, from countries where khapra beetle is known to occur. As we consider packing material to include wrapping, we do not believe that it is necessary to maintain a separate entry for bags used to contain cargo. Therefore, we are removing current paragraph (a)(6).

Because the regulations were last revised prior to the transfer of port inspection duties to Customs and Border Protection, we are also revising the definition of *inspector* provided in § 319.75–1. We are revising the definition to match the definition of inspector provided in the fruits and vegetables regulations in § 319.56–2.

We are also revising footnote 1 in § 319.75–2 to remove the second sentence, which specifically references the entry status of fresh whole chilies and fresh whole peppers from Pakistan under our fruits and vegetables regulations as an example of other restrictions that may apply to articles restricted under the khapra beetle regulations. Instead, we will simply reference the fruits and vegetables regulations and the foreign cotton and covers regulations as examples. Doing so will also allow us to remove footnote 3, which provides the same information.

Finally, we are revising § 319.75–4 to correct a wording redundancy and to make the requirements of that section easier to understand.

Immediate Action

Immediate action is necessary to prevent the introduction of khapra beetle into the United States on additional host materials and from additional countries. Under these circumstances, the Administrator has determined that prior notice and opportunity for public comment are contrary to the public interest and that there is good cause under 5 U.S.C. 553 for making this action effective less than 30 days after publication in the **Federal Register**.

We will consider comments we receive during the comment period for this interim rule (see **DATES** above). After the comment period closes, we will publish another document in the **Federal Register**. The document will include a discussion of any comments we receive and any amendments we are making to the rule.

Executive Order 12866 and Regulatory Flexibility Act

This interim rule is subject to Executive Order 12866. However, for this action, the Office of Management and Budget has waived its review under Executive Order 12866.

In accordance with 5 U.S.C. 603, we have performed an initial regulatory flexibility analysis, which is summarized below, regarding the economic effects of this rule on small entities. The full analysis may be viewed on the Regulations.gov Web site (see **ADDRESSES** above for instructions for accessing Regulations.gov) or obtained from the person listed under **FOR FURTHER INFORMATION CONTACT**.

Current regulations restrict the entry of certain articles known to host the khapra beetle, a destructive pest of grain products and seeds. The interim rule will codify requirements of existing Federal Orders by adding commercial shipments of rice, chick pea, safflower seed, and soybean to the list of regulated articles requiring a phytosanitary certificate, and by prohibiting their importation in passenger baggage and personal effects. The amended regulations will broaden regulations on the importation of khapra beetle host material, such as jute or burlap bags, to all areas where khapra beetle has been detected. The interim rule will also add certain countries to the list of areas where khapra beetle is known to exist and move the list to the PPQ Web site, where it will be easier to make timely amendments.

The U.S. entities that may be impacted by the rule are likely to be those involved in importing, handling, moving, processing, or selling regulated articles. The 2012 County Business Patterns (North American Industry Classification System) statistics corresponding to the Small Business Administration small-entity standards indicate that between 93 and 100 percent of these entities can be considered small. However, impacts of the rule are expected to be limited; the khapra beetle regulations on rice imports have been in place since July 2011, and on chick pea, safflower seed, and soybean imports since December 2011. None of the newly regulated areas (Kuwait, Oman, Qatar, the United Arab Emirates, and South Sudan, and the Palestinian Authority—West Bank) is an important source for the United States of major commodities known to host khapra beetle.

Based on the information we have, there is no reason to conclude that this interim rule will result in any significant economic effect on a substantial number of small entities. However, we do not currently have all of the data necessary for a comprehensive analysis of the effects of this rule on small entities. Therefore, we are inviting comments on potential effects. In particular, we are interested in determining the number and kind of small entities that may incur benefits or costs from the implementation of this interim rule.

Executive Order 12988

This rule has been reviewed under Executive Order 12988, Civil Justice

Reform. This rule: (1) Preempts all State and local laws and regulations that are inconsistent with this rule; (2) has no retroactive effect; and (3) does not require administrative proceedings before parties may file suit in court challenging this rule.

Paperwork Reduction Act

This rule contains no information collection or recordkeeping requirements under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

List of Subjects in 7 CFR Part 319

Coffee, Cotton, Fruits, Imports, Logs, Nursery stock, Plant diseases and pests, Quarantine, Reporting and recordkeeping requirements, Rice, Vegetables.

Accordingly, we are amending 7 CFR part 319 as follows:

PART 319—FOREIGN QUARANTINE NOTICES

■ 1. The authority citation for part 319 continues to read as follows:

Authority: 7 U.S.C. 450, 7701–7772, and 7781–7786; 21 U.S.C. 136 and 136a; 7 CFR 2.22, 2.80, and 371.3.

■ 2. In § 319.75–1, the definition of *inspector* is revised to read as follows:

§ 319.75–1 Definitions.

* * * * *

Inspector. Any individual authorized by the Administrator or the Commissioner of U.S. Customs and Border Protection, Department of Homeland Security, to enforce the regulations in this subpart.

* * * * *

■ 3. Section 319.75–2 is revised to read as follows:

§ 319.75–2 Regulated articles.[1]

(a) The following articles are regulated articles from all countries designated in accordance with paragraph (c) of this section as infested with khapra beetle and are subject to mandatory treatment in accordance with § 319.75–4:

(1) Seeds of the plant family Cucurbitaceae[2] if in shipments greater than 2 ounces, if not for propagation;

(2) Goatskins, lambskins, and sheepskins (excluding goatskins, lambskins, and sheepskins which are fully tanned, blue-chromed, pickled in mineral acid, or salted and moist);

(3) Plant gums and seeds shipped as bulk cargo (in an unpackaged state);

(4) Used jute or burlap bagging not containing cargo;

(5) Used jute or burlap bagging that is used as a packing material (such as filler, wrapping, ties, lining, matting, moisture retention material, or protection material), and the cargo for which the used jute or burlap bagging is used as a packing material; and

(6) Whole chilies (*Capsicum* spp.), whole red peppers (*Capsicum* spp.), and cumin seeds (*Cuminum cyminum*) when packed in new jute or burlap bagging;

(b) The following articles are regulated articles from all countries designated in accordance with paragraph (c) of this section as infested with khapra beetle or that have the potential to be infested with khapra beetle and must be accompanied by a phytosanitary certificate issued in accordance with § 319.75–9 and containing an additional declaration stating: ''The shipment was inspected and found free of khapra beetle (*Trogoderma granarium*).''

(1) Rice (*Oryza sativa*); and

(2) Chick peas (*Cicer* spp.), safflower seeds (*Carthamus tinctorius*), and soybeans (*Glycine max*).

(c) The Administrator will designate a country or an area under a specific jurisdictional authority as infested with khapra beetle when we receive official notification from the country or area that it is infested or when we intercept the pest in a commercial shipment from that country. The Administrator will publish the list of countries or areas under a specific jurisdictional authority found to be infested with khapra beetle on the Plant Protection and Quarantine Web site, *http://www.aphis.usda.gov/import_export/plants/manuals/ports/downloads/kb.pdf.* After a change is made to the list of infested countries or areas, we will publish a notice in the **Federal Register** informing the public that the change has occurred.

■ 4. Section 319.75–4 is revised to read as follows:

§ 319.75–4 Treatments.

Prior to moving into the United States from the port of entry, a regulated article listed in § 319.75–2(a) shall be treated for possible infestation with khapra beetle in accordance with part 305 of this chapter.

Done in Washington, DC, this 18th day of December 2014.

Kevin Shea,

Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 2014–30264 Filed 12–24–14; 8:45 am]

BILLING CODE 3410–34–P

[1] The importation of regulated articles may be subject to prohibitions or additional restrictions under other provisions of 7 CFR part 319, such as Subpart—Foreign Cotton and Covers (see § 319.8) and Subpart—Fruits and Vegetables (see § 319.56).

[2] Seeds of the plant family Cucurbitaceae include but are not limited to: *Benincasa hispida* (wax gourd), *Citrullus Lanatus* (watermelon), *Cucumis melon* (muskmelon, cantaloupe, honeydew), *Cumumis sativius* (cucumber), *Cucurbita pepo* (pumpkin, squashes, vegetable marrow), *Lagenaria siceraria* (calabash, gourd), *Luffa cylindrica* (dishcloth gourd), *Mormoridica charantia* (bitter melon), and *Sechium edule* (chayote).

DEPARTMENT OF AGRICULTURE

National Institute of Food and Agriculture

7 CFR Part 3407

Revision of Delegations of Authority

CFR Correction

In Title 7 of the Code of Federal Regulations, Part 2000 to End, revised as of January 1, 2014, on page 442, in § 3407.4, in paragraph (a), add a heading to read ''Director'', and in the first sentence, add the word ''Director'' between ''The'' and ''is''.

[FR Doc. 2014–30467 Filed 12–24–14; 8:45 am]

BILLING CODE 1505–01–D

FEDERAL ELECTION COMMISSION

11 CFR Chapter I

[Notice 2014–15]

Technical Amendments and Corrections

AGENCY: Federal Election Commission.

ACTION: Correcting amendments.

SUMMARY: The Commission is making technical corrections to various sections of its regulations.

DATES: Effective December 29, 2014.

FOR FURTHER INFORMATION CONTACT: Ms. Amy L. Rothstein, Assistant General Counsel, Ms. Jessica Selinkoff, Attorney, or Mr. Theodore M. Lutz, Attorney, 999 E Street NW., Washington, DC 20463, (202) 694–1650 or (800) 424–9530.

SUPPLEMENTARY INFORMATION:

Background

The existing rules that are the subject of these corrections are part of the continuing series of regulations that the Commission has promulgated to implement the Presidential Election Campaign Fund Act, 26 U.S.C. 9001–13, and the Presidential Primary Matching Payment Account Act, 26 U.S.C. 9031–42 (collectively, the ''Funding Acts''), and the Federal Election Campaign Act of 1971, as amended, 52 U.S.C. 30101–45 (formerly 2 U.S.C. 431–55) (''FECA'').

The Commission is promulgating these corrections without advance notice or an opportunity for comment because they fall under the ''good cause'' exemption of the Administrative Procedure Act. 5 U.S.C. 553(b)(B). The Commission finds that notice and comment are unnecessary here because these corrections are merely typographical and technical; they effect no substantive changes to any rule. For the same reason, these corrections fall within the ''good cause'' exception to the delayed effective date provisions of the Administrative Procedure Act and the Congressional Review Act. 5 U.S.C. 553(d)(3), 808(2).

Moreover, because these corrections are exempt from the notice and comment procedure of the Administrative Procedure Act under 5 U.S.C. 553(b), the Commission is not required to conduct a regulatory flexibility analysis under 5 U.S.C. 603 or 604. *See* 5 U.S.C. 601(2), 604(a). Nor is the Commission required to submit these revisions for congressional review under FECA or the Funding Acts. *See* 52 U.S.C. 30111(d)(1), (4) (formerly 2 U.S.C. 438(d)(1), (4)) (providing for congressional review when Commission ''prescribe[s]'' a ''rule of law''); 26 U.S.C. 9009(c)(1), (4) (same); 26 U.S.C. 9039(c)(1), (4) (same). Accordingly, these corrections are effective upon publication in the **Federal Register**.

Corrections to FECA and Funding Act Rules in Chapter I of Title 11 of the Code of Federal Regulations

This document makes three categories of regulatory changes: Correcting typographical errors; updating references to the United States Code to reflect the recent transfer of FECA from Title 2 to Title 52; and correcting technical errors in certain updated citations.

A. Typographical Corrections

1. Corrections to 11 CFR 100.137

The Commission is correcting two typographical errors in this section. Section 100.137 concerns the cost of invitations, food, and beverages provided by a volunteer ''on the individual's residential premises or in a church or community room as specified in 11 CFR 100.106 and 100.107.'' However, the provisions concerning residential premises and church or community rooms are at 11 CFR 100.135 and 100.136, not 11 CFR 100.106 and 100.107; there are no regulations at 11 CFR 100.106 or 100.107. Thus, the Commission is replacing the reference to ''11 CFR 100.106 and 100.107'' with a reference to ''11 CFR 100.135 and 100.136.''

2. Corrections to 11 CFR 114.1

The Commission is correcting two typographical errors in this section. First, the Commission is correcting paragraph (a)(2)(v) of this section by replacing ''normal of comparable'' with ''normal or comparable.'' Second, the Commission is correcting paragraph (e)(3) of this section by replacing ''requirements on'' with ''requirements of.''

3. Correction to 11 CFR 114.3

The Commission is correcting a typographical error in paragraph (c)(1)(ii) of this section by replacing ''a communications'' with ''a communication.''

4. Correction to 11 CFR 9003.5

The Commission is correcting a typographical error in paragraph (b)(1)(iii)(B) of this section by replacing ''dairy'' with ''daily.'' As corrected, the provision identifies a ''daily travel expense policy'' as an example of a ''pre-established written campaign committee policy.''

B. Updating References to the United States Code

The Office of the Law Revision Counsel of the House of Representatives recently transferred the provisions of FECA from Title 2 of the United States Code to new Title 52.[1] This transfer changed the numbering of the Code sections but did not change any statutory text.

Accordingly, with certain limited exceptions, the Commission is making corresponding changes to references to Title 2 throughout 11 CFR chapter 1.[2] For example, the Commission is revising the reference to 2 U.S.C. 431(1) in the definition of ''election'' at 11 CFR 100.2 to refer, instead, to 52 U.S.C. 30101(1).[3]

C. Corrections to United States Code References

Several citations to Title 2 in Commission regulations contain typographical errors. In the course of revising the citations from Title 2 to Title 52, the Commission is also correcting these errors.

1. Correction to 11 CFR 1.14

Paragraph (a) of this section erroneously refers to 2 U.S.C. 437d(9) rather than 2 U.S.C. 437d(a)(9). The Commission is correcting this reference and updating it to 52 U.S.C. 30107(a)(9).

2. Correction to Part 102

The authority citation for this part erroneously refers to 2 U.S.C. 441(d) rather than 2 U.S.C. 441d. The Commission is correcting this reference and updating it to 52 U.S.C. 30120.

3. Correction to 11 CFR 114.6

The authority citation following this section erroneously refers to 2 U.S.C. 438(8)(a) rather than 2 U.S.C. 438(a)(8). The Commission is correcting this reference and updating it to 52 U.S.C. 30111(a)(8).

4. Corrections to 11 CFR Part 115

The authority citation for this part contains several unnecessary and duplicative references to the public laws that established the Commission's rulemaking authority at 2 U.S.C. 437d(a)(8) and 2 U.S.C. 438(a)(8). It also erroneously refers to 2 U.S.C. 438(a)(10) rather than 2 U.S.C. 438(a)(8). The Commission is correcting and clarifying the authority citation by replacing the references to the public laws with updated statutory references to 52 U.S.C. 30107(a)(8) and 52 U.S.C. 30111(a)(8).

Additionally, although part 115 concerns contributions and expenditures by federal contractors, the current authority citation does not refer to the FECA provision concerning federal contractors, 52 U.S.C. 30119 (formerly 2 U.S.C. 441c). Thus, the Commission is also amending the authority citation to include a reference to this provision.

5. Correction to 11 CFR 9038.1

Paragraph (b)(1)(v) of this section erroneously refers to 2 U.S.C. 437(d)(a)(3) rather than 2 U.S.C.

[1] The transfers occurred on September 1, 2014, for the online version of the United States Code and will occur with supplement II of the 2012 edition for the printed version of the Code. *See* Office of the Law Revision Counsel, Editorial Reclassification: Title 52, United States Code, *http://uscode.house.gov/editorialreclassification/t52/index.html* (last visited Dec. 1, 2014).

[2] The Commission is not updating citations that it already updated in two prior rulemakings. *See* Aggregate Biennial Contribution Limits, 79 FR 62335 (Oct. 17, 2014) (revising 11 CFR part 110); Independent Expenditures and Electioneering Communications by Corporations and Labor Organizations, 79 FR 62797 (Oct. 21, 2014) (revising 11 CFR parts 104 and 114). The revisions made in the latter rulemaking are anticipated to go into effect in early 2015. *See* 79 FR at 62797 (noting effective date). The Commission is also not updating references in 11 CFR 300.12(d) and 11 CFR 300.35(d) to a provision of Title 2 that was repealed prior to FECA's transfer to Title 52.

[3] *See* Office of the Law Revision Counsel, United States Code: Editorial Reclassification Table, *http://uscode.house.gov/editorialreclassification/t52/Reclassifications_Title_52.html* (last visited Dec. 1, 2014).

437d(a)(3). The Commission is correcting this reference and updating it to 52 U.S.C. 30107(a)(3).

List of Subjects

11 CFR Part 1

Privacy.

11 CFR Part 2

Sunshine Act.

11 CFR Part 4

Freedom of information.

11 CFR Part 5

Archives and records.

11 CFR Part 7

Administrative practice and procedure, Conflict of interests.

11 CFR Part 8

Debt collection.

11 CFR Part 100

Elections.

11 CFR Part 101

Political candidates, Reporting and recordkeeping requirements.

11 CFR Part 102

Political committees and parties, Reporting and recordkeeping requirements.

11 CFR Part 103

Banks and banking, Campaign funds, Political committees and parties, Reporting and recordkeeping requirements.

11 CFR Part 104

Campaign funds, Political committees and parties, Reporting and recordkeeping requirements.

11 CFR Part 105

Campaign funds, Political candidates, Political committees and parties, Reporting and recordkeeping requirements.

11 CFR Part 106

Campaign funds, Political committees and parties, Reporting and recordkeeping requirements.

11 CFR Part 107

Campaign funds, Political committees and parties, Reporting and recordkeeping requirements.

11 CFR Part 108

Elections, Reporting and recordkeeping requirements.

11 CFR Part 109

Coordinated and independent expenditures.

11 CFR Part 110

Campaign funds, Political committees and parties.

11 CFR Part 111

Administrative practice and procedure, Elections, Law enforcement, Penalties.

11 CFR Part 112

Administrative practice and procedure, Elections.

11 CFR Part 113

Campaign funds, Political candidates.

11 CFR Part 114

Business and industry, Elections, Labor.

11 CFR Part 115

Elections, Government contracts.

11 CFR Part 116

Administrative practice and procedure, Business and industry, Credit, Elections, Political candidates, Political committees and parties.

11 CFR Part 200

Administrative practice and procedure.

11 CFR Part 201

Administrative practice and procedure.

11 CFR Part 300

Campaign funds, Nonprofit organizations, Political candidates, Political committees and parties, Reporting and recordkeeping requirements.

11 CFR Part 9001

Campaign funds.

11 CFR Part 9002

Campaign funds.

11 CFR Part 9003

Campaign funds, Reporting and recordkeeping requirements.

11 CFR Part 9004

Campaign funds.

11 CFR Part 9006

Campaign funds, Reporting and recordkeeping requirements.

11 CFR Part 9007

Administrative practice and procedure, Campaign funds.

11 CFR Part 9008

Campaign funds, Political committees and parties, Reporting and recordkeeping requirements.

11 CFR Part 9031

Campaign funds.

11 CFR Part 9032

Campaign funds.

11 CFR Part 9033

Campaign funds, Reporting and recordkeeping requirements.

11 CFR Part 9034

Campaign funds, Reporting and recordkeeping requirements.

11 CFR Part 9035

Campaign funds, Reporting and recordkeeping requirements.

11 CFR Part 9036

Administrative practice and procedure, Campaign funds, Reporting and recordkeeping requirements.

11 CFR Part 9038

Administrative practice and procedure, Campaign funds.

11 CFR Part 9039

Campaign funds, Reporting and recordkeeping requirements.

For the reasons set out in the preamble, the Federal Election Commission amends 11 CFR chapter I, as follows:

PART 1—PRIVACY ACT

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

Authority: 5 U.S.C. 552a.

§ 1.1 [Amended]

■ 2. Amend paragraph (c) of § 1.1 to remove ''2 U.S.C. 437g(a)(4)(C) and 438(a)(4)'' and add in its place ''52 U.S.C. 30109(a)(4)(C) and 30111(a)(4)''.

§ 1.2 [Amended]

■ 3. Amend § 1.2 to remove ''2 U.S.C. 437c(a)'' from the definition of ''Commissioner'' and add in its place ''52 U.S.C. 30106(a)''.

■ 4. Revise paragraph (a) of § 1.14 to read as follows:

§ 1.14 Specific exemptions.

(a) No individual, under the provisions of these regulations, shall be entitled to access to materials compiled in its systems of records identified as FEC audits and investigations (FEC 2) or FEC compliance actions (FEC 3). These exempted systems relate to the Commission's power to exercise exclusive civil jurisdiction over the enforcement of the Act under 52 U.S.C. 30107(a)(6) and (e); and to defend itself in actions filed against it under 52 U.S.C. 30107(a)(6). Further the

Commission has a duty to investigate violations of the Act under 52 U.S.C. 30109(a)(2); to conduct audits and investigations pursuant to 52 U.S.C. 30111(b), 26 U.S.C. 9007 and 9038; and to refer apparent violations of the Act to the Attorney General or other law enforcement authorities under 52 U.S.C. 30109(a)(5) and 30107(a)(9). Information contained in FEC systems 2 and 3 contain the working papers of the Commission staff and form the basis for either civil and/or criminal proceedings pursuant to the exercise of the powers and duties of the Commission. These materials must be protected until such time as they are subject to public access under the provision of 52 U.S.C. 30109(a)(4)(B) or 5 U.S.C. 552, or other relevant statutes.

* * * * *

PART 2—SUNSHINE REGULATIONS; MEETINGS

■ 5. The authority citation for part 2 continues to read as follows:

Authority: 5 U.S.C. 552b.

§ 2.2 [Amended]

■ 6. Amend paragraph (b) of § 2.2 to remove ''2 U.S.C. 437c(a)'' and add in its place ''52 U.S.C. 30106(a)''.

§ 2.4 [Amended]

■ 7. In § 2.4:

■ a. Amend paragraph (a)(1) to remove ''2 U.S.C. 437g(a)(12)'' and add in its place ''52 U.S.C. 30109(a)(12)''; and

■ b. Amend paragraph (a)(2) to remove ''2 U.S.C. 437g'' and add in its place ''52 U.S.C. 30109''.

PART 4—PUBLIC RECORDS AND THE FREEDOM OF INFORMATION ACT

■ 8. The authority citation for part 4 continues to read as follows:

Authority: 5 U.S.C. 552, as amended.

§ 4.1 [Amended]

■ 9. In § 4.1:

■ a. Amend paragraph (b) to remove ''2 U.S.C. 437c(a)'' and add in its place ''52 U.S.C. 30106(a)''; and

■ b. Amend paragraph (f) to remove ''2 U.S.C. 437f(d), 437g(a)(4)(B)(ii), and 438(a)'' and add in its place ''52 U.S.C. 30108(d), 30109(a)(4)(B)(ii), and 30111(a)''.

§ 4.4 [Amended]

■ 10. Amend paragraph (a)(3) of § 4.4 to remove ''2 U.S.C. 437g'' and add in its place ''52 U.S.C. 30109''.

§ 4.5 [Amended]

■ 11. Amend paragraph (a)(4)(vi) of § 4.5 to remove ''2 U.S.C. 437g'' and add in its place ''52 U.S.C. 30109''.

PART 5—ACCESS TO PUBLIC DISCLOSURE DIVISION DOCUMENTS

■ 12. Revise the authority citation for part 5 to read as follows:

Authority: 52 U.S.C. 30108(d), 30109(a)(4)(B)(ii), 30111(a); 31 U.S.C. 9701.

§ 5.1 [Amended]

■ 13. In § 5.1:

■ a. Amend paragraph (b) to remove ''2 U.S.C. 437c(a)'' and add in its place ''52 U.S.C. 30106(a)''; and

■ b. Amend paragraph (f) to remove ''2 U.S.C. 437g(a)(4)(B)(ii), and 438(a)'' and add, in its place, ''52 U.S.C. 30109(a)(4)(B)(ii) and 30111(a)''.

§ 5.3 [Amended]

■ 14. Amend paragraph (a) of § 5.3 to remove ''2 U.S.C. 437f(d), 437g(a)(4)(B)(ii), and 438(a)'' and add in its place ''52 U.S.C. 30108(d), 30109(a)(4)(B)(ii), and 30111(a)''.

§ 5.4 [Amended]

■ 15. In § 5.4:

■ a. Amend paragraph (a) introductory text to remove ''2 U.S.C. 438(a)'' and add in its place ''52 U.S.C. 30111(a)''; and

■ b. Amend paragraph (a)(4) to remove ''2 U.S.C. 437g'' and add in its place ''52 U.S.C. 30109''.

PART 7—STANDARDS OF CONDUCT

■ 16. Revise the authority citation for part 7 to read as follows:

Authority: 52 U.S.C. 30106, 30107, and 30111; 5 U.S.C. 7321 *et seq.* and app. 3.

§ 7.2 [Amended]

■ 17. Amend paragraph (b) of § 7.2 to remove ''2 U.S.C. 437c'' and add in its place ''52 U.S.C. 30106''.

■ 18. Revise § 7.7 to read as follows:

§ 7.7 Prohibition against making complaints and investigations public.

(a) Commission employees are subject to criminal penalties if they discuss or otherwise make public any matters pertaining to a complaint or investigation under 52 U.S.C. 30109, without the written permission of the person complained against or being investigated. Such communications are prohibited by 52 U.S.C. 30109(a)(12)(A).

(b) Section 30109(a)(12)(B) of Title 52 of the United States Code provides as follows: ''Any member or employee of the Commission, or any other person, who violates the provisions of [52 U.S.C. 30109(a)(12)(A)] shall be fined not more than $2,000. Any such member, employee, or other person who knowingly and willfully violates the provisions of [52 U.S.C. 30109(a)(12)(A)] shall be fined not more than $5,000.''

§ 7.8 [Amended]

■ 19. In § 7.8:

■ a. Amend introductory text to remove ''2 U.S.C. 437g'' and add in its place ''52 U.S.C. 30109''; and

■ b. Amend paragraph (b) to remove ''2 U.S.C. 437g(a)(1)'' and add in its place ''52 U.S.C. 30109(a)(1)'' and to remove ''2 U.S.C. 437g(a)(2)'' and add in its place ''52 U.S.C. 30109(a)(2)''.

PART 8—COLLECTION OF ADMINISTRATIVE DEBTS

■ 20. Revise the authority citation for part 8 to read as follows:

Authority: 31 U.S.C. 3701, 3711, and 3716–3720A, as amended; 52 U.S.C. 30101 *et seq.;* 31 CFR parts 285 and 900–904.

PART 100—SCOPE AND DEFINITIONS (52 U.S.C. 30101)

■ 21. Revise the authority citation for part 100 to read as follows:

Authority: 52 U.S.C. 30101, 30104, 30111(a)(8), and 30114(c).

■ 22. Revise the part heading to read as shown above.

§ 100.1 [Amended]

■ 23. Amend § 100.1 to remove ''2 U.S.C. 431'' and add in its place ''52 U.S.C. 30101''.

■ 24. Revise the section heading of § 100.2 to read as follows:

§ 100.2 Election (52 U.S.C. 30101(1)).

* * * * *

■ 25. Revise the section heading of § 100.3 to read as follows:

§ 100.3 Candidate (52 U.S.C. 30101(2)).

* * * * *

■ 26. Revise the section heading of § 100.4 to read as follows:

§ 100.4 Federal office (52 U.S.C. 30101(3)).

* * * * *

■ 27. In § 100.5,

■ a. Revise the section heading to read as set forth below; and

■ b. Amend paragraph (b) to remove ''2 U.S.C. 441b(b)(2)(C)'' and add in its place ''52 U.S.C. 30118(b)(2)(C)''.

§ 100.5 Political committee (52 U.S.C. 30101(4), (5), and (6)).

* * * * *

■ 28. Revise the section heading of § 100.6 to read as follows:

§ 100.6 Connected organization (52 U.S.C. 30101(7)).

* * * * *

■ 29. Revise the section heading of § 100.9 to read as follows:

§ 100.9 Commission (52 U.S.C. 30101(10)).

* * * * *

■ 30. Revise the section heading of § 100.10 to read as follows:

§ 100.10 Person (52 U.S.C. 30101(11)).

* * * * *

■ 31. Revise the section heading of § 100.11 to read as follows:

§ 100.11 State (52 U.S.C. 30101(12)).

* * * * *

■ 32. Revise the section heading of § 100.12 to read as follows:

§ 100.12 Identification (52 U.S.C. 30101(13)).

* * * * *

■ 33. Revise the section heading of § 100.13 to read as follows:

§ 100.13 National committee (52 U.S.C. 30101(14)).

* * * * *

■ 34. Revise the section heading of § 100.14 to read as follows:

§ 100.14 State Committee, subordinate committee, district, or local committee (52 U.S.C. 30101(15)).

* * * * *

■ 35. Revise the section heading of § 100.15 to read as follows:

§ 100.15 Political party (52 U.S.C. 30101(16)).

* * * * *

■ 36. Revise the section heading of § 100.16 to read as follows:

§ 100.16 Independent expenditure (52 U.S.C. 30101(17)).

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■ 37. Revise the section heading of § 100.17 to read as follows:

§ 100.17 Clearly identified (52 U.S.C. 30101(18)).

* * * * *

■ 38. Revise § 100.18 to read as follows:

§ 100.18 Act (52 U.S.C. 30101(19)).

Act means the Federal Election Campaign Act of 1971, as amended, 52 U.S.C. 30101 *et seq.*

■ 39. Revise the section heading of § 100.19 to read as follows:

§ 100.19 File, filed, or filing (52 U.S.C. 30104(a)).

* * * * *

■ 40. Revise the section heading of § 100.20 to read as follows:

§ 100.20 Occupation (52 U.S.C. 30101(13)).

* * * * *

■ 41. Revise the section heading of § 100.21 to read as follows:

§ 100.21 Employer (52 U.S.C. 30101(13)).

* * * * *

■ 42. Revise the section heading of § 100.22 to read as follows:

§ 100.22 Expressly advocating (52 U.S.C. 30101(17)).

* * * * *

■ 43. Revise the section heading of § 100.24 to read as follows:

§ 100.24 Federal election activity (52 U.S.C. 30101(20)).

* * * * *

■ 44. Revise the section heading of § 100.25 to read as follows:

§ 100.25 Generic campaign activity (52 U.S.C. 30101(21)).

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■ 45. Revise the section heading of § 100.26 to read as follows:

§ 100.26 Public communication (52 U.S.C. 30101(22)).

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■ 46. Revise the section heading of § 100.27 to read as follows:

§ 100.27 Mass mailing (52 U.S.C. 30101(23)).

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■ 47. Revise the section heading of § 100.28 to read as follows:

§ 100.28 Telephone bank (52 U.S.C. 30101(24)).

* * * * *

■ 48. Revise the section heading of § 100.29 to read as follows:

§ 100.29 Electioneering communication (52 U.S.C. 30104(f)(3)).

* * * * *

■ 49. Revise the subpart B heading to read as follows:

Subpart B—Definition of Contribution (52 U.S.C. 30101(8))

§ 100.52 [Amended]

■ 50. Amend paragraph (b)(1) of § 100.52 to remove ''2 U.S.C. 441a'' and add in its place ''52 U.S.C. 30116''.

§ 100.87 [Amended]

■ 51. Amend paragraph (g) of § 100.87 to remove ''2 U.S.C. 441a(d)'' and add in its place ''52 U.S.C. 30116(d)''.

§ 100.89 [Amended]

■ 52. Amend paragraph (g) of § 100.89 to remove ''2 U.S.C. 441a(d)'' and add in its place ''52 U.S.C. 30116(d)''.

■ 53. Revise the subpart D heading to read as follows:

Subpart D—Definition of Expenditure (52 U.S.C. 30101(9))

§ 100.137 [Amended]

■ 54. Amend § 100.137 to remove ''11 CFR 100.106 and 100.107'' and add in its place ''11 CFR 100.135 and 100.136''.

§ 100.147 [Amended]

■ 55. Amend paragraph (g) of § 100.147 to remove ''2 U.S.C. 441a(d)'' and add in its place ''52 U.S.C. 30116(d)''.

§ 100.149 [Amended]

■ 56. Amend paragraph (g) of § 100.149 to remove ''2 U.S.C. 441a(d)'' and add in its place ''52 U.S.C. 30116(d)''.

PART 101—CANDIDATE STATUS AND DESIGNATIONS (52 U.S.C. 30102(e))

■ 57. Revise the authority citation for part 101 to read as follows:

Authority: 52 U.S.C. 30102(e), 30104(a)(11), and 30111(a)(8).

■ 58. Revise the part heading to read as shown above.

■ 59. Revise the section heading of § 101.1 to read as follows:

§ 101.1 Candidate designations (52 U.S.C. 30102(e)(1)).

* * * * *

■ 60. Revise the section heading of § 101.2 to read as follows:

§ 101.2 Candidate as agent of authorized committee (52 U.S.C. 30102(e)(2)).

* * * * *

■ 61. Revise the section heading of § 101.3 to read as follows:

§ 101.3 Funds received or expended prior to becoming a candidate (52 U.S.C. 30102(e)(2)).

* * * * *

PART 102—REGISTRATION, ORGANIZATION, AND RECORDKEEPING BY POLITICAL COMMITTEES (52 U.S.C. 30103)

■ 62. Revise the authority citation for part 102 to read as follows:

Authority: 52 U.S.C. 30102, 30103, 30104(a)(11), 30111(a)(8), and 30120.

■ 63. Revise the part heading to read as shown above.

■ 64. In § 102.1,

■ a. Revise the section heading to read as set forth below; and

■ b. Amend paragraph (c) to remove ''2 U.S.C. 441b(b)(2)(C)'' and add in its place ''52 U.S.C. 30118(b)(2)(C)''.

§ 102.1 Registration of political committees (52 U.S.C. 30103(a)).

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■ 65. Revise the section heading of § 102.2 to read as follows:

§ 102.2 Statement of organization: Forms and committee identification number (52 U.S.C. 30103(b), (c)).

* * * * *

■ 66. Revise the section heading of § 102.3 to read as follows:

§ 102.3 Termination of registration (52 U.S.C. 30103(d)(1)).

* * * * *

■ 67. Revise the section heading of § 102.4 to read as follows:

§ 102.4 Administrative termination (52 U.S.C. 30103(d)(2)).

* * * * *

■ 68. Revise the section heading of § 102.7 to read as follows:

§ 102.7 Organization of political committees (52 U.S.C. 30102(a)).

* * * * *

■ 69. Revise the section heading of § 102.8 to read as follows:

§ 102.8 Receipt of contributions (52 U.S.C. 30102(b)).

* * * * *

■ 70. Revise the section heading of § 102.9 to read as follows:

§ 102.9 Accounting for contributions and expenditures (52 U.S.C. 30102(c)).

* * * * *

■ 71. Revise the section heading of § 102.10 to read as follows:

§ 102.10 Disbursement by check (52 U.S.C. 30102(h)(1)).

* * * * *

■ 72. Revise the section heading of § 102.11 to read as follows:

§ 102.11 Petty cash fund (52 U.S.C. 30102(h)(2)).

* * * * *

■ 73. Revise the section heading of § 102.12 to read as follows:

§ 102.12 Designation of principal campaign committee (52 U.S.C. 30102(e)(1) and (3)).

* * * * *

■ 74. Revise the section heading of § 102.13 to read as follows:

§ 102.13 Authorization of political committees (52 U.S.C. 30102(e)(1) and (3)).

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■ 75. Revise the section heading of § 102.14 to read as follows:

§ 102.14 Names of political committees (52 U.S.C. 30102(e)(4) and (5)).

* * * * *

■ 76. In § 102.15:

■ a. Revise the section heading to read as set forth below; and

■ b. Remove ''2 U.S.C. 441b'' and add in its place ''52 U.S.C. 30118''.

§ 102.15 Commingled funds (52 U.S.C. 30102(b)(3)).

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■ 77. Revise the section heading of § 102.16 to read as follows:

* * * * *

§ 102.16 Notice: Solicitation of contributions (52 U.S.C. 30120).

PART 103—CAMPAIGN DEPOSITORIES (52 U.S.C. 30102(h))

■ 78. Revise the authority citation for part 103 to read as follows:

Authority: 52 U.S.C. 30102(h), 30111(a)(8).

■ 79. Revise the part heading to read as shown above.

■ 80. Revise the section heading of § 103.2 to read as follows:

§ 103.2 Depositories (52 U.S.C. 30102(h)(1)).

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■ 81. Revise the section heading of § 103.3 to read as follows:

§ 103.3 Deposit of receipts and disbursements (52 U.S.C. 30102(h)(1)).

* * * * *

PART 104—REPORTS BY POLITICAL COMMITTEES AND OTHER PERSONS (2 U.S.C. 434)

■ 82. The authority citation for part 104 continues to read as follows:

Authority: 2 U.S.C. 431(1), 431(8), 431(9), 432(i), 434, 438(a)(8) and (b), 439a, 441a; 36 U.S.C. 510.

■ 83. Revise the section heading of § 104.1 to read as follows:

§ 104.1 Scope (52 U.S.C. 30104(a)).

* * * * *

■ 84. In § 104.3,

■ a. Revise the section heading to read as set forth below;

■ b. Amend paragraphs (a)(3)(iii), (b)(1)(viii), and (b)(3)(viii) to remove ''2 U.S.C. 441a(d)'' and add in its place ''52 U.S.C. 30116(d)''; and

■ c. Amend paragraph (b)(2)(iv) to remove ''2 U.S.C. 441a(b)'' and add in its place ''52 U.S.C. 30116(b)''.

§ 104.3 Contents of reports (52 U.S.C. 30104(b), 30114).

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■ 85. Revise the section heading of § 104.4 to read as follows:

§ 104.4 Independent expenditures by political committees (52 U.S.C. 30104(b), (d), and (g)).

* * * * *

■ 86. Revise the section heading of § 104.5 to read as follows:

§ 104.5 Filing dates (52 U.S.C. 30104(a)(2)).

* * * * *

■ 87. Revise the section heading of § 104.6 to read as follows:

§ 104.6 Form and content of internal communications reports (52 U.S.C. 30101(9)(B)(iii)).

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■ 88. Revise the section heading of § 104.7 to read as follows:

§ 104.7 Best efforts (52 U.S.C. 30102(i)).

* * * * *

■ 89. Revise the section heading of § 104.15 to read as follows:

§ 104.15 Sale or use restriction (52 U.S.C. 30111(a)(4)).

* * * * *

■ 90. Revise the section heading of § 104.16 to read as follows:

§ 104.16 Audits (52 U.S.C. 30111(b)).

* * * * *

■ 91. Revise the section heading of § 104.18 to read as follows:

§ 104.18 Electronic filing of reports (52 U.S.C. 30102(d) and 30104(a)(11)).

* * * * *

■ 92. Revise the section heading of § 104.22 to read as follows:

§ 104.22 Disclosure of bundling by Lobbyist/Registrants and Lobbyist/Registrant PACs (52 U.S.C. 30104(i)).

* * * * *

PART 105—DOCUMENT FILING (52 U.S.C. 30102(g))

■ 93. Revise the authority citation for part 105 to read as follows:

Authority: 52 U.S.C. 30102(g), 30104, 30111(a)(8).

■ 94. Revise the part heading to read as shown above.

■ 95. Revise the section heading of § 105.1 to read as follows:

§ 105.1 Place of filing; House candidates and their authorized committees (52 U.S.C. 30102(g)(1)).

* * * * *

■ 96. Revise the section heading of § 105.2 to read as follows:

§ 105.2 Place of filing; Senate candidates, their principal campaign committees, and committees supporting only Senate candidates (52 U.S.C. 30102(g), 30104(g)(3)).

* * * * *

■ 97. Revise the section heading of § 105.3 to read as follows:

§ 105.3 Place of filing; Presidential candidates and their principal campaign committees (52 U.S.C. 30102(g)(4)).

* * * * *

■ 98. Revise the section heading of § 105.4 to read as follows:

§ 105.4 Place of filing; political committees and other persons (52 U.S.C. 30102(g)(4)).

* * * * *

■ 99. Revise the section heading of § 105.5 to read as follows:

§ 105.5 Transmittal of microfilm copies and photocopies of original reports filed with the Secretary of the Senate to the Commission (52 U.S.C. 30102(g)(3)).

* * * * *

PART 106—ALLOCATIONS OF CANDIDATE AND COMMITTEE ACTIVITIES

■ 100. Revise the authority citation for part 106 to read as follows:

Authority: 52 U.S.C. 30111(a)(8), 30116(b), 30116(g).

■ 101. Revise the authority citation at the end of § 106.1 to read as follows:

§ 106.1 Allocation of expenses between candidates.

* * * * *

(52 U.S.C. 30111(a)(8))

■ 102. Revise the authority citation at the end of § 106.3 to read as follows:

§ 106.3 Allocation of expenses between campaign and non-campaign related travel.

* * * * *

(52 U.S.C. 30111(a)(8))

PART 107—PRESIDENTIAL NOMINATING CONVENTION, REGISTRATION AND REPORTS

■ 103. Revise the authority citation for part 107 to read as follows:

Authority: 52 U.S.C. 30105, 30111(a)(8).

PART 108—FILING COPIES OF REPORTS AND STATEMENTS WITH STATE OFFICERS (52 U.S.C. 30113)

■ 104. Revise the authority citation for part 108 to read as follows:

Authority: 52 U.S.C. 30104(a)(2), 30111(a)(8), 30113, 30143.

■ 105. Revise the part heading to read as shown above.

■ 106. Revise the section heading of § 108.1 to read as follows:

§ 108.1 Filing requirements (52 U.S.C. 30113(a)(1)).

* * * * *

■ 107. Revise the section heading of § 108.2 to read as follows:

§ 108.2 Filing copies of reports and statements in connection with the campaign of any candidate seeking nomination for election to the Office of President or Vice-President (52 U.S.C. 30113(a)(2)).

* * * * *

■ 108. Revise the section heading of § 108.3 to read as follows:

§ 108.3 Filing copies of reports and statements in connection with the campaign of any congressional candidate (52 U.S.C. 30113(a)(2)).

* * * * *

■ 109. Revise the section heading of § 108.4 to read as follows:

§ 108.4 Filing copies of reports by committees other than principal campaign committees (52 U.S.C. 30113(a)(2)).

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■ 110. Revise the section heading of § 108.5 to read as follows:

§ 108.5 Time and manner of filing copies (52 U.S.C. 30104(a)(2)).

* * * * *

■ 111. Revise the section heading of § 108.6 to read as follows:

§ 108.6 Duties of State officers (52 U.S.C. 30113(b)).

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■ 112. Revise the section heading of § 108.7 to read as follows:

§ 108.7 Effect on State law (52 U.S.C. 30143).

* * * * *

PART 109—COORDINATED AND INDEPENDENT EXPENDITURES (52 U.S.C. 30101(17), 30116(a) and (d), and PUB. L. 107–155 SEC. 214(C))

■ 113. Revise the authority citation for part 109 to read as follows:

Authority: 52 U.S.C. 30101(17), 30104(c), 30111(a)(8), 30116, 30120; Sec. 214(c), Pub. L. 107–155, 116 Stat. 81.

■ 114. Revise the part heading to read as shown above.

PART 110—CONTRIBUTION AND EXPENDITURE LIMITATIONS AND PROHIBITIONS

■ 115. The authority citation for part 110 continues to read as follows:

Authority: 52 U.S.C. 30101(8), 30101(9), 30102(c)(2), 30104(i)(3), 30111(a)(8), 30116, 30118, 30120, 30121, 30122, 30123, 30124; 36 U.S.C. 510.

■ 116. Revise the section heading of § 110.2 to read as follows:

§ 110.2 Contributions by multicandidate political committees (52 U.S.C. 30116(a)(2)).

* * * * *

■ 117. Revise the section heading of § 110.3 to read as follows:

§ 110.3 Contribution limitations for affiliated committees and political party committees; transfers (52 U.S.C. 30116(a)(4), 30116(a)(5)).

* * * * *

■ 118. Revise the section heading of § 110.4 to read as follows:

§ 110.4 Contributions in the name of another; cash contributions (52 U.S.C. 30122, 30123, 30102(c)(2)).

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■ 119. Revise the section heading of § 110.6 to read as follows:

§ 110.6 Earmarked contributions (52 U.S.C. 30116(a)(8)).

* * * * *

■ 120. In § 110.11:

■ a. Revise the section heading to read as set forth below; and

■ b. Amend paragraphs (d)(1)(i), (d)(1)(ii), and (d)(2) to remove ''2 U.S.C. 441a(d)'' and add in its place ''52 U.S.C. 30116(d)''.

§ 110.11 Communications; advertising; disclaimers (52 U.S.C. 30120).

* * * * *

■ 121. Revise the section heading of § 110.20 to read as follows:

§ 110.20 Prohibition on contributions, donations, expenditures, independent expenditures, and disbursements by foreign nationals (52 U.S.C. 30121, 36 U.S.C. 510).

* * * * *

PART 111—COMPLIANCE PROCEDURE (52 U.S.C. 30109, 30107(a))

■ 122. Revise the authority citation for part 111 to read as follows:

Authority: 52 U.S.C. 30102(i), 30109, 30107(a), 30111(a)(8); 28 U.S.C. 2461 note; 31 U.S.C. 3701, 3711, 3716–3719, and 3720A, as amended; 31 CFR parts 285 and 900–904.

■ 123. Revise the part heading to read as shown above.

■ 124. In § 111.1:

■ a. Revise the section heading to read as set forth below; and

■ b. Amend the text to remove ''2 U.S.C. 431'' and add in its place ''52 U.S.C. 30101''.

§ 111.1 Scope (52 U.S.C. 30109).

* * * * *

■ 125. Revise the section heading of § 111.3 to read as follows:

§ 111.3 Initiation of compliance matters (52 U.S.C. 30109(a)(1), (2)).

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■ 126. Revise the section heading of § 111.4 to read as follows:

§ 111.4 Complaints (52 U.S.C. 30109(a)(1)).

* * * * *

■ 127. Revise the section heading of § 111.5 to read as follows:

§ 111.5 Initial complaint processing; notification (52 U.S.C. 30109(a)(1)).

* * * * *

■ 128. Revise the section heading of § 111.6 to read as follows:

§ 111.6 Opportunity to demonstrate that no action should be taken on complaint-generated matters (52 U.S.C. 30109(a)(1)).

* * * * *

■ 129. Revise the section heading of § 111.7 to read as follows:

§ 111.7 General Counsel's recommendation on complaint-generated matters (52 U.S.C. 30109(a)(1)).

* * * * *

■ 130. In § 111.8:

■ a. Revise the section heading to read as set forth below; and

■ b. Amend paragraph (d) to remove ''2 U.S.C. 434(a)'' and add in its place ''52 U.S.C. 30104(a)''.

§ 111.8 Internally generated matters; referrals (52 U.S.C. 30109(a)(2)).

* * * * *

■ 131. Revise the section heading of § 111.9 to read as follows:

§ 111.9 The reason to believe finding; notification (52 U.S.C. 30109(a)(2)).

* * * * *

■ 132. Revise the section heading of § 111.10 to read as follows:

§ 111.10 Investigation (52 U.S.C. 30109(a)(2)).

* * * * *

■ 133. Revise the section heading of § 111.11 to read as follows:

§ 111.11 Written questions under order (52 U.S.C. 30107(a)(1)).

* * * * *

■ 134. Revise the section heading of § 111.12 to read as follows:

§ 111.12 Subpoenas and subpoenas duces tecum; depositions (52 U.S.C. 30107(a)(3), (4)).

* * * * *

■ 135. Revise the section heading of § 111.13 to read as follows:

§ 111.13 Service of subpoenas, orders and notifications (52 U.S.C. 30107(a)(3), (4)).

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■ 136. Revise the section heading of § 111.14 to read as follows:

§ 111.14 Witness fees and mileage (52 U.S.C. 30107(a)(5)).

* * * * *

■ 137. Revise the section heading of § 111.15 to read as follows:

§ 111.15 Motions to quash or modify a subpoena (52 U.S.C. 30107(a)(3), (4)).

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■ 138. Revise the section heading of § 111.16 to read as follows:

§ 111.16 The probable cause to believe recommendation; briefing procedures (52 U.S.C. 30109(a)(3)).

* * * * *

■ 139. Revise the section heading of § 111.17 to read as follows:

§ 111.17 The probable cause to believe finding; notification (52 U.S.C. 30109(a)(4)).

* * * * *

■ 140. Revise the section heading of § 111.18 to read as follows:

§ 111.18 Conciliation (52 U.S.C. 30109(a)(4)).

* * * * *

■ 141. Revise the section heading of § 111.19 to read as follows:

§ 111.19 Civil proceedings (52 U.S.C. 30109(a)(6)).

* * * * *

■ 142. In § 111.20:

■ a. Revise the section heading to read as set forth below; and

■ b. Amend paragraph (c) to remove ''2 U.S.C. 437g'' and add in its place ''52 U.S.C. 30109''.

§ 111.20 Public disclosure of Commission action (52 U.S.C. 30109(a)(4)).

* * * * *

■ 143. Revise the section heading of § 111.21 to read as follows:

§ 111.21 Confidentiality (52 U.S.C. 30109(a)(12)).

* * * * *

■ 144. In § 111.24:

■ a. Revise the section heading to read as set forth below;

■ b. Amend paragraph (a)(2)(ii) to remove ''2 U.S.C. 441f'' and add in its place ''52 U.S.C. 30122''; and

■ c. Amend paragraph (b) to remove ''2 U.S.C. 437g(a)(12)(A)'' and add in its place ''52 U.S.C. 30109(a)(12)(A)'' and to remove ''2 U.S.C. 437g'' and add in its place ''52 U.S.C. 30109''.

§ 111.24 Civil Penalties (52 U.S.C. 30109(a)(5), (6), (12), 28 U.S.C. 2461 nt.).

* * * * *

§ 111.30 [Amended]

■ 145. Amend § 111.30 to remove ''2 U.S.C. 434(a)'' and add in its place ''52 U.S.C. 30104(a)'' and to remove ''2 U.S.C. 437g(a)(4)(C)(v)'' and add in its place ''52 U.S.C. 30109(a)(4)(C)(v)''.

■ 146. In § 111.31:

■ a. Revise the section heading to read as set forth below;

■ b. Amend paragraph (b) to remove ''2 U.S.C. 434(a)'' and add in its place ''52 U.S.C. 30104(a)''.

§ 111.31 Does this subpart replace subpart A of this part for violations of the reporting requirements of 52 U.S.C. 30104(a)?

* * * * *

§ 111.32 [Amended]

■ 147. Amend the introductory text of § 111.32 to remove ''2 U.S.C. 434(a)'' and add in its place ''52 U.S.C. 30104(a)''.

§ 111.37 [Amended]

■ 148. Amend paragraph (a) of § 111.37 to remove ''2 U.S.C. 434(a)'' and add in its place ''52 U.S.C. 30104(a)''.

§ 111.38 [Amended]

■ 149. Amend § 111.38 to remove ''2 U.S.C. 437g'' and add in its place ''52 U.S.C. 30109''.

§ 111.39 [Amended]

■ 150. Amend paragraph (c) of § 111.39 to remove ''2 U.S.C. 437g(a)(6)(A)'' and add in its place ''52 U.S.C. 30109(a)(6)(A)''.

§ 111.40 [Amended]

■ 151. In § 111.40:

■ a. Amend paragraph (a) to remove ''2 U.S.C. 434(a)'' and add in its place ''52 U.S.C. 30104(a)''; and

■ b. Amend paragraph (c) to remove ''2 U.S.C. 437g(a)(6)(A)'' and add in its place ''52 U.S.C. 30109(a)(6)(A)''.

§ 111.44 [Amended]

■ 152. Amend paragraph (a) of § 111.44 to remove ''2 U.S.C. 434(a)(6)'' and add in its place ''52 U.S.C. 30104(a)(6)''.

§ 111.51 [Amended]

■ 153. Amend paragraph (a) of § 111.51 to remove ''2 U.S.C. 431'' and add in its place ''52 U.S.C. 30101''.

§ 111.53 [Amended]

■ 154. In § 111.53:

■ a. Remove ''2 U.S.C. 437g(a)(5)(D)'' and add in its place ''52 U.S.C. 30109(a)(5)(D)'';

■ b. Remove ''2 U.S.C. 437g(a)(6)'' and add in its place ''52 U.S.C. 30109(a)(6)''; and

■ c. Remove ''2 U.S.C. 437g(a)(11)'' and add in its place ''52 U.S.C. 30109(a)(11)''.

PART 112—ADVISORY OPINIONS (52 U.S.C. 30108)

■ 155. Revise the authority citation for part 112 to read as follows:

Authority: 52 U.S.C. 30108, 30111(a)(8).

■ 156. Revise the part heading to read as shown above.

■ 157. Revise the section heading of § 112.1 to read as follows:

§ 112.1 Requests for advisory opinions (52 U.S.C. 30108(a)(1)).

* * * * *

■ 158. Revise the section heading of § 112.2 to read as follows:

§ 112.2 Public availability of requests (52 U.S.C. 30108(d)).

* * * * *

■ 159. Revise the section heading of § 112.3 to read as follows:

§ 112.3 Written comments on requests (52 U.S.C. 30108(d)).

* * * * *

■ 160. In § 112.4:

■ a. Revise the section heading to read as set forth below; and

■ b. Amend paragraph (e) to remove ''2 U.S.C. 438(d)'' and add in its place ''52 U.S.C. 30111(d)''.

§ 112.4 Issuance of advisory opinions (52 U.S.C. 30108(a) and (b)).

* * * * *

■ 161. Revise the section heading of § 112.5 to read as follows:

§ 112.5 Reliance on advisory opinions (52 U.S.C. 30108(c)).

* * * * *

PART 113—PERMITTED AND PROHIBITED USES OF CAMPAIGN ACCOUNTS

■ 162. Revise the authority citation for part 113 to read as follows:

Authority: 52 U.S.C. 30102(h), 30111(a)(8), 30114, and 30116.

■ 163. Revise the section heading of § 113.1 to read as follows:

§ 113.1 Definitions (52 U.S.C. 30114).

* * * * *

■ 164. Revise the section heading of § 113.2 to read as follows:

§ 113.2 Permissible non-campaign use of funds (52 U.S.C. 30114).

■ 165. Revise the section heading of § 113.3 to read as follows:

§ 113.3 Deposits of funds donated to a Federal or State officeholder (52 U.S.C. 30102(h)).

* * * * *

■ 166. In § 113.4:

■ a. Revise the section heading to read as set forth below; and

■ b. Amend paragraph (a) to remove ''2 U.S.C. 441a'' and add in its place ''52 U.S.C. 30116''.

§ 113.4 Contribution and expenditure limitations (52 U.S.C. 30116).

* * * * *

■ 167. Revise the section heading of § 113.5 to read as follows:

§ 113.5 Restrictions on use of campaign funds for flights on noncommercial aircraft (52 U.S.C. 30114(c)).

* * * * *

PART 114—CORPORATE AND LABOR ORGANIZATION ACTIVITY

■ 168. The authority citation for part 114 continues to read as follows:

Authority: 2 U.S.C. 431(8), 431(9), 432, 434, 437d(a)(8), 438(a)(8), and 441b.

■ 169. In § 114.1:

■ a. Amend paragraph (a)(2)(v) to remove ''normal of comparable'' and add in its place ''normal or comparable'';

■ b. Amend paragraph (e)(3) to remove ''requirements on'' and add in its place ''requirements of''; and

■ c. Amend the authority citation at the end of the section to read as follows:

§ 114.1 Definitions.

* * * * *

(52 U.S.C. 30101(8)(B)(iii), 30102(c)(3), 30107(a)(8), 30111(a)(8), 30118)

§ 114.3 [Amended]

■ 170. In paragraph (c)(1)(ii) of § 114.3, remove ''a communications'' and add in its place ''a communication''.

■ 171. Revise the authority citation at the end of § 114.5 to read as follows:

§ 114.5 Separate segregated funds.

* * * * *

(52 U.S.C. 30118, 30107(a)(8))

■ 172. Revise the authority citation at the end of § 114.6 to read as follows:

§ 114.6 Twice yearly solicitations.

* * * * *

(52 U.S.C. 30101(8)(B)(iii), 30102(c)(3), 30111(a)(8))

■ 173. Revise the authority citation at the end of § 114.7 to read as follows:

§ 114.7 Membership organizations, cooperatives, or corporations without capital stock.

* * * * *

(52 U.S.C. 30118, 30107(a)(8))

■ 174. Revise the authority citation at the end of § 114.8 to read as follows:

§ 114.8 Trade associations.

* * * * *

(52 U.S.C. 30118, 30107(a)(8))

PART 115—FEDERAL CONTRACTORS

■ 175. Revise the authority citation for part 115 to read as follows:

Authority: 52 U.S.C. 30107(a)(8), 30111(a)(8), and 30119.

PART 116—DEBTS OWED BY CANDIDATES AND POLITICAL COMMITTEES

■ 176. Revise the authority citation for part 116 to read as follows:

Authority: 52 U.S.C. 30103(d), 30104(b)(8), 30111(a)(8), 30116, 30118, and 30141.

§ 116.2 [Amended]

■ 177. Amend paragraph (c)(3) of § 116.2 to remove ''2 U.S.C. 437g'' and add in its place ''52 U.S.C. 30109''.

§ 116.3 [Amended]

■ 178. Amend paragraph (d) of § 116.3 to remove ''2 U.S.C. 451'' and add in its place ''52 U.S.C. 30141''.

PART 200—PETITIONS FOR RULEMAKING

■ 179. Revise the authority citation for part 200 to read as follows:

Authority: 52 U.S.C. 30107(a)(8), 52 U.S.C. 30111(a)(8); 5 U.S.C. 553(e).

§ 200.2 [Amended]

■ 180. Amend paragraph (a)(1) of § 200.2 to remove ''2 U.S.C. 431'' and add in its place ''52 U.S.C. 30101''.

§ 200.3 [Amended]

■ 181. Amend paragraph (a)(2) of § 200.3 to remove ''2 U.S.C. 438(f)'' and add in its place ''52 U.S.C. 30111(f)''.

PART 201—EX PARTE COMMUNICATIONS

■ 182. Revise the authority citation for part 201 to read as follows:

Authority: 52 U.S.C. 30107(a)(8), 30108, 30111(a)(8), and 30111(b); 26 U.S.C. 9007, 9008, 9009(b), 9038, and 9039(b).

§ 201.2 [Amended]

■ 183. Amend paragraph (c) of § 201.2 to remove ''2 U.S.C. 437c(a)'' and add in its place ''52 U.S.C. 30106(a)''.

§ 201.3 [Amended]

■ 184. Amend paragraph (b)(2)(ii) of § 201.3 to remove ''2 U.S.C. 438(b)'' and add in its place ''52 U.S.C. 30111(b)''.

PART 300—NON-FEDERAL FUNDS

■ 185. Revise the authority citation for part 300 to read as follows:

Authority: 52 U.S.C. 30104(e), 30111(a)(8), 30116(a), 30125, and 30143.

§ 300.1 [Amended]

■ 186. Amend paragraph (a) of § 300.1 to remove ''sections 431 to 455 of Title 2'' and add in its place ''sections 30101 to 30145 of Title 52''.

■ 187. Revise the section heading of § 300.10 to read as follows:

§ 300.10 General prohibitions on raising and spending non-Federal funds (52 U.S.C. 30125(a) and (c)).

* * * * *

■ 188. Revise the section heading of § 300.11 to read as follows:

§ 300.11 Prohibitions on fundraising for and donating to certain tax-exempt organizations (52 U.S.C. 30125(d)).

* * * * *

§ 300.12 [Amended]

■ 189. Amend paragraph (b)(1) of § 300.12 to remove ''2 U.S.C. 431(9)'' and add in its place ''52 U.S.C. 30101(9)''.

■ 190. Revise the section heading of § 300.13 to read as follows:

§ 300.13 Reporting (52 U.S.C. 30101 note and 30104(e)).

* * * * *

§ 300.31 [Amended]

■ 191. Amend paragraph (c) of § 300.31 to remove ''2 U.S.C. 441e'' and add in its place ''52 U.S.C. 30121''.

§ 300.35 [Amended]

■ 192. Amend paragraph (a) of § 300.35 to remove ''2 U.S.C. 441e'' and add in its place ''52 U.S.C. 30121''.

§ 300.36 [Amended]

■ 193. Amend paragraphs (a)(2) and (b)(1) of § 300.36 to remove ''2 U.S.C. 431(9)'' and add in its place ''52 U.S.C. 30101(9)''.

■ 194. Revise the section heading of § 300.37 to read as follows:

§ 300.37 Prohibitions on fundraising for and donating to certain tax-exempt organizations (52 U.S.C. 30125(d)).

* * * * *

■ 195. Revise the section heading of § 300.50 to read as follows:

§ 300.50 Prohibited fundraising by national party committees (52 U.S.C. 30125(d)).

* * * * *

■ 196. Revise the section heading of § 300.51 to read as follows:

§ 300.51 Prohibited fundraising by State, district, or local party committees (52 U.S.C. 30125(d)).

* * * * *

■ 197. Revise the section heading of § 300.52 to read as follows:

§ 300.52 Fundraising by Federal candidates and Federal officeholders (52 U.S.C. 30125(e)(1) and (4)).

* * * * *

■ 198. Revise the section heading of § 300.60 to read as follows:

§ 300.60 Scope (52 U.S.C. 30125(e)(1)).

* * * * *

■ 199. Revise the section heading of § 300.61 to read as follows:

§ 300.61 Federal elections (52 U.S.C. 30125(e)(1)(A)).

* * * * *

■ 200. Revise the section heading of § 300.62 to read as follows:

§ 300.62 Non-Federal elections (52 U.S.C. 30125(e)(1)(B)).

* * * * *

■ 201. Revise the section heading of § 300.63 to read as follows:

§ 300.63 Exception for State candidates (52 U.S.C. 30125(e)(2)).

* * * * *

■ 202. Revise the section heading of § 300.64 to read as follows:

§ 300.64 Participation by Federal candidates and officeholders at non-Federal fundraising events (52 U.S.C. 30125(e)(1) and (3)).

* * * * *

■ 203. Revise the section heading of § 300.65 to read as follows:

§ 300.65 Exceptions for certain tax-exempt organizations (52 U.S.C. 30125(e)(1) and (4)).

* * * * *

■ 204. Revise the section heading of § 300.70 to read as follows:

§ 300.70 Scope (52 U.S.C. 30125(f)(1)).

* * * * *

■ 205. Revise the section heading of § 300.71 to read as follows:

§ 300.71 Federal funds required for certain public communications (52 U.S.C. 30125(f)(1)).

* * * * *

■ 206. Revise the section heading of § 300.72 to read as follows:

§ 300.72 Federal funds not required for certain communications (52 U.S.C. 30125(f)(2)).

* * * * *

PART 9001—SCOPE

■ 207. The authority citation for part 9001 continues to read as follows:

Authority: 26 U.S.C. 9009(b).

§ 9001.1 [Amended]

■ 208. In § 9001.1, revise all references to ''sections 431–455 of title 2'' to read ''sections 30101–30145 of Title 52''.

PART 9002—DEFINITIONS

■ 209. The authority citation for part 9002 continues to read as follows:

Authority: 26 U.S.C. 9002 and 9009(b).

§ 9002.11 [Amended]

■ 210. Amend paragraph (b)(5) of § 9002.11 to remove ''2 U.S.C. 431'' and add in its place ''52 U.S.C. 30101''.

§ 9002.13 [Amended]

■ 211. Amend § 9002.13 to remove ''2 U.S.C. 431(8), 441b and 441c'' and add in its place ''52 U.S.C. 30101(8), 30118, and 30119''.

PART 9003—ELIGIBILITY FOR PAYMENTS

■ 212. The authority citation for part 9003 continues to read as follows:

Authority: 26 U.S.C. 9003 and 9009(b).

§ 9003.1 [Amended]

■ 213. In § 9003.1:

■ a. Amend paragraph (b)(8) to remove ''2 U.S.C. 431'' and add in its place ''52 U.S.C. 30101''; and

■ b. Amend paragraph (b)(9) to remove ''2 U.S.C. 437g'' and add in its place ''52 U.S.C. 30109''.

§ 9003.3 [Amended]

■ 214. In § 9003.3:

■ a. Amend paragraphs (a)(2)(i)(A), (a)(2)(i)(B), (a)(2)(i)(I), (a)(2)(ii)(E), (b)(6), (c)(3)(iv), and (c)(6) to remove ''2 U.S.C. 431'' and add in its place ''52 U.S.C. 30101'';

■ b. Amend paragraph (a)(2)(i)(C) to remove ''2 U.S.C. 437g'' and add in its place ''52 U.S.C. 30109'';

■ c. Amend paragraphs (a)(2)(ii)(A) and (a)(2)(ii)(C) to remove ''title 2 of the United States Code'' and add in its place ''Title 52 of the United States Code'';

■ d. Amend paragraph (a)(2)(iii) to remove ''2 U.S.C. 441a(b)'' and add in its place ''52 U.S.C. 30116(b)''; and

■ e. Amend paragraph (a)(2)(iv) to remove ''2 U.S.C. 439a'' and add in its place ''52 U.S.C. 30114''.

§ 9003.5 [Amended]

■ 215. In paragraph (b)(1)(iii)(B) of § 9003.5, remove ''dairy'' and add in its place ''daily''.

PART 9004—ENTITLEMENT OF ELIGIBLE CANDIDATES TO PAYMENTS; USE OF PAYMENTS

■ 216. The authority citation for part 9004 continues to read as follows:

Authority: 26 U.S.C. 9004 and 9009(b).

§ 9004.10 [Amended]

■ 217. Amend paragraphs (a) and (b) of § 9004.10 to remove ''title 2'' and add in its place ''Title 52''.

PART 9006—REPORTS AND RECORDKEEPING

■ 218. Revise the authority citation for part 9006 to read as follows:

Authority: 52 U.S.C. 30104; 26 U.S.C. 9009(b).

PART 9007—EXAMINATIONS AND AUDITS; REPAYMENTS

■ 219. The authority citation for part 9007 continues to read as follows:

Authority: 26 U.S.C. 9007 and 9009(b).

§ 9007.1 [Amended]

■ 220. In § 9007.1:
■ a. Amend paragraph (b)(1)(iii) to remove ''2 U.S.C. 437d'' and add in its place ''52 U.S.C. 30107'';
■ b. Amend paragraph (b)(1)(v) to remove ''2 U.S.C. 437d(a)(1)'' and add in its place ''52 U.S.C. 30107(a)(1)'' and to remove ''2 U.S.C. 437d(a)(3)'' and add in its place ''52 U.S.C. 30107(a)(3); and
■ c. Amend paragraph (d)(2) to remove ''2 U.S.C. 437g'' and add in its place ''52 U.S.C. 30109''.

PART 9008—FEDERAL FINANCING OF PRESIDENTIAL NOMINATING CONVENTIONS

■ 221. Revise the authority citation for part 9008 to read as follows:

Authority: 52 U.S.C. 30105, 30111(a)(8), 30125; 26 U.S.C. 9008, 9009(b).

§ 9008.1 [Amended]

■ 222. Amend paragraphs (a) and (b) of § 9008.1 to remove ''2 U.S.C. 437'' and add in its place ''52 U.S.C. 30105''.

§ 9008.3 [Amended]

■ 223. In § 9008.3:
■ a. Amend paragraph (a)(4)(ii) to remove ''2 U.S.C. 437'' and add in its place ''52 U.S.C. 30105'';
■ b. Amend paragraph (a)(4)(vii) to remove ''2 U.S.C. 431'' and add in its place ''52 U.S.C. 30101''; and
■ c. Amend paragraph (a)(4)(viii) to remove ''2 U.S.C. 437g'' and add in its place ''52 U.S.C. 30109''.

§ 9008.5 [Amended]

■ 224. Amend paragraph (a) of § 9008.5 to remove ''2 U.S.C. 441a(c)'' and add in its place ''52 U.S.C. 30116(c)''.

§ 9008.6 [Amended]

■ 225. Amend paragraph (a)(3) of § 9008.6 to remove ''Title 2'' and add in its place ''Title 52''.

§ 9008.7 [Amended]

■ 226. Amend paragraph (b)(3) of § 9008.7 to remove ''2 U.S.C. 437g'' and add in its place ''52 U.S.C. 30109''.

§ 9008.8 [Amended]

■ 227. Amend paragraphs (a)(3) and (b)(4)(ii)(A) of § 9008.8 to remove ''2 U.S.C. 431'' and add in its place ''52 U.S.C. 30101''.

§ 9008.55 [Amended]

■ 228. Amend paragraph (d) of § 9008.55 to remove ''2 U.S.C. 441i(e)(4)(A)'' and add in its place ''52 U.S.C. 30125(e)(4)(A)''.

PART 9031—SCOPE

■ 229. The authority citation for part 9031 continues to read as follows:

Authority: 26 U.S.C. 9031 and 9039(b).

§ 9031.1 [Amended]

■ 230. In § 9031.1, revise all references to ''sections 431–455 of title 2'' to read ''sections 30101–30145 of Title 52''.

PART 9032—DEFINITIONS

■ 231. The authority citation for part 9032 continues to read as follows:

Authority: 26 U.S.C. 9032 and 9039(b).

§ 9032.4 [Amended]

■ 232. Amend § 9032.4 to remove ''2 U.S.C. 431(8)(A)'' and add in its place ''52 U.S.C. 30101(8)(A)''.

PART 9033—ELIGIBILITY FOR PAYMENTS

■ 233. The authority citation for part 9033 continues to read as follows:

Authority: 26 U.S.C. 9003(e), 9033 and 9039(b).

§ 9033.1 [Amended]

■ 234. In § 9033.1:
■ a. Amend paragraph (b)(10) to remove ''2 U.S.C. 431'' and add in its place ''52 U.S.C. 30101''; and
■ b. Amend paragraph (b)(11) to remove ''2 U.S.C. 437g'' and add in its place ''52 U.S.C. 30109''.

§ 9033.2 [Amended]

■ 235. Amend paragraph (b)(1) of § 9033.2 to remove ''2 U.S.C. 441a(a)(1)(B) and 441a(a)(2)(B)'' and add in its place ''52 U.S.C. 30116(a)(1)(B) and 30116(a)(2)(B)''.

§ 9033.9 [Amended]

■ 236. Amend paragraph (a) of § 9033.9 to remove ''2 U.S.C. 434'' and add in its place ''52 U.S.C. 30104''.

§ 9033.10 [Amended]

■ 237. Amend paragraph (d) of § 9033.10 to remove ''2 U.S.C. 437g'' and add in its place ''52 U.S.C. 30109''.

PART 9034—ENTITLEMENTS

■ 238. The authority citation for part 9034 continues to read as follows:

Authority: 26 U.S.C. 9034 and 9039(b).

§ 9034.3 [Amended]

■ 239. Amend paragraph (e) of § 9034.3 to remove ''2 U.S.C. 441a, 441b, 441c, 441e, 441f, or 441g'' and add in its place ''52 U.S.C. 30116, 30118, 30119, 30121, 30122, or 30123''.

§ 9034.4 [Amended]

■ 240. In § 9034.4:
■ a. Amend paragraph (a)(2) to remove ''2 U.S.C. 441a(b)'' and add in its place ''52 U.S.C. 30116(b)''; and
■ b. Amend paragraph (d)(1) to remove ''2 U.S.C. 441a(a)(5)(C)'' and add in its place ''52 U.S.C. 30116(a)(5)(C)''.

§ 9034.5 [Amended]

■ 241. Amend paragraph (e)(2)(i) of § 9034.5 to remove ''2 U.S.C. 441a'' and add in its place ''52 U.S.C. 30116''.

§ 9034.8 [Amended]

■ 242. Amend paragraph (c)(4)(i) of § 9034.8 to remove ''title 2'' and add in its place ''Title 52''.

§ 9034.9 [Amended]

■ 243. Amend paragraphs (a) and (b) of § 9034.9 to remove ''title 2'' and add in its place ''Title 52''.

PART 9035—EXPENDITURE LIMITATIONS

■ 244. The authority citation for part 9035 continues to read as follows:

Authority: 26 U.S.C. 9035 and 9039(b).

§ 9035.1 [Amended]

■ 245. Amend paragraph (a)(1) of § 9035.1 to remove ''2 U.S.C. 441a(c)'' wherever it appears and add in its place ''52 U.S.C. 30116(c)'', and to remove ''2 U.S.C. 441a(e)'' and add in its place ''52 U.S.C. 30116(e)''.

PART 9036—REVIEW OF MATCHING FUND SUBMISSIONS AND CERTIFICATION OF PAYMENTS BY COMMISSION

■ 246. The authority citation for part 9036 continues to read as follows:

Authority: 26 U.S.C. 9036 and 9039(b).

§ 9036.2 [Amended]

■ 247. Amend paragraph (b)(1)(v) of § 9036.2 to remove ''2 U.S.C. 432(c)(3), 434(b)(3)(A)'' and add in its place ''52 U.S.C. 30102(c)(3), 30104(b)(3)(A)''.

PART 9038—EXAMINATIONS AND AUDITS

■ 248. The authority citation for part 9038 continues to read as follows:

Authority: 26 U.S.C. 9038 and 9039(b).

§ 9038.1 [Amended]

■ 249. In § 9038.1:

■ a. Amend paragraph (b)(1)(iii) to remove ''2 U.S.C. 437d'' and add in its place ''52 U.S.C. 30107'';

■ b. Amend paragraph (b)(1)(v) to remove ''2 U.S.C. 437d(a)(1)'' and add in its place ''52 U.S.C. 30107(a)(1)'' and to remove ''2 U.S.C. 437(d)(a)(3)'' and add in its place ''52 U.S.C. 30107(a)(3)''; and

■ c. Amend paragraph (d)(2) to remove ''2 U.S.C. 437g'' and add in its place ''52 U.S.C. 30109''.

PART 9039—REVIEW AND INVESTIGATION AUTHORITY

■ 250. The authority citation for part 9039 continues to read as follows:

Authority: 26 U.S.C. 9039.

§ 9039.3 [Amended]

■ 251. Amend paragraphs (a)(2) and (b)(3) of § 9039.3 to remove ''2 U.S.C. 437g'' and add in its place ''52 U.S.C. 30109''.

On behalf of the Commission.

Dated: December 17, 2014.

Lee E. Goodman,

Chairman, Federal Election Commission.

[FR Doc. 2014–29933 Filed 12–24–14; 8:45 am]

BILLING CODE 6715–01–P

DEPARTMENT OF THE TREASURY

Office of the Comptroller of the Currency

12 CFR Parts 25 and 195

[Docket ID OCC–2014–0026]

RIN 1557–AD89

FEDERAL RESERVE SYSTEM

12 CFR Part 228

[Regulation BB; Docket No. R–1504]

RIN 7100–AE25

FEDERAL DEPOSIT INSURANCE CORPORATION

12 CFR Part 345

RIN 3064–AD90

Community Reinvestment Act Regulations

AGENCIES: Office of the Comptroller of the Currency, Treasury (OCC); Board of Governors of the Federal Reserve System (Board); and Federal Deposit Insurance Corporation (FDIC).

ACTION: Joint final rule; technical amendment.

SUMMARY: The OCC, the Board, and the FDIC (collectively, the Agencies) are amending their Community Reinvestment Act (CRA) regulations to adjust the asset-size thresholds used to define ''small bank'' or ''small savings association'' and ''intermediate small bank'' or ''intermediate small savings association.'' As required by the CRA regulations, the adjustment to the threshold amount is based on the annual percentage change in the Consumer Price Index.

DATES: Effective January 1, 2015.

FOR FURTHER INFORMATION CONTACT: *OCC:* Margaret Hesse, Senior Counsel, Community and Consumer Law Division, (202) 649–6350; Rima Kundnani, Attorney, Legislative and Regulatory Activities Division, (202) 649–5490, for persons who are deaf or hard of hearing, TTY, (202) 649–5597; or Bobbie K. Kennedy, Bank Examiner, Compliance Policy Division, (202) 649–5470, Office of the Comptroller of the Currency, 400 7th Street SW., Washington, DC 20219.

Board: Amal S. Patel, Senior Supervisory Consumer Financial Services Analyst, (202) 912–7879; or Nikita Pastor, Counsel, (202) 452–3667, Division of Consumer and Community Affairs, Board of Governors of the Federal Reserve System, 20th Street and Constitution Avenue NW., Washington, DC 20551.

FDIC: Patience R. Singleton, Senior Policy Analyst, Supervisory Policy Branch, Division of Depositor and Consumer Protection, (202) 898–6859; or Richard M. Schwartz, Counsel, Legal Division, (202) 898–7424, Federal Deposit Insurance Corporation, 550 17th Street NW., Washington, DC 20429.

SUPPLEMENTARY INFORMATION:

Background and Description of the Joint Final Rule

The Agencies' CRA regulations establish CRA performance standards for small and intermediate small banks and savings associations. The regulations define small and intermediate small banks and savings associations by reference to asset-size criteria expressed in dollar amounts, and they further require the Agencies to publish annual adjustments to these dollar figures based on the year-to-year change in the average of the Consumer Price Index for Urban Wage Earners and Clerical Workers (CPIW), not seasonally adjusted, for each twelve-month period ending in November, with rounding to the nearest million. 12 CFR 25.12(u)(2), 195.12(u)(2), 228.12(u)(2), and 345.12(u)(2). This adjustment formula was first adopted for CRA purposes by the OCC, the Board, and the FDIC on August 2, 2005, effective September 1, 2005. 70 FR 44256 (Aug. 2, 2005). As explained in the **SUPPLEMENTARY INFORMATION** section of the Agencies' 2005 proposed rule, the Consumer Price Index also is used in other federal lending regulations, such as the Home Mortgage Disclosure Act. 70 FR 12148 (Mar. 11, 2005). *See* 12 U.S.C. 2808; 12 CFR 203.2(e)(1)(i) (2006). On March 22, 2007, and effective July 1, 2007, the former Office of Thrift Supervision (OTS), the agency then responsible for regulating savings associations, adopted an annual adjustment formula consistent with that of the other federal banking agencies in its CRA rule previously set forth at 12 CFR 563e. 72 FR 13429 (Mar. 22, 2007). Pursuant to the Dodd-Frank Wall Street Reform and Consumer Protection Act (Dodd-Frank Act),[1] and effective July 21, 2011, CRA rulemaking authority for federal and state savings associations was transferred from the OTS to the OCC, and the OCC subsequently republished, at 12 CFR 195, the CRA regulations applicable to those institutions.[2] In addition, the Dodd-Frank Act transferred responsibility for

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

[2] *See* OCC interim final rule, 76 FR 48950 (Aug. 9, 2011).

supervision of savings and loan holding companies and their non-depository subsidiaries from the OTS to the Board, and the Board subsequently amended its CRA regulation to reflect this transfer of supervision authority.[3]

The threshold for small banks and small savings associations was revised most recently on December 30, 2013, and became effective January 1, 2014 (78 FR 79283 (Dec. 30, 2013)). The current CRA regulations provide that banks and savings associations that, as of December 31 of either of the prior two calendar years, had assets of less than $1.202 billion are small banks or small savings associations. Small banks and small savings associations with assets of at least $300 million as of December 31 of both of the prior two calendar years and less than $1.202 billion as of December 31 of either of the prior two calendar years are intermediate small banks or intermediate small savings associations. 12 CFR 25.12(u)(1), 195.12(u)(1), 228.12(u)(1), and 345.12(u)(1). This joint final rule further revises these thresholds.

During the period ending November 2014, the CPIW increased by 1.60 percent. As a result, the Agencies are revising 12 CFR 25.12(u)(1), 195.12(u)(1), 228.12(u)(1), and 345.12(u)(1) to make this annual adjustment. Beginning January 1, 2015, banks and savings associations that, as of December 31 of either of the prior two calendar years, had assets of less than $1.221 billion are small banks or small savings associations. Small banks and small savings associations with assets of at least $305 million as of December 31 of both of the prior two calendar years and less than $1.221 billion as of December 31 of either of the prior two calendar years are intermediate small banks or intermediate small savings associations. The Agencies also publish current and historical asset-size thresholds on the Web site of the Federal Financial Institutions Examination Council at *http://www.ffiec.gov/cra/.*

Administrative Procedure Act and Effective Date

Under 5 U.S.C. 553(b)(B) of the Administrative Procedure Act (APA), an agency may, for good cause, find (and incorporate the finding and a brief statement of reasons therefore in the rules issued) that notice and public procedure thereon are impracticable, unnecessary, or contrary to the public interest.

The amendments to the regulations to adjust the asset-size thresholds for small and intermediate small banks and savings associations result from the application of a formula established by a provision in the respective CRA regulations that the Agencies previously published for comment. *See* 70 FR 12148 (Mar. 11, 2005), 70 FR 44256 (Aug. 2, 2005), 71 FR 67826 (Nov. 24, 2006), and 72 FR 13429 (Mar. 22, 2007). Sections 25.12(u)(1), 195.12(u)(1), 228.12(u)(1), and 345.12(u)(1) are amended by adjusting the asset-size thresholds as provided for in §§ 25.12(u)(2), 195.12(u)(2), 228.12(u)(2), and 345.12(u)(2).

Accordingly, because the Agencies' rules provide no discretion as to the computation or timing of the revisions to the asset-size criteria, the Agencies have determined that publishing a notice of proposed rulemaking and providing opportunity for public comment are unnecessary.

The effective date of this joint final rule is January 1, 2015. Under 5 U.S.C. 553(d)(3) of the APA, the required publication or service of a substantive rule shall be made not less than 30 days before its effective date, except, among other things, as provided by the agency for good cause found and published with the rule. Because this rule adjusts asset-size thresholds consistent with the procedural requirements of the CRA rules, the Agencies conclude that it is not substantive within the meaning of the APA's delayed effective date provision. Moreover, the Agencies find that there is good cause for dispensing with the delayed effective date requirement, even if it applied, because their current rules already provide notice that the small and intermediate small asset-size thresholds will be adjusted as of December 31 based on twelve-month data as of the end of November each year.

Regulatory Flexibility Act

The Regulatory Flexibility Act (RFA) does not apply to a rulemaking where a general notice of proposed rulemaking is not required. 5 U.S.C. 603 and 604. As noted previously, the Agencies have determined that it is unnecessary to publish a general notice of proposed rulemaking for this joint final rule. Accordingly, the RFA's requirements relating to an initial and final regulatory flexibility analysis do not apply.

Paperwork Reduction Act of 1995

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

Unfunded Mandates Reform Act of 1995

Section 202 of the Unfunded Mandates Reform Act of 1995, 2 U.S.C. 1532 (Unfunded Mandates Act), requires the OCC to prepare a budgetary impact statement before promulgating any final rule for which a general notice of proposed rulemaking was published. As discussed above, the OCC has determined that the publication of a general notice of proposed rulemaking is unnecessary. Accordingly, this joint final rule is not subject to section 202 of the Unfunded Mandates Act.

List of Subjects

12 CFR Part 25

Community development, Credit, Investments, National banks, Reporting and recordkeeping requirements.

12 CFR Part 195

Community development, Credit, Investments, Reporting and recordkeeping requirements, Savings associations.

12 CFR Part 228

Banks, Banking, Community development, Credit, Investments, Reporting and recordkeeping requirements.

12 CFR Part 345

Banks, Banking, Community development, Credit, Investments, Reporting and recordkeeping requirements.

Department of the Treasury

Office of the Comptroller of the Currency

12 CFR Chapter I

For the reasons discussed in the **SUPPLEMENTARY INFORMATION** section, 12 CFR parts 25 and 195 are amended as follows:

PART 25—COMMUNITY REINVESTMENT ACT AND INTERSTATE DEPOSIT PRODUCTION REGULATIONS

■ 1. The authority citation for part 25 continues to read as follows:

Authority: 12 U.S.C. 21, 22, 26, 27, 30, 36, 93a, 161, 215, 215a, 481, 1814, 1816, 1828(c), 1835a, 2901 through 2908, and 3101 through 3111.

■ 2. Revise § 25.12(u)(1) to read as follows:

§ 25.12 Definitions.

* * * * *

[3] *See* Board interim final rule, 76 FR 56508 (Sept. 13, 2011).

(u) *Small bank*—(1) *Definition. Small bank* means a bank that, as of December 31 of either of the prior two calendar years, had assets of less than $1.221 billion. *Intermediate small bank* means a small bank with assets of at least $305 million as of December 31 of both of the prior two calendar years and less than $1.221 billion as of December 31 of either of the prior two calendar years.

* * * * *

PART 195—COMMUNITY REINVESTMENT

■ 3. The authority citation for part 195 continues to read as follows:

Authority: 12 U.S.C. 1462a, 1463, 1464, 1814, 1816, 1828(c), 2901 through 2908, and 5412(b)(2)(B).

■ 4. Revise § 195.12(u)(1) to read as follows:

§ 195.12 Definitions.

* * * * *

(u) *Small savings association*—(1) *Definition. Small savings association* means a savings association that, as of December 31 of either of the prior two calendar years, had assets of less than $1.221 billion. *Intermediate small savings association* means a small savings association with assets of at least $305 million as of December 31 of both of the prior two calendar years and less than $1.221 billion as of December 31 of either of the prior two calendar years.

* * * * *

Federal Reserve System

12 CFR Chapter II

For the reasons set forth in the **SUPPLEMENTARY INFORMATION** section, the Board of Governors of the Federal Reserve System amends part 228 of chapter II of title 12 of the Code of Federal Regulations as follows:

PART 228—COMMUNITY REINVESTMENT (REGULATION BB)

■ 5. The authority citation for part 228 continues to read as follows:

Authority: 12 U.S.C. 321, 325, 1828(c), 1842, 1843, 1844, and 2901 *et seq.*

■ 6. Revise § 228.12(u)(1) to read as follows:

§ 228.12 Definitions.

* * * * *

(u) *Small bank*—(1) *Definition. Small bank* means a bank that, as of December 31 of either of the prior two calendar years, had assets of less than $1.221 billion. *Intermediate small bank* means a small bank with assets of at least $305 million as of December 31 of both of the prior two calendar years and less than $1.221 billion as of December 31 of either of the prior two calendar years.

* * * * *

Federal Deposit Insurance Corporation

12 CFR Chapter III

Authority and Issuance

For the reasons set forth in the **SUPPLEMENTARY INFORMATION** section, the Board of Directors of the Federal Deposit Insurance Corporation amends part 345 of chapter III of title 12 of the Code of Federal Regulations to read as follows:

PART 345—COMMUNITY REINVESTMENT

■ 7. The authority citation for part 345 continues to read as follows:

Authority: 12 U.S.C. 1814–1817, 1819–1820, 1828, 1831u and 2901–2908, 3103–3104, and 3108(a).

■ 8. Revise § 345.12(u)(1) to read as follows:

§ 345.12 Definitions.

* * * * *

(u) *Small bank*—(1) *Definition. Small bank* means a bank that, as of December 31 of either of the prior two calendar years, had assets of less than $1.221 billion. *Intermediate small bank* means a small bank with assets of at least $305 million as of December 31 of both of the prior two calendar years and less than $1.221 billion as of December 31 of either of the prior two calendar years.

* * * * *

Dated: December 17, 2014.

Amy S. Friend,

Senior Deputy Comptroller and Chief Counsel.

By order of the Board of Governors of the Federal Reserve System, acting through the Secretary of the Board under delegated authority, December 18, 2014.

Robert deV. Frierson,

Secretary of the Board.

By order of the Board of Directors.

Dated at Washington, DC, this 18th day of December, 2014.

Federal Deposit Insurance Corporation.

Robert E. Feldman,

Executive Secretary.

[FR Doc. 2014–30256 Filed 12–24–14; 8:45 am]

BILLING CODE 4810–33–P; 6210–01–P; 6714–01–P

BUREAU OF CONSUMER FINANCIAL PROTECTION

12 CFR Part 1003

Home Mortgage Disclosure (Regulation C) Adjustment to Asset-Size Exemption Threshold

AGENCY: Bureau of Consumer Financial Protection.

ACTION: Final rule; official commentary.

SUMMARY: The Bureau of Consumer Financial Protection (Bureau) is issuing a final rule amending the official commentary that interprets the requirements of the Bureau's Regulation C (Home Mortgage Disclosure) to reflect a change in the asset-size exemption threshold for banks, savings associations, and credit unions based on the annual percentage change in the average of the Consumer Price Index for Urban Wage Earners and Clerical Workers (CPI–W). The exemption threshold is adjusted to increase to $44 million from $43 million. The adjustment is based on the 1.1 percent increase in the average of the CPI–W for the 12-month period ending in November 2014. Therefore, banks, savings associations, and credit unions with assets of $44 million or less as of December 31, 2014, are exempt from collecting data in 2015.

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

FOR FURTHER INFORMATION CONTACT: James Wylie, Counsel, Office of Regulations, at (202) 435–7700.

SUPPLEMENTARY INFORMATION:

I. Background

The Home Mortgage Disclosure Act of 1975 (HMDA) (12 U.S.C. 2801–2810) requires most mortgage lenders located in metropolitan areas to collect data about their housing-related lending activity. Annually, lenders must report that data to the appropriate Federal agencies and make the data available to the public. The Bureau's Regulation C (12 CFR part 1003) implements HMDA.

Prior to 1997, HMDA exempted certain depository institutions as defined in HMDA (*i.e.,* banks, savings associations, and credit unions) with assets totaling $10 million or less as of the preceding year-end. In 1996, HMDA was amended to expand the asset-size exemption for these depository institutions. 12 U.S.C. 2808(b). The amendment increased the dollar amount of the asset-size exemption threshold by requiring a one-time adjustment of the $10 million figure based on the percentage by which the CPI–W for 1996 exceeded the CPI–W for 1975, and

it provided for annual adjustments thereafter based on the annual percentage increase in the CPI–W, rounded to the nearest multiple of $1 million dollars.

The definition of ''financial institution'' in Regulation C provides that the Bureau will adjust the asset threshold based on the year-to-year change in the average of the CPI–W, not seasonally adjusted, for each 12-month period ending in November, rounded to the nearest million. 12 CFR 1003.2. For 2014, the threshold was $43 million. During the 12-month period ending in November 2014, the average of the CPI–W increased by 1.1 percent. As a result, the exemption threshold is increased to $44 million. Thus, banks, savings associations, and credit unions with assets of $44 million or less as of December 31, 2014, are exempt from collecting data in 2015. An institution's exemption from collecting data in 2015 does not affect its responsibility to report data it was required to collect in 2014.

II. 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, comment 1003.2 (Financial institution)-2 in Regulation C, supplement I is amended to update the exemption threshold. The amendment in this final rule is technical and nondiscretionary, and it merely applies the formula established by Regulation C for determining any adjustments to the exemption threshold. For these reasons, the Bureau has determined that publishing a notice of proposed rulemaking and providing opportunity for public comment are unnecessary. Therefore, the amendment is adopted in final form.

Section 553(d) of the APA generally requires publication of a final rule not less than 30 days before its effective date, except for (1) a substantive rule which grants or recognizes an exemption or relieves a restriction; (2) interpretive rules and statements of policy; or (3) as otherwise provided by the agency for good cause found and published with the rule. 5 U.S.C. 553(d). At a minimum, the Bureau believes the amendments fall under the third exception to section 553(d). The Bureau finds that there is good cause to make the amendments effective on January 1, 2015. The amendment in this final rule is technical and non-discretionary, and it applies the method previously established in the agency's regulations for determining adjustments to the threshold.

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 agency 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 1003

Banking, Banks, Credit unions, Mortgages, National banks, Reporting and recordkeeping requirements, Savings associations.

Authority and Issuance

For the reasons set forth in the preamble, the Bureau amends Regulation C, 12 CFR part 1003, as set forth below:

PART 1003—HOME MORTGAGE DISCLOSURE (REGULATION C)

■ 1. The authority citation for part 1003 continues to read as follows:

Authority: 12 U.S.C. 2803, 2804, 2805, 5512, 5581.

■ 2. In Supplement I to Part 1003, under *Section 1003.2—Definitions,* under the definition ''*Financial institution*'', paragraph 2 is revised to read as follows:

Supplement I to Part 1003—Staff Commentary

* * * * *

Section 1003.2—Definitions

* * * * *

Financial institution.

* * * * *

2. *Adjustment of exemption threshold for banks, savings associations, and credit unions.* For data collection in 2015, the asset-size exemption threshold is $44 million. Banks, savings associations, and credit unions with assets at or below $44 million as of December 31, 2014, are exempt from collecting data for 2015.

* * * * *

Dated: December 15, 2014.

Richard Cordray,

Director, Bureau of Consumer Financial Protection.

[FR Doc. 2014–30404 Filed 12–24–14; 8:45 am]

BILLING CODE 4810–AM–P

BUREAU OF CONSUMER FINANCIAL PROTECTION

12 CFR Part 1026

Truth in Lending Act (Regulation Z) Adjustment to Asset-Size Exemption Threshold

AGENCY: Bureau of Consumer Financial Protection.

ACTION: Final rule; official interpretation.

SUMMARY: The Bureau is amending the official commentary that interprets the requirements of the Bureau's Regulation Z (Truth in Lending) to reflect a change in the asset size threshold for certain creditors to qualify for an exemption to the requirement to establish an escrow account for a higher-priced mortgage loan based on the annual percentage change in the average of the Consumer Price Index for Urban Wage Earners and Clerical Workers (CPI–W) for the 12-month period ending in November. The exemption threshold is adjusted to increase to $2.060 billion from $2.028 billion. The adjustment is based on the 1.1 percent increase in the average of the CPI–W for the 12-month period ending in November 2014. Therefore, creditors with assets of $2.060 billion or less as of December 31, 2014, are exempt, if other requirements of Regulation Z also are met, from establishing escrow accounts for higher-priced mortgage loans in 2015. The adjustment to the escrows exemption asset-size threshold will also increase a similar threshold for small-creditor portfolio and balloon-payment qualified mortgages. Balloon-payment qualified mortgages that satisfy all applicable criteria, including being made by creditors that do not exceed the asset-size threshold, are also excepted from the prohibition on balloon payments for high-cost mortgages.

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

FOR FURTHER INFORMATION CONTACT: James Wylie, Counsel, Office of Regulations, at (202) 435–7700.

SUPPLEMENTARY INFORMATION:

I. Background

The Dodd-Frank Wall Street Reform and Consumer Protection Act (Dodd-Frank Act) amended TILA section 129D(a) to contain a general requirement that an escrow account be established by a creditor to pay for property taxes and insurance premiums for certain first-lien higher-priced mortgage loan transactions. Section 1461 of the Dodd-Frank Act also generally permits an exemption from

the higher-priced mortgage loan escrow requirement for a creditor that: (1) Operates predominantly in rural or underserved areas; (2) together with all affiliates, has total annual mortgage loan originations that do not exceed a limit set by the Bureau; (3) retains its mortgage obligations in portfolio; and (4) meets any asset-size threshold and any other criteria as the Bureau may establish.

In the 2013 Escrows Final Rule,[1] the Bureau established such an asset-size threshold of $2,000,000,000, which would adjust automatically each year, based on the year-to-year change in the average of the CPI–W for each 12-month period ending in November, with rounding to the nearest million dollars.[2] For 2014, the threshold was $2.028 billion. During the 12-month period ending in November 2014, the average of the CPI–W increased by 1.1 percent. As a result, the exemption threshold is increased to $2.060 billion for 2015. Thus, loans made by creditors with total assets of less than $2.060 billion as of December 31, 2014, that meet the other requirements of 12 CFR 1026.35(b)(2)(iii) will be exempt in 2015 from the escrow-accounts requirement for higher-priced mortgage loans.

The adjustment to the escrows exemption asset-size threshold will also increase the threshold for small-creditor portfolio and balloon-payment qualified mortgages under Regulation Z. The requirements for small-creditor portfolio qualified mortgages at 12 CFR 1026.43(e)(5)(i)(D) reference the asset threshold in 12 CFR 1026.35(b)(2)(iii)(C). Likewise, the requirements for balloon-payment qualified mortgages at 12 CFR 1026.43(f)(1)(vi) references the asset threshold in 12 CFR 1026.35(b)(2)(iii)(C). Balloon-payment qualified mortgages that satisfy all applicable criteria in §§ 1026.43(f)(1)(i) through (vi) and 1026.43(f)(2), or the conditions set forth in § 1026.43(e)(6), including being made by creditors that do not exceed the asset threshold in 12 CFR 1026.35(b)(2)(iii)(C), are also excepted from the prohibition on balloon payments for high-cost mortgages in 12 CFR 1026.32(d)(1)(ii)(C).

II. 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, comment 35(b)(2)(iii)–1 in Regulation Z is amended to update the exemption threshold. The amendment in this final rule is technical and nondiscretionary, and it merely applies the formula previously established in Regulation Z for determining any adjustments to the exemption threshold. For these reasons, the Bureau has determined that publishing a notice of proposed rulemaking and providing opportunity for public comment are unnecessary. Therefore, the amendment is adopted in final form.

Section 553(d) of the APA generally requires publication of a final rule not less than 30 days before its effective date, except for (1) a substantive rule which grants or recognizes an exemption or relieves a restriction; (2) interpretive rules and statements of policy; or (3) as otherwise provided by the agency for good cause found and published with the rule. 5 U.S.C. 553(d). At a minimum, the Bureau believes the amendments fall under the third exception to section 553(d). The Bureau finds that there is good cause to make the amendments effective on January 1, 2015. The amendment in this notice is technical and non-discretionary, and it applies the method previously established in the agency's regulations for automatic adjustments to the threshold.

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 agency 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.*

■ 2. In Supplement I to Part 1026—Official Interpretations, under *Section 1026.35—Requirements for Higher-Priced Mortgage Loans, 35(b)(2) Exemptions, Paragraph 35(b)(2)(iii),* paragraph 1.iii is revised to read as follows:

SUPPLEMENT I TO PART 1026—OFFICIAL INTERPRETATIONS

* * * * *

Subpart E—Special Rules for Certain Home Mortgage Transactions

* * * * *

Section 1026.35—Requirements for Higher-Priced Mortgage Loans

* * * * *

35(b)(2) Exemptions

* * * * *

Paragraph 35(b)(2)(iii)

1. Requirements for exemption. * * *

* * * * *

iii. As of the end of the preceding calendar year, the creditor had total assets that are less than the asset threshold for the relevant calendar year. For calendar year 2015, the asset threshold is $2,060,000,000. Creditors that had total assets of less than $2,060,000,000 on December 31, 2014, satisfy this criterion for purposes of the exemption during 2015. This asset threshold shall adjust automatically each year based on the year-to-year change in the average of the Consumer Price Index for Urban Wage Earners and Clerical Workers, not seasonally adjusted, for each 12-month period ending in November, with rounding to the nearest million dollars. The Bureau will publish notice of the asset threshold each year by amending this comment. For historical purposes, the prior asset thresholds were:

A. For calendar year 2013, the asset threshold was $2,000,000,000. Creditors that had total assets of less than $2,000,000,000 on December 31, 2012, satisfied this criterion for purposes of the exemption during 2013.

B. For calendar year 2014, the asset threshold was $2,028,000,000. Creditors that had total assets of less than $2,028,000,000 on December 31, 2013, satisfied this criterion for purposes of the exemption during 2014.

* * * * *

Dated: December 15, 2014.

Richard Cordray,

Director, Bureau of Consumer Financial Protection.

[FR Doc. 2014–30405 Filed 12–24–14; 8:45 am]

BILLING CODE 4810–AM–P

[1] 78 FR 4726 (Jan. 22, 2013).

[2] *See* 12 CFR 1026.35(b)(2)(iii)(C).

FEDERAL HOUSING FINANCE AGENCY

12 CFR Part 1291

Federal Home Loan Banks' Affordable Housing Program

CFR Correction

In Title 12 of the Code of Federal Regulations, Part 1100 to End, revised as of January 1, 2014, on page 344, in § 1291.5, in paragraphs (c)(13)(iii)(A) and (B) remove the term ''951.9 of this part'' and add ''1291.9'' in its place, and on page 345, in paragraph (c)(14)(iii), remove the term ''951.8, and 951.9, respectively, of this part'' and add in its place ''1291.8, and 1291.9''.

[FR Doc. 2014–30469 Filed 12–24–14; 8:45 am]

BILLING CODE 1505–01–D

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 65

[Docket No.: FAA–FAA–2014–1000; Amdt. No. 65–56A]

RIN 2120–AK40

Elimination of the Air Traffic Control Tower Operator Certificate for Controllers Who Hold a Federal Aviation Administration Credential With a Tower Rating; Correction

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule; request for comments; correction.

SUMMARY: The FAA is correcting a final rule with request for comments, published on December 16, 2014 (79 FR 74607). In that final rule, the FAA amended its regulations to eliminate the requirement for an air traffic control tower operator to hold a control tower operator certificate if the individual also holds a Federal Aviation Administration Credential with a tower rating (FAA Credential). In that document, the FAA inadvertently made an error in the part heading for 14 CFR part 65. This document corrects that error.

DATES: This correction will become effective on February 17, 2015.

FOR FURTHER INFORMATION CONTACT: For technical questions concerning this action, contact Michele Cappelle, Air Traffic Safety Oversight Service, Federal Aviation Administration, 800 Independence Avenue SW., Washington, DC 20591; telephone (202) 267–5205; email *michele.cappelle@faa.gov.*

SUPPLEMENTARY INFORMATION:

Background

On December 16, 2014, the FAA published a final rule with request for comments, entitled ''Elimination of the Air Traffic Control Tower Operator Certificate for Controllers Who Hold a Federal Aviation Administration Credential with a Tower Rating'' (79 FR74607).

In that final rule, the FAA revised the requirement for an air traffic control tower operator to hold a control tower operator certificate if the individual also holds a Federal Aviation Administration Credential with a tower rating (FAA Credential). In that final rule, the FAA inadvertently printed the incorrect part heading for part 65 of Title 14, Code of Federal Regulations.

Correction

In FR Doc. 2014–29386, beginning on page 74611 in the **Federal Register** of December 16, 2014, make the following correction.

Correction to Regulatory Text

1. On page 74611, in the third column, revise the heading of Part 65 to read as follows:

PART 65—CERTIFICATION: AIRMEN OTHER THAN FLIGHT CREWMEMBERS

* * * * *

Issued under authority provided by 49 U.S.C. 106(f), in Washington, DC, on December 19, 2014.

Brenda D. Courtney,

Acting Director, Office of Rulemaking .

[FR Doc. 2014–30269 Filed 12–24–14; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 91

[Docket No.: FAA–2014–0225; Amdt. No. 91–331A]

RIN 2120–AK56

Prohibition Against Certain Flights in the Simferopol (UKFV) and Dnipropetrovsk (UKDV) Flight Information Regions (FIRs)

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Immediately adopted final rule.

SUMMARY: This action amends Special Federal Aviation Regulation (SFAR) No. 113, ''Prohibition Against Certain Flights in the Simferopol (UKFV) Flight Information Region (FIR),'' which prohibited certain flight operations in a portion of the Simferopol (UKFV) FIR by all U.S. air carriers; U.S. commercial operators; persons exercising the privileges of a U.S. airman certificate, except when such persons are operating a U.S.-registered aircraft for a foreign air carrier; and operators of U.S.-registered civil aircraft, except when such operators are foreign air carriers. This action expands the area in which flight operations by persons subject to SFAR No. 113 are prohibited, to include all of the Simferopol (UKFV) FIR, as well as the entire Dnipropetrovsk (UKDV) FIR. The FAA finds this action to be necessary to prevent a potential hazard to persons and aircraft engaged in such flight operations.

DATES: This final rule is effective on December 29, 2014.

FOR FURTHER INFORMATION CONTACT: For technical questions concerning this action, contact Will Gonzalez, Air Transportation Division, AFS–220, Flight Standards Service Federal Aviation Administration, 800 Independence Avenue SW., Washington, DC 20591; telephone 202–267–8166; email *will.gonzalez@faa.gov.*

For legal questions concerning this action, contact Robert Frenzel, Office of the Chief Counsel, AGC–200, Federal Aviation Administration, 800 Independence Avenue SW., Washington, DC 20591; telephone (202) 267–7638; email *robert.frenzel@faa.gov.*

SUPPLEMENTARY INFORMATION:

Good Cause for Immediate Adoption

Section 553(b)(3)(B) of title 5, U.S. Code, authorizes agencies to dispense with notice and comment procedures for rules when the agency for ''good cause'' finds that those procedures are ''impracticable, unnecessary, or contrary to the public interest.'' In this instance, the FAA finds that notice and public comment to this immediately adopted final rule, as well as any delay in the effective date of this rule, are contrary to the public interest due to the immediate need to address the potential hazard to civil aviation that now exists in the Simferopol (UKFV) and Dnepropetrovsk (UKDV) FIRs, as described in the Background section of this Notice.

Authority for This Rulemaking

The FAA is responsible for the safety of flight in the United States (U.S.) and for the safety of U.S. civil operators, U.S.-registered civil aircraft, and U.S.-certificated airmen throughout the world. The FAA's authority to issue rules on aviation safety is found in title

49, U.S. Code. Subtitle I, section 106(f), describes the authority of the FAA Administrator. Subtitle VII of title 49, Aviation Programs, describes in more detail the scope of the agency's authority. Section 40101(d)(1) provides that the Administrator shall consider in the public interest, among other matters, assigning, maintaining, and enhancing safety and security as the highest priorities in air commerce. Section 40105(b)(1)(A) requires the Administrator to exercise his authority consistently with the obligations of the U.S. Government under international agreements.

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 broadly with promoting safe flight of civil aircraft in air commerce by prescribing, among other things, regulations and minimum standards for practices, methods, and procedures that the Administrator finds necessary for safety in air commerce and national security. This regulation is within the scope of that authority, because it prohibits the persons subject to paragraph (a) of SFAR No. 113 from conducting flight operations in the entirety of the Simferopol (UKFV) and Dnipropetrovsk (UKDV) FIRs due to the potential hazard to the safety of such persons' flight operations, as described in the ''Background'' section of this document.

I. Overview of Immediately Adopted Final Rule Amending SFAR No. 113

This action prohibits flight operations in the entirety of the Simferopol (UKFV) and Dnipropetrovsk (UKDV) FIRs by all U.S. air carriers; U.S. commercial operators; persons exercising the privileges of a U.S. airman certificate, except when such persons are operating a U.S.-registered aircraft for a foreign air carrier; and operators of U.S.-registered civil aircraft, except when such operators are foreign air carriers. The FAA finds this action necessary to prevent a potential hazard to persons and aircraft engaged in such flight operations.

II. Background

On April 23, 2014, the FAA issued SFAR No. 113, § 91.1607, which prohibited flight operations in a portion of the Simferopol (UKFV) FIR by all U.S. air carriers; U.S. commercial operators; persons exercising the privileges of a U.S. airman certificate, except when such persons are operating a U.S.-registered aircraft for a foreign air carrier; and operators of U.S.-registered civil aircraft, except when such operators are foreign air carriers. On March 28, 2014, the Russian Federation had issued a Notice-to-Airmen (NOTAM) purporting to establish unilaterally a new FIR, effective April 3, 2014, in a significant portion of the Simferopol (UKFV) FIR, which included sovereign Ukrainian airspace over the Crimean Peninsula and the associated Ukrainian territorial sea, as well as international airspace managed by Ukraine over the Black Sea and the Sea of Azov. Ukraine rejected the Russian Federation's purported establishment of a new FIR within the existing Simferopol (UKFV) FIR, established a prohibited area over the Crimean Peninsula for flight operations below flight level 290, and closed various air traffic services (ATS) route segments.

The Russian Federation responded by issuing a NOTAM that rejected and directly conflicted with Ukrainian NOTAMs concerning the establishment of the prohibited area and the route segment closures. On April 2, 2014, the International Civil Aviation Organization's (ICAO's) Regional Director for Europe and the North Atlantic Regions issued a state letter to countries and their civil aviation authorities highlighting the possible existence of serious risks to the safety of international civil flights and recommending that consideration be given to implementing measures to avoid the airspace and to circumnavigate the Simferopol (UKFV) FIR with alternative routings.

When SFAR No. 113, § 91.1607, was issued, the FAA viewed the possibility of civil aircraft receiving confusing and conflicting air traffic control instructions from both Ukrainian and Russian ATS providers when operating in the portion of the Simferopol (UKFV) FIR covered by SFAR No. 113, § 91.1607, as an unsafe condition that presented a potential hazard to civil flight operations in the disputed airspace. Because political and military tensions between Ukraine and the Russian Federation remained high, the FAA was also concerned that compliance with air traffic control instructions issued by the authorities of one country could result in a civil aircraft being misidentified as a threat and intercepted or otherwise engaged by air defense forces of the other country. The FAA continues to have these concerns.

The FAA is now expanding SFAR No. 113, § 91.1607, due to safety and national security concerns regarding flight operations in the Simferopol (UKFV) and Dnipropetrovsk (UKDV) FIRs. The ongoing conflict in the region poses a significant threat to civil aviation operations in these FIRs. In addition to a series of attacks on fixed-wing and rotary-wing military aircraft flying at lower altitudes, a Ukrainian An-26 flying at 21,000 feet southeast of Luhansk was shot down on July 14, 2014, and a Malaysia Airlines Boeing 777 was shot down on July 17, 2014, while flying over Ukraine at 33,000 feet just west of the Russian border. Approximately 290 passengers and crew perished. The use of weapons capable of targeting and shooting down aircraft flying on civil air routes at cruising altitudes poses a significantly dangerous threat to civil aircraft flying in the Simferopol (UKFV) and Dnipropetrovsk (UKDV) FIRs.

In response to this situation, the FAA issued a NOTAM on July 18, 2014 (UTC), to prohibit operations within the Simferopol (UKFV) and Dnipropetrovsk (UKDV) FIRs by all U.S. air carriers; U.S. commercial operators; persons exercising the privileges of a U.S. airman certificate, except when such persons are operating a U.S.-registered aircraft for a foreign air carrier; and operators of U.S.-registered civil aircraft, except when such operators are foreign air carriers. Given the uncertainty about when the conflict in the region will end, this amendment follows up on that action.

The FAA will continue to actively evaluate the area and the airports in the region to determine to what extent U.S. civil operators may be able to safely operate in the region. Amendments to the SFAR may be appropriate if the risk to aviation safety and security changes. The FAA may amend or rescind the SFAR as necessary prior to its expiration date. This amendment also makes a few technical corrections to SFAR No. 113, § 91.1607.

Because the circumstances described herein warrant immediate action by the FAA, I find that notice and public comment under 5 U.S.C. 553(b)(3)(B) are impracticable and contrary to the public interest. However, we will accept any comments regarding the impact of this action for consideration in any future rulemaking action to amend or rescind this SFAR. Further, I find that good cause exists under 5 U.S.C. 553(d) for making this rule effective immediately upon issuance. I also find that this action is fully consistent with the obligations under 49 U.S.C. 40105 to ensure that I exercise my duties consistently with the obligations of the United States under international agreements.

Approval Based on Authorization Request of an Agency of the United States Government

On April 23, 2014, the FAA put an approval process in place as part of SFAR No. 113, § 91.1607. In this rule, the approval process has been expanded to address flight operations by persons covered by SFAR No. 113, § 91.1607, in the entirety of the Simferopol (UKFV) and Dnipropetrovsk (UKDV) FIRs. If a department, agency, or instrumentality of the U.S. Government determines that it has a critical need to engage any person covered under SFAR No. 113, § 91.1607, including a U.S. air carrier or a U.S. commercial operator, to conduct a charter to transport civilian or military passengers or cargo in the Simferopol (UKFV) FIR and/or the Dnipropetrovsk (UKDV) FIR, that department, agency, or instrumentality may request the FAA to approve persons covered under SFAR No. 113, § 91.1607, to conduct such operations. An approval request must be made to the FAA in a letter signed by an appropriate senior official of the requesting department, agency, or instrumentality of the U.S. Government. The letter must be sent to the Associate Administrator for Aviation Safety (AVS–1), Federal Aviation Administration, 800 Independence Avenue SW., Washington, DC 20591. Electronic submissions are acceptable, and the requesting entity may request that the FAA notify it electronically as to whether the approval request is granted. If a requestor wishes to make an electronic submission to the FAA, the requestor should contact the Air Transportation Division, Flight Standards Service, at (202) 267–8166, to obtain the appropriate email address. A single letter may request approval from the FAA for multiple persons covered under SFAR No. 113, § 91.1607, and/or for multiple flight operations. To the extent known, the letter must identify the person(s) expected to be covered under the SFAR on whose behalf the U.S. Government department, agency, or instrumentality is seeking FAA approval, and it must describe—

- The proposed operation(s), including the nature of the mission being supported;
- The service to be provided by the person(s) covered by the SFAR;
- To the extent known, the specific locations within the Simferopol (UKFV) FIR and/or the Dnipropetrovsk (UKDV) FIR covered by this SFAR where the proposed operation(s) will be conducted; and
- The method by which the department, agency, or instrumentality will provide, or how the operator will otherwise obtain, current threat information and an explanation of how the operator will integrate this information into all phases of its proposed operations (*e.g.,* pre-mission planning and briefing, in-flight, and post-flight).

The request for approval must also include a list of operators with whom the U.S. Government department, agency, or instrumentality requesting FAA approval has a current contract(s), grant(s), or cooperative agreement(s) (or with whom its prime contractor has a subcontract(s)) for specific flight operations in the Simferopol (UKFV) FIR and/or the Dnipropetrovsk (UKDV) FIR. Additional such operators may be identified to the FAA at any time after the FAA approval is issued. Updated lists should be sent to the email address to be obtained from the Air Transportation Division, (202) 267–8166.

If an approval request includes classified information, requestors may contact Aviation Safety Inspector Will Gonzalez for instructions on submitting it to the FAA. His contact information is listed in the ''For Further Information Contact'' section of this final rule.

FAA approval of an operation under SFAR No. 113, § 91.1607, does not relieve persons subject to this SFAR of their responsibility to comply with all applicable FAA rules and regulations. Operators of civil aircraft will have to comply with the conditions of their certificate and Operations Specifications (OpSpecs). Operators will also have to comply with all rules and regulations of other U.S. Government departments or agencies that may apply to the proposed operation, including, but not limited to, the Transportation Security Regulations issued by the Transportation Security Administration, Department of Homeland Security.

Approval Conditions

On April 23, 2014, the FAA put approval conditions in place as part of SFAR No. 113, § 91.1607. The approval conditions will now apply to flight operations conducted by persons covered by SFAR No. 113, § 91.1607, in the entirety of the Simferopol (UKFV) and Dnipropetrovsk (UKDV) FIRs. If the FAA approves the request, the FAA's Aviation Safety Organization (AVS) will send an approval letter to the requesting department, agency, or instrumentality informing it that the FAA's approval is subject to all of the following conditions:

(1) The approval will stipulate those procedures and conditions that limit, to the greatest degree possible, the risk to the operator, while still allowing the operator to achieve its operational objectives.

(2) The approval will specify that the operation is not eligible for coverage under a premium war risk insurance policy issued by the FAA under chapter 443 of title 49, U.S. Code.[1]

(3) If the proposed operation would have been covered by a premium war risk insurance policy issued by the FAA under chapter 443 of title 49, U.S. Code, but for SFAR No. 113, § 91.1607, the FAA will issue an endorsement to that premium policy that specifically excludes coverage for any operations into, out of, within, or through the Simferopol (UKFV) and Dnipropetrovsk (UKDV) FIRs, including operations under a flight plan that contemplates landing in or taking off from Ukrainian territory within those two FIRs. The endorsement to the premium policy will take effect before the approval's effective date. The exclusion specified in the endorsement will remain in effect as long as this SFAR remains in effect, notwithstanding the issuance of any approval under, or exemption from, this SFAR (the chapter 443 premium policy refers to such approval as a ''waiver'' and such exemption as an ''exclusion'').

(4) Before any approval takes effect, the operator must submit to the FAA a written release of the U.S. Government (including but not limited to the United States of America, as Insurer) from all damages, claims, and liabilities, including without limitation legal fees and expenses, and the operator's agreement to indemnify the U.S. Government (including but not limited to the United States of America, as Insurer) with respect to any and all third-party damages, claims, and liabilities, including without limitation legal fees and expenses, relating to any event arising from or related to the approved operations in the Simferopol (UKFV) FIR and/or Dnipropetrovsk (UKDV) FIR. The release and agreement to indemnify do not preclude an operator from raising a claim under an applicable non-premium war risk insurance policy issued by the FAA under chapter 443.

(5) Other conditions that the FAA may specify, including those that may be imposed in OpSpecs.

If the proposed operation or operations are approved, the FAA will issue OpSpecs to the certificate holder

[1] If and when, in connection with an operator's contract with a department, agency, or instrumentality of the U.S. Government, an operation is covered by a non-premium war risk insurance policy issued by FAA under 49 U.S.C. 44305, coverage under that operator's FAA premium war risk insurance policy is suspended as a condition contained in that premium policy.

authorizing these operations and will notify a department, agency, or instrumentality that requests FAA approval of civil flight operations to be conducted by one or more persons described in paragraph (a) of SFAR No. 113, § 91.1607, of any additional conditions beyond those contained in the approval letter, if the operations are approved. The requesting department, agency, or instrumentality must have a contract, grant, or cooperative agreement (or its prime contractor must have a subcontract) with the person(s) described in paragraph (a) of SFAR No. 113, § 91.1607, on whose behalf the department, agency, or instrumentality requests FAA approval.

Request for Exemptions

The FAA included a section about requests for exemption when it issued SFAR No. 113, § 91.1607, on April 23, 2014. The section concerning requests for exemption has been expanded to address flight operations by persons covered by SFAR No. 113, § 91.1607, in both the Simferopol (UKFV) and the Dnipropetrovsk (UKDV) FIRs. Any operations not conducted under the approval process set forth above must be conducted under an exemption from SFAR No. 113, § 91.1607. A request by any person covered under SFAR No. 113, § 91.1607, for an exemption must comply with 14 CFR part 11, and will require exceptional circumstances beyond those contemplated by the approval process set forth above. In addition to the information required by 14 CFR § 11.81, at a minimum, the requestor must describe in its submission to the FAA—

- The proposed operation(s), including the nature of the operation;
- The service to be provided by the person(s) covered by the SFAR;
- The specific locations within the Simferopol (UKFV) FIR and/or the Dnipropetrovsk (UKDV) FIR where the proposed operation(s) will be conducted; and
- The method by which the operator will obtain current threat information, and an explanation of how the operator will integrate this information into all phases of its proposed operations (*e.g.,* the pre-mission planning and briefing, in-flight, and post-flight phases).

Additionally, FAA's endorsement of any premium war risk insurance policy issued under chapter 443 of title 49, U.S. Code, and the release and agreement to indemnify, all as referred to above, will be required as a condition of any exemption that may be issued under SFAR No. 113, § 91.1607.

The FAA recognizes that operations that may be affected by SFAR No. 113, § 91.1607, including this amendment, may be planned for the governments of other countries with the support of the U.S. Government. While these operations will not be permitted through the approval process, the FAA will process exemption requests for such operations on an expedited basis and prior to any private exemption requests.

III. Regulatory Evaluation, Regulatory Flexibility Determination, International Trade Impact Assessment, and Unfunded Mandates Assessment

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), as codified in 5 U.S.C. 603, requires agencies to analyze the economic impact of regulatory changes on small entities. Third, the Trade Agreements Act of 1979 (Pub. L. 96–39), as codified in 19 U.S.C. 2532, prohibits agencies from setting standards that create unnecessary obstacles to the foreign commerce of the United States. In developing U.S. standards, the Trade Agreements 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), as codified in 2 U.S.C. 1532, 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 this final rule.

Department of Transportation (DOT) Order 2100.5 prescribes policies and procedures for simplification, analysis, and review of regulations. If the expected cost impact is so minimal that a proposed or final rule does not warrant a full evaluation, this order permits that a statement to that effect and the basis for it to be included in the preamble if a full regulatory evaluation of the cost and benefits is not prepared. Such a determination has been made for this final rule. The reasoning for this determination follows:

This rule prohibits flights in both the Simferopol (UKFV) and Dnipropetrovsk (UKDV) FIRs due to the significant hazards to civil aviation described in the Background section of this preamble. The alternative flight routes result in some additional fuel and operations costs to the operators, as well as some costs attributed to passenger time. However, no U.S. operators are now operating in the portion of the Simferopol (UKFV) FIR for which flight operations have already been prohibited by SFAR No. 113. Moreover, almost all U.S. operators had already voluntarily ceased their operations in these two FIRs prior to the issuance of the FAA NOTAM on July 18, 2014 (UTC), because of the significant hazards involved. Accordingly, the incremental costs of this proposed amendment to SFAR No. 113 are minimal. By prohibiting unsafe flights, the benefits of this rule will exceed the minimal flight deviation costs.

In conducting these analyses, FAA has determined this final rule is a ''significant regulatory action,'' as defined in section 3(f) of Executive Order 12866, because it raises novel policy issues contemplated under that Executive Order. The rule is also ''significant'' as defined in DOT's Regulatory Policies and Procedures. The final rule, if adopted, will not have a significant economic impact on a substantial number of small entities, will not create unnecessary obstacles to international trade and will not impose an unfunded mandate on state, local, or tribal governments, or on the private sector.

A. Regulatory Flexibility Analysis

The Regulatory Flexibility Act of 1980 (Public Law 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.

U.S. certificate holders affected by this final rule are predominately large passenger and all-cargo carriers. There are some small entity operators flying under U.S. government contract and some operators providing flights that support oil operations that the FAA anticipates will also be affected. Many of these operations are conducted by small entities, but due to the immediacy of the potential harm to U.S. certificate holders, their passengers, crew, and cargo, there is not a sufficient amount of time to ascertain exact numbers. There are likely to be enough such operators to be considered a substantial number of small entities. The incremental costs of this amendment are minimal because operators have largely stopped overflying this area voluntarily.

Therefore, as provided in section 605(b), the head of the FAA certifies that this rulemaking will not result in a significant economic impact on a substantial number of small entities.

B. International Trade Impact Assessment

The Trade Agreements Act of 1979 (Pub. L. 96–39), as amended by the Uruguay Round Agreements Act (Pub. L. 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. The FAA has assessed the potential effect of this final rule and determined that its purpose is to protect the safety of U.S. civil aviation from a potential hazard outside the U.S. Therefore, the rule is in compliance with the Trade Agreements Act.

C. Unfunded Mandates Assessment

Title II of the Unfunded Mandates Reform Act of 1995 (Pub. L. 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 final rule does not contain such a mandate; therefore, the requirements of Title II of the Act do not apply.

D. 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 is no new requirement for information collection associated with this immediately adopted final rule.

E. International Compatibility and Cooperation

In keeping with U.S. obligations under the Convention on International Civil Aviation (the ''Chicago Convention''), it is FAA policy to conform to 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.

F. Environmental Analysis

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 (''NEPA'') in the absence of extraordinary circumstances. The FAA has determined this rulemaking action qualifies for the categorical exclusion identified in paragraph 312(f) and involves no extraordinary circumstances.

The FAA has reviewed the implementation of the proposed SFAR and determined it is categorically excluded from further environmental review according to FAA Order 1050.1E, ''Environmental Impacts: Policies and Procedures,'' paragraph 312(f). The FAA has examined possible extraordinary circumstances and determined that no such circumstances exist. After careful and thorough consideration of the proposed action, the FAA finds that the Federal action does not require preparation of an EA or EIS in accordance with the requirements of NEPA, Council on Environmental Quality (CEQ) regulations, and FAA Order 1050.1E.

IV. Executive Order Determinations

A. Executive Order 13132, ''Federalism''

The FAA has analyzed this immediately adopted final rule under the principles and criteria of Executive Order 13132, ''Federalism.'' The agency determined that this action will 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, does not have Federalism implications.

B. Executive Order 13211, Regulations That Significantly Affect Energy Supply, Distribution, or Use

The FAA analyzed this immediately adopted final 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 is not a ''significant energy action'' under the executive order and it is not likely to have a significant adverse effect on the supply, distribution, or use of energy.

C. Executive Order 13609, Promoting International Regulatory Cooperation

Executive Order 13609, Promoting International Regulatory Cooperation, promotes international regulatory cooperation to meet shared challenges involving health, safety, labor, security, environmental, and other issues and to reduce, eliminate, or prevent unnecessary differences in regulatory requirements. The FAA has analyzed this action under the policies and agency responsibilities of Executive Order 13609, and has determined that this action would have no effect on international regulatory cooperation.

V. How To Obtain Additional Information

A. Rulemaking Documents

An electronic copy of a rulemaking document may be obtained by using the Internet—

1. Search the Federal Document Management System (FDMS) Portal (*http://www.regulations.gov*);

2. Visit the FAA's Regulations and Policies Web page at *http://www.faa.gov/regulations_policies/* or

3. Access the Government Printing Office's Web page at: *http://www.gpo.gov/fdsys/.*

Copies may also be obtained by sending a request (identified by notice, amendment, or docket number of this rulemaking) to the Federal Aviation Administration, Office of Rulemaking, ARM–1, 800 Independence Avenue SW., Washington, DC 20591, or by calling (202) 267–9680.

B. Small Business Regulatory Enforcement Fairness Act

The Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA) requires FAA to comply with small entity requests for information or advice about compliance with statutes and regulations within its jurisdiction. A small entity with questions regarding this document may contact its local FAA official, or the person listed under the **FOR FURTHER INFORMATION CONTACT** section at the beginning of the preamble. To find out more about SBREFA on the Internet, visit: *http://www.faa.gov/regulations_policies/rulemaking/sbre_act/.*

List of Subjects in 14 CFR Part 91

Air traffic control, Aircraft, Airmen, Airports, Aviation safety, Freight, Ukraine.

The Amendment

In consideration of the foregoing, the Federal Aviation Administration amends chapter I of Title 14, Code of Federal Regulations as follows:

PART 91—GENERAL OPERATING AND FLIGHT RULES

■ 1. The authority citation for part 91 is revised to read as follows:

Authority: 49 U.S.C. 106(f), 106(g), 1155, 40101, 40103, 40105, 40113, 40120, 44101, 44111, 44701, 44704, 44709, 44711, 44712, 44715, 44716, 44717, 44722, 46306, 46315, 46316, 46504, 46506–46507, 47122, 47508, 47528–47531, 47534, articles 12 and 29 of the Convention on International Civil Aviation (61 Stat. 1180), (126 Stat. 11).

■ 2. Revise § 91.1607 to read as follows:

§ 91.1607 Special Federal Aviation Regulation No. 113—Prohibition Against Certain Flights in the Simferopol (UKFV) and the Dnipropetrovsk (UKDV) Flight Information Regions (FIRs).

(a) *Applicability.* This Special Federal Aviation Regulation (SFAR) applies to the following persons:

(1) All U.S. air carriers and U.S. commercial operators;

(2) All persons exercising the privileges of an airman certificate issued by the FAA, except such persons operating U.S.-registered aircraft for a foreign air carrier; and

(3) All operators of U.S.-registered civil aircraft, except where the operator of such aircraft is a foreign air carrier.

(b) *Flight prohibition.* Except as provided in paragraphs (c) and (d) of this section, no person described in paragraph (a) of this section may conduct flight operations in the Simferopol (UKFV) FIR or the Dnipropetrovsk (UKDV) FIR.

(c) *Permitted operations.* This section does not prohibit persons described in paragraph (a) of this section from conducting flight operations in either or both of the Simferopol (UKFV) and the Dnipropetrovsk (UKDV) FIRs, provided that such flight operations are conducted under a contract, grant, or cooperative agreement with a department, agency, or instrumentality of the U.S. government (or under a subcontract between the prime contractor of the department, agency, or instrumentality, and the person subject to paragraph (a)), with the approval of the FAA, or under an exemption issued by the FAA. The FAA will process requests for approval or exemption in a timely manner, with the order of preference being: First, for those operations in support of U.S. government-sponsored activities; second, for those operations in support of government-sponsored activities of a foreign country with the support of a U.S. government department, agency, or instrumentality; and third, for all other operations.

(d) *Emergency situations.* In an emergency that requires immediate decision and action for the safety of the flight, the pilot in command of an aircraft may deviate from this section to the extent required by that emergency. Except for U.S. air carriers and commercial operators that are subject to the requirements of 14 CFR parts 119, 121, 125, or 135, each person who deviates from this section must, within 10 days of the deviation, excluding Saturdays, Sundays, and Federal holidays, submit to the nearest FAA Flight Standards District Office (FSDO) a complete report of the operations of the aircraft involved in the deviation, including a description of the deviation and the reasons for it.

(e) *Expiration.* This SFAR will remain in effect until October 27, 2015. The FAA may amend, rescind, or extend this SFAR as necessary.

Issued under authority provided by 49 U.S.C. 106(f), 40101(d)(1), 40105(b)(1)(A), and 44701(a)(5), in Washington, DC, on December 19, 2014.

Michael P. Huerta,

Administrator.

[FR Doc. 2014–30365 Filed 12–24–14; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF COMMERCE

Bureau of Industry and Security

15 CFR Parts 732, 736, 738, 740, 744, and 774

[Docket No. 141027899–4899–01]

RIN 0694–AG34

Corrections and Clarifications to the Export Administration Regulations

AGENCY: Bureau of Industry and Security, Commerce.

ACTION: Final rule.

SUMMARY: The Bureau of Industry and Security (BIS) is correcting certain provisions of the Export Administration Regulations (EAR) that were amended in past rulemakings appearing in the **Federal Register** between November 5, 2007 and October 14, 2014. This final rule makes corrections to certain provisions to ensure consistency and clarity in the regulations. In addition, this final rule makes other corrections to the EAR to fix typographical errors to ensure that the regulations accurately reflect the revisions intended by these past rulemakings.

DATES: This rule is effective December 29, 2014.

FOR FURTHER INFORMATION CONTACT: Timothy Mooney, Regulatory Policy Division, Bureau of Industry and Security, Department of Commerce, Phone: (202) 482–2440, Fax: (202) 482–3355, Email: *rpd2@bis.doc.gov.*

SUPPLEMENTARY INFORMATION:

Background

The Bureau of Industry and Security (BIS) is correcting certain provisions of the Export Administration Regulations (EAR) that were amended in past rulemakings appearing in the **Federal Register** between November 5, 2007 and October 14, 2014. In total, this final rule makes corrections and clarifications for thirteen final rules that amended the EAR during this time period. This final rule corrects these provisions to accurately reflect the revisions intended by these past rulemakings. These final rulemakings consist of the following: *Revisions to the Commerce Control List: Imposition of Controls on Integrated Circuits, Helicopter Landing System*

Radars, Seismic Detection Systems, and Technology for IR Up-Conversion Devices, October 14, 2014 (79 FR 61571); *Russian Sanctions: Addition of Persons to the Entity List and Restrictions on Certain Military End Uses and Military End Users,* September 17, 2014 (79 FR 55608); *Corrections and Clarifications to the Export Administration Regulations; Correction,* August 18, 2014 (79 FR 48660); *Russian Oil Industry Sanctions and Addition of Person to the Entity List,* August 6, 2014 (79 FR 45675); *Wassenaar Arrangement 2013 Plenary Agreements Implementation: Commerce Control List, Definitions, and Reports; and Extension of Fly-by-Wire Technology and Software Controls,* August 4, 2014 (79 FR 45288); *Corrections and Clarifications to the Export Administration Regulations; Conforming Changes to the EAR Based on Amendments to the International Traffic in Arms Regulations,* June 5, 2014 (79 FR 32612); *Revisions to the Export Administration Regulations (EAR): Control of Spacecraft Systems and Related Items the President Determines No Longer Warrant Control Under the United States Munitions List (USML),* May 13, 2014 (79 FR 27417); *Revisions to the Export Administration Regulations (EAR) To Make the Commerce Control List Clearer,* October 4, 2013 (78 FR 61874); *Revisions to the Export Administration Regulations: Military Vehicles; Vessels of War; Submersible Vessels, Oceanographic Equipment; Related Items; and Auxiliary and Miscellaneous Items That the President Determines No Longer Warrant Control Under the United States Munitions List,* July 8, 2013 (78 FR 40892); *Implementation of the Understandings Reached at the 2012 Australia Group (AG) Plenary Meeting and the 2012 AG Intersessional Decisions; Changes to Select Agent Controls,* June 5, 2013 (78 FR 33692); *Revisions to the Export Administration Regulations: Initial Implementation of Export Control Reform,* April 16, 2013 (78 FR 22660); *Export and Reexport Controls to Rwanda and United Nations Sanctions Under the Export Administration Regulations,* July 23, 2012 (77 FR 42973); and *December 2006 Wassenaar Arrangement Plenary Agreement Implementation: Categories 1, 2, 3, 5 Part I, 6, 7, 8, and 9 of the Commerce Control List; Wassenaar Reporting Requirements; Definitions; and Statement of Understanding on Source Code,* November 5, 2007 (72 FR 62524).

The corrections and clarifications are described in the order in which they appear in the EAR.

Section 732.1(d)(1)(v). This final rule makes a correction for the steps overview in § 732.1(d)(1)(v)(General Prohibition Five (End-Use End-User)) to correct a typographical error. The final rule revises this paragraph to remove the phrase ''end-user or end-users'' and add in its place the intended phrase ''end uses or end users.''

General Order No. 5 in Supplement No. 1 to part 736. In Supplement No. 1 to part 736 under General Order No. 5, this final rule makes a correction to paragraph (e)(3) (Prior commodity jurisdiction determinations) to add a reference to 9x515 ECCNs. The transition guidance described in General Order No. 5 also applies to 9x515 ECCNs, but paragraph (e)(3), because it includes a reference to the ''600 series,'' but omits a reference to the 9x515 ECCNs, could lead someone to make an incorrect inference that paragraph (e)(3) is not intended to apply to 9x515 ECCNs. Therefore, to make this paragraph (e)(3) clearer to the public, this final rule adds a reference to 9x515 ECCNs, which was inadvertently omitted in a past final rulemaking. This correction will also make the regulatory text of paragraph (e)(3) consistent with past regulatory guidance provided regarding the scope of General Order No. 5, including the applicability of paragraph (e)(3) of the general order.

Section 738.2(a). This final rule corrects an outdated reference in § 738.2(a) for Category 9 of the Commerce Control List in Supplement No. 1 to Part 774. The reference in § 738.2 paragraph (a) refers to the old name of Category 9 (Propulsion Systems, Space Vehicles and Related Equipment), which was used in the EAR until November 4, 2007, but is no longer used. The final rule corrects the reference to use the current name of Category 9 (Aerospace and Propulsion).

Section 740.20(d)(2). BIS is correcting a provision of the EAR that was previously amended by two final rules appearing in the **Federal Register** on June 5, 2014 (79 FR 32612) and on May 13, 2014 (79 FR 27417), and was again amended in an August 18, 2014 (79 FR 48660) final rule that made correcting amendments to these two final rules. One instruction in the August 18, 2014 rule was incorrect because it did not specify that the two sentences at the end of paragraph (d)(2) to be revised were at the end of the introductory text of paragraph (d)(2), which resulted in the wrong two sentences being revised. Because of the incorrect instruction, the two sentences in paragraph (d)(2)(viii) were revised instead of the intended last two sentences of the introductory text of paragraph (d)(2). This final rule corrects paragraph (d)(2) to accurately reflect the revision intended by the August 18 rule and to add back into the EAR paragraph (d)(2)(viii) that was not intended to be revised or removed in the August 18 rule.

Section 744.1(a). In § 744.1 (General Provisions) under paragraph (a) that describes the scope of part 744, this final rule adds two sentences at the end of paragraph (a) to provide references to §§ 744.21 and 744.22, including providing brief descriptions regarding the scope of these two sections of part 744. This clarification was not in response to any particular rule, but rather was identified by BIS as a helpful conforming change to this section of part 744 to make the public better aware of the scope of this part of the EAR.

Section 744.21(e) (License review standards). This final rule removes the term ''transfer'' and adds in its place the more specific and intended term ''transfer (in-country)'' in three places in paragraph (e). The scope of the license requirements under this section extends to exports, reexports and transfers (in-country), so this change to paragraph (e) was needed to conform to the other parts of this section.

Section 744.21(f) (Military end use). This final rule reinserts text in § 744.21(f) that was inadvertently removed in an earlier rule. Specifically, the April 16, 2013 (78 FR 22660) rule inadvertently deleted the last sentence in paragraph (f), but BIS did not realize the sentence had been deleted until reviewing the incorporation for the September 17, 2014 (79 FR 55608) rule described in the last paragraph. This final rule corrects the deletion by adding the inadvertently deleted sentence back to the end of paragraph (f), which previously stated, '''military end use' also means deployment of items classified under ECCN 9A991 as set forth in Supplement No. 2 to Part 744.''

ECCN 0A617. This final rule revises ECCN 0A617 to remove the term ''not'' in the Related Controls paragraph (9) in the List of Items Controlled section because it is not needed and creates potential confusion. Related Control paragraph (9), which provides a related control reference for certain fuel cells includes a reference to defense articles ''not'' on the USML. However, because all defense articles are on the USML, the inclusion of the term ''not'' before the phrase ''on the USML'' was incorrect and caused confusion for certain members of the public because they were aware that all defense articles are

on the USML, so the Related Controls paragraph was inconsistent with their understanding of the USML and CCL. These people, who contacted BIS, correctly noted that the inclusion of the term ''not'' was not needed or intended under this Related Controls paragraph.

ECCN 0A919. This final rule corrects ECCN 0A919 to remove the ''UN'' control from the Reason for Control paragraph in the License Requirements section. An earlier rule published in July 23, 2012 (77 FR 42973) removed the UN Control from the ''Control(s)'' paragraph in the License Requirement section. Although the intent of the amendatory instruction pertaining to that ECCN entry was that all references to the UN control in the License Requirement section were to be removed, the instruction did not explicitly reference the Reasons for Control paragraph. Consequently, the reference to ''UN'' remained in the Reason for Control paragraph of the ECCN, notwithstanding the fact that the ECCN was not controlled for UN reasons as of July 23, 2012.

ECCNs 1C992, 3A229, 3A231, 3A232, 6A991, 8A992, and 8D999. To conform to the Reason for Control paragraph in new ECCN 0A998 that includes a reference to ''Foreign policy,'' this rule corrects the Reason for Control paragraph of these other seven ECCNs included in the August 6, 2014 (79 FR 45675) rule to adopt a common way of referencing the license requirements in § 746.5. The Reason for Control paragraph in 8D999 included the term ''N/A,'' so this rule also corrects that Reason for Control paragraph by removing ''N/A'' and adding in its place ''Foreign policy,'' so all eight of the ECCNs that reference § 746.5 will use the same way to reference that Reason for Control.

ECCN 2B352. This final rule revises the introductory text of items paragraph f in the List of Items Controlled section of ECCN 2B352 to correct a misspelled term. This final rule removes the incorrect term ''flowing'' and adds in its place the correct term ''following.''

Category 5 Part 2—''Information Security.'' Category 5 Part 2 is amended by revising paragraph b of Note 3. This amendment was inadvertently omitted from the 2013 Wassenaar Arrangement Implementation rule published on August 4, 2014 (79 FR 45302), although the amendment was described in the preamble. 'Executable software' is added to Note 3, as well as a Technical Note to define 'executable software' as ''software'' in executable form, from an existing hardware component excluded from 5A002 by the Cryptography Note. A Note is also added after the Technical Note that states, '''Executable software' does not include complete binary images of the ''software'' running on an end-item.''

ECCN 5A002. This final rule revises the Related Controls paragraph (1) in the List of Items Controlled section to remove redundant text in paragraph (1) that repeats the text of Related Controls paragraph (2) and (3) in the regulations, but is not intended in ECCN 5A002. Therefore, this final rule removes that redundant text from Related Controls paragraph (1). This final rule also revises the ''items'' paragraph in the List of Items Controlled section of ECCN 5A002 to reinsert paragraph (a)(1) a. to 5A002 Note (a). This paragraph (a)(1) a. to 5A002 Note (a) was not intended to be removed from the EAR. However, the paragraph no longer appears in the regulations, so this final rule adds this paragraph back into the 5A002 Note (a). This final rule also makes two other revisions to the ''items'' paragraph of 5A002 to make corrections to the regulations for inconsistencies that BIS identified between the regulations and past EAR rulemakings. Specifically, this final rule revises 5A002 Note (d) Technical Note to delete the phrase ''the term,'' capitalize the term ''Money transactions'' and add the phrase ''in 5A002 Note (d).'' This final rule also revises ''items'' paragraph (b) in the List of Items Controlled section by reinserting the text of ''items'' paragraph (b) that was not intended to be revised in the regulations, but was inadvertently revised when the text for another ECCN was revised. Specifically, when ''items'' paragraph (b) was revised in ECCN 5A992 in the October 4, 2013 rule (78 FR 61874) the same revision was made in the regulations to ECCN 5A002.b, although the October 4, 2013 rule did not revise ECCN 5A002.b.

ECCN 5E002. This final rule makes a correction to the placement of the Related Definitions paragraph in ECCN 5E002 to ensure consistency between the regulations and past rulemakings. This final rule removes the Related Definitions paragraph in the License Requirements section of 5E002 and adds that same Related Definitions paragraph after the Related Controls paragraph in the List of Items Controlled section. The text of the Related Controls paragraph is not changed, only the paragraph's location in the ECCN is changed for consistency with where Related Controls paragraphs appear in ECCNs on the CCL.

ECCN 6A998. This final rule revises the heading of ECCN 6A998 to remove the word major and add quotation marks around the defined term ''component.'' This change is made for consistency with a past rulemaking that had made this same change to 6A998.

ECCN 8A992. This final rule removes the UN control that was inadvertently added back into 8A992 in a rule published August 6, 2014 (79 FR 45675). The UN control had been recently removed in a rulemaking published on June 4, 2014 (79 FR 32612), but the August 6, 2014 rule did not take the removal into account and added the UN control back into this ECCN.

ECCN 9A012. This final rule makes a correction to List of Items Controlled section of ECCN 9A012 to add an ''*items*'' paragraph heading. The ''items'' paragraph heading was inadvertently removed in a previous rulemaking, so this rule corrects this error by adding in the intended ''items'' paragraph heading in the List of Items Controlled section.

ECCN 9A610. This final rule revises the items paragraph y.30 in the List of Items Controlled section of ECCN 9A610 to clarify the meaning of the exclusion from this paragraph. Specifically, this final rule moves the placement of the phrase ''other than electronic items or navigation equipment'' and sets these exclusion criteria from 9A610.y.30 off with commas to make it clearer that commodities described in this phrase are not classified under 9A610.y.30, but rather most likely under 9A610.x.

ECCN 9A991. This final rule revises ECCN 9A991.d to remove the phrase ''subject to the controls of 9A991.a or .b.'' This clarification is made because 9A991.d is intended to be a ''specially designed'' catch-all for any ''parts'' or ''components'' ''specially designed'' for aircraft, not elsewhere specified (n.e.s.) and is not intended to be limited to those ''aircraft'' identified in 9A991.d (*i.e.,* 9A991.a or .b). Prior to reviewing 9A991, the analysis of the CCL must include reviewing the ''600 series,'' which includes an analysis of ECCN 9A610 (See Commerce Control List Order of Review in Supplement No. 4 to part 774). This clarification in the text of 9A991.d in no way changes the scope of any other ECCN on the CCL and is only intended to clarify that when reviewing the CCL for an aircraft part or component n.e.s on the CCL, an analysis of 9A991 must be conducted before determining an aircraft part or component is designated as EAR99.

Although the Export Administration Act expired on August 20, 2001, the President, through Executive Order 13222 of August 17, 2001, 3 CFR, 2001 Comp., p. 783 (2002), as amended by Executive Order 13637 of March 8, 2013, 78 FR 16129 (March 13, 2013) and as extended by the Notice of August 7, 2014, 79 FR 46959 (August 11, 2014),

has continued the Export Administration Regulations in effect under the International Emergency Economic Powers Act. BIS continues to carry out the provisions of the Export Administration Act, as appropriate and to the extent permitted by law, pursuant to Executive Order 13222.

Rulemaking Requirements

1. Executive Orders 13563 and 12866 direct agencies to assess all costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects, distribute impacts, and equity). Executive Order 13563 emphasizes the importance of quantifying both costs and benefits, of reducing costs, of harmonizing rules, and of promoting flexibility. This final rule, which is a consolidation of corrections and clarifications of final rules published between November 5, 2007 and October 14, 2014, as well other corrections and clarifications to the EAR to ensure consistency between the regulations and past EAR rulemakings, has been determined to be not significant for purposes of Executive Order 12866.

2. Notwithstanding any other provision of law, no person is required to respond to nor be subject to a penalty for failure to comply with a collection of information, subject to the requirements of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*) (PRA), unless that collection of information displays a currently valid Office of Management and Budget (OMB) Control Number. This regulation involves collections previously approved by OMB under control number 0694–0088, Simplified Network Application Processing System, which includes, among other things, license applications and carries a burden estimate of 43.8 minutes for a manual or electronic submission. Total burden hours associated with the PRA and OMB control number 0694–0088 are not expected to increase as a result of this rule. You may send comments regarding the collection of information associated with this rule, including suggestions for reducing the burden, to Jasmeet K. Seehra, Office of Management and Budget (OMB), by email to *Jasmeet_K._Seehra@omb.eop.gov,* or by fax to (202) 395–7285.

3. This rule does not contain policies with Federalism implications as that term is defined under E.O. 13132.

4. The Department finds that there is good cause under 5 U.S.C. 553(b)(B) to waive the provisions of the Administrative Procedure Act requiring prior notice and the opportunity for public comment because they are either unnecessary or contrary to the public interest. The following revisions are non-substantive or are limited to ensure consistency with past rulemakings, and thus prior notice and the opportunity for public comment is unnecessary. Sections 740.20(d)(2), 744.21(f), Category 5 Part 2—''Information Security'' for paragraph b of Note 3, and ECCNs 0A919, 5A002, 5E002 and 9A012 were revised to make corrections to the EAR that resulted from mistakes or other ambiguity in amendatory instructions in past rulemakings. Section 738.2(a) was revised to correct an outdated EAR cross reference, and ECCNs 6A998 and 8A992 were revised to reinsert text that was inadvertently removed or revised in a subsequent rulemaking. Section 732.1(d)(1)(v) and ECCNs 0A617, 1C992, 2B352, 3A229, 3A231, 3A232, 6A991, 8A992, and 8D999 were revised to correct typographical errors or to make other non-substantive corrections or clarifications to the EAR text. In addition to the revisions above, BIS makes changes to its regulations to provide guidance on existing interpretations of current EAR provisions, and thus prior notice and the opportunity for public comment is contrary to the public interest. These changes include the revisions to General Order No. 5 in Supplement No. 1 to part 736, §§ 744.1(a) and 744.21(e) and ECCNs 9A610 and 9A991. These revisions are important to get in place as soon as possible so the public will be aware of the correct text and meaning of current EAR provisions.

BIS finds good cause to waive the 30-day delay in effectiveness under 5 U.S.C. 553(d)(3). As mentioned previously, the revisions made by this rule consist of both technical corrections and clarifications that need to be in place as soon as possible to avoid confusion by the public regarding the intent and meaning of changes to the EAR.

Because a notice of proposed rulemaking and an opportunity for public comment are not required to be given for these amendments by 5 U.S.C. 553, or by any other law, the analytical requirements of the Regulatory Flexibility Act, 5 U.S.C. 601 *et seq.,* are not applicable.

List of Subjects

15 CFR Parts 732 and 740

Administrative practice and procedure, Exports, Reporting and recordkeeping requirements.

15 CFR Parts 736 and 738

Exports.

15 CFR Part 744

Exports, Reporting and recordkeeping requirements, Terrorism.

15 CFR Part 774

Exports, Reporting and recordkeeping requirements.

Accordingly, parts 732, 736, 738, 740, 744, 774 of the Export Administration Regulations (15 CFR parts 730 through 774) are revised to read as follows:

PART 732—[AMENDED]

■ 1. The authority citation for 15 CFR part 732 continues to read as follows:

Authority: 50 U.S.C. app. 2401 *et seq.;* 50 U.S.C. 1701 *et seq.;* E.O. 13026, 61 FR 58767, 3 CFR, 1996 Comp., p. 228; E.O. 13222, 66 FR 44025, 3 CFR, 2001 Comp., p. 783; Notice of August 7, 2014, 79 FR 46959 (August 11, 2014).

§ 732.1 [Amended]

■ 2. Section 732.1 is amended in paragraph (d)(1)(v) by removing the phrase ''end-user or end-users'' and adding in its place the phrase ''end uses or end users''.

PART 736—[AMENDED]

■ 3. The authority citation for 15 CFR part 736 continues to read as follows:

Authority: 50 U.S.C. app. 2401 *et seq.;* 50 U.S.C. 1701 *et seq.;* 22 U.S.C. 2151 note; E.O. 12938, 59 FR 59099, 3 CFR, 1994 Comp., p. 950; E.O. 13020, 61 FR 54079, 3 CFR, 1996 Comp., p. 219; E.O. 13026, 61 FR 58767, 3 CFR, 1996 Comp., p. 228; E.O. 13222, 66 FR 44025, 3 CFR, 2001 Comp., p. 783; E.O. 13338, 69 FR 26751, 3 CFR, 2004 Comp., p. 168; Notice of May 7, 2014, 79 FR 26589 (May 9, 2014); Notice of August 7, 2014, 79 FR 46959 (August 11, 2014); Notice of November 7, 2014, 79 FR 67035 (November 12, 2014).

■ 4. Supplement No. 1 to part 736 is amended by revising paragraph (e)(3) to read as follows:

SUPPLEMENT NO. 1 TO PART 736—GENERAL ORDERS

* * * * *

(e) * * *

* * * * *

(3) *Prior commodity jurisdiction determinations.* If the U.S. State Department has previously determined that an item is not subject to the jurisdiction of the ITAR and the item was not listed in a then existing ''018'' series ECCN (for purposes of the ''600 series'' ECCNs) or in a then existing ECCN 9A004.b or related software or technology ECCN (for purposes of the

9x515 ECCNs), then the item is per se not within the scope of a ''600 series'' ECCN or a 9x515 ECCN. If the item was not listed elsewhere on the CCL at the time of such determination (*i.e.,* the item was designated EAR99), the item shall remain designated as EAR99 unless specifically enumerated by BIS or DDTC in an amendment to the CCL or to the USML, respectively.

* * * * *

PART 738—[AMENDED]

■ 5. The authority citation for 15 CFR part 738 continues to read as follows:

Authority: 50 U.S.C. app. 2401 *et seq.;* 50 U.S.C. 1701 *et seq.;* 10 U.S.C. 7420; 10 U.S.C. 7430(e); 22 U.S.C. 287c; 22 U.S.C. 3201 *et seq.;* 22 U.S.C. 6004; 30 U.S.C. 185(s), 185(u); 42 U.S.C. 2139a; 42 U.S.C. 6212; 43 U.S.C. 1354; 15 U.S.C. 1824a; 50 U.S.C. app. 5; 22 U.S.C. 7201 *et seq.;* 22 U.S.C. 7210; E.O. 13026, 61 FR 58767, 3 CFR, 1996 Comp., p. 228; E.O. 13222, 66 FR 44025, 3 CFR, 2001 Comp., p. 783; Notice of August 7, 2014, 79 FR 46959 (August 11, 2014).

§ 738.2 [Amended]

■ 6. Section 738.2 is amended in paragraph (a) by removing the phrase ''Propulsion Systems, Space Vehicles and Related Equipment'' and adding in its place the phrase ''Aerospace and Propulsion''.

PART 740—[AMENDED]

■ 7. The authority citation for 15 CFR part 740 continues to read as follows:

Authority: 50 U.S.C. app. 2401 *et seq.;* 50 U.S.C. 1701 *et seq.;* 22 U.S.C. 7201 *et seq.;* E.O. 13026, 61 FR 58767, 3 CFR, 1996 Comp., p. 228; E.O. 13222, 66 FR 44025, 3 CFR, 2001 Comp., p. 783; Notice of August 7, 2014, 79 FR 46959 (August 11, 2014).

■ 8. Section 740.20 is amended:
■ a. By revising the last two sentences of the introductory text of paragraph (d)(2) and transferring the bracketed text between those two sentences to the end of the introductory text;
■ b. By removing the last sentence of paragraph (d)(2)(vii)(C) and the bracketed text that follows it; and
■ c. By adding paragraph (d)(2)(viii).

The revisions and additions read as follows:

§ 740.20 License Exception Strategic Trade Authorization (STA).

* * * * *

(d) * * *

* * * * *

(2) *Prior Consignee Statement.* * * * In addition, paragraph (d)(2)(vii) is required for all transactions in ''600 series'' items and paragraph (viii) of this section is required for transactions in ''600 series'' items if the consignee is not the government of a country listed in Country Group A:5 (See Supplement No. 1 to part 740 of the EAR). Paragraph (d)(2)(viii) is also required for transactions including 9x515 items.

[INSERT NAME OF CONSIGNEE]:

* * * * *

(viii) Agrees to permit a U.S. Government end-use check with respect to the items.

[INSERT NAME AND TITLE OF PERSON SIGNING THIS DOCUMENT, AND DATE DOCUMENT IS SIGNED].

* * * * *

PART 744—[AMENDED]

■ 9. The authority citation for 15 CFR part 744 continues to read as follows:

Authority: 50 U.S.C. app. 2401 *et seq.;* 50 U.S.C. 1701 *et seq.;* 22 U.S.C. 3201 *et seq.;* 42 U.S.C. 2139a; 22 U.S.C. 7201 *et seq.;* 22 U.S.C. 7210; E.O. 12058, 43 FR 20947, 3 CFR, 1978 Comp., p. 179; E.O. 12851, 58 FR 33181, 3 CFR, 1993 Comp., p. 608; E.O. 12938, 59 FR 59099, 3 CFR, 1994 Comp., p. 950; E.O. 12947, 60 FR 5079, 3 CFR, 1995 Comp., p. 356; E.O. 13026, 61 FR 58767, 3 CFR, 1996 Comp., p. 228; E.O. 13099, 63 FR 45167, 3 CFR, 1998 Comp., p. 208; E.O. 13222, 66 FR 44025, 3 CFR, 2001 Comp., p. 783; E.O. 13224, 66 FR 49079, 3 CFR, 2001 Comp., p. 786; Notice of January 21, 2014, 79 FR 3721 (January 22, 2014); Notice of August 7, 2014, 79 FR 46959 (August 11, 2014); Notice of September 17, 2014, 79 FR 56475 (September 19, 2014); Notice of November 7, 2014, 79 FR 67035 (November 12, 2014).

■ 10. Section 744.1 is amended by adding two sentences to the end of paragraph (a)(1) to read as follows:

§ 744.1 General provisions.

(a)(1) * * * Section 744.21 imposes restrictions for exports, reexports and transfers (in-country) of specified items for certain 'military end uses' in the People's Republic of China (PRC) or for a 'military end use' or 'military end user' in Russia or Venezuela. Section 744.22 imposes restrictions on exports, reexports and transfers to persons whose property and interests in property are blocked pursuant to Executive Orders 13310, 13448, or 13464.

* * * * *

■ 11. Section 744.21 is amended:
■ a. By removing the term ''transfer'' wherever it appears and adding in its place the term ''transfer (in-country)'' in paragraph (e)(1); and
■ b. By adding a sentence to the end of paragraph (f).

The addition reads as follows:

§ 744.21 Restrictions on Certain 'Military end uses' in the People's Republic of China (PRC) or for a 'Military end use' or 'Military end user' in Russia or Venezuela.

* * * * *

(f) * * * 'Military end use' also means deployment of items classified under ECCN 9A991 as set forth in Supplement No. 2 to Part 744.

* * * * *

PART 774—[AMENDED]

■ 12. The authority citation for 15 CFR part 774 continues to read as follows:

Authority: 50 U.S.C. app. 2401 *et seq.;* 50 U.S.C. 1701 *et seq.;* 10 U.S.C. 7420; 10 U.S.C. 7430(e); 22 U.S.C. 287c, 22 U.S.C. 3201 *et seq.;* 22 U.S.C. 6004; 30 U.S.C. 185(s), 185(u); 42 U.S.C. 2139a; 42 U.S.C. 6212; 43 U.S.C. 1354; 15 U.S.C. 1824a; 50 U.S.C. app. 5; 22 U.S.C. 7201 *et seq.;* 22 U.S.C. 7210; E.O. 13026, 61 FR 58767, 3 CFR, 1996 Comp., p. 228; E.O. 13222, 66 FR 44025, 3 CFR, 2001 Comp., p. 783; Notice of August 7, 2014, 79 FR 46959 (August 11, 2014).

Supplement No. 1 to Part 774 [Amended]

■ 13. In Supplement No. 1 to part 774:
■ a. Category 0, Export Control Classification Number (ECCN) 0A617 is amended by removing the term ''not'' from Related Controls paragraph (9) in the List of Items Controlled section.
■ b. Category 0, Export Control Classification Number (ECCN) 0A919 is amended by removing the term ''UN'' from the Reason for Control paragraph in the License Requirements section.
■ c. Export Control Classification Numbers (ECCN) 1C992, 3A229, 3A231, 3A232, and 6A991 are amended by adding the term ''Foreign policy'' at the end of the Reason for Control paragraphs in the License Requirements sections.
■ d. Category 2, Export Control Classification Number (ECCN) 2B352 is amended by removing the term ''flowing'' and adding in its place the term ''following'' in the introductory text of Items paragraph f in the List of Items Controlled section.
■ 14. In Supplement No. 1 to Part 774, Category 5, Part 2—''Information Security'', is amended by revising paragraph b. of Note 3 to read as follows:

Supplement No. 1 to Part 774—The Commerce Control List

* * * * *

CATEGORY 5—TELECOMMUNICATIONS AND ''INFORMATION SECURITY''

* * * * *

Part 2—''INFORMATION SECURITY''

* * * * *

Note 3: * * *

* * * * *

b. Hardware components or 'executable software', of existing items

described in paragraph a. of this Note, that have been designed for these existing items, and meeting all of the following:

1. ''Information security'' is not the primary function or set of functions of the component or 'executable software';

2. The component or 'executable software' does not change any cryptographic functionality of the existing items, or add new cryptographic functionality to the existing items;

3. The feature set of the component or 'executable software' is fixed and is not designed or modified to customer specification; and

4. When necessary, as determined by the appropriate authority in the exporter's country, details of the component or 'executable software', and details of relevant end-items are accessible and will be provided to the authority upon request, in order to ascertain compliance with conditions described above.

Technical Note: For the purpose of the Cryptography Note, 'executable software' means ''software'' in executable form, from an existing hardware component excluded from 5A002 by the Cryptography Note.

Note: 'Executable software' does not include complete binary images of the ''software'' running on an end-item.

* * * * *

■ 15. In Supplement No. 1 to Part 774, Category 5, Part 2—''Information Security'', Export Control Classification Number (ECCN) 5A002 is amended:

■ a. By revising Related Controls paragraph (1) in the List of Items Controlled section;

■ b. By adding paragraph (a)(1) a. to 5A002 Note (a);

■ c. By revising 5A002 Note (d) Technical Note; and

■ d. By revising Items paragraph b. in the List of Items Controlled section.

Supplement No. 1 to Part 774—The Commerce Control List

* * * * *

5A002 ''Information security'' systems, equipment and ''components'' therefor, as follows (see List of Items Controlled)

* * * * *

List of Items Controlled

Related Controls: (1) ECCN 5A002.a controls ''components'' providing the means or functions necessary for ''information security.'' All such ''components'' are presumptively ''specially designed'' and controlled by 5A002.a. * * *

Items:

Note: * * *

(a) * * *

(1) * * *

a. The cryptographic capability is restricted for use in equipment or systems excluded from 5A002 by Note 4 in Category 5—Part 2 or entries (b) to (i) of this Note, and cannot be reprogrammed for any other use; *or*

* * * * *

(d) * * *

Technical Note: 'Money transactions' in 5A002 Note (d) includes the collection and settlement of fares or credit functions.

* * * * *

b. Systems, equipment, application specific ''electronic assemblies'', modules and integrated circuits, designed or modified to enable an item to achieve or exceed the controlled performance levels for functionality specified by 5A002.a that would not otherwise be enabled.

■ 16. In Supplement No. 1 to Part 774, Category 5, Part 2—''Information Security'', Export Control Classification Number (ECCN) 5E002 is amended by removing the Related Definitions paragraph in the License Requirements section and adding a Related Definitions paragraph after the Related Controls paragraph in the List of Items Controlled section to read as follows:

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* * * * *

5E002 ''Technology'' as follows (see List of Items Controlled)

* * * * *

List of Items Controlled

Related Controls: * * *

Related Definitions: N/A

* * * * *

■ 17. In Supplement No. 1 to part 774, Category 6—Sensors and Lasers, Export Control Classification Number (ECCN) 6A998 is amended by revising the heading to read as follows:

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* * * * *

6A998 Radar systems, equipment and major ''components,'' n.e.s., and ''specially designed'' ''components'' therefor, as follows (see List of Items Controlled).

* * * * *

Supplement No. 1 to Part 774 [Amended]

■ 18. In Supplement No. 1 to part 774, Category 8–Marine, Export Control Classification Number (ECCN) 8A992 is amended:

■ a. By removing the term ''UN'' from the Reason for Control paragraph and removing the UN entry in the License Requirements table; and

■ b. By adding the term ''Foreign policy'' at the end of the Reason for Control paragraph in the License Requirements section.

Supplement No. 1 to Part 774 [Amended]

■ 19. In Supplement No. 1 to part 774, Category 8—Marine, Export Control Classification Number (ECCN) 8D999 is amended by removing the term ''N/A'' adding in its place the term ''Foreign policy'' at the end of the Reason for Control paragraph in the License Requirements section.

Supplement No. 1 to Part 774 [Amended]

■ 20. In Supplement No. 1 to part 774, Category 9—Aerospace and Propulsion, Export Control Classification Number (ECCN) 9A012 is amended by adding undesignated paragraph heading ''*Items:*'' between the Related Definitions paragraph and paragraph a. in the List of Items Controlled section.

■ 21. In Supplement No. 1 to part 774, Category 9—Aerospace and Propulsion, Export Control Classification Number (ECCN) 9A610 is amended by revising Items paragraph y.30 in the List of Items Controlled section to read as follows:

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* * * * *

9A610 Military aircraft and related commodities, other than those enumerated in 9A991.a (see List of Items Controlled).

* * * * *

List of Items Controlled

* * * * *

Items:

* * * * *

y.30. ''Parts,'' ''components,'' ''accessories,'' and ''attachments,'' other than electronic items or navigation equipment, for use in or with a commodity controlled by ECCN 9A610.h.

■ 22. In Supplement No. 1 to part 774, Category 9—Aerospace and Propulsion, Export Control Classification Number (ECCN) 9A991 is amended by revising Items paragraph d. in the List of Items Controlled section to read as follows:

Supplement No. 1 to Part 774—The Commerce Control List

* * * * *

9A991 ''Aircraft,'' n.e.s., and gas turbine engines not controlled by 9A001 or 9A101 and ''parts'' and ''components,'' n.e.s. (see List of Items Controlled).

* * * * *

List of Items Controlled

* * * * *

Items:

* * * * *

d. ''Parts'' and ''components,'' ''specially designed'' for ''aircraft,'' n.e.s.

* * * * *

Dated: December 18, 2014.

Kevin J. Wolf,

Assistant Secretary for Export Administration.

[FR Doc. 2014–30019 Filed 12–24–14; 8:45 am]

BILLING CODE 3510–33–P

FEDERAL TRADE COMMISSION

16 CFR Part 305

[3084–AB15]

Energy and Water Use Labeling for Consumer Products Under the Energy Policy and Conservation Act (Energy Labeling Rule)

AGENCY: Federal Trade Commission (''FTC'' or ''Commission'').

ACTION: Final rule.

SUMMARY: Consistent with proposed amendments published in a June 18, 2014 Supplemental Notice of Proposed Rulemaking (SNPRM), the Commission updates its label requirements for heating and cooling equipment and removes information from furnace labels about regional conservation standards.

DATES: The amendments published in this document will become effective on April 6, 2015.

ADDRESSES: Relevant portions of the proceeding, including this document, are available at the Commission's Web site, *www.ftc.gov.*

FOR FURTHER INFORMATION CONTACT: Hampton Newsome, (202) 326–2889, Attorney, Division of Enforcement, Bureau of Consumer Protection, Federal Trade Commission, 600 Pennsylvania Avenue NW., Washington, DC 20580.

SUPPLEMENTARY INFORMATION:

I. Background

The Commission issued the Energy Labeling Rule (''Rule'') in 1979,[1] pursuant to the Energy Policy and Conservation Act of 1975 (EPCA).[2] The Rule requires energy labeling for major home appliances and other consumer products to help consumers compare competing models. When first published, the Rule applied to eight categories: Refrigerators, refrigerator-freezers, freezers, dishwashers, water heaters, clothes washers, room air conditioners, and furnaces. The Commission subsequently expanded the Rule's coverage to include central air conditioners, heat pumps, plumbing products, lighting products, ceiling fans, and televisions. The Commission is separately reviewing the entire Rule.[3]

The Rule requires manufacturers to attach yellow EnergyGuide labels for many of the covered products and prohibits retailers from removing the labels or rendering them illegible. In addition, the Rule directs sellers, including retailers, to post label information on Web sites and in paper catalogs from which consumers can order products. EnergyGuide labels for covered products contain three key disclosures: Estimated annual energy cost (for most products); a product's energy consumption or energy efficiency rating as determined from Department of Energy (DOE) test procedures; and a comparability range displaying the highest and lowest energy costs or efficiency ratings for all similar models. For energy cost calculations, the Rule specifies national average costs for applicable energy sources (*e.g.,* electricity, natural gas, oil) as calculated by DOE. Under the Rule, the Commission periodically updates comparability range and annual energy cost information.[4] The Commission updates the range information based on manufacturer data submitted pursuant to the Rule's reporting requirements.

II. Updates to Heating and Cooling Labels

Summary: The Commission amends its label requirements for heating and cooling equipment consistent with proposed amendments in a Supplemental Notice of Proposed Rulemaking (SNPRM) published on June 18, 2014 (79 FR 34642). As detailed below, these amendments update labels for furnaces and boilers, including range information, remove information on furnace labels about regional standards, and remove mandatory capacity disclosures for all heating and cooling equipment.[5] The Commission will address other matters discussed in the June 18, 2014 SNPRM in a future notice.[6]

Background: The Commission issued revised heating and cooling equipment labels in 2013 to provide installers and consumers with information about new regional standards issued by DOE for some of those products.[7] The new FTC labels for split-system and single-package central air conditioners, gas furnaces, and non-weatherized mobile home furnaces included information about compliance with the regional standards in the form of statements and maps illustrating regions where specific models can be installed under the DOE rules. The new labels also included a Web site link, model number, and capacity information for all furnaces and central air conditioners (regardless of whether subject to regional or uniform national standards) to help consumers access DOE-generated cost information online.[8]

However, following issuance of the new FTC requirements, a legal settlement vacated the DOE regional furnace standards.[9] Because the Commission tied implementation for the new labels (including labels for products subject to uniform national standards) to the DOE regional standards dates, the settlement had the effect of postponing indefinitely the FTC label updates for most gas furnaces, oil furnaces, boilers, and electric furnaces.[10]

[1] 44 FR 66466 (Nov. 19, 1979) (Rule's initial promulgation).

[2] 42 U.S.C. 6294. EPCA also requires the Department of Energy (DOE) to develop test procedures that measure how much energy appliances use, and to determine the representative average cost a consumer pays for different types of energy.

[3] 77 FR 15298 (Mar. 15, 2012) (initiation of regulatory review). The Commission currently has another open proceeding related to light bulb coverage. *See* 76 FR 45715 (Aug. 1, 2011) (proposed expanded light bulb coverage).

[4] 16 CFR 305.10.

[5] The amendments also make a non-substantive correction to section 305.7(a) and (b), which references DOE procedures for measuring refrigerator and freezer capacity. The Association of Home Appliance Manufactures identified this issue in their recent comment (#569–00014). In Appendix L, the amendments also update the refrigerator-freezer and clothes washer prototype labels and reinsert the current sample ceiling fan label, which was inadvertently removed by recent amendments.

[6] In response to the SNPRM, the Commission received 17 comments from organizations and individuals. Six of these addressed the heating and cooling issues discussed in this document. *See http://www.ftc.gov/policy/public-comments/initiative-569.* The comments addressing issues discussed in this Notice include: American Public Gas Association (APGA) (#569–00012), American Gas Association (AGA) (#569–00013), Air-Conditioning, Heating, and Refrigeration Institute (AHRI) (#569–00016), Earthjustice (on behalf of several energy efficiency groups) (#569–00017), Goodman Global, Inc., (#569–00008), Laclede Gas (#569–00011), and Nicholas (#569–0003).

[7] 78 FR 8362 (Feb. 6, 2013).

[8] 78 FR at 8365.

[9] *American Public Gas Ass'n* v. *DOE,* No. 11–1485 (D.C. Cir. filed Dec. 23, 2011) (DE.#1433580, May 1, 2013) and (DE.# 1489805, Apr. 24, 2014).

[10] The settlement did not affect DOE regional standards (or FTC labels) for split system and single

In the wake of the settlement, DOE is not likely to issue revised regional furnace standards in the immediate future. Given these circumstances, the Commission, in its June 18, 2014 SNPRM, proposed to address the need for current information by updating the energy use ranges for boilers and oil-furnace labels and ranges. Furthermore, the Commission proposed to update the labels and ranges for all furnaces and omit the obsolete regional standards information for those products.[11] Consistent with the new labels required by the February 6, 2013 amendments, the proposed label would include a prominent link to an online energy cost calculator provided by the DOE Web site (*productinfo.energy.gov*). This calculator will provide a clear, understandable tool to allow consumers to compare energy costs of different models.[12] To coincide with new efficiency standards for gas furnaces, the Commission proposed making the revised gas furnace labels effective on January 1, 2015.[13]

The Commission also proposed eliminating capacity disclosures on EnergyGuide labels for heating and cooling equipment, but maintaining model numbers. Prior to the February 6, 2013 amendments, the EnergyGuide labels for furnaces and central air conditioners did not require capacity disclosures. In 2013, the Commission added a capacity disclosure to help consumers access cost information posted on the DOE Web site. In the SNPRM (79 FR at 34652–34653), the Commission proposed eliminating this new requirement because the capacity for split-system air conditioners varies depending on the condenser-coil combination. Therefore, a capacity disclosure requirement could raise implementation problems and mislead consumers for some products. Under the proposal, consumers could use model numbers to access specific cost and capacity information for various products, including condenser-coil combinations, through the DOE Web site.

Comments: Many comments supported the elimination of information about the vacated DOE regional standards from the label.[14] No comments opposed this proposal.[15]

The comments provided differing views on the Commission's proposal to eliminate capacity disclosures for heating and cooling products. AHRI, which filed comments (#563707–00010) on the issue earlier in the proceeding, and Goodman agreed with the proposal. AHRI explained that the EnergyGuide label only appears on a split-system air conditioner's condensing unit. Because manufacturers cannot predict which coil will be paired with a particular condenser, they cannot predict the system's capacity rating. In lieu of capacity ratings, AHRI suggested that the FTC allow manufacturers to print basic model numbers on their EnergyGuide labels, which consumers can use to access the capacity information on DOE's database.[16]

In contrast, several efficiency groups urged the Commission to retain the model capacity disclosure. The groups, which understood the proposed change to be limited to split-system air conditioners, argued that retaining the disclosure would be more informative and more consistent with disclosures for other products, such as oil furnaces. They urged consideration of a range of capacities for split-system units. The groups also noted that the DOE Web site link on the FTC label is not yet operable and explained that DOE does not collect heating capacity information for split-system heat pumps. The groups urged the FTC to ensure that the DOE Web site is updated appropriately.[17]

Finally, several comments from natural gas industry groups urged the Commission to prohibit the ENERGY STAR logo on certain furnaces.[18] Since 2012, furnace models rated between a 90 and a 95 annual fuel utilization efficiency (AFUE) qualify for the ENERGY STAR program when installed in southern states.[19] The ENERGY STAR logo for these models contains a map denoting those states accompanied by the ENERGY STAR symbol and the words ''qualified only in.'' The commenters argued that this ENERGY STAR logo incorrectly implies a regional minimum efficiency standard exists for furnaces and thus will lead to consumer confusion. Therefore, APGA suggested that labels bearing the ENERGY STAR logo contain the following disclosure: ''This furnace qualifies for the Department of Energy (DOE) and Environmental Protections Agency's (EPA) volunteer ENERGY STAR program.'' AGA, on the other hand, urged the Commission simply to prohibit the ENERGY STAR logo on furnace labels. It also questioned whether the Commission has authority to allow the ENERGY STAR logo on EnergyGuide labels.

Discussion: Consistent with its proposal in the SNPRM, the Commission updates furnace and boiler labels to include new range information,[20] provide the link to the DOE Web site for cost information, and eliminate the capacity disclosure requirement.[21] In the absence of regional furnace standards following the DOE Settlement, the amendments eliminate any disclosures related to regional standards for such products. If DOE issues revised regional standards in the future, the Commission will revisit whether and how to require label disclosures relating to regional standards. To ensure industry members have adequate time to implement these

package central air conditioners scheduled to become effective on January 1, 2015. As part of the settlement, DOE agreed to issue a policy statement establishing an 18-month enforcement grace period for any air conditioner units manufactured before January 1, 2015.

[11] These amendments do not alter the January 1, 2015 compliance date for central air conditioners established in the February 6, 2013 notice. 78 FR 8362.

[12] 78 FR at 8365.

[13] The SNPRM also proposed a November 1, 2014 effective date for boilers and oil furnace labels.

[14] *See e.g.,* AHRI, Goodman, and APGA. AHRI recommended that the Commission consolidate the effective dates for the revised furnace and boiler labels to January 1, 2015 to simplify compliance.

[15] Some commenters raised broader issues related to heating and cooling equipment not addressed in this Notice because they may require a specific proposal and additional public comment. For example, AHRI recommended that the Commission create new labels for packaged rooftop systems, a combination of a gas furnace product and air conditioner or heat pump. In addition, several commenters (*e.g.,* AGA and AGPA) raised questions about label disclosures related to full fuel cycle issues. The Commission will address these matters in the future.

[16] One commenter, Nicholas (#569–003), recommended that the Commission require heating and cooling equipment labels to display the AHRI Certification number for the part. The commenter explained that such information would aid consumers in determining the efficiency rating of the installed equipment. The Commission does not propose to add such information because the label already contains the model number, which can be used to locate system efficiency through the DOE Compliance Certification Management System or AHRI's online database.

[17] See Earthjustice (#569–00017).

[18] See APGA (#569–00012), AGA (#569–00013), and Laclede Gas (#569–00011).

[19] See ENERGY STAR Program Requirements for Furnaces—Test Method (Rev. Jun–2011) (*http://www.energystar.gov/sites/default/files/specs/private/Furnaces_Version_3.0_Program_Requirements.pdf*).

[20] The new furnace ranges included in this Notice apply to non-weatherized furnaces. The Commission issued updated ranges for weatherized furnaces on August 12, 2014. See 79 FR 46985.

[21] The amendments also update the split-system central air conditioner sample label in Appendix L to indicate that U.S. territories are not part of the ''Southeast'' region for the purposes DOE's regional standards regulations. *See* 10 CFR 430.32. In addition, consistent with the requirements published in 2013 for both furnaces and central air conditioners (78 FR 8362, 8374 (Feb. 6, 2013)), the final rule (305.12(f)(2)) requires the name of the manufacturer or private labeler on the furnace label. The SNPRM contained obsolete language for manufacturer and private labeler names on furnace labels.

changes, the effective date for these amendments is April 6, 2015.

The amendments no longer require capacity disclosures for heating and cooling equipment labels. Instead, the amendments make capacity disclosures optional for all such equipment except for split-system air conditioners, whose labels may not contain capacity disclosures. The Commission issues these amendments for the following reasons. First, as noted in the SNPRM, the installed capacity of split-system air conditioners varies depending on the condenser-coil combination. Accordingly, a capacity requirement for those products is difficult to implement and could mislead or confuse consumers, even if a range of capacity is disclosed.[22] Second, although the Commission initially explained that consumers need capacity information on the label to access cost information on the DOE Web site (78 FR at 8365), the Commission has since learned that the full model number of the installed system is adequate for all heating and cooling equipment. Finally, the absence of a capacity disclosure is unlikely to have a significant impact for typical consumers. Installation professionals use capacity numbers (expressed in Btu/h) to ensure a particular model is suitable for a consumer's home. Consumers seeking capacity information for a particular model can obtain it from their installer contractor or from the DOE Web site.[23] However, since some manufacturers may want to retain capacity information on their labels or may not desire to change recently updated labels to remove this information, the final rule makes the capacity disclosures optional for all models except split-systems, where such disclosures may cause confusion.

The final rule does not prohibit the ENERGY STAR logo on the EnergyGuide label for furnaces.[24] The Commission has permitted the ENERGY STAR logo on EnergyGuide labels since April 3, 2000 (65 FR 17554). As the Commission explained, the combination of the EnergyGuide's detailed efficiency rating disclosure and the ENERGY STAR logo provides a robust source of energy efficiency information to consumers. Without clear evidence indicating the logo suggests the existence of a regional standard to consumers, the Commission does not propose eliminating or qualifying this important information. In addition, installers can remedy any confusion that may stem from the ENERGY STAR logo during their discussions with customers, which typically occur as part of the sale of this type of equipment. Finally, the logo is optional under the Rule. If manufacturers believe it creates confusion for consumers examining the label, they may choose not to include it.

III. Paperwork Reduction Act

The current Rule contains recordkeeping, disclosure, testing, and reporting requirements that constitute information collection requirements as defined by 5 CFR 1320.3(c), the definitional provision within the Office of Management and Budget (OMB) regulations that implement the Paperwork Reduction Act (PRA). OMB has approved the Rule's existing information collection requirements through May 31, 2017 (OMB Control No. 3084–0069). The amendments do not change the substance or frequency of the recordkeeping, disclosure, or reporting requirements and, therefore, do not require further OMB clearance.

IV. Regulatory Flexibility Act

The provisions of the Regulatory Flexibility Act relating to a Regulatory Flexibility Act analysis (5 U.S.C. 603–604) are not applicable to this proceeding because the amendments do not impose any new obligations on entities regulated by the Energy Labeling Rule. As explained in detail elsewhere in this document, the amendments do not significantly change the substance or frequency of the recordkeeping, disclosure, or reporting requirements. Thus, the amendments will not have a ''significant economic impact on a substantial number of small entities.'' 5 U.S.C. 605. The Commission has concluded, therefore, that a regulatory flexibility analysis is not necessary, and certifies, under Section 605 of the Regulatory Flexibility Act (5 U.S.C. 605(b)), that the amendments announced today will not have a significant economic impact on a substantial number of small entities.

List of Subjects in 16 CFR Part 305

Advertising, Energy conservation, Household appliances, Labeling, Reporting and recordkeeping requirements.

For the reasons set out above, the Commission amends 16 CFR part 305 as follows:

PART 305—ENERGY AND WATER USE LABELING FOR CONSUMER PRODUCTS UNDER THE ENERGY POLICY AND CONSERVATION ACT (ENERGY LABELING RULE)

■ 1. The authority citation for Part 305 continues to read as follows:

Authority: 42 U.S.C. 6294.

■ 2. In § 305.7, amend paragraphs (a) and (b) to read as follows:

§ 305.7 Determinations of capacity.

* * * * *

(a) *Refrigerators and refrigerator-freezers.* The capacity shall be the total refrigerated volume (VT) and the adjusted total volume (AV) in cubic feet, rounded to the nearest one-tenth of a cubic foot, as determined according to appendix A to 10 CFR part 430, subpart B.

(b) *Freezers.* The capacity shall be the total refrigerated volume (VT) and the adjusted total volume (AV) in cubic feet, rounded to the nearest one-tenth of a cubic foot, as determined according to appendix B to 10 CFR part 430, subpart B.

* * * * *

■ 3. Amend § 305.12, to revise paragraph (f) to read as follows, remove paragraphs (g) and (h), redesignate paragraph (i) as paragraph (g), and revise newly redesignated paragraph (g) to read as follows:

§ 305.12 Labeling for central air conditioners, heat pumps, and furnaces.

* * * * *

(f) *Content of furnace labels: Content of labels for non-weatherized furnaces, weatherized furnaces, mobile home furnaces, electric furnaces, and boilers.*

(1) Headlines and texts, as illustrated in the prototype and sample labels in appendix L to this part.

(2) Name of manufacturer or private labeler shall, in the case of a corporation, be deemed to be satisfied only by the actual corporate name, which may be preceded or followed by the name of the particular division of the corporation. In the case of an individual, partnership, or association, the name under which the business is conducted shall be used.

(3) The model's basic model number.

[22] Because the rated efficiency of oil furnaces can depend on the input capacity set by the installer the Rule (section 305.12) allows manufacturers to provide a chart of different efficiency ratings associated with different input capacities that may be used by installers. However, unlike split-system air conditioners, the number of possible combinations and associated ratings is limited and can easily appear on the label. The final rule retains the optional capacity chart for oil furnace labels.

[23] The FTC staff will work with DOE to ensure the online cost calculator is operational before the new labels go into effect in 2015 and that capacity information collected by DOE is adequate for consumers and installers.

[24] The requirements regarding ENERGY STAR information on labels are consistent with EPCA, which specifically authorizes the Commission to include any information on the label related to energy consumption that would assist consumers in making purchasing decisions and in using the product. 42 U.S.C. 6294(c)(5).

(4) The model's capacity. Inclusion of capacity is optional at the discretion of the manufacturer or private labeler.

(5) The annual fuel utilization efficiency (AFUE) for furnace models as determined in accordance with § 305.5.

(6) Ranges of comparability consisting of the lowest and highest annual fuel utilization efficiency (AFUE) ratings for all furnaces of the model's type consistent with the sample labels in appendix L.

(7) Placement of the labeled product on the scale shall be proportionate to the lowest and highest annual fuel utilization efficiency ratings forming the scale.

(8) The following statement shall appear in bold print on furnace labels adjacent to the range(s) as illustrated in the sample labels in appendix L:

For energy cost info, visit *productinfo.energy.gov.*

(9) The following statement shall appear at the top of the label as illustrated in the sample labels in appendix L to this part:

Federal law prohibits removal of this label before consumer purchase.

(10) No marks or information other than that specified in this part shall appear on or directly adjoining this label except that:

(i) A part or publication number identification may be included on this label, as desired by the manufacturer. If a manufacturer elects to use a part or publication number, it must appear in the lower right-hand corner of the label and be set in 6-point type or smaller.

(ii) The energy use disclosure labels required by the governments of Canada or Mexico may appear directly adjoining this label, as desired by the manufacturer.

(iii) The manufacturer may include the ENERGY STAR logo on the label for certified products in a location consistent with the sample labels in appendix L to this part. The logo must be no larger than 1 inch by 3 inches in size. Only manufacturers that have signed a Memorandum of Understanding with the Department of Energy or the Environmental Protection Agency may add the ENERGY STAR logo to labels on qualifying covered products; such manufacturers may add the ENERGY STAR logo to labels only on those covered products that are contemplated by the Memorandum of Understanding.

(11) Manufacturers of boilers shipped with more than one input nozzle to be installed in the field must label such boilers with the AFUE of the system when it is set up with the nozzle that results in the lowest AFUE rating.

(12) Manufacturers that ship out boilers that may be set up as either steam or hot water units must label the boilers with the AFUE rating derived by conducting the required test on the boiler as a hot water unit.

(13) Manufacturers of oil furnaces must label their products with the AFUE rating associated with the furnace's input capacity set by the manufacturer at shipment. The oil furnace label may also contain a chart, as illustrated in sample label 9B in appendix L to this part, indicating the efficiency rating at up to three additional input capacities offered by the manufacturer. Consistent with paragraph (f)(10)(iii) of this section, labels for oil furnaces may include the ENERGY STAR logo only if the model qualifies for that program on all input capacities displayed on the label.

(g) *Content of central air conditioner labels: Content of labels for central air conditioners and heat pumps.*

(1) Headlines and texts, as illustrated in the prototype and sample labels in appendix L to this part.

(2) Name of manufacturer or private labeler shall, in the case of a corporation, be deemed to be satisfied only by the actual corporate name, which may be preceded or followed by the name of the particular division of the corporation. In the case of an individual, partnership, or association, the name under which the business is conducted shall be used.

(3) The model's basic model number.

(4) The model's capacity. Inclusion of capacity is optional at the discretion of the manufacturer or private labeler for all models except split-system labels, which may not disclose capacity.

(5) The seasonal energy efficiency ratio (SEER) for the cooling function of central air conditioners as determined in accordance with § 305.5. For the heating function, the heating seasonal performance factor (HSPF) shall be calculated for heating Region IV for the standardized design heating requirement nearest the capacity measured in the High Temperature Test in accordance with § 305.5. In addition, as illustrated in the sample labels 7 and 8 in appendix L to this part, the ratings for any split-system condenser-evaporator coil combinations shall include the low and high ratings of all condenser-evaporator coil combinations certified to the Department of Energy pursuant to 10 CFR part 430.

(6)(i) Each cooling-only central air conditioner label shall contain a range of comparability consisting of the lowest and highest SEER for all cooling only central air conditioners consistent with sample label 7A in appendix L to this part.

(ii) Each heat pump label, except as noted in paragraph (g)(6)(iii) of this section, shall contain two ranges of comparability. The first range shall consist of the lowest and highest seasonal energy efficiency ratios for the cooling side of all heat pumps consistent with sample label 8 in appendix L to this part. The second range shall consist of the lowest and highest heating seasonal performance factors for the heating side of all heat pumps consistent with sample label 8 in appendix L to this part.

(iii) Each heating-only heat pump label shall contain a range of comparability consisting of the lowest and highest heating seasonal performance factors for all heating-only heat pumps following the format of sample label 8 in appendix L to this part.

(7) Placement of the labeled product on the scale shall be proportionate to the lowest and highest efficiency ratings forming the scale.

(8) The following statement shall appear on the label in bold print as indicated in the sample labels in appendix L to this part.

For energy cost info, visit *productinfo.energy.gov.*

(9) All labels on split-system condenser units must contain one of the following three statements:

(i) For labels disclosing only the seasonal energy efficiency ratio for cooling, the statement should read:

This system's efficiency rating depends on the coil your contractor installs with this unit. Ask for details.

(ii) For labels disclosing both the seasonal energy efficiency ratio for cooling and the heating seasonal performance factor for heating, the statement should read:

This system's efficiency ratings depend on the coil your contractor installs with this unit. The heating efficiency rating will vary slightly in different geographic regions. Ask your contractor for details.

(iii) For labels disclosing only the heating seasonal performance factor for heating, the statement should read:

This system's efficiency rating depends on the coil your contractor installs with this unit. The efficiency rating will vary slightly in different geographic regions. Ask your contractor for details.

(10) The following statement shall appear at the top of the label as illustrated in the sample labels in appendix L of this part:

Federal law prohibits removal of this label before consumer purchase.

(11) For any single-package air conditioner with an Energy Efficiency Ratio (EER) of at least 11.0, any split-system central air conditioner with a rated cooling capacity of at least 45,000 Btu/h and efficiency ratings of at least 14 SEER and 11.7 EER, and any split-system central air conditioners with a rated cooling capacity less than 45,000 Btu/h and efficiency ratings of at least 14 SEER and 12.2 EER, the label must contain the following regional standards information:

(i) A statement that reads: Notice Federal law allows this unit to be installed in all U.S. states and territories.

(ii) For split systems, a statement that reads:

Energy Efficiency Ratio (EER): The installed system's EER could range from [_] to [_], depending on the coil installed with this unit.

(iii) For single-package air conditioners, a statement that reads:

Energy Efficiency Ratio (EER): This model's EER is [_].

(12) For any split-system central air conditioners with a rated cooling capacity of at least 45,000 Btu/h and minimum efficiency ratings below 14 SEER or 11.7 EER, and any split-system central air conditioner with a rated cooling capacity less than 45,000 Btu/h and a minimum efficiency rating below 14 SEER or 12.2 EER, the label must contain the following regional standards information consistent with sample label 7 in appendix L to this part:

(i) A statement that reads:

The installed system must meet the minimum Federal regional efficiency standards.

See *productinfo.energy.gov* for certified combinations.

(ii) A map, chart, and accompanying text as illustrated in the sample label 7 in appendix L.

(iii) For split-system air conditioner systems, a statement that reads

Energy Efficiency Ratio (EER): Could range from [_] to [_], depending on the coil installed with this unit.

(13) For any single-package air conditioner with an EER below 11.0, the label must contain the following regional standards information consistent with sample label 7B in appendix L to this part:

(i) A statement that reads:

Notice Federal law allows this unit to be installed only in: AK, AL, AR, CO, CT, DC, DE, FL, GA, HI, ID, IL, IA, IN, KS, KY, LA, MA, ME, MD, MI, MN, MO, MS, MT, NC, ND, NE, NH, NJ, NY, OH, OK, OR, PA, RI, SC, SD, TN, TX, UT, VA, VT, WA, WV, WI, WY and U.S. territories.

Federal law prohibits installation of this unit in other states.

(ii) A map and accompanying text as illustrated in the sample label 7A in appendix L.

(iii) A statement that reads:

Energy Efficiency Ratio (EER): This model's EER is [_].

(14) No marks or information other than that specified in this part shall appear on or directly adjoining this label except that:

(i) A part or publication number identification may be included on this label, as desired by the manufacturer. If a manufacturer elects to use a part or publication number, it must appear in the lower right-hand corner of the label and be set in 6-point type or smaller.

(ii) The energy use disclosure labels required by the governments of Canada or Mexico may appear directly adjoining this label, as desired by the manufacturer.

(iii) The manufacturer may include the ENERGY STAR logo on the label for certified products in a location consistent with the sample labels in appendix L to this part. The logo must be no larger than 1 inch by 3 inches in size. Only manufacturers that have signed a Memorandum of Understanding with the Department of Energy or the Environmental Protection Agency may add the ENERGY STAR logo to labels on qualifying covered products; such manufacturers may add the ENERGY STAR logo to labels only on those covered products that are contemplated by the Memorandum of Understanding.

■ 4. Revise Appendices G1, G2, G3, G4, G5, G6, G7, and G8 to part 305 to read as follows:

Appendix G1 to Part 305—Furnaces—Gas

Furnace type	Range of annual fuel utilization efficiencies (AFUEs)	
	Low	High
Non-Weatherized Gas Furnaces—All Capacities	80.0	98.5
Gas Furnaces—All Capacities	81.0	95.0

Appendix G2 to Part 305—Furnaces—Electric

Furnace type	Range of annual fuel utilization efficiencies (AFUEs)	
	Low	High
Electric Furnaces—All Capacities	100.0	100.0

Appendix G3 to Part 305—Furnaces—Oil

Type	Range of annual fuel utilization efficiencies (AFUEs)	
	Low	High
Non-Weatherized Oil Furnaces—All Capacities	83.0	96.7
Weatherized Oil Furnaces—All Capacities	78.0	83.0

Appendix G4 to Part 305—Mobile Home Furnaces—Gas

Type	Range of annual fuel utilization efficiencies (AFUEs)	
	Low	High
Mobile Home Gas Furnaces—All Capacities	80.0	96.5

Appendix G5 to Part 305—Mobile Home Furnaces—Oil

Type	Range of annual fuel utilization efficiencies (AFUEs)	
	Low	High
Mobile Home Oil Furnaces—All Capacities	80.0	87.0

Appendix G6 to Part 305—Boilers (Gas)

Type	Range of annual fuel utilization efficiencies (AFUEs)	
	Low	High
Gas Boilers (except steam)—All Capacities	82.0	96.3
Gas Boilers (steam)—All Capacities	81.0	83.4

Appendix G7 to Part 305—Boilers (Oil)

Type	Range of annual fuel utilization efficiencies (AFUEs)	
	Low	High
Oil Boilers—All Capacities	82.0	91.2

Appendix G8 to Part 305—Boilers (Electric)

Type	Range of annual fuel utilization efficiencies (AFUEs)	
	Low	High
Electric Boilers—All Capacities	100	100

■ 5. Appendix L to part 305 is amended as follows:

■ a. Prototype Labels 1, 2, 3, and 4 are revised;

■ b. Sample Labels 7, 7A, 8, 9, 9A, and 9B are revised;

■ c. Sample Labels 7B and 8A are removed; and

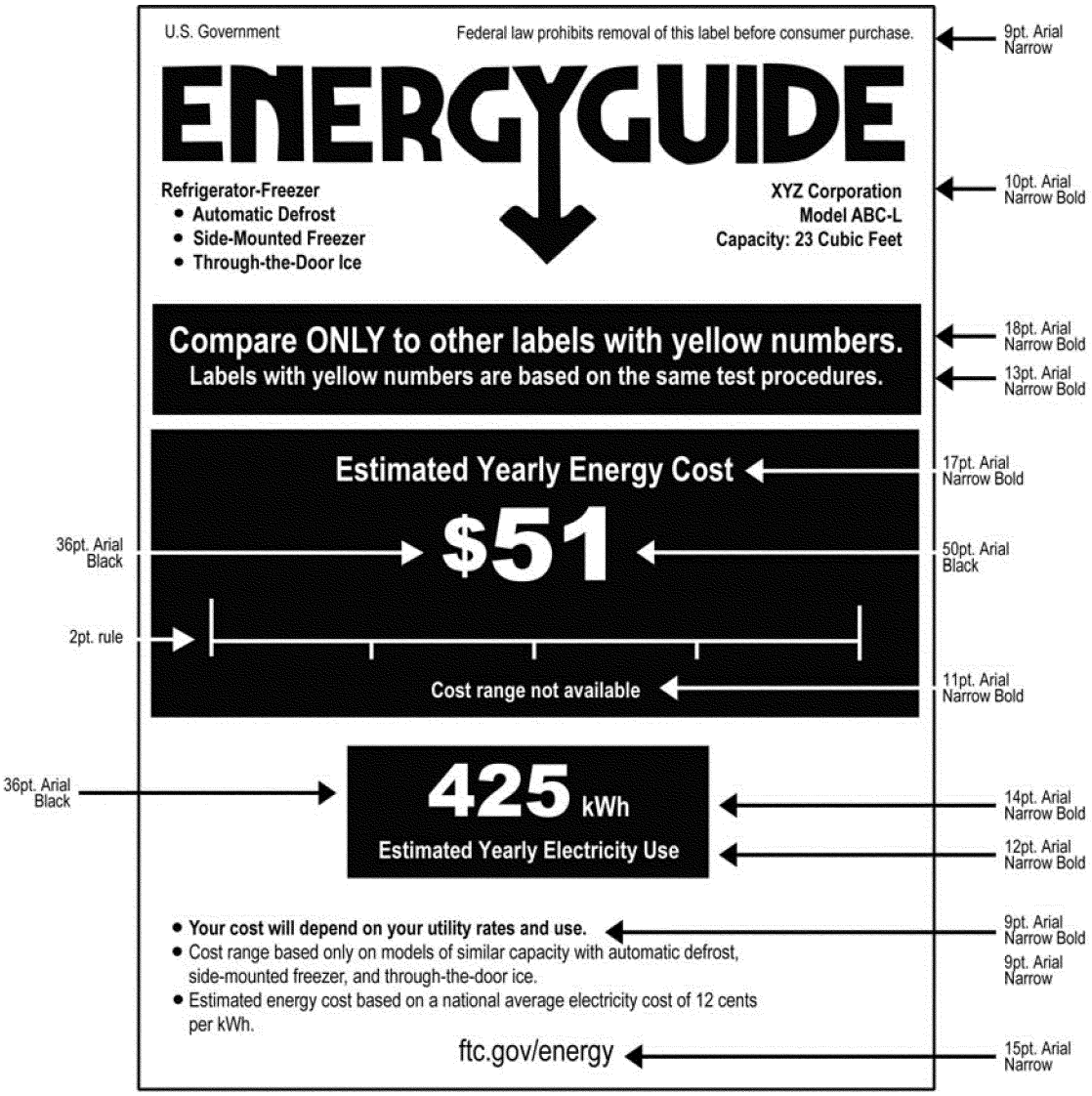
■ d. Sample Label 17 is added.

The revisions read as follows:

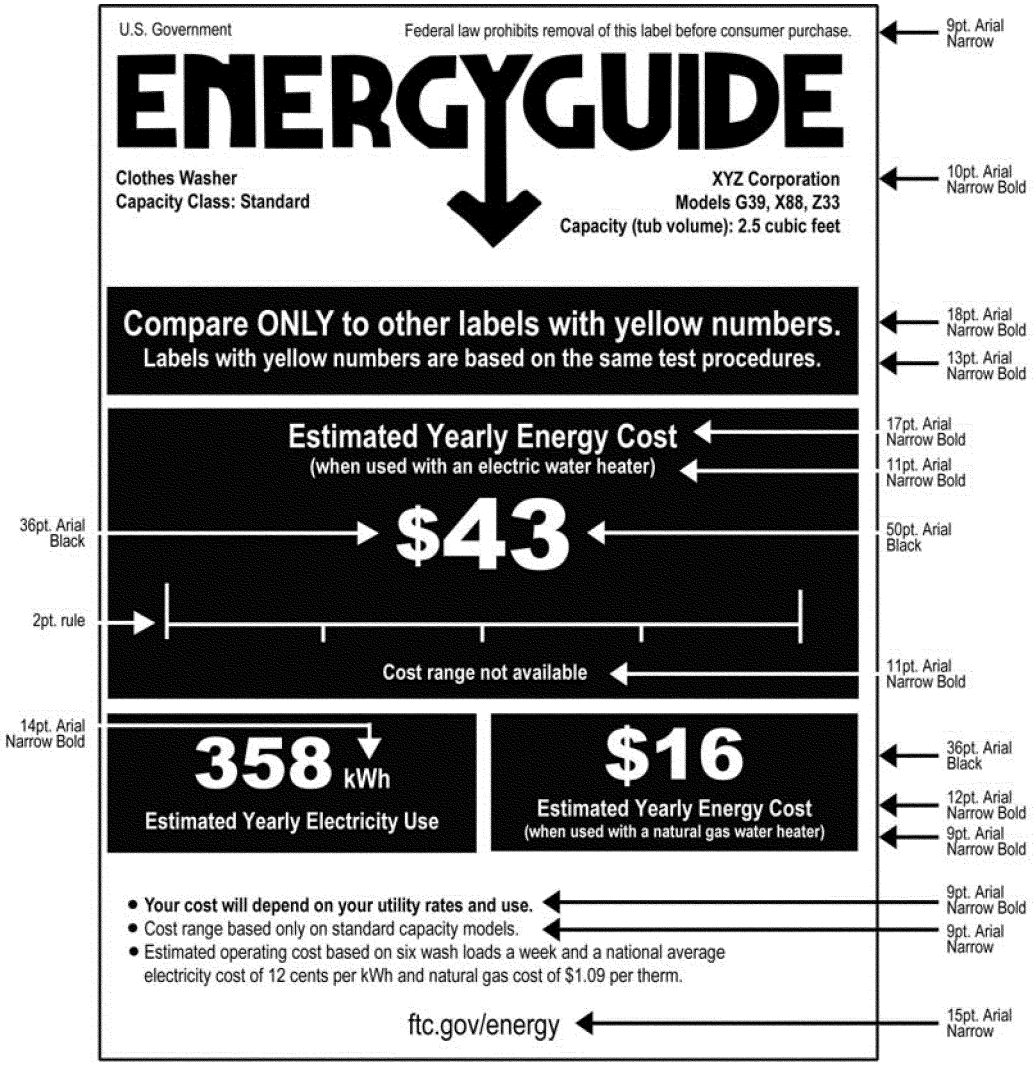
Appendix L to Part 305—Sample Labels

* * * * *

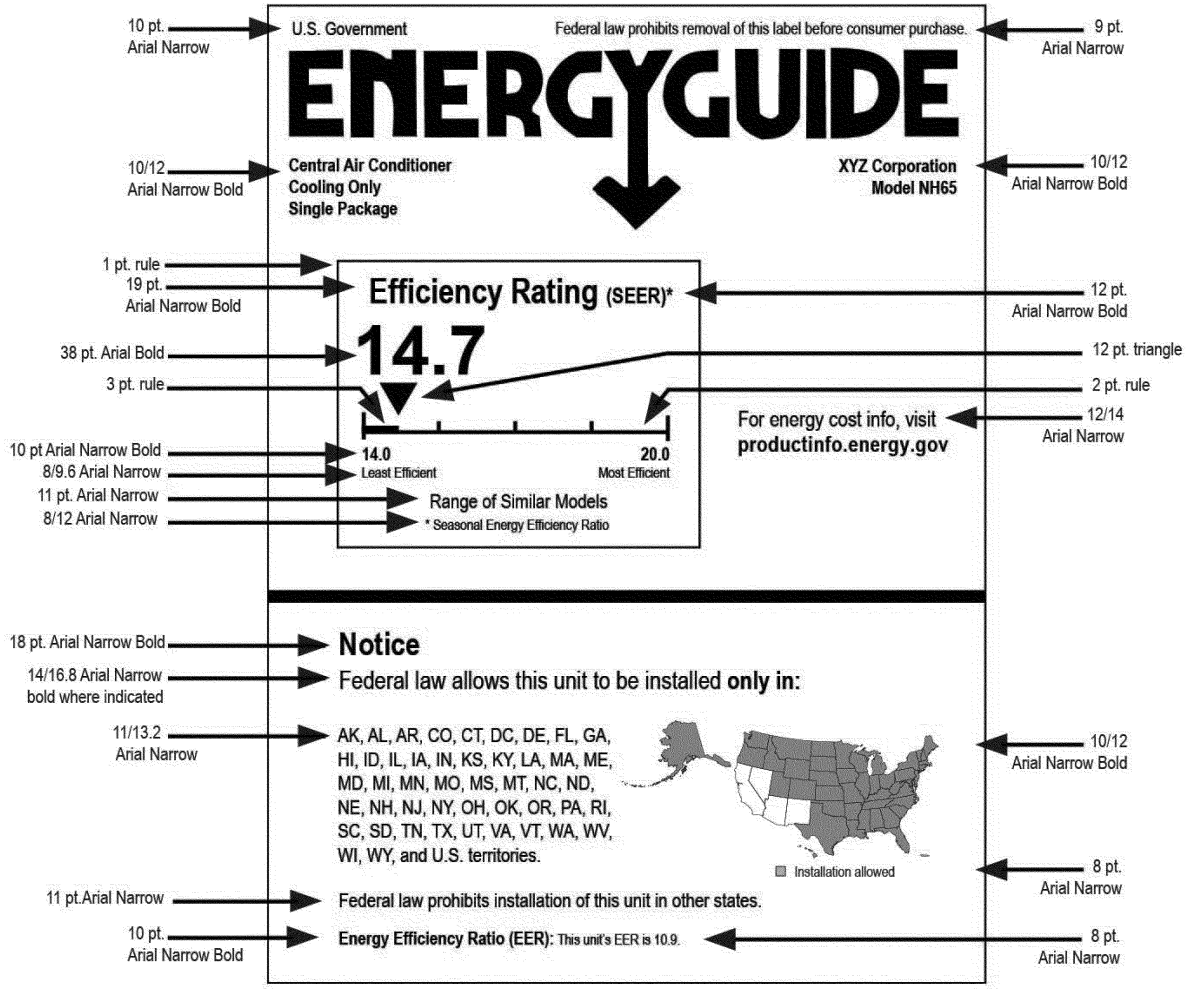
BILLING CODE 6750–01–P



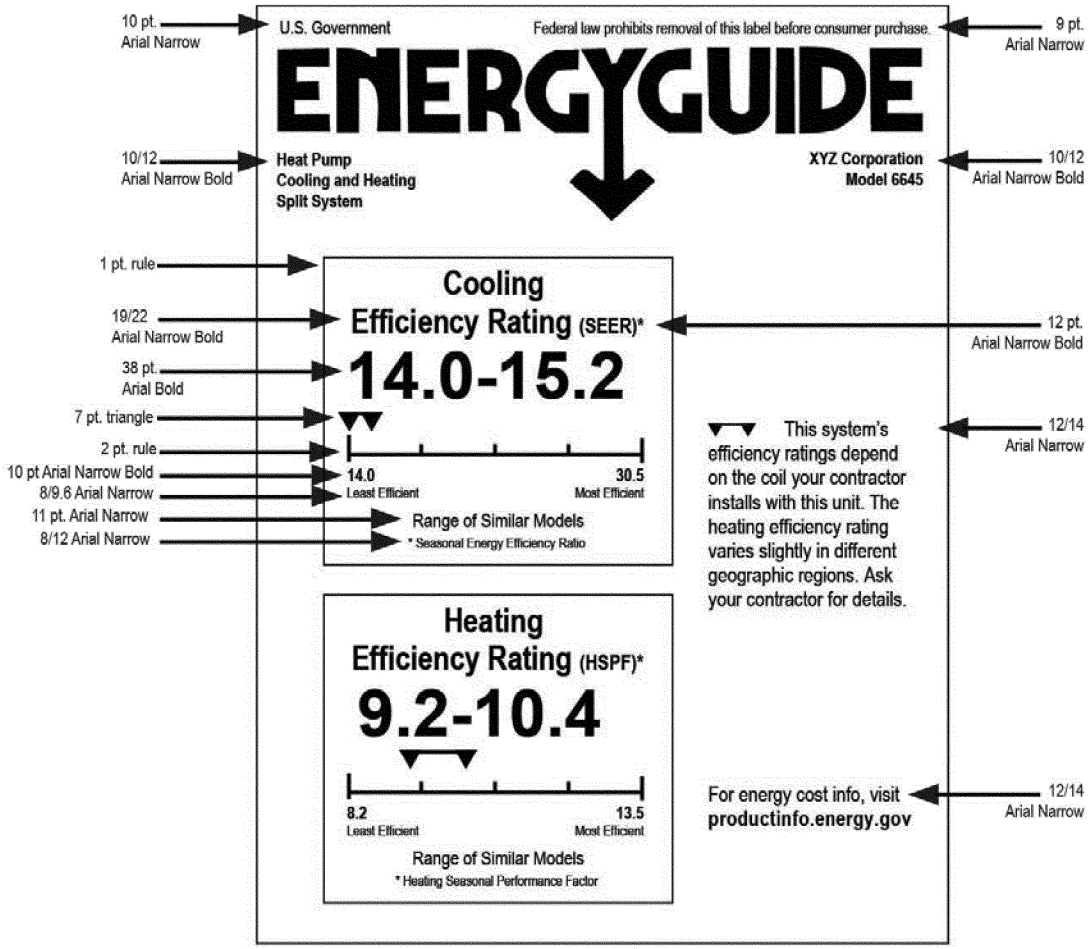
Prototype Label 1 – Refrigerator-Freezer



Prototype Label 2 – For Clothes Washers Manufactured on or after March 7, 2015



Prototype Label 3 – Single-Package Central Air Conditioner



Prototype Label 4 – Split-system Heat Pump

* * * * *

U.S. Government

Federal law prohibits removal of this label before consumer purchase.

ENERGYGUIDE

Central Air Conditioner
Cooling Only
Split System

XYZ Corporation
Model HC47

Efficiency Rating (SEER)*

13.0-14.2

13.0 Least Efficient

26.0 Most Efficient

Range of Similar Models

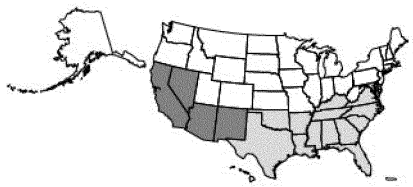
* Seasonal Energy Efficiency Ratio

This system's efficiency rating depends on the coil your contractor installs with this unit. Ask for details.

For energy cost info, visit **productinfo.energy.gov**

Notice

The installed system must meet minimum federal regional efficiency standards.
See **productinfo.energy.gov** for certified coil combinations.



North AK, CO, CT, ID, IL, IA, IN, KS, MA, ME, MI, MN, MO, MT, ND, NE, NH, NJ, NY, OH, OR, PA, RI, SD, UT, VT, WA, WV, WI, WY, U.S. Territories

Southeast AL, AR, DC, DE, FL, GA, HI, KY, LA, MD, MS, NC, OK, SC, TN, TX, VA

Southwest AZ, CA, NM, NV

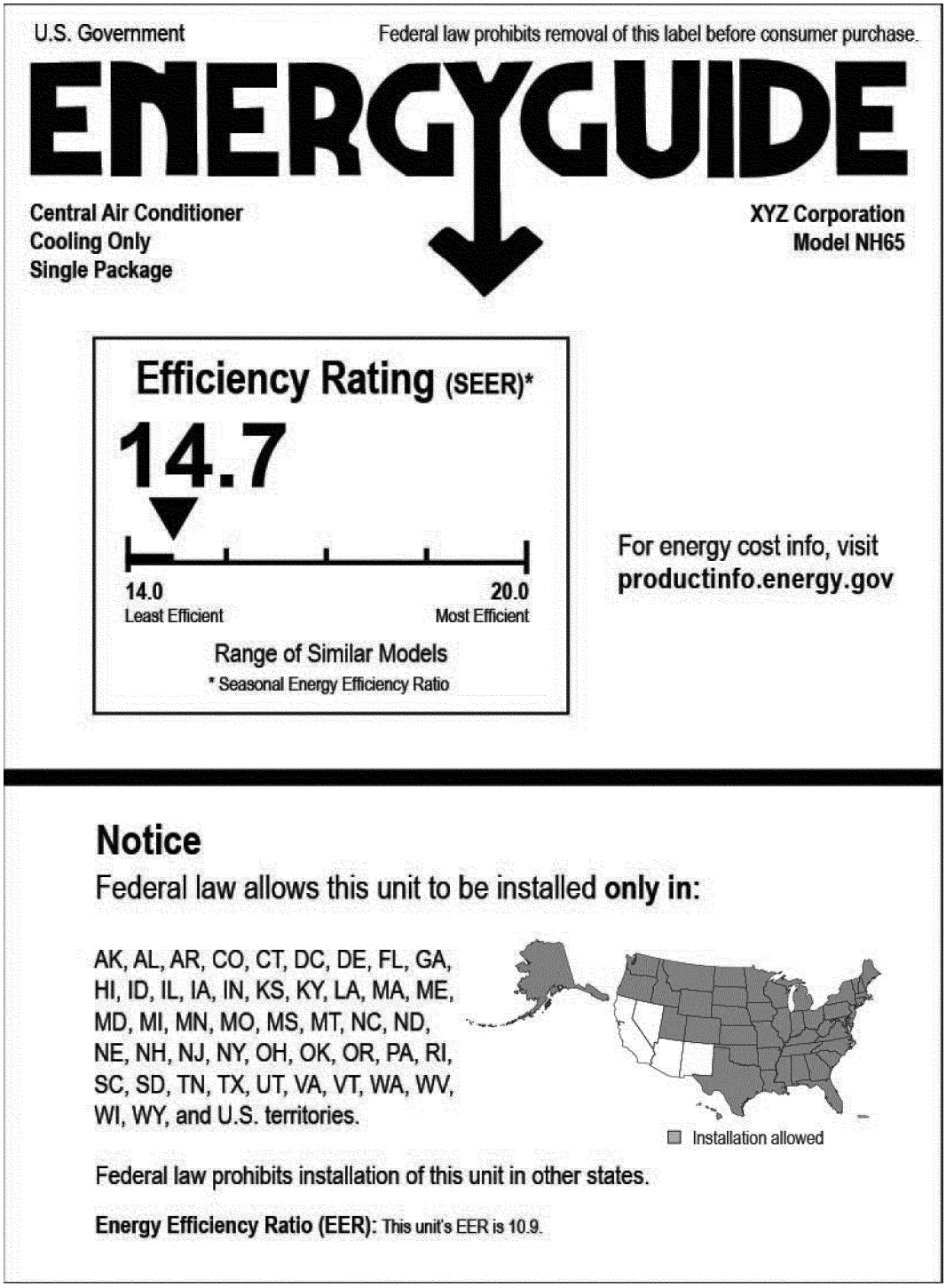
Minimum Standards

	North	Southeast	Southwest
SEER	13	14	14
EER†			12.2
EER††			11.7

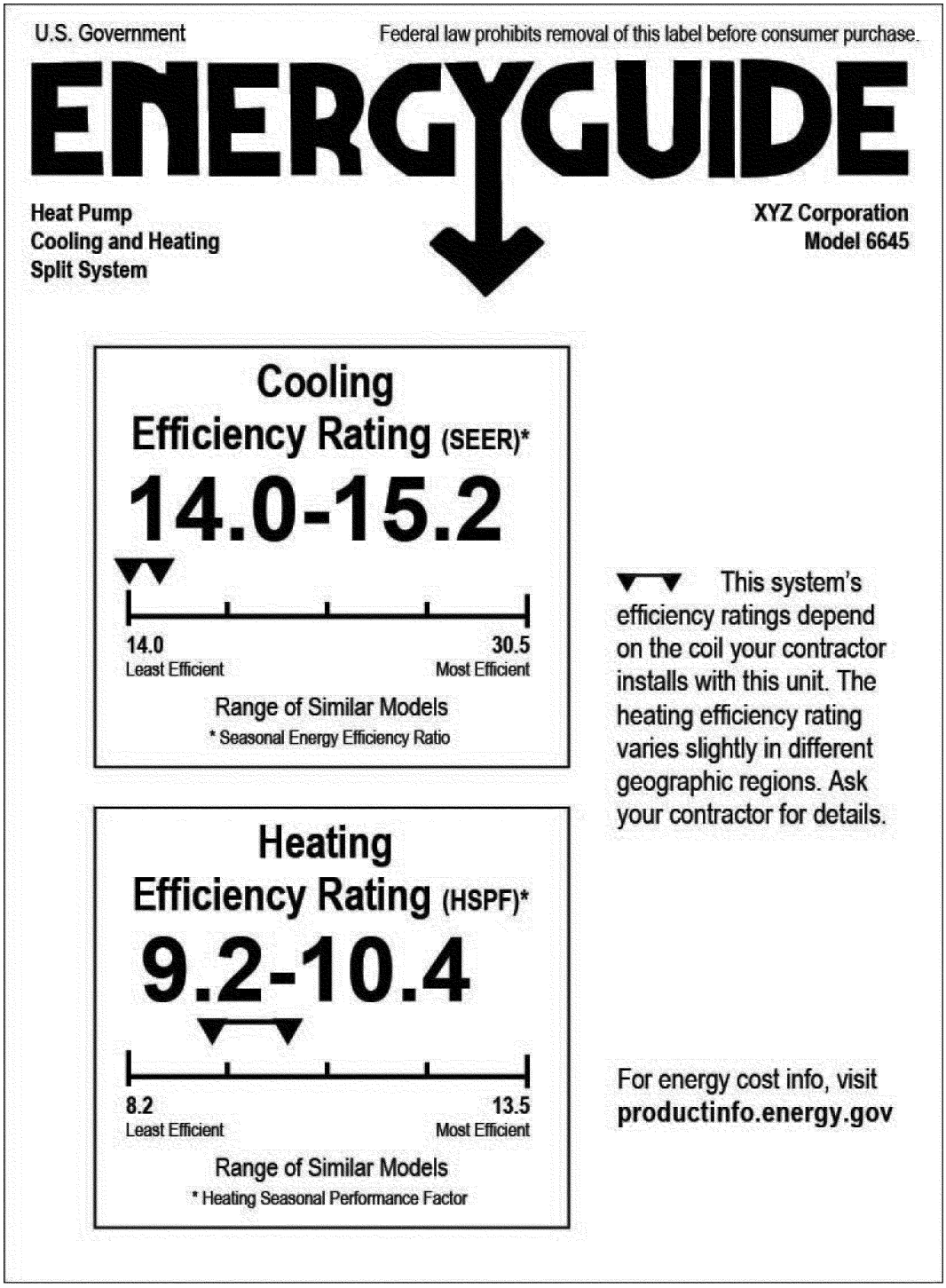
† Units with rated capacity of less than 45,000 btu/h
†† Units with rated capacity equal to or greater than 45,000 btu/h

Energy Efficiency Ratio (EER): could range from 11.4 to 12.5, depending on the coil installed with this unit

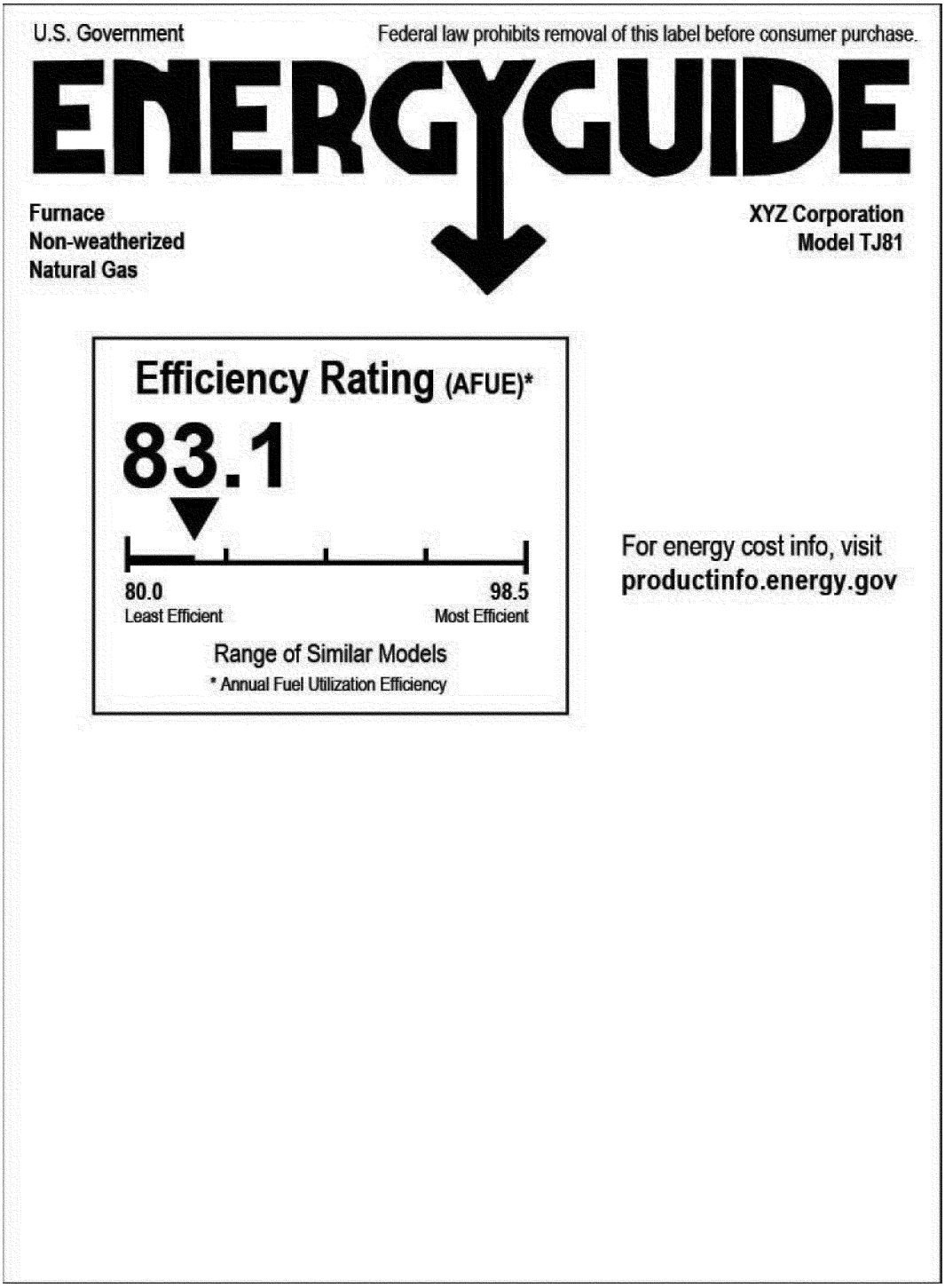
Sample Label 7 – Split-system Central Air Conditioner



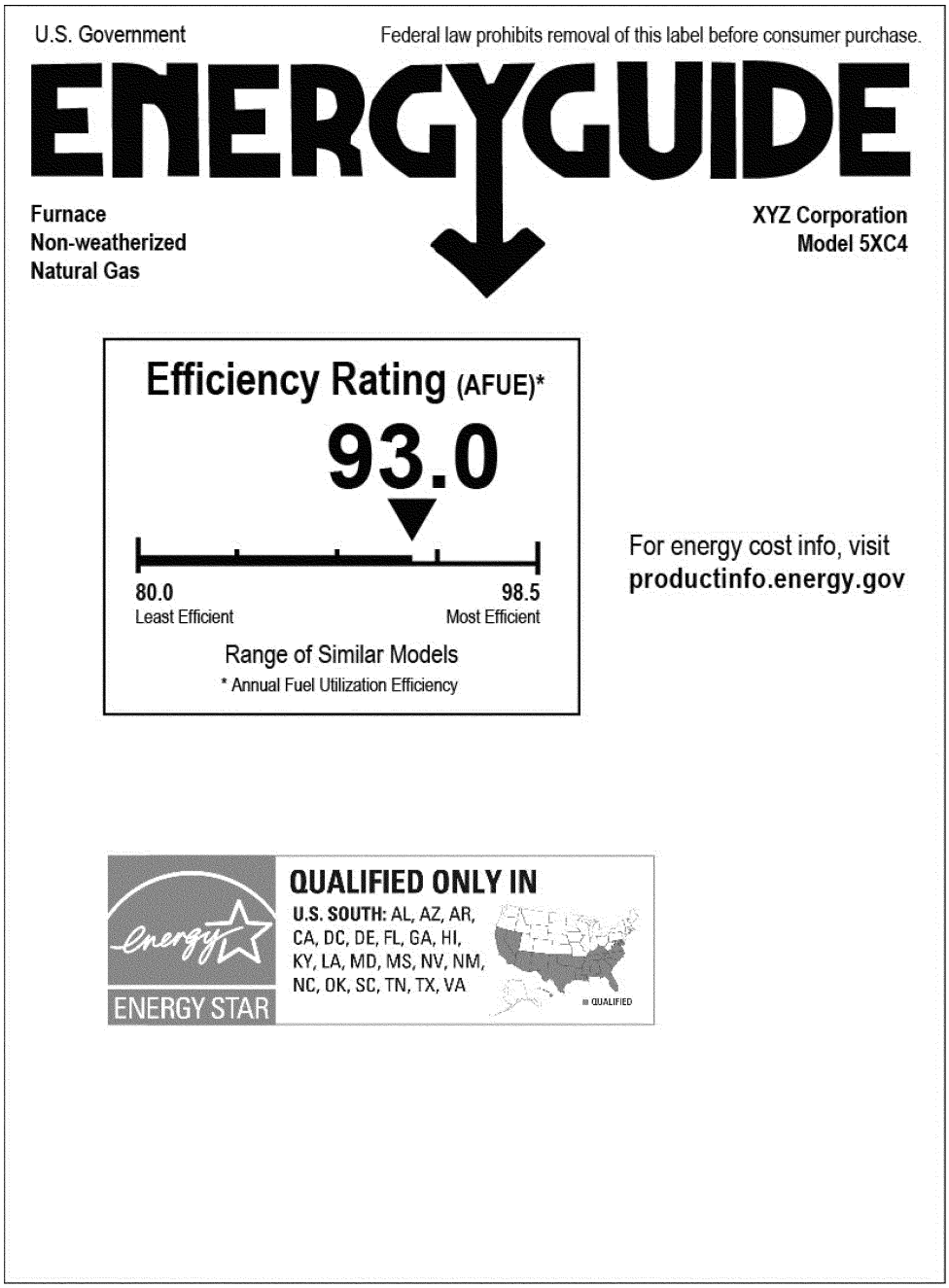
Sample Label 7A – Single-package Central Air Conditioner



Sample Label 8 – Split-system Heat Pump



Sample Label 9 – Non-weatherized Gas Furnace



Sample Label 9A – Non-weatherized Gas Furnace (ENERGY STAR certified)

U.S. Government

Federal law prohibits removal of this label before consumer purchase.

ENERGYGUIDE

Furnace
Non-weatherized
Oil

XYZ Corporation
Model GX40

Efficiency Rating (AFUE)*

84.1

83.0
Least Efficient

96.7
Most Efficient

Range of Similar Models

* Annual Fuel Utilization Efficiency

For energy cost info, visit
productinfo.energy.gov

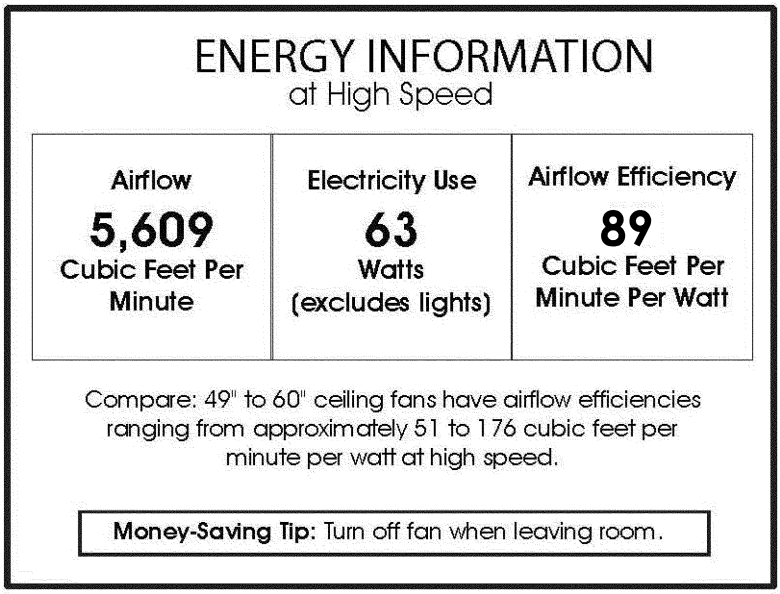
Your efficiency rating depends on the input capacity set by your installer.

The input capacity is 119,000 Btu/h unless your installer checks an input capacity box below.

Input Capacity set by installer (Btu/h)	Efficiency Rating (AFUE)
☐ 84,000	85.5
☐ 105,000	84.8
☐ 140,000	83.5

Sample Label 9B – Non-weatherized Oil Furnaces

* * * * *



Sample Label 17 – Ceiling Fan

* * * * *

By direction of the Commission.

Donald S. Clark,

Secretary.

[FR Doc. 2014–30135 Filed 12–24–14; 8:45 am]

BILLING CODE 6750–01–C

DEPARTMENT OF STATE

22 CFR Parts 121 and 126

RIN 1400–AD25

[Public Notice 8979]

Amendment to the International Traffic in Arms Regulations: United States Munitions List Category XI (Military Electronics), Correction, and Other Changes

AGENCY: Department of State.

ACTION: Final rule; correction and correcting amendments.

SUMMARY: The Department of State is correcting a final rule that appeared in the **Federal Register** of July 1, 2014 (79 FR 37536) and making other, minor changes.

DATES: This rule is effective on December 30, 2014.

FOR FURTHER INFORMATION CONTACT: Mr. C. Edward Peartree, Director, Office of Defense Trade Controls Policy, Department of State, telephone (202) 663–2792; email *DDTCPublicComments@state.gov.* ATTN: Regulatory Change, USML Category XI Final Rule, Correction. The Department of State's full retrospective plan can be accessed at *http://www.state.gov/documents/organization/181028.pdf.*

SUPPLEMENTARY INFORMATION: The Department is correcting the rule, ''Amendment to the International Traffic in Arms Regulations: United States Munitions List Category XI (Military Electronics), and Other Changes'' published in the **Federal Register** of July 1, 2014 (79 FR 37536), and effective on December 30, 2014. The changes in this rule are meant to clarify the regulation by revising certain text and providing conforming updates to Supplement No. 1 to part 126, taking into account revisions made to the USML categories in the rule published on July 1, 2014.

Additionally, minor corrections are made to section 126.6, as follows: 1) subparagraph (c)(4) is deleted to account for a previous revision to section 126.1 that excepts section 126.6; 2) subparagraph (c)(6)(ii) is revised to replace the obsolete term, ''Shippers Export Declaration'' with the correct term, ''Electronic Export Information;'' and, subparagraph (c)(7)(iv) is deleted to remove reference to the obsolete ''Direct Shipment Verification Program.''

Pursuant to ECR, the Department of Commerce has been publishing revisions to the Export Administration Regulations, including various revisions to the Commerce Control List (CCL). Revision of the USML and CCL are coordinated so there is uninterrupted regulatory coverage for items moving from the jurisdiction of the Department of State to that of the Department of Commerce.

The following corrections are made to the rule, ''Amendment to the International Traffic in Arms Regulations: United States Munitions List Category XI (Military Electronics), and Other Changes'' published in the **Federal Register** of July 1, 2014 (79 FR 37536), and effective on December 30, 2014:

PART 121—[CORRECTED]

§ 121.1 [Corrected]

■ 1. On page 37542, in the third column, paragraph (a)(3)(vi), ''Revolutions-per-Minute'' is removed and ''revolutions per minute'' is added in its place.

■ 2. On page 37543, in the first column, paragraph (a)(3)(xiii), ''III or IV'' is removed and ''III, IV, or XV'' is added in its place.

■ 3. On page 37543, in the first column, Note to paragraph (a)(3)(xvii), the quotations surrounding the phrase ''Normalized Clutter Attenuation'' are removed.

■ 4. On page 37543, in the first column, paragraph (a)(3)(xviii), ''(EP)'' is removed.

■ 5. On page 37543, in the third column, paragraph (a)(4)(i), ''Electronic Support (ES)'' is removed, and ''ES'' is added in its place.

■ 6. On page 37544, in the second column, Note 1 to paragraph (a), the

quotations surrounding the phrase ''Low Probability of Intercept'' are removed.

■ 7. On page 37544, in the third column, paragraph (c)(6), a space is added to read ''30 dB.''

■ 8. On page 37544, in the third column, paragraph (c)(8), a comma is added after ''*e.g.*'' and the single quotation marks surrounding the phrase ''specially designed'' are removed.

■ 9. On page 37545, in the first column, paragraph (c)(10)(ii), ''1 second'' is removed, and ''one second'' is added in its place.

■ 10. On page 37545, in the third column, paragraph (d), the term ''enumerated'' is removed, and ''described'' is added in its place.

The following correcting amendments are made to part 126:

PART 126—GENERAL POLICIES AND PROVISIONS

■ 11. The authority citation for part 126 continues to read as follows:

Authority: Secs. 2, 38, 40, 42, and 71, Pub. L. 90–629, 90 Stat. 744 (22 U.S.C. 2752, 2778, 2780, 2791, and 2797); 22 U.S.C. 2651a; 22 U.S.C. 287c; E.O. 12918, 59 FR 28205; 3 CFR, 1994 Comp., p. 899; Sec. 1225, Pub. L. 108–375; Sec. 7089, Pub. L. 111–117; Pub. L. 111–266; Sections 7045 and 7046, Pub. L. 112–74; E.O. 13637, 78 FR 16129.

§ 126.6 [Amended]

■ 12. In § 126.6:

■ a. Paragraph (c)(4) is removed, and the paragraphs (c)(5), (6), and (7) are redesignated as paragraphs (c)(4), (5), and (6).

■ b. In newly redesignated paragraph (c)(5)(ii) the phrase ''Shippers Export Declaration'' is removed and ''Electronic Export Information (EEI)'' is added in its place.

■ c. Paragraph (c)(7)(iv) is removed.

■ 13. Supplement No. 1 to part 126 is revised to read as follows:

SUPPLEMENT NO. 1 TO PART 126

[Supplement No. 1*—*An ''X'' in the chart indicates that the item is excluded from use under the exemption referenced in the top of the column. An item excluded in any one row is excluded regardless of whether other rows may contain a description that would include the item.]

USML Category	Exclusion	(CA) § 126.5	(AS) § 126.16	(UK) § 126.17
I–XXI	Classified defense articles and services. *See* Note 1	X	X	X
I–XXI	Defense articles listed in the Missile Technology Control Regime (MTCR) Annex.	X	X	X
I–XXI	U.S. origin defense articles and services used for marketing purposes and not previously licensed for export in accordance with this subchapter.		X	X
I–XXI	Defense services for or technical data related to defense articles identified in this supplement as excluded from the Canadian exemption.	X		
I–XXI	Any transaction involving the export of defense articles and services for which congressional notification is required in accordance with § 123.15 and § 124.11 of this subchapter. *See* Note 17.	X		
I–XXI	U.S. origin defense articles and services specific to developmental systems that have not obtained written Milestone B approval from the U.S. Department of Defense milestone approval authority, unless such export is pursuant to a written solicitation or contract issued or awarded by the U.S. Department of Defense for an end-use identified in paragraph (e)(1), (e)(2), or (e)(4) of § 126.16 or § 126.17 of this subchapter and is consistent with other exclusions of this supplement.		X	X
I–XXI	Nuclear weapons strategic delivery systems and all components, parts, accessories, and attachments specifically designed for such systems and associated equipment.	X		
I–XXI	Defense articles and services specific to the existence or method of compliance with anti-tamper measures, where such measures are readily identifiable, made at originating Government direction.		X	X
I–XXI	Defense articles and services specific to reduced observables or counter low observables in any part of the spectrum. *See* Note 2.		X	X
I–XXI	Defense articles and services specific to sensor fusion beyond that required for display or identification correlation. *See* Note 3.		X	X
I–XXI	Defense articles and services specific to the automatic target acquisition or recognition and cueing of multiple autonomous unmanned systems.		X	X
I–XXI	Nuclear power generating equipment or propulsion equipment (*e.g.,* nuclear reactors), specifically designed for military use and components therefor, specifically designed for military use. *See* also § 123.20 of this subchapter.			X
I–XXI	Libraries (parametric technical databases) specially designed for military use with equipment controlled on the USML. *See* Note 13.			X
I–XXI	Defense services or technical data specific to applied research as defined in § 125.4(c)(3) of this subchapter, design methodology as defined in § 125.4(c)(4) of this subchapter, engineering analysis as defined in § 125.4(c)(5) of this subchapter, or manufacturing know-how as defined in § 125.4(c)(6) of this subchapter. *See* Note 12.	X		
I–XXI	Defense services other than those required to prepare a quote or bid proposal in response to a written request from a department or agency of the United States Federal Government or from a Canadian Federal, Provincial, or Territorial Government; or defense services other than those required to produce, design, assemble, maintain or service a defense article for use by a registered U.S. company, or a U.S. Federal Government Program, or for end-use in a Canadian Federal, Provincial, or Territorial Government Program. *See* Note 14.	X		

SUPPLEMENT NO. 1 TO PART 126—Continued

[Supplement No. 1*—*An "X" in the chart indicates that the item is excluded from use under the exemption referenced in the top of the column. An item excluded in any one row is excluded regardless of whether other rows may contain a description that would include the item.]

USML Category	Exclusion	(CA) § 126.5	(AS) § 126.16	(UK) § 126.17
I	Firearms, close assault weapons, and combat shotguns	X		
II(k)	Software source code related to USML Category II(c), II(d), or II(i). *See* Note 4.		X	X
II(k)	Manufacturing know-how related to USML Category II(d). *See* Note 5	X	X	X
III	Ammunition for firearms, close assault weapons, and combat shotguns listed in USML Category I.	X		
III	Defense articles and services specific to ammunition and fuse setting devices for guns and armament controlled in USML Category II.			X
III(e)	Manufacturing know-how related to USML Category III(d)(1) or III(d)(2) and their specially designed components. *See* Note 5.	X	X	X
III(e)	Software source code related to USML Category III(d)(1) or III(d)(2). *See* Note 4.		X	X
IV	Defense articles and services specific to man-portable air defense systems (MANPADS). *See* Note 6.	X	X	X
IV	Defense articles and services specific to rockets, designed or modified for non-military applications that do not have a range of 300 km (*i.e.,* not controlled on the MTCR Annex).			X
IV	Defense articles and services specific to torpedoes		X	X
IV	Defense articles and services specific to anti-personnel landmines. *See* Note 15.	X	X	X
IV	Defense articles and services specific to cluster munitions	X	X	X
IV(i)	Software source code related to USML Category IV(a), IV(b), IV(c), or IV(g). *See* Note 4.		X	X
IV(i)	Manufacturing know-how related to USML Category IV(a), IV(b), IV(d), or IV(g) and their specially designed components. *See* Note 5.	X	X	X
V	The following energetic materials and related substances: a. TATB (triaminotrinitrobenzene) (CAS 3058–38–6);. b. Explosives controlled in USML Category V(a)(38);. c. Iron powder (CAS 7439–89–6) with particle size of 3 micrometers or less produced by reduction of iron oxide with hydrogen;. d. BOBBA–8 (bis(2-methylaziridinyl)2-(2-hydroxypropanoxy) propylamino phosphine oxide), and other MAPO derivatives;. e. N-methyl-p-nitroaniline (CAS 100–15–2); or. f. Trinitrophenylmethylnitramine (tetryl) (CAS 479–45–8).			X
V(a)(13)	ANF or ANAzF as described in USML Category V(a)(13)(iii) and (iv)			X
V(a)(23)	Difluoraminated derivative of RDX as described in USML Category V(a)(23)(iii).			X
V(c)(7)	Pyrotechnics and pyrophorics specifically formulated for military purposes to enhance or control radiated energy in any part of the IR spectrum.			X
V(d)(3)	Bis-2, 2-dinitropropylnitrate (BDNPN)			X
V(i)	Developmental explosives, propellants, pyrotechnics, fuels, oxidizers, binders, additives, or precursors therefor, funded by the Department of Defense via contract or other funding authorization in accordance with notes 1 to 3 for USML Category V(i). This exclusion does not apply if such export is pursuant to a written solicitation or contract issued or awarded by the U.S. Department of Defense for an end-use identified in paragraph (e)(1), (e)(2), or (e)(4) of § 126.16 or § 126.17 of this subchapter and is consistent with other exclusions of this supplement.		X	X
VI	Defense articles and services specific to cryogenic equipment, and specially designed components or accessories therefor, specially designed or configured to be installed in a vehicle for military ground, marine, airborne or space applications, capable of operating while in motion and of producing or maintaining temperatures below 103 K (−170°C).			X
VI	Defense articles and services specific to superconductive electrical equipment (rotating machinery and transformers) specially designed or configured to be installed in a vehicle for military ground, marine, airborne, or space applications and capable of operating while in motion. This, however, does not include direct current hybrid homopolar generators which have single-pole normal metal armatures that rotate in a magnetic field produced by superconducting windings, provided those windings are the only superconducting component in the generator.			X
VI	Defense articles and services specific to naval technology and systems relating to acoustic spectrum control and awareness. *See* Note 10.		X	X
VI(a)	Nuclear powered vessels.	X	X	X

SUPPLEMENT NO. 1 TO PART 126—Continued

[Supplement No. 1*—*An "X" in the chart indicates that the item is excluded from use under the exemption referenced in the top of the column. An item excluded in any one row is excluded regardless of whether other rows may contain a description that would include the item.]

USML Category	Exclusion	(CA) § 126.5	(AS) § 126.16	(UK) § 126.17
VI(e)	Defense articles and services specific to naval nuclear propulsion equipment. *See* Note 7.	X	X	X
VI(g)	Software source code related to USML Category VI(a) or VI(c). *See* Note 4.		X	X
VII	Defense articles and services specific to cryogenic equipment, and specially designed components or accessories therefor, specially designed or configured to be installed in a vehicle for military ground, marine, airborne or space applications, capable of operating while in motion and of producing or maintaining temperatures below 103 K (−170°C).			X
VII	Defense articles and services specific to superconductive electrical equipment (rotating machinery and transformers) specially designed or configured to be installed in a vehicle for military ground, marine, airborne, or space applications and capable of operating while in motion. This, however, does not include direct current hybrid homopolar generators which have single-pole normal metal armatures that rotate in a magnetic field produced by superconducting windings, provided those windings are the only superconducting component in the generator.			X
VIII	Defense articles and services specific to cryogenic equipment, and specially designed components and accessories therefor, specially designed or configured to be installed in a vehicle for military ground, marine, airborne or space applications, capable of operating while in motion and of producing or maintaining temperatures below 103 K (−170°C).			X
VIII	Defense articles and services specific to superconductive electrical equipment (rotating machinery and transformers) specially designed or configured to be installed in a vehicle for military ground, marine, airborne, or space applications and capable of operating while in motion. This, however, does not include direct current hybrid homopolar generators which have single-pole normal metal armatures that rotate in a magnetic field produced by superconducting windings, provided those windings are the only superconducting component in the generator.			X
VIII(a)	All USML Category VIII(a) items.	X		
VIII(f)	Developmental aircraft parts, components, accessories, and attachments identified in USML Category VIII(f).	X		
VIII(i)	Manufacturing know-how related to USML Category VIII(a) or VIII(e), and specially designed parts or components therefor. *See* Note 5.	X	X	X
VIII(i)	Software source code related to USML Category VIII(a) or VIII(e). *See* Note 4.		X	X
IX	Training or simulation equipment for Man Portable Air Defense Systems (MANPADS). *See* Note 6.		X	X
IX(e)	Software source code related to USML Category IX(a) or IX(b). *See* Note 4.		X	X
IX(e)	Software that is both specifically designed or modified for military use and specifically designed or modified for modeling or simulating military operational scenarios.			X
X(e)	Manufacturing know-how related to USML Category X(a)(1) or X(a)(2), and specially designed components therefor. *See* Note 5.	X	X	X
XI(a) XI(c), XI(d)	Defense articles and services specific to countermeasures and counter-countermeasures *See* Note 9.		X	X
XI(a)	High Frequency and Phased Array Microwave Radar systems, with capabilities such as search, acquisition, tracking, moving target indication, and imaging radar systems. *See* Note 16.		X	
XI(a), XI(c), XI(d)	Defense articles and services specific to naval technology and systems relating to acoustic spectrum control and awareness. *See* Note 10.		X	X
XI(a), XI(c), XI(d)	Defense articles and services specific to USML Category XI(b) (*e.g.,* communications security (COMSEC) and TEMPEST).		X	X
XI(d)	Software source code related to USML Category XI(a). *See* Note 4		X	X
XI(d)	Manufacturing know-how related to USML Category XI(a)(3) or XI(a)(4), and specially designed components therefor. *See* Note 5.	X	X	X
XII	Defense articles and services specific to countermeasures and counter-countermeasures. *See* Note 9.		X	X

SUPPLEMENT NO. 1 TO PART 126—Continued

[Supplement No. 1*—*An ''X'' in the chart indicates that the item is excluded from use under the exemption referenced in the top of the column. An item excluded in any one row is excluded regardless of whether other rows may contain a description that would include the item.]

USML Category	Exclusion	(CA) § 126.5	(AS) § 126.16	(UK) § 126.17
XII	Defense articles and services specific to USML Category XII(c) articles, except any 1st- and 2nd-generation image intensification tubes and 1st- and 2nd-generation image intensification night sighting equipment. End-items in USML Category XII(c) and related technical data limited to basic operations, maintenance, and training information as authorized under the exemption in § 125.4(b)(5) of this subchapter may be exported directly to a Canadian Government entity (*i.e.,* federal, provincial, territorial, or municipal) consistent with § 126.5, other exclusions, and the provisions of this subchapter.	X		
XII	Technical data or defense services for night vision equipment beyond basic operations, maintenance, and training data. However, the AS and UK Treaty exemptions apply when such export is pursuant to a written solicitation or contract issued or awarded by the U.S. Department of Defense for an end-use identified in paragraph (e)(1), (e)(2), or (e)(4) of § 126.16 or § 126.17 of this subchapter and is consistent with other exclusions of this supplement.	X	X	X
XII(f)	Manufacturing know-how related to USML Category XII(d) and specially designed components therefor. *See* Note 5.	X	X	X
XII(f)	Software source code related to USML Category XII(a), XII(b), XII(c), or XII(d). *See* Note 4.		X	X
XIII(b)	Defense articles and services specific to USML Category XIII(b) (Military Information Security Assurance Systems, cryptographic devices, software, and components).		X	X
XIII(d)	Carbon/carbon billets and preforms which are reinforced in three or more dimensional planes, specifically designed, developed, modified, configured or adapted for defense articles.			X
XIII(e)	Defense articles and services specific to armored plate manufactured to comply with a military standard or specification or suitable for military use. *See* Note 11.			X
XIII(g)	Defense articles and services related to concealment and deception equipment and materials.			X
XIII(h)	Energy conversion devices other than fuel cells			X
XIII(j)	Defense articles and services related to hardware associated with the measurement or modification of system signatures for detection of defense articles as described in Note 2.		X	X
XIII(l)	Software source code related to USML Category XIII(a). *See* Note 4		X	X
XIV	Defense articles and services related to toxicological agents, including chemical agents, biological agents, and associated equipment.		X	X
XIV(a), XIV(b), XIV(d), XIV(e), XIV(f).	Chemical agents listed in USML Category XIV(a), (d) and (e), biological agents and biologically derived substances in USML Category XIV(b), and equipment listed in USML Category XIV(f) for dissemination of the chemical agents and biological agents listed in USML Category XIV(a), (b), (d), and (e).	X		
XV(a)	Defense articles and services specific to spacecraft/satellites. However, the Canadian exemption may be used for commercial communications satellites that have no other type of payload.	X	X	X
XV(b)	Defense articles and services specific to ground control stations for spacecraft telemetry, tracking, and control. Defense articles and services are not excluded under this entry if they do not control the spacecraft. Receivers for receiving satellite transmissions are also not excluded under this entry.		X	X
XV(c)	Defense articles and services specific to GPS/PPS security modules		X	X
XV(c)	Defense articles controlled in USML Category XV(c) except end-items for end-use by the Federal Government of Canada exported directly or indirectly through a Canadian-registered person.	X		
XV(e)	Anti-jam systems with the ability to respond to incoming interference by adaptively reducing antenna gain (nulling) in the direction of the interference.	X		
XV(e)(1)	Antennas having any of the following: a. Aperture (overall dimension of the radiating portions of the antenna) greater than 30 feet;. b. All sidelobes less than or equal to -35 dB relative to the peak of the main beam; or. c. Designed, modified, or configured to provide coverage area on the surface of the earth less than 200 nautical miles in diameter, where ''coverage area'' is defined as that area on the surface of the earth that is illuminated by the main beam width of the antenna (which is the angular distance between half power points of the beam).	X		

SUPPLEMENT NO. 1 TO PART 126—Continued

[Supplement No. 1*—*An "X" in the chart indicates that the item is excluded from use under the exemption referenced in the top of the column. An item excluded in any one row is excluded regardless of whether other rows may contain a description that would include the item.]

USML Category	Exclusion	(CA) § 126.5	(AS) § 126.16	(UK) § 126.17
XV(e)(12)	Propulsion systems which permit acceleration of the satellite on-orbit (*i.e.,* after mission orbit injection) at rates greater than 0.1 g.	X		
XV(e)(10)	Attitude determination and control systems designed to provide spacecraft pointing determination and control or payload pointing system control better than 0.02 degrees per axis.	X		
XV(e)	All parts, components, accessories, attachments, equipment, or systems for USML Category XV(a) items, except when specially designed for use in commercial communications satellites.	X		
XV(e)	Defense articles and services specific to spacecraft, ground control station systems (only for spacecraft control as controlled in USML Category XV(b)), subsystems, components, parts, accessories, attachments, and associated equipment controlled in Category XV.		X	X
XV(f)	Technical data and defense services directly related to the other defense articles excluded from the exemptions for USML Category XV.	X	X	X
XVI	Defense articles and services specific to design and testing of nuclear weapons.	X	X	X
XVII	Classified articles, and technical data and defense services relating thereto, not elsewhere enumerated. *See* Note 1.	X	X	X
XVIII	Defense articles and services specific to directed energy weapon systems.		X	X
XIX(e), XIX(f)(1), XIX(f)(2), XIX(g).	Defense articles and services specific to gas turbine engine hot section components and to Full Authority Digital Engine Control Systems (FADEC) or Digital Electronic Engine Controls (DEEC). *See* Note 8.		X	X
XIX(g)	Technical data and defense services for gas turbine engine hot sections. (This does not include hardware). *See* Note 8.	X	X	X
XX	Defense articles and services related to submersible vessels, oceanographic, and associated equipment.	X	X	X
XX	Defense articles and services specific to naval technology and systems relating to acoustic spectrum control and awareness. *See* Note 10.		X	X
XX	Defense articles specific to cryogenic equipment, and specially designed components or accessories therefor, specially designed or configured to be installed in a vehicle for military ground, marine, airborne or space applications, capable of operating while in motion and of producing or maintaining temperatures below 103 K (−170°C).			X
XX	Defense articles specific to superconductive electrical equipment (rotating machinery and transformers) specially designed or configured to be installed in a vehicle for military ground, marine, airborne, or space applications and capable of operating while in motion. This, however, does not include direct current hybrid homopolar generators that have single-pole normal metal armatures which rotate in a magnetic field produced by superconducting windings, provided those windings are the only superconducting component in the generator.			X
XX(a)	Nuclear powered vessels.	X	X	X
XX(b)	Defense articles and services specific to naval nuclear propulsion equipment. *See* Note 7.	X	X	X
XX(c)	Defense articles and services specific to submarine combat control systems.		X	X
XX(d)	Software source code related to USML Category XX(a). *See* Note 4		X	X
XXI	Articles, and technical data and defense services relating thereto, not otherwise enumerated on the USML, but placed in this category by the Director, Office of Defense Trade Controls Policy.	X	X	X

Note 1: Classified defense articles and services are not eligible for export under the Canadian exemptions. U.S. origin articles, technical data, and services controlled in USML Category XVII are not eligible for export under the UK Treaty exemption. U.S. origin classified defense articles and services are not eligible for export under either the UK or AS Treaty exemptions except when being released pursuant to a U.S. Department of Defense written request, directive, or contract that provides for the export of the defense article or service.

Note 2: The phrase "any part of the spectrum" includes radio frequency (RF), infrared (IR), electro-optical, visual, ultraviolet (UV), acoustic, and magnetic. Defense articles related to reduced observables or counter reduced observables are defined as:

(a) Signature reduction (radio frequency (RF), infrared (IR), Electro-Optical, visual, ultraviolet (UV), acoustic, magnetic, RF emissions) of defense platforms, including systems, subsystems, components, materials (including dual-purpose materials used for Electromagnetic Interference (EM) reduction), technologies, and signature prediction, test and measurement equipment and software, and material transmissivity/reflectivity prediction codes and optimization software.

(b) Electronically scanned array radar, high power radars, radar processing algorithms, periscope-mounted radar systems (PATRIOT), LADAR, multistatic and IR focal plane array-based sensors, to include systems, subsystems, components, materials, and technologies.

Note 3: Defense articles and services related to sensor fusion beyond that required for display or identification correlation is defined as techniques designed to automatically combine information from two or more sensors/sources for the purpose of target identification, tracking, designation, or passing of data in support of surveillance or weapons engagement. Sensor fusion involves sensors such as acoustic, infrared, electro optical, frequency, etc. Display or identification correlation refers to the combination of target detections from multiple sources for assignment of common target track designation.

Note 4: Software source code beyond that source code required for basic operation, maintenance, and training for programs, systems, and/or subsystems is not eligible for use of the UK or AS Treaty exemptions, unless such export is pursuant to a written solicitation or contract issued or awarded by the U.S. Department of Defense for an end-use identified in paragraph (e)(1), (e)(2), or (e)(4) of § 126.16 or § 126.17 of this subchapter and is consistent with other exclusions of this supplement.

Note 5: Manufacturing know-how, as defined in § 125.4(c)(6) of this subchapter, is not eligible for use of the UK or AS Treaty exemptions, unless such export is pursuant to a written solicitation or contract issued or awarded by the U.S. Department of Defense for an end-use identified in paragraph (e)(1), (e)(2), or (e)(4) of § 126.16 or § 126.17 of this subchapter and is consistent with other exclusions of this supplement.

Note 6: Defense articles and services specific to Man Portable Air Defense Systems (MANPADS) includes missiles that can be used without modification in other applications. It also includes production and test equipment and components specifically designed or modified for MANPAD systems, as well as training equipment specifically designed or modified for MANPAD systems.

Note 7: Naval nuclear propulsion plants includes all of USML Category VI(e). Naval nuclear propulsion information consists of technical data that concern the design, arrangement, development, manufacture, testing, operation, administration, training, maintenance, and repair of the propulsion plants of naval nuclear-powered ships and prototypes, including the associated shipboard and shore-based nuclear support facilities. Examples of defense articles covered by this exclusion include nuclear propulsion plants and nuclear submarine technologies or systems; nuclear powered vessels (*see* USML Categories VI and XX).

Note 8: A complete gas turbine engine with embedded hot section components or digital engine controls is eligible for export or transfer under the Treaties. Technical data, other than those data required for routine external maintenance and operation, related to the hot section is not eligible for export under the Canadian exemption. Technical data, other than those data required for routine external maintenance and operation, related to the hot section or digital engine controls, as well as individual hot section parts or components are not eligible for the Treaty exemption whether shipped separately or accompanying a complete engine. Gas turbine engine hot section exempted defense article components and technology are combustion chambers and liners; high pressure turbine blades, vanes, disks and related cooled structure; cooled low pressure turbine blades, vanes, disks and related cooled structure; cooled augmenters; and cooled nozzles. Examples of gas turbine engine hot section developmental technologies are Integrated High Performance Turbine Engine Technology (IHPTET), Versatile, Affordable Advanced Turbine Engine (VAATE), and Ultra-Efficient Engine Technology (UEET), which are also excluded from export under the exemptions.

Note 9: Examples of countermeasures and counter-countermeasures related to defense articles not exportable under the AS or UK Treaty exemptions are:

(a) IR countermeasures;

(b) Classified techniques and capabilities;

(c) Exports for precision radio frequency location that directly or indirectly supports fire control and is used for situation awareness, target identification, target acquisition, and weapons targeting and Radio Direction Finding (RDF) capabilities. Precision RF location is defined as angle of arrival accuracy of less than five degrees (RMS) and RF emitter location of less than ten percent range error;

(d) Providing the capability to reprogram; and

(e) Acoustics (including underwater), active and passive countermeasures, and counter-countermeasures

Note 10: Examples of defense articles covered by this exclusion include underwater acoustic vector sensors; acoustic reduction; off-board, underwater, active and passive sensing, propeller/propulsor technologies; fixed mobile/floating/powered detection systems which include in-buoy signal processing for target detection and classification; autonomous underwater vehicles capable of long endurance in ocean environments (manned submarines excluded); automated control algorithms embedded in on-board autonomous platforms which enable (a) group behaviors for target detection and classification, (b) adaptation to the environment or tactical situation for enhancing target detection and classification; ''intelligent autonomy'' algorithms that define the status, group (greater than 2) behaviors, and responses to detection stimuli by autonomous, underwater vehicles; and low frequency, broad band ''acoustic color,'' active acoustic ''fingerprint'' sensing for the purpose of long range, single pass identification of ocean bottom objects, buried or otherwise (controlled under Category USML XI(a)(1), (a)(2), (b), (c), and (d)).

Note 11: This exclusion does not apply to the platforms (*e.g.,* vehicles) for which the armored plates are applied. For exclusions related to the platforms, refer to the other exclusions in this list, particularly for the category in which the platform is controlled.

The excluded defense articles include constructions of metallic or non-metallic materials or combinations thereof specially designed to provide protection for military systems. The phrase ''suitable for military use'' applies to any articles or materials which have been tested to level IIIA or above IAW NIJ standard 0108.01 or comparable national standard. This exclusion does not include military helmets, body armor, or other protective garments which may be exported IAW the terms of the AS or UK Treaty.

Note 12: Defense services or technical data specific to applied research (§ 125.4(c)(3) of this subchapter), design methodology (§ 125.4(c)(4) of this subchapter), engineering analysis (§ 125.4(c)(5) of this subchapter), or manufacturing know-how (§ 125.4(c)(6) of this subchapter) are not eligible for export under the Canadian exemptions. However, this exclusion does not include defense services or technical data specific to build-to-print as defined in § 125.4(c)(1) of this subchapter, build/design-to-specification as defined in § 125.4(c)(2) of this subchapter, or basic research as defined in § 125.4(c)(3) of this subchapter, or maintenance (*i.e.,* inspection, testing, calibration or repair, including overhaul, reconditioning and one-to-one replacement of any defective items parts or components, but excluding any modification, enhancement, upgrade or other form of alteration or improvement that changes the basic performance of the item) of non-excluded defense articles which may be exported subject to other exclusions or terms of the Canadian exemptions.

Note 13: The term ''libraries'' (parametric technical databases) means a collection of technical information of a military nature, reference to which may enhance the performance of military equipment or systems.

Note 14: In order to utilize the authorized defense services under the Canadian exemption, the following must be complied with:

(a) The Canadian contractor and subcontractor must certify, in writing, to the U.S. exporter that the technical data and defense services being exported will be used only for an activity identified in Supplement No. 1 to part 126 of this subchapter and in accordance with § 126.5 of this subchapter; and

(b) A written arrangement between the U.S. exporter and the Canadian recipient must:

(1) Limit delivery of the defense articles being produced directly to an identified manufacturer in the United States registered in accordance with part 122 of this subchapter; a department or agency of the United States Federal Government; a Canadian-registered person authorized in writing to manufacture defense articles by and for the Government of Canada; a Canadian Federal, Provincial, or Territorial Government;

(2) Prohibit the disclosure of the technical data to any other contractor or subcontractor who is not a Canadian-registered person;

(3) Provide that any subcontract contain all the limitations of § 126.5 of this subchapter;

(4) Require that the Canadian contractor, including subcontractors, destroy or return to the U.S. exporter in the United States all of the technical data exported pursuant to the contract or purchase order upon fulfillment of the contract, unless for use by a Canadian or United States Government entity that requires in writing the technical data be maintained. The U.S. exporter must be provided written certification that the technical data is being retained or destroyed; and

(5) Include a clause requiring that all documentation created from U.S. origin technical data contain the statement that, ''This document contains technical data, the use of which is restricted by the U.S. Arms Export Control Act. This data has been provided in accordance with, and is subject to, the limitations specified in § 126.5 of the International Traffic in Arms Regulations (ITAR). By accepting this data, the consignee agrees to honor the requirements of the ITAR.''

(c) The U.S. exporter must provide the Directorate of Defense Trade Controls a semi-annual report regarding all of their on-going activities authorized under § 126.5 of this subchapter. The report shall include the article(s) being produced; the end-user(s); the end-item into which the product is to be incorporated; the intended end-use of the product; and the names and addresses of all the Canadian contractors and subcontractors.

Note 15: This exclusion does not apply to demining equipment in support of the clearance of landmines and unexploded ordnance for humanitarian purposes.

As used in this exclusion, ''anti-personnel landmine'' means any mine placed under, on, or near the ground or other surface area, or delivered by artillery, rocket, mortar, or similar means or dropped from an aircraft and which is designed to be detonated or exploded by the presence, proximity, or contact of a person; any device or material which is designed, constructed, or adapted to kill or injure and which functions unexpectedly when a person disturbs or approaches an apparently harmless object or performs an apparently safe act; any manually-emplaced munition or device designed to kill, injure, or damage and which is actuated by remote control or automatically after a lapse of time.

Note 16: The radar systems described are controlled in USML Category XI(a)(3)(i) through (v). As used in this entry, the term ''systems'' includes equipment, devices, software, assemblies, modules, components, practices, processes, methods, approaches, schema, frameworks, and models.

Note 17: This exclusion does not apply to the export of defense articles previously notified to Congress pursuant to § 123.15 or § 124.11 of this subchapter. For use of the Australian and UK exemptions for congressional notification, see § 126.16(o) and § 126.17(o).

Rose E. Gottemoeller,

Under Secretary, Arms Control and International Security, Department of State.

[FR Doc. 2014–30232 Filed 12–24–14; 8:45 am]

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ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 9 and 721

[EPA–HQ–OPPT–2010–0573; FRL–9915–60]

RIN 2070–AJ73

Benzidine-Based Chemical Substances; Di-n-pentyl Phthalate (DnPP); and Alkanes, C12-13, Chloro; Significant New Use Rule

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: Under the Toxic Substances Control Act (TSCA), EPA is promulgating a significant new use rule (SNUR) to add nine benzidine-based chemical substances to the existing SNUR on benzidine-based chemical substances. With respect to both the newly-added benzidine-based chemical substances and the previously-listed benzidine-based chemical substances, this rule makes inapplicable the exemption relating to persons that import or process substances as part of an article. EPA is also promulgating a SNUR for di-n-pentyl phthalate (DnPP) and a SNUR for alkanes, C_{12-13}, chloro. These actions require persons who intend to manufacture (defined by statute to include import) or process these chemical substances for an activity that is designated as a significant new use to notify EPA at least 90 days before commencing such manufacture or processing. The required notifications will provide EPA with the opportunity to evaluate activities associated with a significant new use and, if necessary based on the information available at that time, an opportunity to protect against potential unreasonable risks, if any, from that activity before it occurs. EPA is also making a technical amendment to the codified list of control numbers for approved information collection activities so that it includes the control number assigned by the Office of Management and Budget (OMB) to the information collection activities contained in this rule.

DATES: This final rule is effective February 27, 2015.

ADDRESSES: The docket for this action, identified by docket identification (ID) number EPA–HQ–OPPT–2010–0573, is available at *http://www.regulations.gov* or at the Office of Pollution Prevention and Toxics Docket (OPPT Docket), EPA Docket Center (EPA/DC), EPA West Bldg., Rm. 3334, 1301 Constitution Ave. NW., Washington, DC. The Public Reading Room is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Public Reading Room is (202) 566–1744, and the telephone number for the OPPT Docket is (202) 566–0280. Please review the visitor instructions and additional information about the docket available at *http://www.epa.gov/dockets.*

FOR FURTHER INFORMATION CONTACT:

For technical information contact: Sara Kemme, National Program Chemicals Division (7404T), Office of Pollution Prevention and Toxics, Environmental Protection Agency, 1200 Pennsylvania Ave. NW., Washington, DC 20460–0001; telephone number: (202) 566–0511; email address: *kemme.sara@epa.gov.*

For general information contact: The TSCA-Hotline, ABVI-Goodwill, 422 South Clinton Ave., Rochester, NY 14620; telephone number: (202) 554–1404; email address: *TSCA-Hotline@epa.gov.*

SUPPLEMENTARY INFORMATION:

I. Executive Summary

A. Does this action apply to me?

These three different SNURs may apply to different entities. The North American Industrial Classification System (NAICS) codes have been provided to assist you and others in determining whether this action might apply to certain entities.

1. *Benzidine-based chemical substances.* You may be potentially affected by this action if you manufacture (defined by statute to include import), or process, including as part of an article, any of the benzidine-based chemical substances listed in Tables 1 and 2 of the regulatory text in this document. Potentially affected entities may include, but are not limited to:

- Manufacturers or processors of one or more of the subject chemical substances.
- Entities which plan to use the listed chemical substances in conjunction with apparel and other finished products made from fabrics, leather, and similar materials.
- Entities which plan to use the listed chemical substances in conjunction with paper and allied products.
- Manufacturers or processors of the subject chemical substances in printing inks. These entities may include those described by the NAICS codes 325—chemical manufacturing, 31—textile manufacturers, 316—leather and allied products manufacturers, 322—paper manufacturers, 4243 apparel, piece goods, and notions wholesalers, or 443—clothing and accessories stores.

2. *DnPP.* You may be potentially affected by this action if you manufacture (defined by statute to include import), or process DnPP. Potentially affected entities may include, but are not limited to: Chemical industry—plastic material and resins (NAICS code 325211).

3. *Alkanes, C_{12-13}, chloro (CAS No. 71011–12–6).* You may be potentially affected by this action if you manufacture or process the following short-chained chlorinated paraffin (SCCP): Alkanes, C_{12-13}, chloro (CAS No. 71011–12–6). Potentially affected entities may include, but are not limited to: Manufacturers of SCCPs (NAICS codes 325 and 325998), chemical manufacturing; including miscellaneous chemical product and preparation manufacturing; and processors of SCCPs (NAICS codes 324 and 324191), petroleum lubricating oil and grease manufacturing.

This action may also affect certain entities through pre-existing import certification and export notification rules under TSCA. Persons who import any chemical substance governed by a final SNUR are subject to the TSCA section 13 (15 U.S.C. 2612) import

certification requirements and the corresponding regulations at 19 CFR 12.118 through 12.127; see also 19 CFR 127.28. Those persons must certify that the shipment of the chemical substance complies with all applicable rules and orders under TSCA, including any SNUR requirements. The EPA policy in support of import certification appears at 40 CFR part 707, subpart B. In addition, any persons who export or intend to export a chemical substance that is the subject of a proposed or final SNUR are subject to the export notification provisions of TSCA section 12(b) (15 U.S.C. 2611(b)) (see 40 CFR 721.20) and must comply with the export notification requirements in 40 CFR part 707, subpart D.

To determine whether you or your business may be affected by this action, you should carefully examine the applicability provisions in 40 CFR 721.5 for SNUR-related obligations and with respect to benzidine-based chemical substances, the applicability provisions in Unit V. If you have any questions regarding the applicability of this action to a particular entity, consult the technical person listed under **FOR FURTHER INFORMATION CONTACT**.

B. What Is the Agency's Authority for Taking this Action?

Section 5(a)(2) of TSCA (15 U.S.C. 2604(a)(2)) authorizes EPA to determine that a use of a chemical substance is a ''significant new use.'' EPA must make this determination by rule after considering all relevant factors, including those listed in TSCA section 5(a)(2). Once EPA determines that a use of a chemical substance is a significant new use, TSCA section 5(a)(1)(B) requires persons to submit a significant new use notice (SNUN) to EPA at least 90 days before they manufacture or process the chemical substance for that use (15 U.S.C. 2604(a)(1)(B)). As described in Unit V., the general SNUR provisions are found at 40 CFR part 721, subpart A.

C. What action is the agency taking?

In a **Federal Register** proposed rule published on March 28, 2012 (77 FR 18752) (FRL–8865–2), EPA proposed three chemical specific SNURs being addressed in this final rule (Ref. 1). EPA's response to public comments received on the proposed rule appears in Unit X. Please consult the March 28, 2012 **Federal Register** proposed rule (Ref. 1) for further background information for this final rule.

These final SNURs will require persons to notify EPA at least 90 days before commencing the manufacture (including import) or processing of:

- The nine benzidine-based chemical substances identified in Table A of Unit II., which are being added to 40 CFR 721.1660 with a designation of any use as a significant new use;
- DnPP with a designation of any use other than as a chemical standard for analytical experiments as a significant new use; and
- Alkanes, C12–13, chloro (CAS No. 71011–12–6) with a designation of any use as a significant new use.

In addition, this final rule amends the SNUR at 40 CFR 721.1660 to make inapplicable the exemption at 40 CFR 721.45(f) for persons that import or process benzidine-based chemical substances as part of an article. For the benzidine-based chemical substances, the elimination of the article exemption at 40 CFR 721.45(f) will require persons to notify EPA at least 90 days before commencing processing or importing as part of an article any of the newly-added benzidine-based chemical substances, as well as those already covered (61 FR 52287, October 7, 1996 (FRL–5396–6), codified at 40 CFR 721.1660) (Ref. 2).

D. Why is the agency taking this action?

These SNURs are necessary to ensure that EPA receives timely advance notice of any future manufacturing and processing of these chemical substances for new uses that may produce changes in human and environmental exposures. The rationale and objectives for this SNUR are explained in Unit III.

E. What are the estimated incremental impacts of this action?

EPA has evaluated the potential costs of establishing SNUR reporting requirements for potential manufacturers and processors of the chemical substances included in this final rule. This analysis, which is available in the docket, is discussed in Unit IX., and is briefly summarized here. In the event that a SNUN is submitted, costs are estimated to be less than $8,700 per SNUN submission for large business submitters and $6,300 for small business submitters. These estimates include the cost to prepare and submit the SNUN and the payment of a user fee. In addition, for persons exporting a substance that is the subject of a SNUR, a one-time notice must be provided for the first export or intended export to a particular country, which is estimated to cost less than $100 on average per notification. The rule may also affect firms that import or process articles that may contain benzidine-based chemicals, because, while not required by the SNUR, these parties may take additional steps to determine whether benzidine-based chemicals are part of the articles that they are considering to import or process. Since EPA is unable to predict whether anyone might engage in future activities that would require reporting, potential total costs were not estimated.

II. Overview of the Chemical Substances Subject to This Rule

The SNURs in this final rule involve certain benzidine-based chemical substances in the existing SNUR at 40 CFR 721.1660 (Ref. 1), the nine benzidine-based chemical substances listed in Table A of this unit, DnPP (CAS No. 131–18–0), and alkanes, C12-13, chloro (CAS No. 71011–12–6).

TABLE A—NEWLY ADDED BENZIDINE-BASED CHEMICAL SUBSTANCES

CAS or accession No.	C.I. name	C.I. No.	Chemical name
117–33–9	Not available	Not available	1,3-Naphthalenedisulfonic acid, 7-hydroxy-8-[2-[4'-[2-(4-hydroxyphenyl)diazenyl][1,1'- biphenyl]-4-yl]diazenyl]-.
65150–87–0	Not available	Not available	1,3,6-Naphthalenetrisulfonic acid, 8-hydroxy-7-[2-[4'-[2-(2-hydroxy-1-naphthalenyl)diazenyl][1,1'-biphenyl]-4-yl]diazenyl]-, lithium salt (1:3).
68214–82–4	Direct Navy BH	Not available	2,7-Naphthalenedisulfonic acid, 5-amino-3-[2-[4'-[2-(7-amino-1-hydroxy-3-sulfo-2- naphthalenyl)diazenyl][1,1'-biphenyl]-4-yl]diazenyl]-4-hydroxy-, sodium salt (1:2).
72379–45–4	Not available	Not available	2,7-Naphthalenedisulfonic acid, 4-amino-5-hydroxy-3-[2-[4'-[2-[2-hydroxy-4-[(2- methylphenyl)amino] phenyl]diazenyl][1,1'-biphenyl]-4-yl]diazenyl]-6-(2- phenyldiazenyl)-.

TABLE A—NEWLY ADDED BENZIDINE-BASED CHEMICAL SUBSTANCES—Continued

CAS or accession No.	C.I. name	C.I. No.	Chemical name
Accession No. 21808 ..... CAS No. CBI (NA)	CBI	CBI	2,7-Naphthalenedisulfonic acid, 4-amino-5-hydroxy [[[(substituted phenylamino)] substituted phenylazo] diphenyl]azo-, phenylazo-, disodium salt. (generic name).
Accession No. 24921 ..... CAS No. CBI (NA)	CBI	CBI	4-(Substituted naphthalenyl)azo diphenylyl azo-substituted carbopolycycle azo benzenesulfonic acid, sodium salt. (generic name).
Accession No. 26256 ..... CAS No. CBI (NA)	CBI	CBI	4-(Substituted phenyl)azo biphenylyl azo-substituted carbopolycycloazo benzenesulfonic acid, sodium salt. (generic name)
Accession No. 26267 ..... CAS No. CBI (NA)	CBI	CBI	4-(Substituted phenyl)azo biphenylyl azo-substituted carbopolycycle azo benzenesulfonic acid, sodium salt. (generic name).
Accession No. 26701 ..... CAS No. CBI (NA)	CBI	CBI	Phenylazoaminohydroxynaphthalenylazobiphenylazo substituted benzene sodium sulfonate. (generic name).

CAS = Chemical Abstracts Services. CBI = Confidential Business Information. CBI (NA) = Confidential Business Information (Not Available). C.I. = Chemical Index.

III. Rationale and Objectives

A. Rationale

Consistent with EPA's past practice for issuing SNURs under TSCA section 5(a)(2), EPA's decision to issue a SNUR for a particular chemical use need not be based on an extensive evaluation of the hazard, exposure, or potential risk associated with that use. Rather, the Agency's action is based on EPA's determination that if the use begins or resumes, it may present a risk that EPA should evaluate under TSCA before the manufacturing or processing for that use begins. Since the new use does not currently exist, deferring a detailed consideration of potential risks or hazards related to that use is an effective use of resources. If a person decides to begin manufacturing or processing the chemical for the use, the notice to EPA allows EPA to evaluate the use according to the specific parameters and circumstances surrounding that intended use.

1. *Benzidine-based chemical substances.* As described in the proposal (Ref. 1), EPA is concerned about potential carcinogenic effects on workers and consumers from the manufacture, processing, or use of these substances. Consumers exposed via dermal exposure to consumer products containing the benzidine-based chemical substances are a particular concern because enzymes present in the human body and in bacteria on the skin aid in the reduction of these chemical substances to the benzidine unit, an established human carcinogen (Ref. 3). The main consumer products that could result in dermal exposure if containing these chemical substances include textiles and leather products because they are in prolonged contact with human skin.

During the review of information on benzidine-based chemical substances, EPA determined that the newly identified chemical substances that are being added to 40 CFR 721.1660 by this final rule present the same concerns (Ref. 4) as those of the benzidine-based chemical substances already listed in the rule ((Ref. 2)), codified at 40 CFR 721.1660). EPA does not believe there is any current use of these nine benzidine-based chemical substances within or outside the United States. This conclusion is based on a review of EPA's own Inventory Update Reporting (IUR) data, and more recent Chemical Data Reporting (CDR) data as well as other sources including the Colour Index International, published by the Society of Dyers and Colourists and American Association of Textile Chemists and Colorists; IHS Chemical Economics Handbook, Dyes; and ICIS Directory of World Chemical Producers.

In addition, as discussed earlier, although some of the benzidine-based chemical substances subject to the 1996 SNUR may be manufactured or processed outside the United States, an analysis of the benzidine-based chemical substances market (Ref. 4) revealed no information indicating import of articles containing benzidine-based chemical substances for non-excluded purposes.

Although it appears there is no ongoing domestic manufacture of the nine newly added benzidine-based chemical substances, or import for a non-excluded use of articles containing any benzidine-based chemical substances, the manufacture (including import) or processing of the nine newly added benzidine-based chemical substances and the import or processing of articles containing any benzidine-based chemical substances may begin at any time, without prior notice to EPA. Thus, EPA is concerned that commencement of the manufacture (including import) or processing for any new uses, including resumption of past uses, of benzidine-based chemical substances could significantly increase the magnitude and duration of exposure to humans over that which would otherwise exist currently. EPA is concerned that such an increase should not occur without an opportunity for the Agency to evaluate activities associated with a significant new use and an opportunity to protect against potential unreasonable risks, if any, from exposure to the chemical substance.

Accordingly, EPA is finalizing a SNUR for the nine benzidine-based chemical substances by adding them to those currently listed at 40 CFR 721.1660, and making inapplicable the article exemption at 40 CFR 721.45(f) for those chemical substances newly added in this rulemaking as well as for those already listed at 40 CFR 721.1660. This final rule will require persons who intend to manufacture (including import) or process any of the benzidine-based chemical substances for a non-excluded use, including importing or processing any listed benzidine-based chemical substance for a non-excluded use as part of an article, to submit a SNUN.

2. *DnPP.* As described in the proposal (Ref. 1), EPA has concerns regarding potential adverse human health and environmental effects that may be caused by DnPP. EPA has direct information from animal studies that DnPP specifically can elicit developmental/reproductive effects that are relevant to human health and also indicate potential effects in wildlife. EPA also is concerned that due to its general structure and categorization as a phthalate that DnPP may elicit adverse environmental effects similar to those

described for other phthalates. EPA is concerned that any manufacturing (including import) or processing of DnPP, beyond that for its limited ongoing use as a chemical standard for laboratory use, could significantly increase the magnitude and duration of exposure to humans over that which would otherwise exist currently. EPA is concerned that such an increase should not occur without an opportunity to evaluate activities associated with a significant new use and an opportunity to protect against potential unreasonable risks, if any, from exposure to the chemical substance. Accordingly, EPA is finalizing a SNUR for DnPP that would designate, as a significant new use, any use of the chemical substance other than use as a chemical standard for analytical experiments. A person who intends to manufacture or process DnPP for use other than use as a chemical standard for analytical experiments would be required to submit a SNUN.

3. *Alkanes, C12-13, chloro (CAS No. 71011–12–6).* As described in the proposal (Ref. 1), EPA has a primary concern regarding adverse environmental effects that may be caused by alkanes, C12-13, chloro (CAS No. 71011–12–6), one type of SCCP. For example, alkanes, C12-13, chloro, have been shown to be highly toxic to aquatic invertebrates following acute and chronic exposures and to fish following chronic exposures. EPA also has concerns about the persistence and bioaccumulation potential of SCCPs, including alkanes, C12-13, chloro, since these substances have been measured in a variety of biota (*i.e.,* freshwater aquatic species, marine mammals, and avian and terrestrial wildlife) and have also been measured in human breast milk from Canada and the United Kingdom. The mechanisms or pathways by which SCCPs, including alkanes, C12-13, chloro (CAS No. 71011–12–6), move into and through the environment and humans are not fully understood, but are likely to include releases from manufacturing of the chemicals, manufacturing of products like plastics or textiles, aging and wear of products like sofas and electronics, and releases at the end of product life (*e.g.,* disposal, recycling).

EPA believes that all manufacture and processing into the United States of alkanes, C12-13, chloro (CAS No. 71011–12–6) has ceased. Given that EPA has no evidence to suggest that there is any manufacture or processing of this chemical substance in the United States, and taking into consideration the negative commercial and regulatory environment associated with this chemical internationally (including the European Union (EU) and Canadian ban on marketing) and use of the alkanes, C12-13, chloro (CAS No. 71011–12–6) domestically, EPA does not expect to find such activity. However, EPA is concerned that commencement of the manufacture or processing for any new uses, including resumption of past uses, could significantly increase the magnitude and duration of exposure to humans over that which would otherwise exist. EPA is concerned that such an increase should not occur without an opportunity to evaluate activities associated with a significant new use and an opportunity to protect against potential unreasonable risks, if any, from exposure to the chemical substance. Accordingly, EPA is finalizing a SNUR for alkanes, C12-13, chloro (CAS No. 71011–12–6) that designates as a significant new use any use of the chemical substance. This SNUR requires a person who intends to manufacture or process alkanes, C12-13, chloro (CAS No. 71011–12–6) for any use to submit a SNUN.

B. Objectives

Based on the considerations described in the proposal (Ref. 1) and in the response to public comments, EPA expects to achieve the following objectives with regard to the significant new uses that are designated in this final rule:

1. EPA will receive notice of any person's intent to manufacture or process the specified chemicals for the described significant new uses before that activity begins;

2. EPA will have an opportunity to review and evaluate data submitted in the SNUN before the notice submitter begins manufacturing or processing of the specified chemicals for the described significant new use;

3. EPA will be able to regulate prospective uses of the specified chemicals before the described significant new uses occur, provided that regulation is warranted pursuant to TSCA sections 5(e), 5(f), 6 or 7; and

4. EPA would receive a notice alerting the Agency to a reversal of an industry trend toward deselecting for a chemical.

IV. Significant New Use Determination

Section 5(a)(2) of TSCA states that EPA's determination that a use of a chemical substance is a significant new use must be made after consideration of all relevant factors including:

- The projected volume of manufacturing and processing of a chemical substance.
- The extent to which a use changes the type or form of exposure of human beings or the environment to a chemical substance.
- The extent to which a use increases the magnitude and duration of exposure of human beings or the environment to a chemical substance.
- The reasonably anticipated manner and methods of manufacturing, processing, distribution in commerce, and disposal of a chemical substance.

In addition to these factors enumerated in TSCA section 5(a)(2), the statute authorizes EPA to consider any other relevant factors.

To determine what constitutes a significant new use of the benzidine-based chemical substances, DnPP, and alkanes, C12-13, chloro (CAS No. 71011–12–6) subject to this rule, EPA considered relevant information about the toxicity of these substances, likely human exposures and environmental releases associated with possible uses, and the four factors listed in section 5(a)(2) of TSCA. EPA has determined that the manufacture or processing, of any of the benzidine-based chemical substances subject to the 1996 SNUR or being newly added to 40 CFR 721.1660 by this final rule, except for ongoing uses specified in 40 CFR 721.1660(a)(2)(i) of the regulatory text in this document, is a significant new use. EPA has also determined that the manufacture or processing of DnPP for any use other than use as a chemical standard for analytical experiments is a significant new use, and the manufacture or processing of alkanes, C12-13, chloro (CAS No. 71011–12–6) for any use is a significant new use.

V. Applicability of the General Provisions

General provisions for SNURs appear under 40 CFR part 721, subpart A. These provisions describe persons subject to the rule, recordkeeping requirements, exemptions to reporting requirements, and applicability of the rule to uses occurring before the effective date of the final rule.

Provisions relating to user fees appear at 40 CFR part 700. According to 40 CFR 721.1(c), persons subject to SNURs must comply with the same notice requirements and EPA regulatory procedures as submitters of Premanufacture Notices (PMNs) under TSCA section 5(a)(1)(A). In particular, these requirements include the information submissions requirements of TSCA section 5(b) and 5(d)(1), the exemptions authorized by TSCA section 5(h)(1), (h)(2), (h)(3), and (h)(5), and the regulations at 40 CFR part 720. Once EPA receives a SNUN, EPA may take regulatory action under TSCA section 5(e), 5(f), 6 or 7 to control the activities

on which it has received the SNUN. If EPA does not take action, EPA is required under TSCA section 5(g) to explain in the **Federal Register** its reasons for not taking action.

However, 40 CFR 721.45(f) (which generally exempts persons importing or processing a substance as part of an article) will not apply to the benzidine-based chemical substances listed at 40 CFR 721.1660 and those added by this final rule. Therefore, a person who imports or processes as part of an article a benzidine-based chemical substance that is covered by this rule would not be exempt from submitting a SNUN.

Persons who export or intend to export a chemical substance identified in a proposed or final SNUR are subject to the export notification provisions of TSCA section 12(b). The regulations that interpret TSCA section 12(b) appear at 40 CFR part 707, subpart D. Persons who import a chemical substance identified in a final SNUR are subject to the TSCA section 13 import certification requirements, codified at 19 CFR 12.118 through 12.127; see also 19 CFR 127.28. Those persons must certify that the shipment of the chemical substance complies with all applicable rules and orders under TSCA, including any SNUR requirements. The EPA policy in support of import certification appears at 40 CFR part 707, subpart B.

VI. Applicability of the Final Rule to Uses Occurring Before the Effective Date of the Final Rule

As discussed in the **Federal Register** of April 24, 1990 (55 FR 17376) (FRL–3658–5) (Ref. 5), EPA has decided that the intent of section 5(a)(1)(B) of TSCA is best served by designating a use as a significant new use as of the date of publication of the proposed rule rather than as of the effective date of the final rule. If uses begun after publication of the proposed rule were considered ongoing rather than new, it would be difficult for EPA to establish SNUR notice requirements, because a person could defeat the SNUR by initiating the proposed significant new use before the rule became final, and then argue that the use was ongoing as of the effective date of the final rule. Thus, persons who begin the commercial manufacture or processing of a covered substance as a significant new use have to cease any such activity as of the effective date of the rule if and when finalized. To resume their activities, these persons would have to comply with all applicable SNUR notice requirements and wait until the notice review period, including all extensions, expires. If a person were to meet the conditions of advance compliance under 40 CFR 721.45(h), that person would be considered to have met the requirements of the final SNUR for those activities.

VII. Test Data and Other Information

EPA recognizes that TSCA section 5 does not require developing any particular test data before submission of a SNUN. There are two exceptions:

1. Development of test data is required where the chemical substance subject to the SNUR is also subject to a test rule under TSCA section 4 (see TSCA section 5(b)(1)) and

2. Development of test data may be necessary where the chemical substance has been listed under TSCA section 5(b)(4) (see TSCA section 5(b)(2)).

In the absence of a section 4 test rule or a section 5(b)(4) listing covering the chemical substance, persons are required only to submit test data in their possession or control and to describe any other data known to or reasonably ascertainable by them (15 U.S.C. 2604(d); 40 CFR 721.25, and 40 CFR 720.50). However, as a general matter, EPA recommends that SNUN submitters include data that would permit a reasoned evaluation of risks posed by the chemical substance during its manufacture, import, processing, use, distribution in commerce, or disposal. EPA encourages persons to consult with the Agency before submitting a SNUN. As part of this optional pre-notice consultation, EPA would discuss specific data it believes may be useful in evaluating a significant new use. SNUNs submitted for significant new uses without any test data may increase the likelihood that EPA would take action under TSCA section 5(e) to prohibit or limit activities associated with this chemical. SNUN submitters should be aware that EPA will be better able to evaluate SNUNs that provide detailed information on:

- Human exposure and environmental releases that may result from the significant new uses of the chemical substance.
- Potential benefits of the chemical substance.
- Information on risks posed by the chemical substances compared to risks posed by potential substitutes.

VIII. SNUN Submissions

According to 40 CFR 721.1(c), persons submitting a SNUN must comply with the same notice requirements and EPA regulatory procedures as persons submitting a PMN, including submission of test data on health and environmental effects as described in 40 CFR 720.50. SNUNs must be on EPA Form No. 7710–25, generated using e-PMN software, and submitted to the Agency in accordance with the procedures set forth in 40 CFR 721.25 and 720.40. E–PMN software is available electronically at *http://www.epa.gov/opptintr/newchems.*

IX. Economic Analysis

A. SNUNs

EPA has evaluated the potential costs of establishing SNUR reporting requirements for potential manufacturers and processors of these chemicals and for articles containing any of the benzidine-based chemical substances included in the 1996 SNUR and those newly added by this final rule when imported or processed as part of an article. These economic analyses, which are briefly summarized here, are available in the docket for this rule. EPA added additional information to the economic analysis for the benzidine-based chemical substances in response to public comments.

The costs of submission of a SNUN would be incurred when a company decides to pursue a significant new use of one of these chemicals. In the event that a SNUN is submitted, costs are estimated at approximately $8,600 per SNUN submission, and include the cost for preparing and submitting the SNUN, recordkeeping, and the payment of a user fee. Businesses that submit a SNUN are either subject to a $2,500 user fee required by 40 CFR 700.45(b)(2)(iii), or, if they are a small business with annual sales of less than $40 million when combined with those of the parent company (if any), a reduced user fee of $100 (40 CFR 700.45(b)(1)). In its evaluation of this final rule, EPA also considered the potential costs a company might incur by avoiding or delaying the significant new use in the future, but these costs have not been quantified.

B. Export Notification

EPA regulations under TSCA section 12(b) (15 U.S.C. 2611(b)) at 40 CFR part 707, subpart D require that, for chemicals subject to a proposed or final SNUR, a company notify EPA of the first export or intended export to a particular country of an affected chemical substance. EPA estimated that the one-time cost of preparing and submitting an export notification to be $84. The total costs of export notification would vary per chemical, depending on the number of required notifications (*i.e.,* number of countries to which the chemical is exported).

C. Import or Processing Benzidine-Based Chemical Substances as Part of an Article

In the case of the benzidine-based chemical substances, this rule makes inapplicable the exemption relating to persons that import or process substances as part of an article. In the proposed rule EPA preliminarily determined, based on the Agency's market research, that there was no ongoing manufacturing (including import) or processing of these chemical substances for significant new uses as part of articles or otherwise. For the nine newly-added benzidine-based chemical substances, EPA found no evidence of manufacture either domestically or abroad, and thus also no evidence of importation or processing of these chemical substances as part of articles (Ref. 1). For the majority of the 24 previously listed benzidine-based chemical substances, EPA found no evidence of manufacture, either domestically or abroad. While EPA found that some of the previously listed benzidine-based chemical substances were being manufactured domestically for discrete uses that are not subject to this SNUR, EPA found no evidence that these chemical substances were being imported or processed as part of articles (Ref. 1). EPA received no public comments indicating otherwise. Based on the global trend away from using these chemical substances, the fact that they are regulated in numerous jurisdictions, and the absence of public comments indicating their ongoing use for significant new uses, EPA is finalizing its determination that these benzidine-based chemical substances are not being manufactured (including import) or processed for a significant new use as part of articles or otherwise.

However, the rule may affect firms that plan to import or process types of articles that benzidine-based chemicals are potentially a part of. Some firms have an understanding of the contents of the articles they import or process. However, EPA acknowledges that importers and processors of articles may have varying levels of knowledge about the chemical content of the articles that they import or process. These parties may need to become familiar with the requirements of the rule. And, while not required by the SNUR, these parties may take additional steps to determine whether benzidine-based chemicals are part of the articles that they are considering to import or process. This determination may involve activities such as gathering information from suppliers along the supply chain, and/or testing samples of the article itself. Costs vary across the activities chosen and the extent of familiarity a firm has regarding the articles it imports or processes. Cost ranges are presented in the ''Economic Analysis of the Final Significant New Use Rule for Nine Benzidine Based Chemical Substances'' (Ref. 4). Given existing regulatory limitations on certain benzidine-based substances both internationally and within the U.S., industry-wide processes, resources that support companies in understanding and managing their supply chains, and evidence showing minimal worldwide availability of the dyes regulated under the SNUR, EPA believes that article importers that choose to investigate their products would incur costs at the lower end of the ranges presented in the Economic Analysis as a result of this rule. For those companies choosing to undertake actions to assess the composition of the articles they import or process, EPA expects that in all likelihood, these importers and processors would take actions that are commensurate with the company's perceived likelihood that a chemical substance might be a part of an article they intend to import into the United States and the resources it has available.

X. Response to Public Comment

The Agency reviewed and considered all comments received related to the proposed rule. Copies of all non-CBI comments are available in the docket for this action. A discussion of the major comments germane to the rulemaking and the Agency's responses follow

A. Legal Authority To Make Inapplicable the Exemption for Persons Who Import or Process Chemical Substances as Part of Articles

One commenter suggests that if chemical substances are not exempted from the SNUR at the point they are incorporated into articles, then EPA should consider whether it is inappropriately regulating ''*articles* under the *chemical* management authorities of TSCA,'' (emphasis original) inconsistent with Congressional intent in enacting TSCA. The commenter argues further that the regulation of articles is not the primary purpose of TSCA and that such regulation should be addressed by other agencies operating under other statutes such as the Occupational Safety and Health Act of 1970 and the Consumer Product Safety Act of 1972. Another comment raises similar issues.

EPA responded that the SNUR for benzidine-based chemical substances does not regulate articles per se, but rather persons who manufacture or process these chemical substances, including when the chemical substances are present as part of articles. TSCA clearly contemplates such regulation, as *certain* articles are expressly removed from TSCA jurisdiction at TSCA section 3(2). Indeed, EPA has a long history of regulating chemical substances as part of articles under TSCA. For polychlorinated biphenyls (the only chemical substance specifically addressed in TSCA as it was originally enacted), section 6(e) of TSCA provides authority for EPA to promulgate rules related to polychlorinated biphenyls in articles, such as electrical transformers. Other examples include the regulation of asbestos (40 CFR 763.160) and regulation of manufacturers of consumer products intended for use by children who also manufacture (including import) lead (40 CFR 716.21(a)(8)).

TSCA section 5 provides EPA with authority to regulate chemical substances, including chemical substances that are part of articles.[1] Under this section, EPA has previously regulated persons that import or process chemical substances as part of articles, including articles containing erionite fiber (40 CFR 721.2800) and mercury (40 CFR 721.10068). This is in keeping with the statutory language authorizing the Administrator to designate a ''use of a chemical substance as a significant new use'' and to require SNUN submissions from persons that intend to manufacture or process a chemical for a designated significant new use. The commenter is incorrect in suggesting that regulation to address chemical substances in articles is beyond the originally intended functions of TSCA. When TSCA was being drafted, legislators characterized it as ''a mechanism to protect against dangerous chemical materials contained in consumer and industrial products''; by way of example, the drafters cited ''the presence of mercury in such consumer products as paint, home thermometers, sponges, and a variety of other products.'' S. Rep. No. 94–698, 94th Cong., 2d Sess., 5–6 (1976).

Furthermore, this application of the regulations (to persons who manufacture or process the chemical substance as part of articles) is consistent with legislators' observation, in drafting this section, that:

[1] It should be noted that there is no general SNUN exemption for uses of a chemical substances involving articles and EPA routinely defines significant new uses to include use in articles. The exemption at 40 CFR 721.45(f) relates to a different question: whether the SNUR applies to persons who process or import a chemical substance by processing or importing the substance as part of an article.

[T]he most desirable time to determine the health and environmental effects of a substance, and to take action to protect against any potential adverse effects, occurs before commercial production begins. Not only is human and environmental harm avoided or alleviated, but the cost of any regulatory action in terms of loss of jobs and capital investment is minimized.

H.R. Rep. 94–1679, 94th Cong., 2d Sess., 65 (1976).

When a chemical substance is domestically produced, the substance generally exists in non-article form at the earliest point of commercial production in the United States. When a chemical substance is imported, however, it may in many instances already be part of an article, even at the earliest point that it enters U.S. commerce. By this action, EPA makes importers of specific chemical substances subject to the same SNUN requirements as domestic manufacturers of the same substance, irrespective of whether such import is as part of an article. This action is consistent with the plain text of TSCA 5(a)(1)(B) (generally, ''no person may . . . manufacture or process'' for a significant new use without proper notice) and with one of the intended goals of TSCA: to hold importers to ''the same responsibilities and obligations as domestic manufacturers,'' H.R. Rep. No. 94–1341, 94th Cong. 2d. Sess., 12–13 (1976). This action is also consistent with EPA's identified concerns regarding benzidine-based chemical substances when they are present as part of an article (See Ref. 1, pg. 18756).

Moreover, when originally promulgating the presumptive SNUN submission exemption for persons who import or process chemical substances as part of articles (40 CFR 721.45(f)), EPA did so based on a belief that people and the environment would generally not be exposed to chemical substances in articles. To address those cases where the assumption may not be valid, EPA specifically noted that, ''EPA may decide to eliminate one or all of these . . . exemptions [including the exemption for importers and processors of chemicals as part of articles] if EPA decides that review under a SNUR is warranted for specific substances . . . in articles.'' (Ref. 6). Thus, while EPA clearly has statutory authority to subject importers and processors of chemical substances in articles to SNUN requirements, they are presumptively excluded by rule at 40 CFR 721.45(f), based on an assumption that people and the environment will generally not be exposed to substances in articles. (Ref. 6). To the extent that potential exposure to a chemical substance as part of an article contributes to the EPA's determination pursuant to the factors in section 5(a)(2) of TSCA that the new use is significant (*i.e.,* EPA has reason to anticipate that use as part of an article would raise important questions, related to potential exposure, that EPA should have an opportunity to review before such use could resume or occur), it is appropriate to make the exemption inapplicable.

EPA notes that one of the commenters appears to have conflated the **Federal Register** notice establishing the article importers' and article processors' exemption from PMN requirements (Ref. 7), discussing 40 CFR 720.22(b)) with another **Federal Register** notice establishing the comparable exemptions from SNUR requirements (Ref. 6), discussing 40 CFR 721.45(f)). While EPA recognizes that parts 720 and 721 deal with many similar issues, they are also distinct from each other in important respects. It is significant that in the 1984 action, whereby EPA established the article importers' and article processors' exemption for SNURs, it did not simply mirror the 1983 rationale for the comparable exemption from PMN obligations. For PMNs, EPA noted the difficulties associated with determining the identity and Inventory status of each chemical substance in imported articles (*e.g.,* automobiles) (Ref. 7). But for SNURs, EPA placed special emphasis on its assumption that import of the substance as part of an article would not affect human or environmental exposure to the substance, while taking particular care to reserve ongoing discretion to revise its assumption as warranted in the case of specific substances. EPA had reason to differentiate between the two rationales. SNURs are for specified chemical substances for which EPA has identified exposure-based concerns for the defined significant new use (per the TSCA section 5(a)(2) factors). By contrast, PMNs are required for all new chemicals (*i.e.,* those not on the TSCA inventory), not a specified set of chemicals.

Finally, there is no basis for the commenter's suggestion that EPA should decline to review significant new uses, in deference to the Occupational Safety and Health Administration (OSHA) or the Consumer Product Safety Commission (CPSC), simply because a significant new use notice would be submitted by a person who imports or processes the chemical substance as part of an article. Neither the Occupational Safety and Health Act of 1970 nor the Consumer Product Safety Act of 1972 contains a comparable mechanism to ensure advance notice and opportunity to review significant new uses of chemical substances, as part of articles or otherwise.

B. Development of a Separate Policy Framework for Making Inapplicable the Exemption for Persons Who Import or Process Chemical Substances as Part of Articles

1. *Comment.* Some commenters suggest that before finalizing a rulemaking to make the ''articles exemption'' inapplicable to the benzidine-based chemical substances, the EPA should complete a separate public comment process to develop a general ''policy framework for the issuance of article SNURs.'' Commenters suggest that this policy framework should include science based criteria, feasibility criteria, costs, and other factors.

One comment suggests that, in formulating the ''policy framework'' or criteria for making the exemption for importers and processors of chemical substances as part of articles inapplicable, EPA should address the following questions:

- Can the risk posed by the chemical of concern be addressed through the standard regulation?
- Why is the standard approach for SNURs that exempts articles not sufficient?
- What conditions make direct regulation of articles necessary?
- What gaps in health and environmental protection are likely to occur if a SNUR only regulates chemicals and mixtures?

Response. The comments conflate two separate issues: The determination of a significant new use under TSCA section 5(a)(2), and the decision to make the regulatory exemption at 40 CFR 721.45(f) inapplicable. (40 CFR 721.45(f) provides that persons who import or process a chemical substance as part of an article are not subject to the notification requirements at 40 CFR 721.25; this exemption is referred to as the ''articles exemption'' by some commenters). EPA first makes a determination on whether a use of a chemical substance is a significant new use considering the factors listed in TSCA section 5(a)(2). Once that determination is made, EPA separately determines whether it would be appropriate to revoke the regulatory exemption at 40 CFR 721.45(f) for persons who import or process a chemical substance as part of an article.

EPA notes that there may be a variety of cases in which it may be appropriate for EPA to include persons who import or process the chemical substance as

part of an article among the persons subject to SNUN submission obligations. Knowledge regarding chemical exposures from articles has evolved since the Agency established the exemption at 40 CFR 721.45(f) in 1984, and there has been a steady increase in international trade of chemicals in articles. Accumulated data illustrate that SNURs (and section 5(e) consent orders) that include the exemption for persons who import or process a chemical substance as part of an article are sometimes insufficient to appropriately flag significant new exposures from downstream uses. For example, there have been instances in which a section 5(e) consent order for a new chemical substance was issued, prohibiting the release of the chemical substance to water, and yet the chemical substance at issue was later found in the environment and biota. The presence of the chemical substance in the environment and in biota then appears to be associated with the use of the substance in articles (Ref. 8). There are also documented exposures (and resulting toxicity) of children to lead and cadmium and their compounds from a variety of articles, such as toys (Ref. 9), and exposures to other heavy metals from articles, as measured in indoor air and house dust samples, which are direct routes of exposure accounting for children's levels and toxicity (Ref. 10). Other well-documented examples are the presence of brominated flame retardants (*e.g.,* polybrominated diphenyl ethers and brominated phthalates and benzoates) in samplings of articles, indoor air, people, and house dust. The low exchange rate of indoor air and house dust to sources outside the home support the flame retardant release from articles postulate. Likewise, other semi-sealed environments, such as automobiles, have demonstrated migration of flame retardants from treated articles to interior surfaces and indoor air, as no other source was possible. In addition, high flame retardant levels have been observed in biota raised in proximity to articles and living near article recyling sites. Further, observed flame retardant levels in biota and in the environment at locations remote from manufacturing sites suggest transport of these non-volatile chemical substances on associated particulate matter from distributed treated articles, which strongly suggest release from articles as one potential source (Ref. 11–15).

The information discussed in this unit—the well-documented exposures (and resulting toxicity) of children to lead, cadmium, and other metals from a variety of articles; the data on other chemicals used in articles; and the presence in the environment and biota of certain brominated flame retardants (*e.g.,* polybrominated diphenyl ethers and brominated phthalates and benzoates)—all illustrate that there can be exposure to the chemicals associated with their presence in articles (Refs. 9–15).

The scope of the suggested criteria (which the commenters suggest EPA should now develop to govern its exercise of its authority to make the exemption at 40 CFR 721.45(f) inapplicable) is incommensurate with the level of analysis supporting the original development of the exemption. EPA notes that TSCA section 5(a)(1) establishes a general prohibition on manufacturing or processing a chemical substance for a significant new use without prior notice to EPA. 40 CFR 721.45(f) establishes an exemption from this prohibition, but it is based on a fairly minimal rationale: ''EPA believes people and the environment will generally not be exposed to substances in articles.'' (Ref. 6). EPA counterbalanced its reliance on this generalized assumption (about all chemicals that exist as part of articles) with a broad reservation of case-by-case discretion to make the exemption inapplicable as ''warranted for specific substances.'' (Ref. 6).

EPA does not think that development of a ''policy framework'' is necessary before reaching the conclusion, with respect to benzidine-based chemical substances, that persons who import or process these substances as part of articles should be subject to the notification provisions of 40 CFR 721.25. Dermal exposure can occur from the leaching of the benzidine-based chemical substances by sweat in contact with the dyed textiles (Ref. 1)). In addition, data indicate that exposure to other chemicals in materials such as textiles and foam can result from the dust that is generated from abrasion and/or degradation of the materials (Ref. 16). EPA notes that the commenter did not offer data to undercut the conclusion that such exposure can occur. Because of this information, and other information described in Unit III.E. of the (Ref. 1), EPA does not assume that new types or forms of exposure associated with new use of benzidine-based chemical substances would be insignificant merely because the chemical substance is imported or processed as part of an article. Thus, EPA does not believe the default assumption used to support 40 CFR 721.45(f) (that people and the environment will generally not be exposed to substances in articles) holds with respect to benzidine-based chemical substances.

2. *Comment.* Comments also suggest that EPA analyze the ''variety of products'' that could be construed as articles, the ''practical questions that will arise'' if the import and processing of such products were not exempt from SNURs, and the ''unique channels of trade,'' through which different varieties of products move. Commenters encouraged EPA to develop and articulate publicly a policy framework, considering the following factors on an article-specific basis, before proceeding to revoke the article exemption with respect to a particular chemical substance:

- Whether there is, or will be, direct exposure to the chemical substance in the article during the course of the article's use.
- Whether there is, or will be, a release of the regulated substance, or a metabolite or breakdown product from the substance, during subsequent processing, distribution, use or disposal of the article.
- Whether there is, or will be, a link between import or export of an article and cross-border exposure to the U.S. population.

Response. Given the variety of substances and uses addressed under SNUR regulations, EPA believes it is more efficient to address article-specific issues as they actually arise within each regulatory action than to develop, as suggested by the commenter, an anticipatory ''policy framework'' document.

The importers and processors of chemical substances present in articles are generally in the best position to know which chemical substances are used in which types of articles. When EPA identifies a particular chemical substance in a SNUR, such stakeholders have an opportunity to identify, in their public comments, any article-specific issues that concern them. Furthermore, these issues are likely to be more accurately identified and more appropriately addressed in connection with the development of a SNUR for particular chemical substances than they would be if they were reviewed generically. In this case, commenters did not raise any issues specific to certain articles.

C. A Compelling Basis Standard for Making Inapplicable the Exemption for Persons Who Import or Process Chemical Substances as Part of Articles

1. *Comment.* Some commenters made the point that revocation of the exemption at 40 CFR 721.45(f) should

not be a presumed component of all SNURs. This was part of a broader comment that EPA should not make this exemption inapplicable unless there was a ''compelling basis'' to do so. One commenter was concerned that if EPA proceeds on a case-by-case basis, following reasoning that ''could be applied to many chemicals,'' then elimination of the exemption would come to be a ''kind of 'default' step'' in future SNURs. One commenter also argues that, where the SNUN submission requirement is to apply to importers and processors of substances as part of articles, the TSCA section 5(a)(2) criteria require EPA to undertake a compelling analysis of how the use and distribution of the ''specific articles or article categories,'' would ''contribute to potential exposures of concern.''

Response. As an initial matter, the comments conflate two separate issues: The determination of a significant new use under TSCA section 5(a)(2), and the decision to make the regulatory exemption at 40 CFR 721.45(f) inapplicable. The TSCA section 5(a)(2) factors do not impose a ''compelling analysis'' requirement on the elimination of the 40 CFR 721.45(f) exemption because (among other reasons) these two actions concern two discrete issues. The section 5(a)(2) factors speak to the significant new use itself. 40 CFR 721.45(f) speaks to who is required to notify EPA of the significant new use.

In this case, EPA identified its reasons, under the TSCA section 5(a)(2) factor analysis, to anticipate that the new use would pose important new questions related to the substances' potential to threaten health or the environment (Ref. 1, pg. 18756), and that EPA should have an opportunity to consider those questions before such use could occur. (In essence, a SNUR puts a particular set of uses on the same footing as a new chemical, which is subject to automatic review under TSCA section 5(a)(1) unless EPA specifically excludes it from such review.) EPA also identified a basis, specific to benzidine-based chemical substances, to question the assumption that people and the environment will generally not be exposed to the chemical substances in articles. Therefore, EPA is also making inapplicable the exemption at 40 CFR 721.45(f) for persons who import or process a chemical substance as part of an article. No commenter provided data or other information to undercut the factual basis for either decision.

Neither TSCA nor the implementing regulations for SNURs establish a separate ''compelling basis'' standard, either with respect to the determination of a significant new use or with respect to the decision to make the exemption at 40 CFR 721.45(f) inapplicable. Nor have commenters identified a persuasive basis for EPA to adopt such a standard under either scenario.

EPA's specific action with respect to benzidine-based chemical substances is not, as commenters suggest, tantamount to the presumptive revocation of the SNUN submission exemption for importers and processors of chemical substances as part of articles in all future instances. EPA has not proposed to globally modify or eliminate the SNUR exemption for persons who import or process chemical substances as part of articles. EPA need not presently address the merits of an action it is not presently taking, and did not previously propose to take.

TSCA sections 5(a)(2)(B) and (C) require EPA to consider the extent to which a new use ''changes the type or form of exposure'' or ''increases the magnitude and duration of exposure'' before making a determination that a particular use is a ''significant new use.'' EPA disagrees that it must therefore, as one commenter suggests, conduct a multiplicity of separate significant new use analyses whenever the use under consideration involves an article (*i.e.,* one for each specific article or article category, comparing the relative significance of each particular article or article category). In particular, the commenter's interpretation of TSCA section 5(a)(2) misconstrues the baseline against which the ''newness'' and the ''significance'' of a significant new use are evaluated. As EPA has long maintained, the single analytical baseline is the set of uses that were ongoing ''as of the date of publication'' of the SNUR proposal. (See *e.g.,* Ref. 1).

Furthermore, the particular analytical standards the commenter suggests are not commensurate with the establishment of a one-time notice requirement intended to give EPA an opportunity to later evaluate the need for testing or other regulatory action under TSCA. Requiring upfront answers to the very questions EPA would evaluate after receiving a significant new use notice, as a pre-condition of requiring the notices, would undermine the statutory authorization to issue SNURs in the first place. EPA's decision to propose a SNUR for a particular chemical use and to make the exemption at 40 CFR 721.45(f) inapplicable to that SNUR need not be based on an extensive evaluation of the hazard, exposure, or potential risk associated with that use. Rather, the Agency is acting because it has reason to anticipate that such use would raise important new questions related to the substance's potential to threaten health or the environment, and that EPA should have an opportunity to consider those questions before such use could occur. Since the use designated as a significant new use does not currently exist, deferring a detailed consideration of potential risks or hazards related to that use is an effective use of resources. If a person decides to begin manufacturing or processing the chemical for the significant new use, in articles or otherwise, the notice to EPA allows EPA to evaluate the use according to the specific parameters and circumstances surrounding that intended use.

Even if it were appropriate to construe the decision to make the 40 CFR 721.45(f) exemption inapplicable as a subcomponent of the significant new use determination under section 5(a)(2) (rather than as a subsequent determination), EPA adequately considered the section 5(a)(2) factors.

The first factor is the ''projected volume of manufacturing and processing of a chemical substance'' (TSCA section 5(a)(2)(A)). EPA projects that these substances will not be manufactured or processed at any volume for the new uses in question and notes that for the newly proposed nine benzidine-based chemical substances, data reported to EPA for the 2012, 2006, 2002, and 1998 reporting cycles, as required by the TSCA IUR rule, indicate no evidence of manufacture (including import) (Refs. 1 and 17). Any increase in the projected volume of manufacturing (including import) or processing of these substances, beyond the very limited uses currently ongoing, would reflect a significant departure from prior trends. Given that these chemical substances are anticipated to metabolize to the parent benzidine molecule, which is a known human carcinogen, EPA anticipates that information presented in the SNUN on the quantities manufactured (including imported) and processed of benzidine based chemical substances would be important to EPA's overall evaluation of whether the new use may present an unreasonable risk to human health or the environment. The necessary increase in volume of this substance from any new use weighs in favor of determining that the new use is a significant new use.

The second factor is ''the extent to which a use changes the type or form of exposure of human beings or the environment to a chemical substance'' (TSCA section 5(a)(2)(B)). For the newly added benzidine-based chemical substances, a general market review on

these chemical substances indicates no current manufacture within or outside the United States. Although some of the chemical substances subject to the 1996 SNUR may still have certain limited ongoing uses (*e.g.,* as a test reagent, lab standard, or microscopy stain), such uses are expected to be confined to limited laboratory or technical applications that are not expected to represent an appreciable amount of overall exposure. Furthermore, EPA did not find evidence of actual ongoing importation or domestic production for these uses. No comments provided evidence of ongoing manufacture (including import) or processing of these chemical substances as part of articles or otherwise. Thus, EPA believes that there is no, or almost no, current exposure to these chemical substances in the United States.

Should a significant new use be planned, EPA anticipates that the new use would raise important new questions such as the following:

- To what extent would the use be expected to involve dermal contact with the substance?
- Would the substance be used in a setting where oral exposure is likely (*e.g.,* would young children be able to mouth the article)?
- How would potential occupational exposures and releases to the environment over the substance's lifecycle be expected to be managed?

Given that these chemical substances are anticipated to metabolize to the parent benzidine molecule, which is a known human carcinogen, EPA anticipates that the answers to such questions would be important to EPA's evaluation of whether the new use may present an unreasonable risk to human health or the environment. The potential for a new use to change the type or form of exposure weighs in favor of determining that the new use is a significant new use.

The third factor is ''the extent to which a use increases the magnitude and duration of exposure of human beings or the environment to a chemical substance'' (TSCA section 5(a)(2)(C)). Should one of the designated significant new uses be planned, EPA anticipates that the planned new use would raise important new questions relating to the concentration in which the substance would be used, the potential for repeated exposure, and the potential for continuous exposure. Given these chemical substances are anticipated to metabolize to the parent benzidine molecule, which is a known human carcinogen, EPA anticipates that the answers to these questions would be important to EPA's overall evaluation of whether the new use may present an unreasonable risk to human health or the environment. EPA also notes that dermal exposure can occur from the leaching of the chemical substances by sweat in contact with the dyed textiles (Ref. 1). Because of this information, and the information described in Unit III.E. of the proposal (Ref. 1), EPA does not assume that new types or forms of exposure associated with new use of these substances would be insignificant merely because they relate to new use in an article or because the pertinent manufacturing or processing of the substance occurred as part of an article. The potential for activities related to a new use to increase the magnitude and duration of exposure weighs in favor of determining that any non-ongoing use is a significant new use.

The fourth factor is ''the reasonably anticipated manner and methods of manufacturing, processing, distribution in commerce, and disposal of a chemical substance'' (TSCA section 5(a)(2)(D)). EPA anticipates that any new use, beyond the very limited uses currently ongoing, would raise important new questions such as the following:

- To what extent can the anticipated manufacturing, processing, distribution in commerce, and disposal of the chemical substance be expected to result in worker exposure, user exposure, or release of the chemical substance to the environment?
- What potential controls are available to limit such releases?

Given these chemical substances are anticipated to metabolize to the parent benzidine molecule, which is a known human carcinogen, EPA anticipates that the answers to these questions would be important to EPA's overall evaluation of whether the new use ''may present an unreasonable risk to human health or the environment.'' The potential for manufacturing, processing, distribution in commerce or disposal of these benzidine-based chemical substances to change the overall exposure picture weighs in favor of determining that consumer textile use is a significant new use.

After considering each of the four TSCA 5(a)(2) factors, EPA has concluded that the factors taken together weigh in favor of determining that manufacture or processing of these benzidine-based chemical substances for any non-ongoing use would be a significant new use such that the Agency should have an opportunity to analyze the new use before such use (and potential exposures) occurs. This determination would still hold even if one were to consider the 40 CFR 721.45(f) exemption as a subcomponent of the significant new use determination under section 5(a)(2).

D. Narrowing the Scope of SNURs Where the Exemption for Importers and Processors of Chemical Substances as Part of Articles Is Made Inapplicable

Some comments suggest that significant new uses should not be ''open-ended'' but instead must be targeted to specific articles, particularly in cases where the exemption at 40 CFR 721.45(f) is made inapplicable. The concern expressed is that if the SNUN applies to ''any use of a substance, then regulated parties and the EPA would be obligated to proceed through the SNUR process for an article that would have little relevance to the perceived hazard that drove the original SNUR.'' The commenter further writes that ''open-ended article SNUR's can trigger reviews for articles that may have no relationship to the hazard or exposure concerns that motivated EPA's decision to initiate the rule.''

EPA's concern with these benzidine-based dyes is not limited to certain exposure pathways to specific articles. EPA's concern is specific to the benzidine-based dyes and thus to the range of exposures that could occur for these chemical substances. The preamble of the proposed rule notes multiple potential routes and sources of exposure including inhalation, skin absorption via dyed textiles, and ingestion. (Ref. 1). Furthermore, SNURs need not be narrowly focused on the mitigation of currently foreseeable exposure scenarios—it is proper that they will also ensure EPA has timely notice of future (and currently unforeseeable) exposure scenarios. An additional requirement to make targeted predictions of the particular uses that ''may be proposed in the future'' would undermine this intended function of the SNUR.

More generally, an exhaustive list of all applications that could possibly fall within the ambit of a significant new use definition is not a prerequisite for issuing a SNUR. Since the significant new use does not currently exist, deferring a detailed consideration of potential risks related to the importation or processing of these chemical substances (including as part of articles) is an effective use of resources. If a person decides to begin importing or processing the chemical, as part of an article or otherwise, the notice to EPA allows EPA to evaluate the significant new use according to the specific parameters and circumstances surrounding that intended use.

E. EPA Should Have a Reasonable Basis To Conclude That Identified Articles Would Be Distributed in the United States

One comment states that ''EPA presents an exposure-based rationale for why certain articles could be a concern, but indicates that there is no current expectation that these chemical substances will be used in such articles.'' The commenter believes that before issuing an article SNUR, EPA should have a reasonable basis to conclude that identified articles of concern would be distributed in the United States. The commenter contends that EPA should identify an article containing such a chemical that is currently in global commerce and explain why it is likely to be distributed in the United States. The commenter believes that it might also be possible to identify an article at the research and development stage that is likely to proceed to commercial development. Without such findings, however, the commenter is concerned that EPA would be issuing an article SNUR for a situation that presents no current or likely future threats to health or the environment, and thus that the rule would be a waste of public resources. Another comment raises similar issues, arguing that EPA should provide even more specific information on how the significant new uses contribute to risk.

Alternatively, the first commenter suggests that EPA include a specific provision suspending enforcement of the SNUR until a determination is made that there is a reasonable basis to believe that an article containing the specific chemical had been, or would be, distributed in the United States.

EPA disagrees with the suggestion to limit the application of SNUN submission requirements for importers and processors of the chemical substances as part of articles to situations where importation or processing as part of an article is known to be imminent. SNURs address situations in which EPA is concerned about the potential for use to commence without prior opportunity for review and risk management action where appropriate. For purposes of SNURs, EPA cannot be expected to predict specific situations where new uses may be imminent, or how those specific uses may contribute to risk, before designating significant new uses. The purpose of a SNUR is to obtain such information so that EPA can evaluate risks associated with, and take risk management action where appropriate regarding, any notified activities. These rules serve the important function of alerting EPA when a significant new use is intended. Without them, EPA would have no expectation of timely identification of new uses of these chemicals. Notice relating to the import or processing of articles is particularly important in this case, as the proposal specifically identified a concern related to the potential for dermal exposure via dyed articles (*i.e.,* from the leaching of the benzidine-based chemical substances by sweat in contact dyed articles, such as textiles). (Ref. 1).

It would not be an efficient use of government resources for EPA to continually monitor global commerce to try to predict which chemicals are about to be imported as part of articles (but have not yet been imported) into the United States. Persons who wish to manufacture (including import) or process these chemical substances for a significant new use, as part of an article or otherwise, are in a better position than EPA to evaluate when they are about to initiate a particular significant new use.

Given that SNURs cannot be issued for ongoing uses, the commenter's suggestion (that EPA must itself make an upfront demonstration that a particular new use is *about to begin,* to secure the opportunity to be notified of when significant new uses involving importation or processing of chemical substances as part of articles are about to begin) is impracticable. It would likely result in a scenario in which an otherwise significant new use would be allowed to commence prior to the issuance of a SNUR proposal, thereby placing that use outside of EPA's SNUR authority. Furthermore, EPA has already considered and rejected (in 2006, following public comment on a 2004 proposal) the position that it must defer revocation of the 40 CFR 721.45(f) exemption for a SNUR until it appears likely ''that these chemical substances will be imported as part of articles.''(Ref. 18). EPA concluded in 2006, after a re-evaluation of the issue prompted by public comments, that ''if the subject substances when imported as a part of articles are not subject to the SNUR, EPA could miss the opportunity to obtain notifications that would provide information of potential regulatory and assessment value.'' (Ref. 19)(ultimately declining to make the exemption inapplicable, based on a separate concern that the use with respect to articles appeared to be already ongoing).

Finally, for essentially the same reasons as set forth in this unit, EPA believes it would be inappropriate to follow one commenter's alternative suggestion: To promulgate a SNUR without the exemption for importers and processors of chemical substances as part of articles, while somehow ''suspending enforcement'' until the precise moment that manufacture or processing for a significant new use as part of an article is about to begin, but has not yet begun.

In sum, EPA believes commenter's suggestions would turn the regulatory process on its head. EPA would likely need to already have a SNUR in place in order to obtain the kind of timely information about significant new use that the commenter asserts should be prerequisite to issuing the SNUR in the first place.

F. Intended Coverage of the Benzidine-Based Chemical Substances SNUR

1. *Comment.* One commenter writes that ''A proposed rule offering a clear explanation of what uses EPA intends to cover, including an explanation of the alternatives if certain situations are unclear, will greatly increase the chances that useful information about business practices and common terms of art in an industry will be identified.'' EPA should define the scope of the uses to be regulated as clearly and precisely as possible.

The commenter also contended that soliciting public comment on the appropriate scope of new uses to be regulated, for a specific chemical substance, constitutes ''an abdication of the role that EPA should be undertaking.'' The commenter suggests that before soliciting public comments, EPA should have first pursued an informal coordination with downstream industries and (as necessary) an exercise of its ''ample authority under TSCA, either through regulatory action under section 8 or order authority under section 11(c).'' Finally, the commenter suggests that to the extent the proposed significant new uses admit ambiguity or potential need for adjustment in response to public comment, that is evidence that EPA ''should have learned more about the uses'' before issuing the proposal and is improperly seeking ''to shift the responsibility to stakeholders.''

Response. The description of the scope of the significant new uses in the benzidine-based chemical substances proposed SNUR and the Agency's basis for the proposal were explicit. The SNUR proposal fairly apprised stakeholders as to the chemical at issue and the particular concerns driving the proposed action. It further indicated that based on information available to EPA, the significant new uses identified are not currently on-going. Stakeholders had an opportunity to oppose any of these preliminary findings by supplying

countervailing information thorough the rulemaking process itself. Grafting additional pre-proposal steps onto the SNUR rulemaking process would be unnecessarily time-consuming and an unsound use of agency resources. The timelier, less resource-intensive, and more transparent process is for interested stakeholders, through the public comment process itself, to simply provide any pertinent countervailing information they wish to add to the initial collection of information EPA presented in the proposal.

As noted earlier, TSCA section 5(a)(2) does not compel nor contemplate an article by article analysis to identify every conceivable significant new use of a chemical substance. EPA evaluates whether a new use is ''significant'' consistent with the evidence of Congressional intent underlying the enactment of TSCA. See H.R. Rep. No. 94–1341 at 24 (1976) (''[B]ecause of the nature of a substance, it is possible that any new use of it will be significant. Thus, a potentially dangerous substance which is manufactured for a particular use may, if manufactured for a different use present additional health or environmental problems and consequently there should be notice of the intent to manufacture it for such different use.'' H.R. Rep. No 94–1679 at 66 (1976) (''[T]he conferees intend that any potential threats to health or the environment from the manufacture, processing, distribution in commerce, or disposal of a substance associated with a new use be considered by the Administrator when determining the significance of a new use.'') Finally, a broad construction of the significant new use is particularly appropriate where (as in the case of benzidine-based dyes) any increase in the projected volume of manufacturing (including import) or processing of these substances, beyond the very limited uses currently ongoing, would reflect a significant departure from prior trends.

2. *Comment.* ''It does not make sense to issue article SNUR's [*sic*] for full size machines or structures. An article SNUR should focus on the specific components of more complex machines or structures that involve the chemical of concern.''

Response. The commenter neither explains what the commenter means by ''full size,'' nor offers any specific evidence to support their general view that new uses of chemical substances in ''full size machines or structures,'' are any less likely to be significant than new uses of chemical substances in ''specific components.'' Nor does the commenter indicate why persons who import or process chemical substances as part of articles would be more likely to be importing or processing the chemical substances for use in ''full size'' articles. Attempting to define and distinguish between ''full size'' article uses and other uses, and correlating such distinctions to whether persons are importing or processing these chemical substances as part of articles, would delay the rulemaking and increase its complexity, in a manner that does not seem warranted on the basis of the limited information supplied in the comment.

3. *Comment.* ''Chemicals used in articles may sometimes be incorporated into 'internal' mechanisms of the article that are unlikely to come into contact with people or be released into the environment during normal use of the article.''

Response. The commenter does not explain why the basis for a SNUR should be limited to those exposures that occur concurrent with the article fulfilling its intended function, when TSCA section 5(a)(2)(D) contemplates that EPA will consider the value of ensuring it has a future opportunity to review the whole life-cycle impact (*e.g.,* ''manufacturing, processing, distribution in commerce, and disposal'') of a significant new use of a chemical substance. The exposure to the chemical substance, including when it is in an article, may be larger during disposal or recycling than during the ''normal use'' of the chemical. Further, chemical substances that are 'internal' to an article may still result in exposure if the chemical substance has certain physical- chemical properties (*e.g.,* a relatively volatile chemical used as a plasticizer in interior automobile parts) or due to abrasion of the article (*e.g.,* a dye incorporated into furniture covering.)

Nor does the commenter indicate why persons who import or process chemical substances as part of articles would be more likely than any other manufacturers or processors to be manufacturing or processing for use in the internal mechanisms of articles. Attempting to define and meaningfully distinguish between ''internal'' article uses and other uses, and correlating such distinctions to whether manufacturing or processing of the substance occurs as part of an article, would delay the rulemaking and increase its complexity, in a manner that does not seem warranted on the basis of the limited information supplied in the comment.

4. *Comment.* ''EPA should clarify whether the SNUR applies to articles containing the chemical of concern in a solid, liquid, particle or gaseous form.''

Response. This SNUR applies to the chemical substances regardless of form. To the extent the commenter seeks to continue some aspect of the exemption at 40 CFR 721.45(f), depending on the form of the chemical substance in the article that is being imported or processed, the commenter has not offered any specific support for that proposition, either generally or in any particular case. In the SNUR at issue, EPA does not believe it is prudent to limit the application of the rule based on the form (solid, liquid, or gaseous) of the chemical substances at issue. Chemicals that may have been used in one form during the manufacture of the article may be released from the article in a different physical form. Also, fluids and particles are not covered under the applicable definition of article at 40 CFR 704.3. EPA received no comments suggesting that use of these chemicals in one form or another may not be significant based on the TSCA section 5(a)(2) factors. Moreover, information relevant to a specific form of a chemical substance can be submitted in a SNUN and may be considered by EPA in review of that SNUN in determining whether follow-up action is warranted, and may support EPA's amendment of the SNUR to limit its scope.

5. *Comment.* ''[A] chemical may be present at a very low concentration that is unlikely to be associated with a risk warranting EPA risk management action. . . . EPA should consider whether it can establish a *de minimus* exclusion [from the SNUR].''

Response. EPA notes that the SNUR already contains a general exemption for unintentionally present impurities at 40 CFR 721.45(d). To the extent chemical substances are intentionally added to articles at very low concentrations, the question of whether the substance warrants risk management action is one that EPA can address upon receipt of the SNUN, not an analytical prerequisite to deciding whether it should receive the SNUN in the first place.

G. Screening for Benzidine-Based Chemical Substances

Some commenters faulted the proposal for not identifying precise screening operations to be taken in response to the SNUR, and for not conducting additional analyses of the cost and feasibility of such screening operations. One commenter suggests, in particular, that an article importer should be deemed in compliance with the SNUR if the chemical is present below an established *de minimis* level (based on mass or concentration), or if it simply does not know the article's

content after conducting a reasonable inquiry for such information.

With respect to processors, given the requirements of 40 CFR 721.5(a)(2), a processor of the chemical substance should have received notification that the chemical substance is the subject of a SNUR. A processor is not required to submit a SNUN for its unknowing processing of a chemical substance subject to a SNUR if (upon obtaining knowledge) the processor can document that when the past processing occurred, the processor neither knew the chemical identity of the substance it was processing nor knew that substance was subject to a SNUR. See 40 CFR 721.5(c). EPA would generally expect that processors would only fail to be aware of the presence of a chemical subject to a SNUR if the manufacturer (including importer) or upstream processor of the chemical substances failed to meet their obligations under 40 CFR 721.5(a)(2).

With respect to importers, EPA disagrees that it would be appropriate or necessary for the SNUR itself to define screening procedures to be employed for compliance purposes. The Agency did not propose to require a particular screening procedure and, for the following reasons, it does not agree that particular screening procedures should be specified and incorporated into the final rule.

First, EPA believes that adding these sort of screening-effort exemptions, specifically for importers of chemical substances as part of articles, would be especially difficult to reconcile with the general statutory prohibition (under TSCA section 5(a)(1)) on manufacturing or processing a chemical substance for a significant new use without prior notice to EPA. The issue under the statute is whether or not an importer actually imports a substance. This is a separate question from the importers' level of knowledge or level of effort to obtain knowledge respecting the content of the imports.[2] With respect to SNURs, EPA notes that its direct rulemaking authority is to identify significant new uses under section 5(a)(2). The Agency has been appropriately cautious in exercising its implicit rulemaking authority to limit the applicability of section 5(a)(1). EPA recognizes that it did previously exercise such implicit rulemaking authority when establishing 40 CFR 721.45(f). However, as noted in this unit, the exemption at 40 CFR 721.45(f) was established along with a broad reservation of authority to withdraw the exemption where, as here, it is inaccurate to assume that there would not be exposure to the substance simply because it is present as part of an article. And a screening-effort exemption is especially difficult to reconcile with the statute in the case of importers. With importers, unlike with processors, there are no upstream entities with a duty under TSCA to notify importers of the presence of a chemical substance subject to a SNUR.

Second, establishing a safe-harbor for importers based on lack of knowledge would create incentives for foreign suppliers to deliberately withhold information from importers. This could greatly reduce the efficacy of this SNUR. Currently, when an importer wishes to import a substance it knows would be subject to notification requirements, but for which the chemical identity is claimed as CBI by a foreign manufacturer, EPA's longstanding practice when reviewing PMNs and SNUNs is to accept the relevant information on chemical identity directly from the foreign manufacturer. See, (Ref. 7)(''[t]he principal importer need not know the specific chemical identity of the imported substance'' and ''may have its foreign manufacturer or supplier, or some other person, report the chemical identity to EPA.'') Offering an outright regulatory exemption to an importer simply because it is ignorant of the existence of a SNUR-regulated substance in the imported article (after conducting a prescribed inquiry) would allow foreign suppliers to short-circuit this process simply by refusing to divulge to the importer whether the import contains a chemical substance subject to SNUR.

Third, to the extent the chemical substance subject to the SNUR is only ''unintentionally present'' at the point of foreign manufacture, it is already exempt from reporting by the importer as an imported impurity. See 40 CFR 721.3 (chapeau), 40 CFR 720.3(m), and 40 CFR 721.45(d). Thus, importers are not required to submit a SNUN for a substance based simply on that substance's presence as an impurity (*i.e.,* a chemical substances unintentionally present with another chemical substance).

Fourth, whether and how it may appropriate for importers to screen for benzidine-based chemical substances will depend on many factors, including their current state of knowledge about the articles that they import and the potential risk of unknowingly importing articles that contain these chemical substances. The relevant factors are largely impossible for EPA to establish at this time, given that there is currently no on-going import of these substances for the designated significant new uses.

Finally, EPA did conduct additional analysis of potential screening burden to explore commenters' concerns. As described in Unit X.H., EPA acknowledges the costs of the various activities that certain entities may choose to undertake, in response to this rule, to ensure that the chemicals they import or process as part of articles do not trigger SNUN submission requirements (Ref. 20). Based on EPA's economic analysis and the responses to the proposed rule, EPA does not believe that these costs will be significant for any individual entity.

H. Costs Associated With Making the Exemption for Persons That Import or Process Chemical Substances as Part of Articles Inapplicable

Some comments note that the economic analysis, which focuses on the cost of filing a SNUN, does not include any analysis of the costs that might be associated with screening articles to determine whether these SNURs would apply. One comment also notes that ''the preambles to the proposed rules do not discuss what, if any obligations companies have to screen articles for the chemicals included in the SNUR's.''

With respect to processors: existing SNUR regulations already provide that the unknowing processing of a chemical substance does not itself trigger SNUN requirements if the processor can (upon obtaining knowledge) document that when the past processing occurred, the processor neither knew the chemical identity of the substance it was processing nor knew that substance was subject to a SNUR. See 40 CFR 721.5(c).

With respect to importers: Based on an assessment of current market activity in the economic analysis, EPA believes that the chemicals subject to the final SNUR are not currently being imported into the United States for the identified significant new uses in articles. EPA received no public comments on the proposed SNUR that indicate that importation of these benzidine-based chemical substances for the finalized significant new uses, in articles or otherwise, is ongoing. However, because this SNUR makes inapplicable the exemption for persons that import or process chemical substances as part of articles, companies may take actions to ensure that they do not import any articles containing the subject chemical substances after promulgation of this rule, by such means they deem

[2] The limiting clause in the definition of ''principal importer'' at 40 CFR 721.3—''knowing that a chemical substance will be imported''—is a limit based on the person's knowledge that he or she is engaged in an import transaction, not a limit based on the person's knowledge of a particular chemical's identity and regulatory status. (48 FR 21727, May 13, 1983) (FRL 2998–5).

appropriate. This is not necessarily a new consideration for importers given that importers of mixtures have needed to be aware of chemical substances subject to a SNUR that may be a component of imported mixtures. Whether and how companies respond will depend on many factors, including their current state of knowledge about articles that they import and their own assessments of the potential risk of unknowingly importing articles that contain these chemicals. As noted in this unit, EPA did conduct additional analysis of burdens that may be associated with activities entities may undertake to ensure the chemicals they import or process as part of articles do not trigger SNUN submission requirements (Ref. 20).

In any event, EPA did not propose to mandate any particular level of screening of imported or processed articles. The preamble to the proposed SNUR did not discuss the precise steps that an importer or processor must take in this regard because there is no precise level of screening by which the manufacturer or processor could be separately liable under the rule (if not performed) or by which a manufacturer or processor could obtain ''safe harbor'' from what would otherwise be a violation of the rule. While EPA might potentially take screening practices into consideration when evaluating a particular instance in which the SNUR was nevertheless violated, that would be as a matter of enforcement policy, not as a provision of the rule itself.

EPA has included estimates for some activities that importers may undertake (*e.g.,* supplier inquiries) in order to evaluate the likelihood of chemicals being imported as part of articles. These costs will vary for individual companies and their experience with suppliers. Awareness of article components and constituents is becoming more commonplace as companies frequently operate on a global scale and are subject to numerous regulatory requirements around the world that affect product stewardship responsibilities. Existing requirements that may compel a company to investigate an article's components include the Consumer Product Safety Act, California's Proposition 65, and the EU's regulation on Registration, Evaluation, Authorization and Restriction of Chemical (REACH), which requires customer notification about the presence of certain chemical in articles that a company distributes. U.S. importing companies may already be familiar with the process of determining whether the articles they import contain restricted chemical substances, if they are subject to the requirements cited above or various U.S. regulations, such as the Product Safety Improvement Act (CPSIA) of 2008, Washington's Children's Safe Product Act, and Maine's Act to Protect Children's Health and the Environment from Toxic Chemicals in Toys and Children's Products (Ref. 20).

Given the existing regulatory limitations on certain chemicals both internationally and within the United States, regulated industries have begun to develop industry-wide processes and other resources to obtain information on chemical substances in articles. Policies and procedures could include supplier agreements, such as Hewlett Packard's requirement that suppliers meet their General Specifications for the Environment (GSE) (Ref. 21) and Walmart's requirement that suppliers participate in International Compliance Information Exchange (iCiX) to manage and share compliance information throughout the supply chain (Ref. 22). More extensive policies and procedures could even include product testing. Companies may choose to use existing procedures or develop new ones that could range from document review, to supplier agreements, to product testing.

Additional analysis conducted by EPA on activities that companies may choose to undertake to ensure that the chemicals they import or process as part of articles do not trigger requirements of the SNUR shows a wide range of potential activities and associated costs. The conduct of these activities and associated costs are at the discretion of the company. Table B of this unit shows EPA's estimated range of costs associated with some of these potential activities for importers of articles.

TABLE B—RANGE OF COSTS ASSOCIATED WITH AN IMPORTER'S IDENTIFICATION OF CHEMICALS SUBJECT TO SNURS IN ARTICLES

Activity	Cost US ($)	Notes
Per Rule Costs		
1. Rule familiarization	$55	Cost typically already included in SNUR Economic Analyses.
2. Identify the type of imported articles that potentially contain the restricted substances.	$130 to $1,550	Actual costs may vary based on number of articles imported and the complexity of the article itself (number of components).
3. Identify all suppliers involved.	$950	Actual costs may vary depending on the number of articles imported, number of suppliers, and frequency of supplier changes.
6. Recordkeeping	$10	Cost typically already included in SNUR Economic Analyses.
Article-Related Costs		
4. Collect data from suppliers.	$5 to $515 per article reviewed. $0 if no data collected	Actual costs only apply to those companies that choose to collect data from suppliers. They will vary depending on the specific data collection method chosen. Total costs depend on considerations including the number of articles imported, number of suppliers, and frequency of supplier changes.
5. Chemical testing	$130 per article tested. $0 if no testing.	Actual costs only apply to those companies that choose to collect data from suppliers. Total costs per company will depend on considerations including the number of articles tested, which may be affected by the number of suppliers and risk associated with each, and frequency of supplier changes.

Should processors of articles need to demonstrate compliance with a SNUR, it is expected that they could use the shipping or labeling documents received with the article in the ordinary course of business. As these documents

would be received and stored anyway, as per standard business practices, the elimination of the exemption in the SNUR for persons that import or process chemical substances as part of articles would be unlikely to lead such persons to incur significant additional costs. To the extent that processors choose to undertake more steps to identify regulated chemicals as part of articles, the costs of these activities would be similar to those in Table B of this unit for importers of similar size, supply chain complexity, and level of compliance with other chemical regulations.

There are a number of regulations, including California's Proposition 65 and the EU's REACH that currently restrict or otherwise affect the use of certain benzidine-based substances, particularly in their use as dyes in textiles and leather. California's Proposition 65 Chemical List includes benzidine-based dyes as a potential carcinogen and requires that firms provide a clear and reasonable warning before knowingly and intentionally exposing anyone to a listed chemical. This warning may include the labeling of consumer products (Refs. 23–24).

The EU has banned, in textile and leather articles which may come into direct and prolonged contact with humans, the use of azo dyes which can break down to release any of 22 listed carcinogenic aromatic amines (including benzidine and its congeners) in amounts above 30 ppm (Ref. 25). The European Commission's Directorate General for Health and Consumers maintains the RAPEX database that member countries can use to report dangerous products and the measures they have taken to prevent or restrict those products. Despite the EU ban, small numbers of products containing such azo dyes have recently been listed on RAPEX. The products are typically voluntarily withdrawn from the market and/or destroyed by the importer or have been placed under an order by the authorities to cease sales (Refs. 26, 27). Therefore, azo dyes in imported articles still remain a potential issue in the EU. Other countries have also banned the manufacture and use of the azo dyes in textiles. Currently the manufacture of azo dyes is banned in South Korea and Japan (Ref. 27). Use of these chemicals is banned by Egypt, India, China, South Korea, Taiwan and Vietnam (Ref. 28), and Indonesia has banned the use of the dyes in children's and baby's clothing (Ref. 29). In 2012, the Japanese textiles and leather industry announced voluntary restrictions of the chemicals (Refs. 29, 30). Canada has also expressed concern about the potential release of benzidine or its congeners from azo dyes and is evaluating potential approaches for addressing azo dyes (Ref. 30). Organizations, such as the American Apparel & Footwear Association (AAFA), have developed a comprehensive Restricted Substances List (RSL) as a reference for companies and have developed a toolkit to help apparel and footwear companies to better manage chemicals throughout the supply chain. Given the current level of international and domestic regulation and attention to benzidine-related chemicals, EPA believes that importers and processors of articles may already have undertaken a number of activities to manage chemicals within their supply chains and generally to deselect for these chemicals. Therefore, EPA expects that companies that could potentially commence importing or processing benzidine-based chemicals as part of articles may already have some knowledge of the chemicals within their supply chain and would undertake few of the activities listed in Table B and would fall toward the lower end of the cost range for any activities undertaken. More detailed information is included in EPA's economic analysis.

EPA does not believe that the subject chemicals are entering the United States in imported articles for the significant new uses defined by the final regulation. However, companies may screen or initiate other activities to determine if articles they import in the future contain chemicals included in this SNUR. EPA notes that no commenters provided data that could be used to estimate what, if any, costs might be associated with continued assurance that imported articles are free from the chemical substances subject to this SNUR. The number of companies that may take such actions is not known, nor is the level of action that may be taken by a particular company. Based on EPA's economic analysis and the responses to the proposed rule, EPA does not believe that these costs will be significant for any individual entity.

I. Import and Export Regulations for Chemical Substances as Part of Articles

One comment noted that EPA is not proposing to change the way in which TSCA's export and import rules (pursuant to TSCA sections 12(b) and 13, respectively) apply to articles containing these chemical substances. The comment indicates that (under the status quo of the import rules) the U.S. Customs and Border Protection (CBP) will not be screening articles for the chemical substances in the proposed SNURs.

EPA agrees that the TSCA import rules are important TSCA compliance mechanisms and that 19 CFR 12.119 allows EPA to establish section 13 import certification requirements for chemicals in articles. However, declining to subject importers to one notice requirement (section 13 import certification) does not render another notice requirement (section 5 SNUN submission) unenforceable.

In this case, EPA did not propose to require section 13 import certification or section 12 export notification for the subject chemical substances when part of articles. This is consistent with EPA's past practice of making the exemption at 40 CFR 721.45(f) inapplicable without also requiring import certification or export notification for these chemical substances as part of articles (40 CFR 721.2800; 40 CFR 721.10068). However, the Agency continues to study this issue and has not ruled out a later proposal to require import certification and/or export notification for these chemical substances as part of articles.

With or without an import certification requirement, it is the importer that is ''responsible for insuring that chemical importation complies with TSCA just as domestic manufacturers are responsible for insuring that chemical manufacture compliance with TSCA.'' 40 CFR 707.20(b)(1).

J. Distinguishing Between Chemicals in Non-Article Form and Other Products

One comment contends that the rule, as proposed, ''would not allow [EPA] to distinguish between a chemical being brought into the United States in its raw form and a chemical being brought in on a shift as a dye or finish.'' The comment goes on to state that treating them the same way is unrealistic and scientifically unsound.

EPA disagrees with the comment and notes that it was not proposing to eliminate all distinctions, in all regulatory provisions under TSCA, between import of a chemical substance in non-article form, and import of a chemical substance as part of an article. The rule simply removes one particular distinction between persons who import or process a chemical substance in non-article form and persons who import or process a chemical substance as part of an article. Thus, while the raw chemical manufacturer and the article importer may both be required to submit a SNUN, EPA would be able distinguish between the two scenarios, as appropriate, in its review of the SNUN. The SNUN review process will allow case-by-case analysis of each circumstance.

With respect to the commenter's comparison of the volume at which these chemical substances are currently manufactured in non-article form and the volume at which these chemical substances are currently manufactured in article form (*i.e.,* via import of a chemical substance as part of an article), EPA's conclusion, with respect to the significant new uses, is that the two volumes are currently the same. This is because EPA has concluded that there is no current manufacture of these chemical substances for the significant new uses, either through domestic manufacture of the substances in non-article form, or through import of articles containing the substances. Thus, both production volumes are currently zero.

K. Provisions for Processors

In a comment submitted after the closing of the public comment period, one commenter questions the utility of a provision for processors at 40 CFR 721.5(c), as applied to notice requirements under this rule. The commenter states that 40 CFR 721.5(c) would not protect companies unless they could document lack of knowledge that a SNUR applies. The commenter believes that this requirement is therefore impossible to meet, explaining that it is impossible to document what one does not know.

EPA will respond to this comment, although it was submitted after the closing of the public comment period for this action, because it relates closely to the timely submitted comments. EPA disagrees that applying 40 CFR 721.5(c) is impossible or impracticable. The provisions at 40 CFR 721.5(c) provide that the unknowing processing of a chemical substance does not itself trigger SNUN submission requirements, subject to meeting certain documentation requirements. Upon obtaining knowledge that it previously engaged in activities covered by the SNUR, a processor can at that time assemble evidence relating to the period when the past processing occurred. Specifically, this would be evidence bearing on whether the processor previously knew the chemical identity of the substance it was processing or previously knew that that substance was subject to a SNUR. Evidence to establish a prior lack of knowledge could include items such as a purchase order and, where applicable, a material safety data sheet (MSDS) that indicates neither the relevant chemical identity nor the presence of a chemical subject to a SNUR. Another type of evidence would be the affidavit of a person in a position of appropriate authority swearing to the prior lack of knowledge. EPA would generally consider the wording on a purchase order and, where applicable, an MSDS, along with an affidavit as described above, in determining whether there is sufficiently clear documentation for purposes of 40 CFR 721.5(c). However, if there was also contrary documentary evidence, indicative of the prior possession of knowledge (*e.g.,* receipt of a notice given to the processor pursuant to 40 CFR 721.5(a)(1)(i)) then the overall documentary evidence would not allow the processor to take advantage of the provisions of 40 CFR 721.5(c).

L. Potential Ongoing Use of DnPP

One commenter identified a potential ongoing use of DnPP in grease in automotive switches. The commenter requested that EPA exclude the identified use from the SNUR.

After investigation, EPA has determined that there is no ongoing use of DnPP in grease in automotive switches.

The commenter states that ''[b]ased on current use information . . . [the commenter] believes that DnPP is being used in grease in some automotive switches.'' The proposal stated that EPA ''welcome[d] specific information that documents [ongoing] use.'' Yet the commenter does not provide any current use information to substantiate this belief. When raising a potential ongoing use, it is generally preferable to include information substantiating that use, especially where the entity raising that use is not an actual manufacturer (including importer) or processor of that chemical substance for that use and thus would not be anticipated to have direct knowledge of that use.

In order to determine whether there is an ongoing use of DnPP in grease in automotive switches, EPA performed targeted searches of sources including IHS Chemical Economics Handbook, MSDS search tools such as Seton's MSDS Hazard Communication Library and patent searches and was unable to substantiate this use as an ongoing use of DnPP. EPA reviewed several grease MSDS, and no grease MSDS listed any phthalate in its composition. EPA's DfE alternatives analysis also has not identified use in grease in automotive switches as an ongoing use of DnPP.

EPA also conducted patent searches for grease in automotive switches, and dampening greases in general. A patent search found mentions of the term phthalates with electronic components, but not DnPP specifically for automotive switches. However, one patent gave a very broad alkyl range that release of phthalates C4 and C8 were observed during the vacuum burn pretreatment of electronic components [disc drives]. This process is routine treatment to remove volatiles from electronic components, including electronic switches (Vacuum baking process USP 6,051,169 and Electric switches USP 3,694,601). EPA does not believe the existence of this information is indicative of current use of DnPP in grease in automotive switches because, patents do not necessarily indicate current use. As noted in the proposed rule (Ref. 1), no IUR production volume data were reported for DnPP during the 2006, 2002, 1998 and 1994 reporting cycles. In addition, no production volume data were reported for the 2012 CDR (Ref. 17)

Accordingly, EPA is declining to exclude use ''in grease in automotive switches'' from the significant new uses of DnPP.

M. Reliance on Inventory Update Rule (IUR) Data in Assessing Ongoing Use of DnPP

One commenter suggests that EPA relied solely on the IUR data for determining ongoing uses of DnPP, and that such reliance may be misleading or incomplete. The commenter notes that ongoing uses below the IUR reporting threshold of 10,000 lbs would not be reported to EPA through the IUR process.

EPA uses IUR data to identify ongoing uses of chemical substances. However, this is not the sole source of information relied upon to support the SNUR. EPA first identified a SNUR as a regulatory alternative for DnPP in the Phthalates Action Plan because EPA found that the most recent IUR data contained no reports of DnPP being produced in or imported into the United States. In proposing the SNUR, EPA prepared the ''Economic Analysis of the Proposed Significant New Use Rule for Di-n-pentyl Phthalate (DnPP)'' (Ref. 31) and conducted internet queries in order to ascertain whether there were any ongoing uses of DnPP at levels below the IUR reporting threshold. During the course of this research EPA identified several companies which either use or sell DnPP as a chemical standard for use in phthalates testing. Accordingly, the significant new uses of DnPP does not include use of DnPP as a chemical standard for analytical experiments as a significant new use.

N. Design for the Environment (DfE) Assessment for Phthalates

One commenter noted that EPA has undertaken a DfE project focused on phthalates, including but not limited to, DnPP. The commenter believes that the

DfE phthalates alternative assessment will provide valuable information about potential alternatives to industries using phthalates. The commenter recommends that EPA refrain from further action on any phthalate until the DfE project is finalized.

EPA disagrees that finalization of the DnPP SNUR should be delayed until the DfE project is complete. (To the extent the comment is discussing the timing of other potential EPA actions to address phthalates, it is outside the scope of this proposal.)

The comment states that the final DfE report would identify alternatives, their viability as substitutes, and EPA's comparative hazard information. EPA disagrees that this report is likely to provide information relevant to this SNUR. When defining the ''significant new use,'' EPA is limited to uses of the chemical substance that are not ongoing. The DfE report is not expected to identify alternatives for chemical substances that are generally no longer in use. It is already clear that there are many alternatives to DnPP use, because there are almost no ongoing uses of DnPP. Furthermore, the DfE report is not expected to suggest DnPP itself as an alternative to another phthalate because of its toxicity relative to other phthalates. Even if the DfE report were to identify a significant new use of DnPP as an alternative to some other chemical substance, then EPA would have the opportunity to consider that information at such time as it received the significant new use notice for DnPP.

EPA notes that it is a regular practice to finalize SNURs for chemical substances that have not undergone a DfE assessment. Given that the DfE report is unlikely to provide additional information relevant to EPA's significant new use determination for DnPP, that newly available information respecting any particular use of DnPP could be included in the significant new use notice itself, and that further delay would increase regulatory uncertainty, EPA disagrees that it would be appropriate to delay issuance of the SNUR on DnPP pending the release of the DfE report.

XI. References

The following is a listing of the documents that are specifically referenced in this action. The docket includes these documents and other information considered by EPA, including documents that are referenced within the documents that are in the docket, even if the referenced document is not physically located in the docket. For assistance in locating these other documents, please consult the technical person listed under **FOR FURTHER INFORMATION CONTACT**.

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19. U.S. EPA, Certain Polybrominated Diphenylethers; Significant New Use Rule.71 FR 34018, June 13, 2006 (FRL 7743–2).
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XII. Statutory and Executive Order Reviews

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

This final rule has been designated by OMB as a ''significant regulatory action'' under section 3(f) of Executive Order 12866 (58 FR 51735, October 4, 1993). Accordingly, EPA submitted this action to OMB for review under Executive Order 12866 and 13563 (76 FR 3821, January 21, 2011), and any changes made in response to OMB recommendations are documented in the docket.

B. Paperwork Reduction Act (PRA)

This action does not impose any new information collection burden under the PRA, 44 U.S.C. 3501 *et seq.* Burden is defined in 5 CFR 1320.3(b). The information collection activities associated with existing chemical SNURs are already approved by OMB under OMB control number 2070–0038 (EPA ICR No. 1188); and the information collection activities associated with export notifications are already approved by OMB under OMB control number 2070–0030 (EPA ICR No. 0795). If an entity were to submit a SNUN to the agency, the annual burden is estimated to be less than 100 hours per response, and the estimated burden for an export notifications is less than 1.5 hours per notification. In both cases, burden is estimated to be reduced for submitters who have already registered to use the electronic submission system. Additional burden, estimated to be less than 10 hours, could be incurred where additional record keeping requirements are specified under 40 CFR 721.125(a), (b), and (c).

An Agency may not conduct or sponsor, and a person is not required to respond to a collection of information that requires OMB approval under the PRA, unless it has been approved by OMB and displays a currently valid OMB control number. The OMB control numbers for EPA's regulations in Title 40 of the CFR, after appearing in the **Federal Register**, are listed in 40 CFR part 9 and included on the related collection instrument, or form, if applicable. EPA is amending the table in 40 CFR part 9 to list this SNUR. This listing of the OMB control numbers and their subsequent codification in the CFR satisfies the display requirements of the PRA and OMB's implementing regulations at 5 CFR part 1320. Since the existing OMB approval was previously subject to public notice and comment before OMB approval, and given the technical nature of the table, EPA finds that further notice and comment to amend the table is unnecessary. As a result, EPA finds that there is ''good cause'' under section 553(b)(3)(B) of the Administrative Procedure Act, 5 U.S.C. 553(b)(3)(B), to amend this table without further notice and comment.

C. Regulatory Flexibility Act (RFA)

Pursuant to section 605(b) of the RFA, 5 U.S.C. 601 *et seq.,* I hereby certify that promulgation of this SNUR will not have a significant economic impact on a substantial number of small entities. The rationale supporting this conclusion is as follows.

EPA generally finds that proposed and final SNURs are not expected to have a significant economic impact on a substantial number of small entities (See, *e.g.,* Ref. 34). Since these SNURs will require a person who intends to engage in such activity in the future to first notify EPA by submitting a SNUN, no economic impact will occur unless someone files a SNUN to pursue a significant new use in the future or forgoes profits by avoiding or delaying the significant new use. Although some small entities may decide to engage in such activities in the future, EPA cannot presently determine how many, if any, there may be. However, EPA's experience to date is that, in response to the promulgation of SNURs covering over 1,000 chemical substances, the Agency receives only a handful of notices per year. During the six year period from 2005–2011, only three submitters self-identified as small in their SNUN submission (Refs. 5, 32, 33). EPA believes the cost of submitting a SNUN is relatively small compared to the cost of developing and marketing a chemical new to a firm and that the requirement to submit a SNUN generally does not have a significant economic impact.

A SNUR applies to any person (including small or large entities) who intends to engage in any activity described in the rule as a ''significant new use.'' In the proposed SNUR EPA preliminarily determined, based in part, on the Agency's market research, that these chemical substances are not being manufactured (including imported) or processed for a significant new use. In the case of the benzidine-based dyes, this preliminary determination also included importation and processing of these chemical substances as part of articles (Ref. 1). EPA received no public comment indicating any ongoing importation of the benzidine-based chemical substances as part of articles or otherwise. Therefore, EPA is finalizing its determination that these uses, including the importation and processing of benzidine-based dyes as part of articles, are new and not ongoing. Thus no small entities presently engage in a significant new use.

Therefore, EPA believes that the potential economic impact of complying with this SNUR is not expected to be significant or adversely impact a substantial number of small entities.

D. Unfunded Mandates Reform Act (UMRA)

Based on EPA's experience with proposing and finalizing SNURs, State, local, and Tribal governments have not been impacted by these rulemakings, and EPA does not have any reason to believe that any State, local, or Tribal government would be impacted by this rulemaking. As such, EPA has determined that this regulatory action would not impose any enforceable duty, contain any unfunded mandate, or otherwise have any effect on small governments subject to the requirements of sections 202, 203, 204, or 205 of UMRA, 2 U.S.C. 1531–1538.

E. Executive Order 13132: Federalism

This action does not have a substantial direct effect on States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132 (64 FR 43255, August 10, 1999).

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

This action does not have Tribal implications because it will not have any effect (*i.e.,* there will be no increase or decrease in authority or jurisdiction) on Tribal governments, on the relationship between the Federal government and the Indian tribes, or on the distribution of power and responsibilities between the Federal government and Indian tribes. Thus, Executive Order 13175 (65 FR 67249, November 9, 2000), 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 Executive Order 13045 (62 FR 19885, April 23, 1997), because this action is not intended to address environmental health or safety risks for children.

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 expected to affect energy supply, distribution, or use.

I. National Technology Transfer and Advancement Act (NTTAA)

Since this action does not involve any technical standards, section 12(d) of NTTAA, 15 U.S.C. 272 note, does not apply to this action.

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

This action does not entail special considerations of environmental justice related issues as delineated by Executive Order 12898 (59 FR 7629, February 16, 1994), because EPA has determined that this action will not have disproportionately high and adverse human health or environmental effects on minority or low-income populations. This action does not affect the level of protection provided to human health or the environment.

K. Congressional Review Act (CRA)

Pursuant to the CRA, 5 U.S.C. 801 *et seq.,* EPA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. This action is not a ''major rule'' as defined by 5 U.S.C. 804(2).

List of Subjects

40 CFR Part 9

Environmental protection, Reporting and recordkeeping requirements.

40 CFR Part 721

Environmental protection, Chemicals, Hazardous substances, Reporting and recordkeeping requirements.

Dated: December 16, 2014.

Wendy C. Hamnett,

Director, Office of Pollution Prevention and Toxics.

Therefore, 40 CFR chapter I is amended as follows:

PART 9—[AMENDED]

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

Authority: 7 U.S.C. 135 *et seq.,* 136–136y; 15 U.S.C. 2001, 2003, 2005, 2006, 2601–2671; 21 U.S.C. 331j, 346a, 348; 31 U.S.C. 9701; 33 U.S.C. 1251 *et seq.,* 1311, 1313d, 1314, 1318, 1321, 1326, 1330, 1342, 1344, 1345 (d) and (e), 1361; E.O. 11735, 38 FR 21243, 3 CFR, 1971–1975 Comp. p. 973; 42 U.S.C. 241, 242b, 243, 246, 300f, 300g, 300g–1, 300g–2, 300g–3, 300g–4, 300g–5, 300g–6, 300j–1, 300j–2, 300j–3, 300j–4, 300j–9, 1857 *et seq.,* 6901–6992k, 7401–7671q, 7542, 9601–9657, 11023, 11048.

■ 2. In § 9.1, add the following sections in numerical order under the undesignated center heading ''Significant New Uses of Chemical Substances'' to read as follows:

§ 9.1 OMB approvals under the Paperwork Reduction Act.

* * * * *

40 CFR citation	OMB Control No.
* * * * *	
Significant New Uses of Chemical Substances	
* * * * *	
721.10226	2070–0038
721.10227	2070–0038
* * * * *	

* * * * *

PART 721—[AMENDED]

■ 3. The authority citation for part 721 continues to read as follows:

Authority: 15 U.S.C. 2604, 2607, and 2625(c).

■ 4. Revise § 721.1660 to read as follows:

§ 721.1660 Benzidine-based chemical substances.

(a) *Chemical substances and significant new uses subject to reporting.* (1) The benzidine-based chemical substances listed in Table 1 and Table 2 of this section are subject to reporting under this section for the significant new uses described in paragraph (a)(2) of this section.

TABLE 1—BENZIDINE-BASED CHEMICAL SUBSTANCES

CAS or accession No.	C.I. name	C.I. No.	Chemical name
117–33–9	Not available	Not available	1,3-Naphthalenedisulfonic acid, 7-hydroxy-8-[2-[4'-[2-(4-hydroxyphenyl)diazenyl][1,1'-biphenyl]-4-yl]diazenyl]-
65150–87–0	Not available	Not available	1,3,6-Naphthalenetrisulfonic acid, 8-hydroxy-7-[2-[4'-[2-(2-hydroxy-1-naphthalenyl)diazenyl][1,1'- biphenyl]-4-yl]diazenyl]-, lithium salt (1:3)
68214–82–4	Direct Navy BH	22590	2,7-Naphthalenedisulfonic acid, 5-amino-3-[2-[4'-[2-(7-amino-1-hydroxy-3-sulfo-2- naphthalenyl)diazenyl][1,1'-biphenyl]-4-yl]diazenyl]-4-hydroxy-, sodium salt (1:2)
72379–45–4	Not available	Not available	2,7-Naphthalenedisulfonic acid, 4-amino-5-hydroxy-3-[2-[4'-[2-[2-hydroxy-4-[(2-methylphenyl)amino]phenyl]diazenyl][1,1'- biphenyl]-4-yl]diazenyl]-6-(2-phenyldiazenyl)-
Accession No. 21808 .. CAS No. CBI (NA)	CBI	CBI	2,7-Naphthalenedisulfonic acid, 4-amino-5-hydroxy [[[(substituted phenylamino)] substituted phenylazo] diphenyl]azo-, phenylazo-, disodium salt. (generic name)

TABLE 1—BENZIDINE-BASED CHEMICAL SUBSTANCES—Continued

CAS or accession No.	C.I. name	C.I. No.	Chemical name
Accession No. 24921 .. CAS No.	CBI	CBI	4-(Substituted naphthalenyl)azo diphenylyl azo-substituted carbopolycycle azo benzenesulfonic acid, sodium salt. (generic name)
Accession No. 26256 .. CAS No. CBI (NA)	CBI	CBI	4-(Substituted phenyl)azo biphenylyl azo- substituted carbopolycycloazo benzenesulfonic acid, sodium salt. (generic name)
Accession No. 26267 .. CAS No. CBI (NA)	CBI	CBI	4-(Substituted phenyl)azo biphenylyl azo - substituted carbopolycycle azo benzenesulfonic acid, sodium salt. (generic name)
Accession No. 26701 .. CAS No. CBI (NA)	CBI	CBI	Phenylazoaminohydroxynaphthalenylazobiphenylazo substituted benzene sodium sulfonate. (generic name).

TABLE 2—BENZIDINE-BASED CHEMICAL SUBSTANCES

CAS No.	C.I. name	C.I. No.	Chemical name
92–87–5	Benzidine	Not available	[1,1′-Biphenyl]-4,4′-diamine.
531–85–1	Benzidine · 2HCl	Not available	[1,1′-Biphenyl]-4,4′-diamine, dihydrochloride.
573–58–0	C.I. Direct Red 28	22120	1- Naphthalenesulfonic acid, 3,3′-[[1,1′-biphenyl]-4,4′-diylbis(azo)]bis[4-amino-, disodium salt.
1937–37–7	C.I. Direct Black 38	30235	2,7-Naphthalenedisulfonic acid, 4-amino-3-[[4′-[(2,4-diaminophenyl) azo][1,1′-biphenyl]-4- yl]azo]-5-hydroxy-6-(phenylazo)-, disodium salt.
2302–97–8	C.I. Direct Red 44	22500	1-Naphthalenesulfonic acid, 8,8′-[[1,1′-biphenyl]-4,4′-diylbis(azo)]bis[7-hydroxy-, disodium salt.
2429–73–4	C.I. Direct Blue 2	22590	2,7-Naphthalenedisulfonic acid, 5-amino-3-[[4′-[(7-amino-1-hydroxy-3-sulfo-2-naphthalenyl)azo][1,1′-biphenyl]-4-yl]azo]-4-hydroxy-, trisodium salt.
2429–79–0	C.I. Direct Orange 8.	22130	Benzoic acid, 5-[[4′-[(1-amino-4-sulfo-2-naphthalenyl) azo][1,1′-biphenyl]-4-yl]azo]-2- hydroxy-, disodium salt.
2429–81–4	C.I. Direct Brown 31.	35660	Benzoic acid, 5-[[4′-[[2,6-diamino-3-[[8-hydroxy-3,6-disulfo-7-[(4-sulfo-1-naphthalenyl)azo]-2- naphthalenyl]azo]-5-methylphenyl]azo][1,1′- biphenyl]-4-yl]azo]-2-hydroxy-, tetrasodium salt.
2429–82–5	C.I. Direct Brown 2	22311	Benzoic acid, 5-[[4′-[(7-amino-1-hydroxy-3-sulfo-2-naphthalenyl) azo][1,1′-biphenyl]-4-yl]azo]-2-hydroxy-, disodium salt.
2429–83–6	Direct Black 4	30245	2,7-Naphthalenedisulfonic acid, 4-amino-3-[[4′-[(2,4-diamino-5-methylphenyl)azo][1,1′-biphenyl]-4-yl]azo] -5-hydroxy-6-(phenylazo)-, disodium salt.
2429–84–7	C.I. Direct Red 1	22310	Benzoic acid, 5-[[4′-[(2-amino-8-hydroxy-6-sulfo-1-naphthalenyl)azo][1,1′-biphenyl]-4-yl]azo]-2-hydroxy-, disodium salt.
2586–58–5	C.I. Direct Brown 1:2.	30110	Benzoic acid, 5-[[4′-[[2,6-diamino-3-methyl-5-[(4-sulfophenyl)azo]phenyl]azo][1,1′-biphenyl]-4- yl]azo]-2-hydroxy-, disodium salt.
2602–46–2	C.I. Direct Blue 6	22610	2,7-Naphthalenedisulfonic acid, 3,3′-[[1,1′-biphenyl]-4,4′-diylbis(azo)]bis[5-amino-4-hydroxy-, tetrasodium salt.
2893–80–3	C.I. Direct Brown 6	30140	Benzoic acid, 5-[[4′-[[2,4-dihydroxy-3-[(4-sulfophenyl) azo]phenyl]azo][1,1′-biphenyl]-4- yl]azo]-2-hydroxy-, disodium salt.
3530–19–6	C.I. Direct Red 37	22240	1,3-Naphthalenedisulfonic acid, 8-[[4′-[(4-ethoxyphenyl)azo][1,1′-biphenyl]-4-yl]azo]-7-hydroxy-, disodium salt
3567–65–5	C.I. Acid Red 85	22245	1,3-Naphthalenedisulfonic acid, 7-hydroxy-8-[[4′-[[4-[[(4-methylphenyl)sulfonyl]oxy]phenyl]azo][1,1′-biphenyl]-4-yl]azo]-, disodium salt.
3626–28–6	C.I. Direct Green 1	30280	2,7-Naphthalenedisulfonic acid, 4-amino-5-hydroxy-3-[[4′-[(4-hydroxyphenyl)azo][1,1′- biphenyl]-4- yl]azo]-6-(phenylazo)-, disodium salt.
3811–71–0	C.I. Direct Brown 1	30045	Benzoic acid, 5-[[4′-[[2,4-diamino-5-[(4-sulfophenyl) azo]phenyl]azo][1,1′ biphenyl]-4- yl]azo]-2-hydroxy-, disodium salt.
4335–09–5	C.I. Direct Green 6	30295	2,7-Naphthalenedisulfonic acid, 4-amino-5-hydroxy-6-[[4′-[(4-hydroxyphenyl)azo][1,1′-biphenyl]-4- yl]azo]-3-[(4-nitrophenyl)azo]-, disodium salt.
6358–80–1	C.I. Acid Black 94	30336	2,7-Naphthalenedisulfonic acid, 4-amino-5-hydroxy-3-[[4′-[[4-hydroxy-2-[(2-methylphenyl)amino]phenyl]azo] [1,1′- biphenyl]-4-yl]azo]-6-[(4-sulfophenyl) azo]-, trisodium salt.
6360–29–8	C.I. Direct Brown 27.	31725	Benzoic acid, 5-[[4′-[[4-[(4-amino-7-sulfo-1-naphthalenyl)azo]-6-sulfo-1-naphthalenyl]azo][1,1′-biphenyl]-4-yl] azo]-2- hydroxy-, trisodium salt.
6360–54–9	C.I. Direct Brown 154.	30120	Benzoic acid, 5-[[4′-[[2,6-diamino-3-methyl-5-[(4-sulfophenyl)azo]phenyl] azo][1,1′-biphenyl]-4-yl]azo]-2- hydroxy-3-methyl-, disodium salt.
8014–91–3	C.I. Direct Brown 74.	36300	Benzoic acid, 3,3′-[(3,7-disulfo-1,5-naphthalenediyl)bis [azo(6-hydroxy-3,1-phenylene)azo[6(or7)-sulfo-4,1-naphthalenediyl]azo[1,1′-biphenyl]-4,4′-diylazo]]bis[6-hydroxy-, hexasodium salt.
16071–86–6	C.I. Direct Brown 95.	30145	Cuprate(2-), [5-[[4′-[[2,6-dihydroxy-3-[(2-hydroxy-5-sulfophenyl)azo]phenyl] azo][1,1′- biphenyl]-4-yl]azo]-2-hydroxybenzoato(4-)]-, disodium salt.

(2) The significant new uses are:

(i) For each of the chemical substances listed in Table 2 of this section, any use other than use as a reagent to test for hydrogen peroxide in milk; a reagent to test for hydrogen sulfate, hydrogen cyanide, and nicotine; a stain in microscopy; a reagent for detecting blood; an analytical standard; and, additionally for Colour Index (C.I.) Direct Red 28 (Congo Red) (CAS No. 573–58–0), an indicator dye.

(ii) For the chemical substances listed in Table 1 of this section: Any use.

(b) *Specific requirements.* The provisions of subpart A of this part apply to this section except as modified by this paragraph (b).

(1) *Revocation of certain notification exemptions.* The provisions of § 721.45(f) do not apply to this section. A person who imports or processes a chemical substance identified in paragraph (a)(1) of this section as part of an article for a significant new use described in paragraph (a)(2) of this section is not exempt from submitting a significant new use notice.

(2) [Reserved]

■ 5. Add § 721.10226 to subpart E to read as follows:

§ 721.10226 Di-n-pentyl phthalate (DnPP).

(a) *Chemical substance and significant new uses subject to reporting.* (1) The chemical substance identified as di-*n*-pentyl phthalate (DnPP) (1,2-benzenedicarboxylic acid, 1,2-dipentyl ester) (CAS No. 131–18–0) is subject to reporting under this section for the significant new uses described in paragraph (a)(2) of this section.

(2) The significant new use is: Any use other than use as a chemical standard for analytical experiments.

(b) [Reserved]

■ 6. Add § 721.10227 to subpart E to read as follows:

§ 721.10227 Alkanes, C_{12-13}, chloro (CAS No. 71011–12–6).

(a) *Chemical substance and significant new uses subject to reporting.* (1) The chemical substance identified as alkanes, C_{12-13}, chloro (CAS No. 71011–12–6) is subject to reporting under this section for the significant new uses described in paragraph (a)(2) of this section.

(2) The significant new use is: Any use.

(b) *Specific requirements.* The provisions of subpart A of this part apply to this section except as modified by this paragraph (b).

(1) *Persons who must report.* Section 721.5 applies to this section except for § 721.5(a)(2). A person who intends to manufacture for commercial purposes a substance identified in paragraph (a)(1) of this section and intends to distribute the substance in commerce must submit a significant new use notice.

(2) [Reserved]

[FR Doc. 2014–29887 Filed 12–24–14; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R03–OAR–2014–0409; FRL–9920–68–Region–3]

Approval and Promulgation of Air Quality Implementation Plan; Pennsylvania; Determination of Attainment for the 2008 Lead National Ambient Air Quality Standard for the Lyons Nonattainment Area

AGENCY: Environmental Protection Agency.

ACTION: Final rule.

SUMMARY: The Environmental Protection Agency (EPA) is taking final action to determine that the Lyons, Pennsylvania nonattainment area (hereafter referred to as the ''Lyons Area'' or ''Area'') has attained the 2008 lead (Pb) national ambient air quality standard (NAAQS). On March 31, 2014, the Commonwealth of Pennsylvania, through the Pennsylvania Department of Environmental Protection, submitted a request to EPA to make a determination that the Lyons Area has attained the 2008 Pb NAAQS. This determination of attainment is based upon certified, quality-assured, and quality-controlled ambient air monitoring data from 2011–2013 which shows that the Area has monitored attainment for the 2008 Pb NAAQS. Additionally, as a result of this determination, EPA is taking final action to suspend the requirements for the Area to submit an attainment demonstration, together with reasonably available control measures (RACM), a reasonable further progress (RFP) plan, and contingency measures for failure to meet RFP or attainment deadlines for so long as the Area continues to attain the 2008 Pb NAAQS. This determination does not constitute a redesignation to attainment. The Lyons Area will remain designated nonattainment for the 2008 Pb NAAQS until such time as EPA determines that the Lyons Area meets the Clean Air Act (CAA) requirements for redesignation to attainment, including an approved maintenance plan. These actions are being taken under the Clean Air Act (CAA).

DATES: This final rule is effective on January 28, 2015.

ADDRESSES: EPA has established a docket for this action under Docket ID Number EPA–R03–OAR–2014–0409. All documents in the docket are listed in the *www.regulations.gov*. Although listed in the electronic docket, some information is not publicly available, *i.e.*, 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 through *www.regulations.gov* or in hard copy for public inspection during normal business hours at the Air Protection Division, U.S. Environmental Protection Agency, Region III, 1650 Arch Street, Philadelphia, Pennsylvania 19103.

FOR FURTHER INFORMATION CONTACT: Ellen Schmitt, (215) 814–5787, or by email at *schmitt.ellen@epa.gov*.

SUPPLEMENTARY INFORMATION:

I. Background

On August 7, 2014 (79 FR 46211), EPA published a notice of proposed rulemaking (NPR) for the Commonwealth of Pennsylvania. In the August 7, 2014 NPR, EPA proposed to make a clean data determination, finding that the Lyons Area has attained the 2008 Pb NAAQS, based on certified, quality-assured, and quality-controlled ambient air monitoring data from 2011–2013. The Lyons Area is located in Berks County, Pennsylvania and bounded by Kutztown Borough, Lyons Borough, Maxatawny Township, and Richmond Township. *See* 40 CFR 81.339.

II. Summary of Rulemaking Action

EPA is taking final action to determine that the Lyons Area has attaining data for the 2008 Pb NAAQS. This determination of attainment is based upon certified, quality-assured, and quality-controlled air monitoring data that shows the Area has monitored attainment of the 2008 Pb NAAQS based on 2011–2013 data.

Other specific requirements of the determination of attainment and the rationale for EPA's action are explained in the NPR published on August 7, 2014 (79 FR 46211) as well as in the Technical Support Document (TSD) that accompanied the NPR, and will not be restated here. The TSD is available in the docket for this rulemaking action at *www.regulations.gov*.

III. Effect of This Action

This final action suspends the requirements for the Lyons Area to

submit an attainment demonstration, associated RACM, RFP plan, and contingency measures for failure to meet RFP or attainment deadlines so long as this Area continues to meet the 2008 Pb NAAQS. Finalizing this action does not constitute a redesignation of the Lyons Area to attainment for the 2008 Pb NAAQS under section 107(d)(3) of the CAA. Further, finalizing this action does not involve approving a maintenance plan for the Area as required under section 175A of the CAA, nor does it involve a determination that the Area has met all requirements for a redesignation.

IV. Public Comments and EPA's Responses

EPA received comments from the East Penn Manufacturing Company, Inc. (hereafter referred to as ''commenter'') regarding the August 7, 2014 NPR proposing a determination of attainment for the Lyons Area for the 2008 Pb NAAQS. A full set of these comments is provided in the docket for today's final rulemaking action.

Comment: The commenter states it is supportive of EPA's proposed determination of attainment of the Lyons Area because such a determination is an affirmation of ''historical and on-going policies and practices regarding compliance with air quality standards and minimization of lead emissions'' from its manufacturing campus in the Lyons Area. The commenter states that it believes that the nonattainment plan provision requirements of section 172(c) of the CAA, including the emission inventory provisions of section 172(c)(3), will be suspended for as long as the Lyons Area continues to attain the 2008 Pb NAAQS upon EPA's finalization of the determination of attainment for the Lyons Area. The commenter refers to a September 4, 1992 EPA memorandum [1] and a May 10, 1995 EPA memorandum,[2] in support of its position that the nonattainment plan provision requirements of section 172(c), including the emission inventory provisions of section 172(c)(3), should be suspended when EPA finalizes the determination of attainment for the Lyons Area. The commenter states it understands the nonattainment plan provisions of section 172(c), including emission inventory provision requirements in section 172(c)(3), are suspended because development and inclusion of such information in a state implementation plan (SIP) only has meaning for areas not attaining the 2008 Pb NAAQS in accordance with both the Calcagni Memorandum and the Seitz Memorandum.

The commenter asserts that ''such information'' will not have meaning upon final promulgation of the Lyons Area determination of attainment because the Lyons Area will be understood to have attained the NAAQS. For further support, the commenter cites to language from the Seitz Memorandum (which also references the Calcagni Memorandum and 57 FR 13498 (April 16, 1992)) [3] which says that ''no other measures to provide for attainment would be needed by areas seeking redesignation to attainment since 'attainment will have been reached.' '' The commenter requests that EPA acknowledge that upon final promulgation of the Lyons Area determination of attainment, all additional information requirements under section 172(c), including the emission inventory provisions, will be considered suspended as long as the Lyons Area continues to demonstrate attainment with the 2008 Pb NAAQS.

Response: EPA disagrees with the commenter's asserted position that upon final promulgation of the Lyons Area determination of attainment, all informational or planning requirements under section 172(c), including the emission inventory provisions, are considered suspended as long as the Lyons Area continues to demonstrate attainment with the 2008 Pb NAAQS.

Following enactment of the CAA Amendments of 1990, EPA promulgated its interpretation of the requirements for implementing the NAAQS in the general preamble for the implementation of Title I of the CAA Amendments of 1990 (General Preamble). *See* 57 FR 13498, 13564 (April 16, 1992). In 1995, based on the interpretation of CAA sections 171, 172, and 182 in the General Preamble, EPA set forth what has become known as its ''Clean Data Policy'' for the 1-hour ozone NAAQS. *See* Seitz Memorandum. The Seitz Memorandum provided that requirements to submit SIP revisions addressing RFP, an attainment demonstration, and other related requirements such as contingency measures and other specific ozone-related requirements in section 182 not relevant here, would be suspended for as long as the nonattainment area continued to monitor attainment of the NAAQS.[4] The Seitz Memorandum did not state the emissions inventory requirement in section 172(c)(3) was suspended when an area attains the NAAQS.

Prior to the Seitz Memorandum, the Calcagni Memorandum in 1992 addressed prerequisites for redesignation of nonattainment areas to attainment. The Calcagni Memorandum indicated certain requirements from section 172(c) including RFP, identification of certain emissions increases, and other measures needed for attainment would not apply for redesignations because they only have meaning for areas not attaining the NAAQS. The Calcagni Memorandum specifically stated that the requirements for an emission inventory in section 172(c) would be satisfied by the emission inventory requirements in section 175A for maintenance plans which must be submitted with redesignation requests under section 107(d). Thus, the Calcagni Memorandum, like the Seitz Memorandum, specifically did not state that emission inventory requirements in section 172(c)(3) were not required for areas which had attained the NAAQS, but which were still designated nonattainment as the Lyons Area is. Rather, according to the Calcagni

[1] *Procedures for Processing Requests to Redesignate Areas to Attainment*, EPA Memorandum from John Calcagni, Director, Air Quality Management Division, Office of Air Quality Planning Standards, September 4, 1992 (Calcagni Memorandum), located at *http://www.epa.gov/ttn/oarpg/t5/memoranda/redesignmem090492.pdf*. The commenter referred to this Memorandum as the ''September 4, 1994 Calcagni memorandum.'' EPA believes the inaccurate year was an inadvertent error as the September 4, 1992 Calcagni Memorandum addressed requirements for attainment plans necessary when an area has attained a NAAQS and seeks redesignation.

[2] *Reasonable Further Progress, Attainment Demonstration, and Related Requirements for Ozone Nonattainment Areas Meeting the Ozone National Ambient Air Quality Standard* (Seitz Memorandum), EPA Memorandum from John S. Seitz, Director, Office of Air Quality Planning Standards, May 10, 1995, located at *http://www.epa.gov/ttn/caaa/t1/memoranda/clean15.pdf*.

[3] 57 FR 13498 was promulgated after the CAA Amendments in 1990 as EPA's ''General Preamble'' which principally described EPA's preliminary views on how EPA should interpret various provisions of Title I, primarily those concerning SIP revisions required for nonattainment areas. Although the General Preamble includes various statements that states must take certain actions, EPA specifically stated in the **Federal Register** notice that the statements in the General Preamble are made pursuant to EPA's preliminary interpretations, and thus do not bind the states and the public as a matter of law. EPA stated that the General Preamble was an advance notice of how EPA generally intends, in subsequent rulemakings, to take action on SIP submissions and to interpret various Title I provisions. EPA notes the commenter inadvertently cites the General Preamble as 57 FR 13564 and not 57 FR 13498.

[4] EPA notes that the Seitz Memorandum specifically states that the Memorandum addresses whether areas attaining the NAAQS must submit SIP revisions concerning RFP and attainment demonstrations and related requirements such as contingency measures, transportation control measures, and section 182(g) milestones. The Seitz Memorandum does not explicitly or implicitly state that requirements to submit emission inventories in section 172(c)(3) are suspended.

Memorandum, the emission inventory requirement in section 172(c)(3) for nonattainment areas is required but can be satisfied by the requirement to submit an emission inventory for purposes of section 175A maintenance plans.

Likewise, EPA's General Preamble for title I of the CAA in 57 FR 13498 also discussed SIP submission requirements that are not applicable for purposes of *redesignations* of areas to attainment (in section 107(d)), such as RFP and contingency measures, where the areas in question have already attained the NAAQS. The General Preamble stated that for areas already attaining the NAAQS, such additional measures in section 172(c) that are designed to bring about attainment are not needed, and any additional measures to ensure that maintenance of the NAAQS continues would be addressed under the requirements for maintenance plans in section 175A. *See* 57 FR 13564 (stating requirement for RFP would have no meaning once an area attained). However, like the Calcagni Memorandum, the General Preamble also stated that the emission inventory requirement of section 172(c)(3) would be satisfied during consideration of redesignation requests by the inventory requirements of the maintenance plan. *Id.* Thus, for redesignations, states can satisfy the inventory requirement in section 172(c)(3) by meeting the section 175A maintenance plan requirement to submit a base-year emission inventory.

Of more relevance, in 2004, EPA indicated its intention to extend the Clean Data Policy (from the Seitz Memorandum) to the fine particulate matter ($PM_{2.5}$) NAAQS.[5] EPA's 2007 implementation rule for the 1997 $PM_{2.5}$ NAAQS (the 2007 $PM_{2.5}$ Implementation Rule) specifically extended the Clean Data Policy to the 1997 $PM_{2.5}$ NAAQS providing that, when EPA makes a determination that an area designated nonattainment has attained the $PM_{2.5}$ NAAQS, certain requirements of section 172(c) for SIP revisions shall be suspended, including requirements to submit an attainment demonstration, RFP, RACM, contingency measures and other planning SIPs related to attainment of the NAAQS.[6] *See* 40 CFR 51.1004(c). EPA's Clean Data Policy represents the Agency's long-held interpretation that certain requirements of subpart 1 of part D of the CAA are, by EPA's terms, not applicable to areas that have attained the NAAQS before the applicable attainment date.[7]

Specifically, a determination of attainment indicates that the area has attained the NAAQS and therefore the purpose of the RFP requirement (for the nonattainment area to make progress towards attainment) will have been fulfilled. Therefore, the area does not have to address RFP, as long as it continues to monitor attainment. In addition, the goal of the attainment demonstration required by section 172(c) is to show how the area will be brought back into attainment and a clean data determination indicates that the area is in attainment.[8] Thus, EPA has determined that an attainment demonstration is unnecessary as attainment will have been reached. Finally, the contingency measures SIP requirement in section 172(c)(9) is linked with both the attainment demonstration and RFP requirements, and similar reasoning applies for the suspension of contingency measures requirement upon a determination of attainment. Section 172(c)(9) provides that SIPs in nonattainment areas shall provide for the implementation of contingency measures to be undertaken if the area fails to make reasonable further progress or fails to attain the NAAQS. This contingency measure requirement is inextricably tied to the reasonable further progress and attainment demonstration requirements. Where an area has already achieved attainment, it has no need to rely on contingency measures to make further progress to attainment. Thus, the contingency measure requirement no longer applies when an area has attained the standard.

EPA's Clean Data Policy has been reviewed and consistently upheld by a number of courts. U.S. Courts of Appeals for the Tenth, Seventh, and Ninth Circuits have all upheld EPA rulemakings applying the Clean Data Policy suspending requirements for RFP, attainment demonstrations, RACM and contingency measures. *See Sierra Club* v. *EPA*, 99 F.3d 1551 (10th Cir. 1996); *Sierra Club* v. *EPA*, 375 F.3d 537 (7th Cir. 2004); *Our Children's Earth Foundation* v. *EPA*, No. 04–73032 (9th Cir. June 28, 2005 (Memorandum Opinion)); and *Latino Issues Forum* v. *EPA*, Nos. 06–75831 and 08–71238 (9th Cir. March 2, 2009 (Memorandum Opinion)). Notably, in each of those EPA actions upheld by the courts, EPA suspended the planning requirements listed above but did not suspend the requirement that the state submit an emissions inventory. A listing of these rulemakings was provided in the NPR for this action and will not be restated here. *See* 79 FR 46211.

In alignment with the policies outlined in the Seitz Memorandum for ozone and the 2007 $PM_{2.5}$ Implementation Rule mentioned above,[9] EPA employs the same rationale when it approves the suspension of certain requirements for nonattainment areas for the 2008 Pb NAAQS.[10] EPA has applied its interpretation of what SIP provisions are impacted under a determination of attainment for a nonattainment area for the 2008 Pb NAAQS in previous final determinations of attainment rulemaking actions for 2008 Pb NAAQS nonattainment areas. *See* 77 FR 52232 (August 29, 2012) and 78 FR 66280 (November 5, 2013).

In the August 7, 2014 NPR, EPA expressly stated that if we finalized the determination of attainment for the Lyons Area, the requirements for Pennsylvania to submit for the Area an attainment demonstration, associated RACM, a RFP plan, contingency measures, and other planning requirements related to attainment of the standard would be suspended for so long as the Lyons Area continues to attain the 2008 Pb NAAQS.

The commenter wrongly interprets this language to mean that upon

[5] *Clean Data Policy for the Fine Particle National Ambient Air Quality Standards,* EPA Memorandum from Steve Page, Director, EPA Office of Air Quality Planning Standards, December 14, 2004, located at *http://www.epa.gov/airquality/urbanair/sipstatus/docs/pm25_clean_data_policy_14dec2004.pdf.*

[6] Although the D.C. Circuit remanded the 2007 $PM_{2.5}$ Implementation Rule to EPA on January 4, 2013, the decision did not cast doubt on EPA's interpretation of statutory provisions, including EPA's Clean Data Policy interpretation. *See Natural Resources Defense Council* v. *EPA,* 706 F.3d 428 (D.C. Cir. 2013) (remanding the 2007 $PM_{2.5}$ Implementation Rule due to concerns regarding requirements for subpart 4 of part D of Title I of the CAA).

[7] This discussion refers to subpart 1 of part D of the CAA as this subpart contains the general and substantive attainment-related requirements for all NAAQS. Subpart 5 establishes additional requirements for the lead NAAQS, including the applicable attainment date and the deadline for states to submit a plan to meet the substantive attainment-related requirements of subpart 1.

[8] Likewise, EPA's Clean Data Policy suspends the requirement for RACM in SIP submissions for section 172(c) upon a determination of attainment because the intent of RACM in section 172(c)(1) is to enable an area to attain the NAAQS. RACM would not be needed as an ''additional measure'' if an area has attained the NAAQS.

[9] *See* 72 FR 20586 (April 25, 2007) (2007 $PM_{2.5}$ Implementation Rule). *See also* 70 FR 71612 (November 29, 2005) (Final Rule To Implement the 8-Hour Ozone National Ambient Air Quality Standard—Phase 2 which included and extended the Clean Data Policy for ozone to the 1997 ozone NAAQS).

[10] Each of the above interpretations apply only as long as a nonattainment area continues to monitor attainment of the standard. If EPA determines that the Lyons Area has violated the 2008 Pb NAAQS, the area would again be required to submit the pertinent SIP sections in section 172(c) including requirements for RFP, RACM, and contingency measures.

finalization of the determination of attainment for the Lyons Area, all of the nonattainment plan provisions that fall under paragraph 172(c), including the emission inventory provisions of section 172(c)(3), will be suspended for so long as the Lyons Area continues to attain the 2008 Pb NAAQS.

Section 172(c) includes a list of requirements for SIP revisions for areas that are designated as nonattainment for a NAAQS. As discussed earlier, EPA has long interpreted some of the planning provisions that directly relate to measures aimed to achieve attainment of a NAAQS, such as RFP, RACM, and contingency measures, to no longer apply when an area is monitoring attainment of the standard. However, EPA believes a number of section 172(c) SIP revision requirements continue to apply and must be met even after EPA determines that a nonattainment area has attained a NAAQS. The provision requiring a nonattainment area to submit an emissions inventory is one such obligation that cannot be suspended simply because the area has monitored attainment. The requirement in section 172(c)(5) for a nonattainment new source review permit program in accordance with section 173 is another requirement not suspended by a determination of attainment. As stated in the NPR and TSD for this action, a finalized determination of attainment does not undo the original designation of the area as nonattainment, nor does it redesignate the area to attainment. While the commenter cites the Seitz Memorandum, General Preamble, and Calcagni Memorandum in support of its position, those documents in fact support EPA's interpretation that the emission inventory requirement in section 172(c)(3) remains as a required SIP provision after a determination of attainment. As discussed earlier, the Calcagni Memorandum and General Preamble maintain that the emission inventory requirement in section 172(c)(3) continues to apply to areas that are attaining the NAAQS, and only provide that for purposes of redesignation under 107(d)(3)(E), the requirement can be satisfied by an emission inventory submitted pursuant to the maintenance plan required by section 175A.

Thus, EPA disagrees with the commenter that all nonattainment plan provision requirements located in section 172(c), including ''informational'' requirements such as the section 172(c)(3) emissions inventory provision, are suspended after a determination of attainment is made for the nonattainment area.

V. EPA's Final Action

EPA is taking final action to determine that the Lyons Area is attaining the 2008 lead NAAQS. This determination of attainment is based upon certified, quality-assured, and quality-controlled air monitoring data showing that this Area has monitored attainment of the 2008 Pb NAAQS during the period 2011–2013. This final action suspends the requirements for this Area to submit an attainment demonstration, associated RACM, RFP plans, and contingency measures for failure to meet RFP or attainment deadlines so long as this Area continues to meet the 2008 Pb NAAQS. EPA is taking this final action because it is in accordance with the CAA and EPA policy and guidance.

VI. Statutory and Executive Order Reviews

A. General Requirements

This action, which makes a determination of attainment based on air quality, will result in the suspension of certain Federal requirements and/or will not impose any additional requirements beyond those imposed by state law. For that reason, this action:

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

In addition, this rulemaking action does not have tribal implications as specified by Executive Order 13175 (65 FR 67249, November 9, 2000), because the SIP is not approved to apply in Indian country located in the state, and EPA notes that it will not impose substantial direct costs on tribal governments or preempt tribal law.

B. Submission to Congress and the Comptroller General

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

C. Petitions for Judicial Review

Under section 307(b)(1) of the CAA, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by February 27, 2015. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this action for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This rulemaking action, determining that the Lyons Area has attained the 2008 Pb NAAQS, may not be challenged later in proceedings to enforce its requirements. (*See* section 307(b)(2).)

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Incorporation by reference, Lead, Reporting and recordkeeping requirements.

Dated: December 11, 2014.

William C. Early, Acting,

Regional Administrator, Region III.

40 CFR part 52 is amended as follows:

PART 52—APPROVAL AND PROMULGATION OF IMPLEMENTATION PLANS

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

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

Subpart NN—Pennsylvania

■ 2. Section 52.2055 is added to read as follows:

§ 52.2055 Control strategy: Lead.

(a) *Determination of attainment.* EPA has determined, as of December 29, 2014, based on quality-assured ambient air quality data for 2011 to 2013, that the Lyons, PA nonattainment area has attained the 2008 Pb NAAQS. This determination suspends the requirements for this area to submit an attainment demonstration, associated reasonably available control measures, a reasonable further progress plan, contingency measures, and other planning SIPs related to attainment of the standard for as long as this area continues to meet the 2008 Pb NAAQS. If EPA determines, after notice-and-comment rulemaking, that this area no longer meets the 2008 Pb NAAQS, the corresponding determination of attainment for that area shall be withdrawn.

(b) [Reserved]

[FR Doc. 2014–30174 Filed 12–24–14; 8:45 am]

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ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 80

Regulation of Fuels and Fuel Additives

CFR Correction

In Title 40 of the Code of Federal Regulations, Parts 72 to 80, revised as of July 1, 2014, on page 711, in § 80.75, remove the first introductory paragraph, including the bold text at the end of the paragraph: ''Reporting requirements''.

[FR Doc. 2014–30464 Filed 12–24–14; 8:45 am]

BILLING CODE 1505–01–D

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 74

[WT Docket Nos. 08–166; 08–167; ET Docket No. 10–24; FCC 14–62]

Information Collection Approval for the Rules Regarding Low Power Auxiliary Stations, Including Wireless Microphones

AGENCY: Federal Communications Commission.

ACTION: Announcement of approval date for information collection.

SUMMARY: In this document, the Commission announces that the Office of Management and Budget (OMB) approved on December 5, 2014, for a period for three years, a revision to an information collection for the FCC Application for Radio Service Authorization for the Wireless Telecommunications Bureau and the Public Safety and Homeland Security Bureau, FCC Form 601. With this document, the Commission is announcing OMB approval and the effective date of the revised requirements for FCC Form 601.

DATES: FCC Form 601 was approved by OMB on December 5, 2014 and is effective on December 29, 2014.

FOR FURTHER INFORMATION CONTACT: For additional information contact Cathy Williams, *Cathy.Williams@fcc.gov,* (202) 418–2918.

SUPPLEMENTARY INFORMATION: This document announces that, on December 5, 2014, OMB approved the revised information collection requirements for FCC Application for Radio Service Authorization for the Wireless Telecommunications Bureau and the Public Safety and Homeland Security Bureau FCC Form 601 published at 79 FR 40680 on July 14, 2014. The OMB Control Number is 3060–0798. The Commission publishes this document as an announcement of the effective date of the requirements. If you have any comments on the burden estimates listed below, or how the Commission can improve the collections and reduce any burdens caused thereby, please contact Cathy Williams, Federal Communications Commission, Room 1–C823, 445 12th Street SW., Washington, DC 20554. Please include the OMB Control Number, 3060–0798, in your correspondence. The Commission will also accept your comments via the Internet if you send them to *PRA@fcc.gov.*

To request materials in accessible formats for people with disabilities (Braille, large print, electronic files, audio format), send an email to *fcc504@fcc.gov* or call the Consumer and Governmental Affairs Bureau at (202) 418–0530 (voice), (202) 418–0432 (TTY).

Synopsis

As required by the Paperwork Reduction Act of 1995 (44 U.S.C. 3507), the FCC is notifying the public that it received OMB approval on December 5, 2014, for the revised information collection requirements contained in the information collection 3060–0798.

Under 5 CFR 1320, an agency may not conduct or sponsor a collection of information unless it displays a current, 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 that does not display a current, valid OMB Control Number. The OMB Control Number is 3060–0798. The foregoing document is required by the Paperwork Reduction Act of 1995, Pub. L. 104–13, October 1, 1995, and 44 U.S.C. 3507. The total annual reporting burdens and costs for the respondents are as follows:

OMB Control Number: 3060–0798.

OMB Approval Date: December 5, 2014.

OMB Expiration Date: December 31, 2017.

Title: FCC Application for Radio Service Authorization Wireless Telecommunications Bureau; Public Safety and Homeland Security Bureau.

Form No.: FCC Form 601.

Respondents: Individuals and households; Business or other for-profit; 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 received approval from OMB 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.

Federal Communications Commission.

Marlene H. Dortch,

Secretary, Office of the Secretary Office of the Managing Director.

[FR Doc. 2014–30252 Filed 12–24–14; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 79

[CG Docket No. 05–231; FCC 14–12]

Closed Captioning of Video Programming; Telecommunications for the Deaf and Hard of Hearing; Petition for Rulemaking

AGENCY: Federal Communications Commission.

ACTION: Final rule; announcement of effective date.

SUMMARY: In this document, the Commission announces that the Office of Management and Budget (OMB) has approved, for a period of three years, the information collection associated with the Commission's document Closed Captioning of Video Programming; Telecommunications for the Deaf and Hard of Hearing; Petition for Rulemaking (*Report and Order*). This document is consistent with the *Report and Order,* which stated that the Commission would publish a document in the **Federal Register** announcing the effective date of those rules.

DATES: 47 CFR 79.1(c)(3), (e)(11)(iii), (iv) and (v), (j), and (k), published at 79 FR 17911, March 31, 2014, are effective March 16, 2015.

FOR FURTHER INFORMATION CONTACT: Eliot Greenwald, Disability Rights Office, Consumer and Governmental Affairs Bureau, at (202) 418–2235, or email *Eliot.Greenwald@fcc.gov.*

SUPPLEMENTARY INFORMATION: This document announces that, on December 18, 2014, OMB approved, for a period of three years, the information collection requirements contained in the Commission's *Report and Order,* FCC 14–12, published at 79 FR 17911, March 31, 2014. The OMB Control Number is 3060–0761. The Commission publishes this document as an announcement of the effective date of the rules. If you have any comments on the burden estimates listed below, or how the Commission can improve the collections and reduce any burdens caused thereby, please contact Cathy Williams, Federal Communications Commission, Room 1–C823, 445 12th Street SW., Washington, DC 20554. Please include the OMB Control Number, 3060–0761, in your correspondence. The Commission will also accept your comments via the Internet if you send them to *PRA@fcc.gov.*

To request materials in accessible formats for people with disabilities (Braille, large print, electronic files, audio format), send an email to *fcc504@fcc.gov* or call the Consumer and Governmental Affairs Bureau at (202) 418–0530 (voice), (202) 418–0432 (TTY).

Synopsis

As required by the Paperwork Reduction Act of 1995 (44 U.S.C. 3507), the FCC is notifying the public that it received OMB approval on December 18, 2014, for the information collection requirements contained in the Commission's rules at 47 CFR 79.1(c)(3), (e)(11)(iii), (iv) and (v), (j), and (k). Under 5 CFR part 1320, an agency may not conduct or sponsor a collection of information unless it displays a current, 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 that does not display a current, valid OMB Control Number. The OMB Control Number is 3060–0761.

The foregoing notice is required by the Paperwork Reduction Act of 1995, Pub. L. 104–13, October 1, 1995, and 44 U.S.C. 3507.

The total annual reporting burdens and costs for the respondents are as follows:

OMB Control Number: 3060–0761.

OMB Approval Date: December 18, 2014.

OMB Expiration Date: December 31, 2017.

Title: Section 79.1, Closed Captioning of Video Programming, CG Docket No. 05–231.

Form Number: N/A.

Type of Review: Revision of a currently approved collection.

Respondents: Business or other for-profit entities; Individuals or households; and Not-for-profit entities.

Number of Respondents and Responses: 22,565 respondents; 1,149,437 responses.

Estimated Time per Response: 0.25 hours (15 minutes) to 120 hours.

Frequency of Response: Annual, one-time and on-occasion reporting requirements; Third party disclosure requirement; Recordkeeping requirement.

Obligation to Respond: Required to obtain or retain benefits. The statutory

authority for this obligation is found at section 713 of the Communications Act of 1934, as amended, 47 U.S.C. 613, and implemented at 47 CFR 79.1.

Total Annual Burden: 1,254,358 hours.

Total Annual Cost: $40,220,496.

Nature and Extent of Confidentiality: Confidentiality is an issue to the extent that individuals and households provide personally identifiable information, which is covered under the FCC's system of records notice (SORN), FCC/CGB–1, ''Informal Complaints, Inquiries and Request for Dispute Assistance.'' As required by the Privacy Act, 5 U.S.C. 552a, the Commission also published a SORN, FCC/CGB–1 ''Informal Complaints, Inquiries and Request for Dispute Assistance,'' in the **Federal Register** on August 15, 2014 (79 FR 48152) which became effective on September 24, 2014.

Privacy Impact Assessment: Yes.

Needs and Uses: The Commission seeks to extend existing information collection requirements in its closed captioning rules (47 CFR 79.1), which require that, with some exceptions, all new video programming, and 75 percent of ''pre-rule'' programming, be closed captioned. The existing collections include petitions by video programming providers, producers, and owners for exemptions from the closed captioning rules, responses by commenters, and replies; complaints by viewers alleging violations of the closed captioning rules, responses by video programming distributors, and recordkeeping in support of complaint responses; and making video programming distributor contact information available to viewers in phone directories, on the Commission's Web site and the Web sites of video programming distributors (if they have them), and in billing statements (to the extent video programming distributors issue them). In addition, the Commission seeks to extend proposed information collection requirements. Specifically, on February 20, 2014, the Commission adopted rules governing the quality of closed captioning on television. *Closed Captioning of Video Programming; Telecommunications for the Deaf and Hard of Hearing, Inc. Petition for Rulemaking,* CG Docket No. 05–231, Report and Order, Declaratory Ruling, and Further Notice of Proposed Rulemaking, 29 FCC Rcd 2221 (2014), published at 79 FR 17911 (March 31, 2014). The Commission took the following actions, among others:

(a) Required video programming distributors to make best efforts to obtain certification from video programmers that their programming (i) complies with the captioning quality standards established in the Report and Order; (ii) adheres to the Best Practices for video programmers set out in the Report and Order; or (iii) is exempt from the closed captioning rules under one or more properly attained and specified exemptions.

(b) Adopted additional requirements and a ''compliance ladder'' for broadcasters that use electronic newsroom technique.

(c) Required video programming distributors to keep records of their activities related to the maintenance, monitoring, and technical checks of their captioning equipment.

(d) Required that petitions requesting an exemption based on the economically burdensome standard and all subsequent pleadings, as well as comments, oppositions, or replies to comments, be filed electronically in accordance with 47 CFR 0.401(a)(1)(iii) instead of as a paper filing.

Comments, oppositions, or replies to comments must be served on the other party, by delivering or mailing a copy to the last known address in accordance with 47 CFR 1.47 or by sending a copy to the email address last provided by the party, its attorney, or other duly constituted agent, and must include a certification that the other party was served with a copy.

Federal Communications Commission.

Sheryl D. Todd,

Deputy Secretary, Office of the Secretary, Office of the Managing Director.

[FR Doc. 2014–30379 Filed 12–24–14; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Parts 80, 87 and 95

[DA 14–1286]

Update Mailing Addresses Pertaining to Satellite Emergency Radiobeacons

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: In this document, the Federal Communications Commission (FCC) revises certain mailing addresses pertaining to satellite emergency radiobeacons which are used to facilitate search and rescue of persons in distress. We update the rules to include the correct mailing addresses for the National Oceanographic and Atmospheric Administration's (NOAA) National Beacon Registration Database, the Radio Technical Commission for Maritime Services (RTCM), the Radio Technical Commission for Aeronautics (RTCA), and the United States Coast Guard (Coast Guard). This Order updates the mailing addresses provided in our rules for NOAA, RTCM, RTCA and the Coast Guard.

DATES: Effective December 29, 2014. The incorporation by reference of certain publications listed in the rule was previously approved by the Director of the Federal Register.

ADDRESSES: Federal Communications Commission, 445 12th Street SW., Washington, DC 20554.

FOR FURTHER INFORMATION CONTACT: James Shaffer, Mobility Division, Wireless Telecommunications Bureau, at (202) 418–0687.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's *Order* (''*Order*'') in DA 14–1286 adopted on September 5, 2014, and released on September 5, 2014. The full text of this document is available for inspection and copying during normal business hours in the FCC Reference Center, 445 12th Street SW., Washington, DC 20554. The complete text may be purchased from the Commission's copy contractor, Best Copy and Printing, Inc., 445 12th Street SW., Room CY–B402, Washington, DC 20554. The full text may also be downloaded at: *www.fcc.gov.* Alternative formats are available to persons with disabilities by sending an email to *fcc504@fcc.gov* or by calling the Consumer & Governmental Affairs Bureau at 202–418–0530 (voice), 202–418–0432 (tty).

In this *Order,* the FCC revised 47 CFR 80.7, 80.1061, 87.199 and 95.1402 to update NOAA's address for its National Beacon Registration Database used by beacon owners to register emergency information used during emergencies. We also update RTCM and RTCA addresses used for obtaining technical standards for beacons that part 80 and 87 incorporate by reference. Finally, we update the rules to reflect Coast Guard's new mailing and Internet addresses used for submitting findings by a test facility accepted by the Coast Guard for assuring beacons meet the relevant RTCM technical standard. Updating these mailing addresses will reduce confusion and delay in registering emergency information with NOAA, assure NOAA receives important information from beacon users, reduce confusion and delay in obtaining copies of needed technical standards and reduce confusion and delay in filing test results with the Coast Guard.

Procedural Matters

1. The Bureau adopts this Order pursuant to its delegated authority to

''conduct[ ] rulemaking . . . proceedings'' in matters pertaining to the licensing and regulation of wireless telecommunications ''involving ministerial conforming amendments to rule parts.''

2. The revisions adopted in this Order and set forth in the attached Appendix merely correct the addresses provided in our rules for NOAA and RTCM. These revisions are thus ministerial, non-substantive, and editorial. Accordingly, we find good cause to conclude that notice and comment procedures are unnecessary and would not serve any useful purpose. Because the rule revisions will not affect the substantive rights or interests of any licensee, we also find good cause to make these non-substantive, editorial revisions of the rules effective upon publication in the **Federal Register**.

3. Because this Order is being adopted without the publication of a notice of proposed rulemaking, the Regulatory Flexibility Act, 5 U.S.C. 601 *et seq.,* does not require the Commission to prepare a regulatory flexibility analysis.

4. This document does not contain new or modified information collection requirements subject to the Paperwork Reduction Act of 1995, Public Law 104–13. In addition, therefore, it does not contain any new or modified information collection burden for small business concerns with fewer than 25 employees, pursuant to the Small Business Paperwork Relief Act of 2002, Public Law 107–198, see 44 U.S.C. 3506(c)(4).

List of Subjects in 47 CFR Parts 80, 87 and 95

Communications equipment, radio, Incorporation by reference.

Federal Communications Commission.

Roger Sherman,

Bureau Chief, Wireless Telecommunications Bureau.

For the reasons discussed in the preamble, the Federal Communications Commission amends 47 CFR parts 80, 87 and 95 as follows:

PART 80—STATIONS IN THE MARITIME SERVICES

■ 1. The authority citation for part 80 continues to read as follows:

Authority: Secs. 4, 303, 307(e), 309, and 332, 48 Stat. 1066, 1082, as amended; 47 U.S.C. 154, 303, 307(e), 309, and 332, unless otherwise noted. Interpret or apply 48 Stat. 1064–1068, 1081–1105, as amended; 47 U.S.C. 151–155, 301–609; 3 UST 3450, 3 UST 4726, 12 UST 2377.

■ 2. Section 80.7 is amended by revising paragraph (f) introductory text to read as follows:

§ 80.7 Incorporation by reference.

* * * * *

(f) The Radio Technical Commission for Maritime Services (RTCM), 1611 N. Kent Street, Suite 605, Arlington, VA 22209; *www.rtcm.org;* telephone (703) 527–2000; *email information@rtcm.org.*

* * * * *

■ 3. Section 80.1061 is amended by revising paragraphs (c) introductory text, (c)(1), (e), and (f) to read as follows:

§ 80.1061 Special requirements for 406.0–406.1 MHz EPIRB stations.

* * * * *

(c) Prior to submitting a certification application for a 406.0–406.1 MHz radiobeacon, the radiobeacon must be certified by a test facility recognized by one of the COSPAS–SARSAT Partners that the equipment satisfies the design characteristics associated with the measurement methods described in COSPAS–SARSAT Standard C/S T.001 (incorporated by reference, see § 80.7), and COSPAS–SARSAT Standard C/S T.007 (incorporated by reference, see § 80.7). Additionally, the radiobeacon must be subjected to the environmental and operational tests associated with the test procedures described in Appendix A of RTCM Standard 11000.2 (incorporated by reference, see § 80.7), by a test facility accepted by the U.S. Coast Guard for this purpose. Information regarding accepted test facilities may be obtained from Commandant (CG–5214), U.S. Coast Guard, 2100 2nd St. SW., Stop 7126, Washington, DC 20593–7126, *http://www.uscg.mil.hq/cg5/cg5214/epirbs.asp.*

(1) After a 406.0–406.1 MHz EPIRB has been certified by the recognized test facilities the following information must be submitted in duplicate to the Commandant (CG–5214), U.S. Coast Guard, 2100 2nd Street SW., Stop 7126, Washington, DC 20593–7126:

* * * * *

(e) An identification code, issued by the National Oceanic and Atmospheric Administration (NOAA), the United States Program Manager for the 406.0–406.1 MHz COSPAS/SARSAT satellite system, must be programmed in each EPIRB unit to establish a unique identification for each EPIRB station. With each marketable EPIRB unit, the manufacturer or grantee must include a postage pre-paid registration card printed with the EPIRB identification code addressed to: NOAA/SARSAT Beacon Registration, NSOF, E/SPO53, 1315 East West Hwy, Silver Spring, MD 20910–9684. The registration card must request the owner's name, address, telephone number, type of ship, alternate emergency contact and other information as required by NOAA. The registration card must also contain information regarding the availability to register the EPIRB at NOAA's online web-based registration database at: *http://www.beaconregistration.noaa.gov.* In addition, the following statement must be included: ''WARNING—failure to register this EPIRB with NOAA before installation could result in a monetary forfeiture being issued to the owner.''

(f) To enhance protection of life and property it is mandatory that each 406.0–406.1 MHz EPIRB be registered with NOAA before installation and that information be kept up-to-date. Therefore, in addition to the identification plate or label requirements contained in §§ 2.925 and 2.926 of this chapter, each 406.0–406.1 MHz EPIRB must be provided on the outside with a clearly discernible permanent plate or label containing the following statement: ''The owner of this 406.0–406.1 MHz EPIRB must register the NOAA identification code contained on this label with the National Oceanic and Atmospheric Administration (NOAA) whose address is: NOAA/SARSAT Beacon Registration, NSOF, E/SPO53, 1315 East West Hwy, Silver Spring, MD 20910–9684.'' Vessel owners shall advise NOAA in writing upon change of vessel or EPIRB ownership, transfer of EPIRB to another vessel, or any other change in registration information. NOAA will provide registrants with proof of registration and change of registration postcards.

* * * * *

PART 87—AVIATION SERVICES

■ 4. The authority citation for part 87 continues to read as follows:

Authority: 47 U.S.C. 154, 303 and 307(e), unless otherwise noted.

■ 5. Section 87.199 is amended by revising paragraphs (a), (e), and (f) to read as follows:

§ 87.199 Special requirements for 406.0–406.1 MHz ELTs.

(a) 406.0–406.1 MHz ELTs use G1D emission. Except for the spurious emission limits specified in § 87.139(h), 406.0–406.1 MHz ELTs must meet all the technical and performance standards contained in the Radio Technical Commission for Aeronautics document titled ''Minimum Operational Performance Standards 406 MHz Emergency Locator Transmitters (ELT)'' Document No. RTCA/DO–204 dated September 29, 1989. The Director of the Federal Register approves this

incorporation by reference in accordance with 5 U.S.C 552(a) and 1 CFR part 51. Copies of this standard can be inspected at the Federal Communications Commission, 445 12th Street SW., Washington, DC (Reference Information Center) or at the National Archives and Records Administration (NARA). For information on the availability of this material at NARA, call 202–741–6030, or go to: *http://www.archives.gov/federal_register/code_of_federal_regulations/ibr_locations.html.* Copies of the RTCA standards also may be obtained from the Radio Technical Commission for Aeronautics, Inc., 1150 18th Street NW., Suite 910, Washington, DC 20036.

* * * * *

(e) An identification code, issued by the National Oceanic and Atmospheric Administration (NOAA), the United States Program Manager for the 406.0–406.1 MHz COSPAS/SARSAT satellite system, must be programmed in each ELT unit to establish a unique identification for each ELT station. With each marketable ELT unit the manufacturer or grantee must include a postage pre-paid registration card printed with the ELT identification code addressed to: NOAA/SARSAT Beacon Registration, NSOF, E/SPO53, 1315 East West Hwy, Silver Spring, MD 20910–9684. The registration card must request the owner's name, address, telephone, type of aircraft, alternate emergency contact, and other information as required by NOAA. The registration card must also contain information regarding the availability to register the ELT at NOAA's online Web-based registration database at: *http://www.beaconregistration.noaa.gov.* Further, the following statement must be included: ''WARNING—failure to register this ELT with NOAA before installation could result in a monetary forfeiture being issued to the owner.''

(f) To enhance protection of life and property, it is mandatory that each 406.0–406.1 MHz ELT must be registered with NOAA before installation and that information be kept up-to-date. In addition to the identification plate or label requirements contained in §§ 2.925 and 2.926 of this chapter, each 406.0–406.1 MHz ELT must be provided on the outside with a clearly discernable permanent plate or label containing the following statement: ''The owner of this 406.0–406.1 MHz ELT must register the NOAA identification code contained on this label with the National Oceanic and Atmospheric Administration (NOAA), whose address is: NOAA/SARSAT Beacon Registration, NSOF, E/SPO53, 1315 East West Hwy, Silver Spring, MD 20910–9684.'' Aircraft owners shall advise NOAA in writing upon change of aircraft or ELT ownership, or any other change in registration information. Fleet operators must notify NOAA upon transfer of ELT to another aircraft outside of the owner's control, or any other change in registration information. NOAA will provide registrants with proof of registration and change of registration postcards.

* * * * *

PART 95—PERSONAL RADIO SERVICES

■ 6. The authority citation for part 95 continues to read as follows:

Authority: Secs. 4, 303, 48 Stat. 1066, 1082, as amended; 47 U.S.C. 154, 303.

■ 7. Section 95.1402 is amended by revising paragraphs (a), (e), and (f) to read as follows:

§ 95.1402 Special requirements for 406 MHz PLBs.

(a) All 406 MHz PLBs must meet all the technical and performance standards contained in the Radio Technical Commission for Maritime (RTCM) Service document ''RTCM Recommended Standards for 406 MHz Satellite Personal Locator Beacons (PLBs),'' Version 1.1, RTCM Paper 76–2002/SC110–STD, dated June 19, 2002. This RTCM document is incorporated by reference in accordance with 5 U.S.C. 552(a), and 1 CFR part 51. Copies of the document are available and may be obtained from the Radio Technical Commission for Maritime Services, 1611 N. Kent Street, Suite 605, Arlington, VA 22209; *www.rtcm.org;* telephone (703) 527–2000; email *information@rtcm.org.* The document is available for inspection at Commission headquarters at 445 12th Street SW., Washington, DC 20554. Copies may also be inspected 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.*

* * * * *

(e) An identification code, issued by the National Oceanic and Atmospheric Administration (NOAA), the United States Program Manager for the 406 MHz COSPAS/SARSAT satellite system, must be programmed in each PLB unit to establish a unique identification for each PLB station. With each marketable PLB unit, the manufacturer or grantee must include a postage pre-paid registration card printed with the PLB identification code addressed to: NOAA/SARSAT Beacon Registration, NSOF, E/SPO53, 1315 East West Hwy, Silver Spring, MD 20910–9684. The registration card must request the owner's name, address, telephone number, alternate emergency contact and include the following statement: ''WARNING—failure to register this PLB with NOAA could result in a monetary forfeiture order being issued to the owner.''

(f) To enhance protection of life and property, it is mandatory that each 406 MHz PLB be registered with NOAA and that information be kept up-to-date. In addition to the identification plate or label requirements contained in §§ 2.925 and 2.926 of this chapter, each 406 MHz PLB must be provided on the outside with a clearly discernable permanent plate or label containing the following statement: ''The owner of this 406 MHz PLB must register the NOAA identification code contained on this label with the National Oceanic and Atmospheric Administration (NOAA) whose address is: NOAA/SARSAT Beacon Registration, NSOF, E/SPO53, 1315 East West Hwy, Silver Spring, MD 20910–9684.'' Owners shall advise NOAA in writing upon change of PLB ownership, or any other change in registration information. NOAA will provide registrants with proof of registration and change of registration postcards.

* * * * *

[FR Doc. 2014–30381 Filed 12–24–14; 8:45 am]

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DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 229

[Docket No. 1140325271–4999–02]

RIN 0648–BE13

List of Fisheries for 2015

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

ACTION: Final rule.

SUMMARY: The National Marine Fisheries Service (NMFS) publishes its final List of Fisheries (LOF) for 2015, as required by the Marine Mammal Protection Act (MMPA). The final LOF for 2015 reflects new information on interactions between commercial fisheries and marine mammals. NMFS must classify each commercial fishery

on the LOF into one of three categories under the MMPA based upon the level of mortality and serious injury of marine mammals that occurs incidental to each fishery. The classification of a fishery on the LOF determines whether participants in that fishery are subject to certain provisions of the MMPA, such as registration, observer coverage, and take reduction plan (TRP) requirements.

DATES: The effective date of this final rule is January 28, 2015.

ADDRESSES: Chief, Marine Mammal and Sea Turtle Conservation Division, Office of Protected Resources, NMFS, 1315 East-West Highway, Silver Spring, MD 20910.

FOR FURTHER INFORMATION CONTACT: Lisa White, Office of Protected Resources, 301–427–8494; Allison Rosner, Greater Atlantic Region, 978–281–9328; Jessica Powell, Southeast Region, 727–824–5312; Elizabeth Petras, West Coast Region (CA), 562–980–3238; Brent Norberg, West Coast Region (WA/OR), 206–526–6550; Kim Rivera, Alaska Region, 907–586–7424; Nancy Young, Pacific Islands Region, 808–725–5156. Individuals who use a telecommunications device for the hearing impaired may call the Federal Information Relay Service at 1–800–877–8339 between 8 a.m. and 4 p.m. Eastern time, Monday through Friday, excluding Federal holidays.

SUPPLEMENTARY INFORMATION:

What is the list of fisheries?

Section 118 of the MMPA requires NMFS to place all U.S. commercial fisheries into one of three categories based on the level of incidental mortality and serious injury of marine mammals occurring in each fishery (16 U.S.C. 1387(c)(1)). The classification of a fishery on the LOF determines whether participants in that fishery may be required to comply with certain provisions of the MMPA, such as registration, observer coverage, and take reduction plan requirements. NMFS must reexamine the LOF annually, considering new information in the Marine Mammal Stock Assessment Reports (SARs) and other relevant sources, and publish in the **Federal Register** any necessary changes to the LOF after notice and opportunity for public comment (16 U.S.C. 1387 (c)(1)(C)).

How does NMFS determine in which category a fishery is placed?

The definitions for the fishery classification criteria can be found in the implementing regulations for section 118 of the MMPA (50 CFR 229.2). The criteria are also summarized here.

Fishery Classification Criteria

The fishery classification criteria consist of a two-tiered, stock-specific approach that first addresses the total impact of all fisheries on each marine mammal stock and then addresses the impact of individual fisheries on each stock. This approach is based on consideration of the rate, in numbers of animals per year, of incidental mortalities and serious injuries of marine mammals due to commercial fishing operations relative to the potential biological removal (PBR) level for each marine mammal stock. The MMPA (16 U.S.C. 1362 (20)) defines the PBR level as the maximum number of animals, not including natural mortalities, that may be removed from a marine mammal stock while allowing that stock to reach or maintain its optimum sustainable population. This definition can also be found in the implementing regulations for section 118 of the MMPA (50 CFR 229.2).

Tier 1: If the total annual mortality and serious injury of a marine mammal stock, across all fisheries, is less than or equal to 10 percent of the PBR level of the stock, all fisheries interacting with the stock will be placed in Category III (unless those fisheries interact with other stock(s) in which total annual mortality and serious injury is greater than 10 percent of PBR). Otherwise, these fisheries are subject to the next tier (Tier 2) of analysis to determine their classification.

Tier 2, Category I: Annual mortality and serious injury of a stock in a given fishery is greater than or equal to 50 percent of the PBR level (*i.e.,* frequent incidental mortality and serious injury of marine mammals).

Tier 2, Category II: Annual mortality and serious injury of a stock in a given fishery is greater than 1 percent and less than 50 percent of the PBR level (*i.e.,* occasional incidental mortality and serious injury of marine mammals).

Tier 2, Category III: Annual mortality and serious injury of a stock in a given fishery is less than or equal to 1 percent of the PBR level (*i.e.,* a remote likelihood of or no known incidental mortality and serious injury of marine mammals).

While Tier 1 considers the cumulative fishery mortality and serious injury for a particular stock, Tier 2 considers fishery-specific mortality and serious injury for a particular stock. Additional details regarding how the categories were determined are provided in the preamble to the final rule implementing section 118 of the MMPA (60 FR 45086, August 30, 1995).

Because fisheries are classified on a per-stock basis, a fishery may qualify as one Category for one marine mammal stock and another Category for a different marine mammal stock. A fishery is typically classified on the LOF at its highest level of classification (*e.g.,* a fishery qualifying for Category III for one marine mammal stock and for Category II for another marine mammal stock will be listed under Category II). Stocks driving a fishery's classification are denoted with a superscript ''1'' in Tables 1 and 2.

Other Criteria That May Be Considered

The tier analysis requires a minimum amount of data, and NMFS does not have sufficient data to perform a tier analysis on certain fisheries. Therefore, NMFS has classified certain fisheries by analogy to other Category I or II fisheries that use similar fishing techniques or gear that are known to cause mortality or serious injury of marine mammals, or according to factors discussed in the final LOF for 1996 (60 FR 67063, December 28, 1995) and listed in the regulatory definition of a Category II fishery: ''In the absence of reliable information indicating the frequency of incidental mortality and serious injury of marine mammals by a commercial fishery, NMFS will determine whether the incidental mortality or serious injury is 'frequent,' 'occasional,' or 'remote' by evaluating other factors such as fishing techniques, gear used, methods used to deter marine mammals, target species, seasons and areas fished, qualitative data from logbooks or fisher reports, stranding data, and the species and distribution of marine mammals in the area, or at the discretion of the Assistant Administrator for Fisheries'' (50 CFR 229.2).

Further, eligible commercial fisheries not specifically identified on the LOF are deemed to be Category II fisheries until the next LOF is published (50 CFR 229.2).

How does NMFS determine which species or stocks are included as incidentally killed or injured in a fishery?

The LOF includes a list of marine mammal species and/or stocks incidentally killed or injured in each commercial fishery. The list of species and/or stocks incidentally killed or injured includes ''serious'' and ''non-serious'' documented injuries as described later in the List of Species and/or Stocks Incidentally Killed or Injured in the Pacific Ocean and the Atlantic Ocean, Gulf of Mexico, and Caribbean sections. To determine which species and stocks are included as

incidentally killed or injured in a fishery, NMFS annually reviews the information presented in the current SARs. The SARs are based upon the best available scientific information and provide the most current and inclusive information on each stock's PBR level and level of interaction with commercial fishing operations. The best available scientific information used in the SARs reviewed for the 2015 LOF generally summarizes data from 2007–2011. NMFS also reviews other sources of new information, including injury determination reports, bycatch estimation reports, observer data, logbook data, stranding data, disentanglement network data, fisher self-reports (*i.e.* MMPA reports), and anecdotal reports from that time period.

Where does NMFS obtain information on the level of observer coverage in a fishery on the LOF?

The best available information on the level of observer coverage and the spatial and temporal distribution of observed marine mammal interactions is presented in the SARs. Data obtained from the observer program and observer coverage levels are important tools in estimating the level of marine mammal mortality and serious injury in commercial fishing operations. Starting with the 2005 SARs, each SAR includes an appendix with detailed descriptions of each Category I and II fishery on the LOF, including the observer coverage in those fisheries. The SARs generally do not provide detailed information on observer coverage in Category III fisheries because, under the MMPA, Category III fisheries are generally not required to accommodate observers aboard vessels due to the remote likelihood of mortality and serious injury of marine mammals. Fishery information presented in the SARs' appendices and other resources referenced during the tier analysis may include: Level of observer coverage, target species, levels of fishing effort, spatial and temporal distribution of fishing effort, characteristics of fishing gear and operations, management and regulations, and interactions with marine mammals. Copies of the SARs are available on the NMFS Office of Protected Resources Web site at: *http://www.nmfs.noaa.gov/pr/sars/.* Information on observer coverage levels in Category I and II fisheries can also be found in the Category I and II fishery fact sheets on the NMFS Office of Protected Resources' Web site: *http://www.nmfs.noaa.gov/pr/interactions/lof/.* Additional information on observer programs in commercial fisheries can be found on the NMFS National Observer Program's Web site: *http://www.st.nmfs.gov/st4/nop/.*

How do I find out if a specific fishery is in category I, II, or III?

This rule includes three tables that list all U.S. commercial fisheries by LOF Category. Table 1 lists all of the commercial fisheries in the Pacific Ocean (including Alaska); Table 2 lists all of the commercial fisheries in the Atlantic Ocean, Gulf of Mexico, and Caribbean; and Table 3 lists all U.S.-authorized commercial fisheries on the high seas. A fourth table, Table 4, lists all commercial fisheries managed under applicable TRPs or take reduction teams (TRTs).

Are high seas fisheries included on the LOF?

Beginning with the 2009 LOF, NMFS includes high seas fisheries in Table 3 of the LOF, along with the number of valid High Seas Fishing Compliance Act (HSFCA) permits in each fishery. As of 2004, NMFS issues HSFCA permits only for high seas fisheries analyzed in accordance with the National Environmental Policy Act (NEPA) and the Endangered Species Act (ESA). The authorized high seas fisheries are broad in scope and encompass multiple specific fisheries identified by gear type. For the purposes of the LOF, the high seas fisheries are subdivided based on gear type (*e.g.,* trawl, longline, purse seine, gillnet, troll, etc.) to provide more detail on composition of effort within these fisheries. Many fisheries operate in both U.S. waters and on the high seas, creating some overlap between the fisheries listed in Tables 1 and 2 and those in Table 3. In these cases, the high seas component of the fishery is not considered a separate fishery, but an extension of a fishery operating within U.S. waters (listed in Table 1 or 2). NMFS designates those fisheries in Tables 1, 2, and 3 by a ''*'' after the fishery's name. The number of HSFCA permits listed in Table 3 for the high seas components of these fisheries operating in U.S. waters does not necessarily represent additional effort that is not accounted for in Tables 1 and 2. Many vessels/participants holding HSFCA permits also fish within U.S. waters and are included in the number of vessels and participants operating within those fisheries in Tables 1 and 2.

HSFCA permits are valid for five years, during which time FMPs can change. Therefore, some vessels/participants may possess valid HSFCA permits without the ability to fish under the permit because it was issued for a gear type that is no longer authorized under the most current FMP. For this reason, the number of HSFCA permits displayed in Table 3 is likely higher than the actual U.S. fishing effort on the high seas. For more information on how NMFS classifies high seas fisheries on the LOF, see the preamble text in the final 2009 LOF (73 FR 73032; December 1, 2008). Additional information about HSFCA permits can be found at: *http://www.nmfs.noaa.gov/ia/permits/highseas.html.*

Where can I find specific information on fisheries listed on the LOF?

Starting with the 2010 LOF, NMFS developed summary documents, or fishery fact sheets, for each Category I and II fishery on the LOF. These fishery fact sheets provide the full history of each Category I and II fishery, including: When the fishery was added to the LOF, the basis for the fishery's initial classification, classification changes to the fishery, changes to the list of species and/or stocks incidentally killed or injured in the fishery, fishery gear and methods used, observer coverage levels, fishery management and regulation, and applicable TRPs or TRTs, if any. These fishery fact sheets are updated after each final LOF and can be found under ''How Do I Find Out if a Specific Fishery is in Category I, II, or III?'' on the NMFS Office of Protected Resources' Web site: *http://www.nmfs.noaa.gov/pr/interactions/lof/,* linked to the ''List of Fisheries by Year'' table. NMFS is developing similar fishery fact sheets for each Category III fishery on the LOF. However, due to the large number of Category III fisheries on the LOF and the lack of accessible and detailed information on many of these fisheries, the development of these fishery fact sheets is taking significant time to complete. NMFS will begin posting Category III fishery fact sheets online with the final 2015 LOF.

Am I required to register under the MMPA?

Owners of vessels or gear engaging in a Category I or II fishery are required under the MMPA (16 U.S.C. 1387(c)(2)), as described in 50 CFR 229.4, to register with NMFS and obtain a marine mammal authorization to lawfully take non-endangered and non-threatened marine mammals incidental to commercial fishing operations. Owners of vessels or gear engaged in a Category III fishery are not required to register with NMFS or obtain a marine mammal authorization.

How do I register and receive my authorization certificate and mortality/injury reporting forms?

NMFS has integrated the MMPA registration process, implemented through the Marine Mammal Authorization Program (MMAP), with existing state and Federal fishery license, registration, or permit systems for Category I and II fisheries on the LOF. Participants in these fisheries are automatically registered under the MMAP and are not required to submit registration or renewal materials directly under the MMAP. In the Pacific Islands, West Coast, and Alaska regions, NMFS will issue vessel or gear owners an authorization certificate and/or mortality/injury reporting forms via U.S. mail or with their state or Federal license at the time of renewal. In the Greater Atlantic Region, NMFS will issue vessel or gear owners an authorization certificate via U.S. mail automatically at the beginning of each calendar year; but vessel or gear owners must request or print mortality/injury reporting forms by contacting the NMFS Greater Atlantic Regional Office at 978–281–9328 or by visiting the Greater Atlantic Regional Office Web site (*http://www.nero.noaa.gov/mmap*). In the Southeast region, NMFS will issue vessel or gear owners notification of registry and vessel or gear owners may receive their authorization certificate and/or mortality/injury reporting form by contacting the Southeast Regional Office at 727–209–5952 or by visiting the Southeast Regional Office Web site (*http://sero.nmfs.noaa.gov/protected_resources/marine_mammal_authorization_program/*) and following the instructions for printing the necessary documents. Mortality/injury forms are also available online at *http://www.nmfs.noaa.gov/pr/pdfs/interactions/mmap_reporting_form.pdf.*

The authorization certificate, or a copy, must be on board the vessel while it is operating in a Category I or II fishery, or for non-vessel fisheries, in the possession of the person in charge of the fishing operation (50 CFR 229.4(e)). Although efforts are made to limit the issuance of authorization certificates to only those vessel or gear owners that participate in Category I or II fisheries, not all state and Federal permit systems distinguish between fisheries as classified by the LOF. Therefore, some vessel or gear owners in Category III fisheries may receive authorization certificates even though they are not required for Category III fisheries. Individuals fishing in Category I and II fisheries for which no state or Federal permit is required must register with NMFS by contacting their appropriate Regional Office (see **ADDRESSES**).

How do I renew my registration under the MMAP?

In Alaska regional and Greater Atlantic Regional fisheries, registrations of vessel or gear owners are automatically renewed and participants should receive an authorization certificate by January 1 of each new year. In Pacific Islands regional fisheries, vessel or gear owners receive an authorization certificate by January 1 for state fisheries and with their permit renewal for federal fisheries. In West Coast regional fisheries, vessel or gear owners receive authorization with each renewed state fishing license, the timing of which varies based on target species. Vessel or gear owners who participate in fisheries in these regions and have not received authorization certificates by January 1 or with renewed fishing licenses must contact the appropriate NMFS Regional Office (see **ADDRESSES**).

In Southeast regional fisheries, vessel or gear owners' registrations are automatically renewed and participants will receive a letter in the mail by January 1 instructing them to contact the Southeast Regional Office to have an authorization certificate mailed to them or to visit the Southeast Regional Office Web site (*http://sero.nmfs.noaa.gov/protected_resources/marine_mammal_authorization_program/*) to print their own certificate.

Am I required to submit reports when I kill or injure a marine mammal during the course of commercial fishing operations?

In accordance with the MMPA (16 U.S.C. 1387(e)) and 50 CFR 229.6, any vessel owner or operator, or gear owner or operator (in the case of non-vessel fisheries), participating in a fishery listed on the LOF must report to NMFS all incidental mortalities and injuries of marine mammals that occur during commercial fishing operations, regardless of the category in which the fishery is placed (I, II, or III) within 48 hours of the end of the fishing trip or, in the case of non-vessel fisheries, fishing activity. ''Injury'' is defined in 50 CFR 229.2 as a wound or other physical harm. In addition, any animal that ingests fishing gear or any animal that is released with fishing gear entangling, trailing, or perforating any part of the body is considered injured, regardless of the presence of any wound or other evidence of injury, and must be reported. Mortality/injury reporting forms and instructions for submitting forms to NMFS can be downloaded from: *http://www.nmfs.noaa.gov/pr/pdfs/interactions/mmap_reporting_form.pdf* or by contacting the appropriate Regional office (see **ADDRESSES**). Forms may be faxed directly to the NMFS Office of Protected Resources at 301–713–4060 or 301–713–0376. Reporting requirements and procedures can be found in 50 CFR 229.6.

Am I required to take an observer aboard my vessel?

Individuals participating in a Category I or II fishery are required to accommodate an observer aboard their vessel(s) upon request from NMFS. MMPA section 118 states that the Secretary is not required to place an observer on a vessel if the facilities for quartering an observer or performing observer functions are inadequate or unsafe; thereby authorizing the exemption of vessels too small to accommodate an observer from this requirement. However, vessels will not be exempted from observer requirements regardless of their size, for U.S. Atlantic Ocean, Caribbean, or Gulf of Mexico large pelagics longline vessels operating in special areas designated by the Pelagic Longline Take Reduction Plan implementing regulations (50 CFR 229.36(d)). Observer requirements can be found in 50 CFR 229.7.

Am I required to comply with any marine mammal take reduction plan regulations?

Table 4 in this rule provides a list of fisheries affected by TRPs and TRTs. TRP regulations can be found at 50 CFR 229.30 through 229.37. A description of each TRT and copies of each TRP can be found at: *http://www.nmfs.noaa.gov/pr/interactions/trt/.* It is the responsibility of fishery participants to comply with applicable take reduction regulations.

Where can I find more information about the LOF and the MMAP?

Information regarding the LOF and the Marine Mammal Authorization Program, including registration procedures and forms, current and past LOFs, information on each Category I and II fishery, observer requirements, and marine mammal mortality/injury reporting forms and submittal procedures, may be obtained at: *http://www.nmfs.noaa.gov/pr/interactions/lof/,* or from any NMFS Regional Office at the addresses listed below:

NMFS, Greater Atlantic Regional Fisheries Office, 55 Great Republic Drive, Gloucester, MA 01930–2298, Attn: Allison Rosner;

NMFS, Southeast Region, 263 13th Avenue South, St. Petersburg, FL 33701, Attn: Jessica Powell;

NMFS, West Coast Region, Long Beach Office, 501 W. Ocean Blvd., Suite 4200, Long Beach, CA 90802–4213, Attn: Elizabeth Petras;

NMFS, West Coast Region, Seattle Office, 7600 Sand Point Way NE., Seattle, WA 98115, Attn: Brent Norberg, Protected Resources Division;

NMFS, Alaska Region, Protected Resources, P.O. Box 22668, 709 West 9th Street, Juneau, AK 99802, Attn: Kim Rivera; or

NMFS, Pacific Islands Regional Office, Protected Resources Division, 1845 Wasp Blvd., Building 176, Honolulu, HI 96818, Attn: Nancy Young.

Sources of Information Reviewed for the 2015 LOF

NMFS reviewed the marine mammal incidental mortality and serious injury information presented in the SARs for all fisheries to determine whether changes in fishery classification are warranted. The SARs are based on the best scientific information available at the time of preparation, including the level of mortality and serious injury of marine mammals that occurs incidental to commercial fishery operations and the PBR levels of marine mammal stocks. The information contained in the SARs is reviewed by regional Scientific Review Groups (SRGs) representing Alaska, the Pacific (including Hawaii), and the U.S. Atlantic, Gulf of Mexico, and Caribbean. The SRGs were created by the MMPA to review the science that informs the SARs, and to advise NMFS on marine mammal population status, trends, and stock structure, uncertainties in the science, research needs, and other issues.

NMFS also reviewed other sources of new information, including marine mammal stranding data, observer program data, fisher self-reports through the Marine Mammal Authorization Program, reports to the SRGs, conference papers, FMPs, and ESA documents.

The LOF for 2015 was based on, among other things, information provided in the NEPA and ESA documents analyzing authorized high seas fisheries; stranding data; fishermen self-reports through the MMAP; and SARs, primarily the 2013 SARs, which are generally based on data from 2007–2011. The final SARs referenced in this LOF include: 2007 (73 FR 21111, April 18, 2008), 2008 (74 FR 19530, April 29, 2009), 2009 (75 FR 12498, March 16, 2010), 2010 (76 FR 34054, June 10, 2011), 2011 (77 FR 29969, May 21, 2012), and 2012 (78 FR 19446, April, 1 2013), and 2013 (79 FR 49053, August 19, 2014). The SARs are available at: *http://www.nmfs.noaa.gov/pr/sars/.*

Comments and Responses

NMFS received four comment letters on the proposed LOF for 2015 (79 FR 50589, August 25, 2014). Comments were received from the Center for Biological Diversity (CBD), Hawaii Department of Land and Natural Resources (DLNR), Hawaii Longline Association (HLA), and Oceana. Comments on issues outside of the scope of the LOF were noted, but generally without response.

General Comments

Comment 1: CBD states that the List of Fisheries is the first step in fisheries' registration and authorization and asks NMFS to re-examine its practice of registering and authorizing fisheries under section 118 without also authorizing take of threatened and endangered marine mammals under section 101(a)(5)(E).

Response: The List of Fisheries categorizes each commercial fishery based on the definitions of Category I, II, and III fisheries set forth at 50 CFR 229.2. Publication of the List of Fisheries does not authorize take of threatened or endangered marine mammals incidental to commercial fishing. Under section 101(a)(5)(E) of the MMPA, NMFS issues permits for the incidental taking of threatened or endangered species listed under the Endangered Species Act, if it can be determined that (1) mortality and serious injury incidental to commercial fisheries would have a negligible impact on the affected species or stock, (2) a recovery plan for that species or stock has been developed or is being developed, and (3) where required under section 118, a monitoring program has been established, vessels are registered, and a take reduction plan has been developed or is being developed. NMFS publishes a separate list of fisheries that have met these conditions in the **Federal Register**. Participants in fisheries that are not included on that list remain subject to the ESA prohibition against taking marine mammals from endangered or threatened stocks.

Comments on Commercial Fisheries in the Pacific Ocean

Comment 2: HLA contends that the Hawaii-based deep-set longline fishery does not interact with Main Hawaiian Islands (MHI) insular false killer whales. HLA commented that there has never been a documented interaction between the fishery and an animal from the MHI insular stock, and there are no data or other scientific information to support attribution of MHI insular false killer whale interactions to the deep-set fishery. HLA opposes including the stock on the list of marine mammals killed or injured in the deep-set fishery.

Response: NMFS determines which species or stocks are included as incidentally killed or injured in a fishery by annually reviewing the information presented in the current stock assessment reports (SARs), among other relevant sources. The SARs are based on the best available scientific information and provide the most current and inclusive information on each stock, including range, abundance, PBR, and level of interaction with commercial fishing operations. The LOF does not separately evaluate the data and calculations contained within the SARs.

The 2015 LOF is based on the 2013 SARs, which report fishery interactions from 2007–2011. During that time period, observers recorded one interaction with an unidentified blackfish (*i.e.,* identified as either a short-finned pilot whale or a false killer whale) within the overlap zone shared by pelagic and MHI insular false killer whales (40–140 km from the main Hawaiian Islands). Based on NMFS' proration models (for blackfish and for false killer whales of unknown stock identity), and an expansion of observed interactions to fleet-wide estimates, NMFS estimates a 5-year average mortality and serious injury level of 0.1 MHI insular false killer whales per year incidental to the Hawaii-based deep-set longline fishery from 2007–2011 (Carretta *et al.,* 2014).

NMFS is retaining the stock on the list of marine mammal stocks incidentally killed or injured in the Hawaii deep-set longline fishery. For a more complete analysis of the methodology for determining mortality and serious injury of MHI insular false killer whales, the commenter is referred to the 2013 SAR.

Comment 3: HLA opposes the continued inclusion of short-finned pilot whales on the list of species killed or injured in the Hawaii-based shallow-set longline fishery because it is not supported by the available data. NMFS has included the species because of a single interaction on the high seas involving an unidentified cetacean that ''may have'' been a short-finned pilot whale. There have been no confirmed short-finned pilot whale interactions in the shallow-set fishery. HLA states that in the absence of data confirming that the fishery is interacting with short-

finned pilot whales, NMFS may not add the species to the list of species or stocks that are incidentally killed or injured by the fishery.

Response: The 2013 SAR for the Hawaii stock of short-finned pilot whales states that two unidentified cetaceans, known to be either false killer whales or short-finned pilot whales (*i.e.,* ''blackfish''), were observed seriously injured in the shallow-set longline fishery on the high seas from 2007–2011 (Carretta *et al.,* 2014). When the species of a blackfish cannot be positively identified, NMFS prorates the interaction to each species based on distance from shore (McCracken, 2010). Until all animals that are taken can be identified to either species (*e.g.,* using photos, tissue samples), this prorating approach constitutes the best available information and ensures that potential impacts to all species and stocks are assessed. Based on this approach, the estimated average annual mortality and serious injury of short-finned pilot whales in the fishery on the high seas from 2007–2011 is 0.1 (Carretta *et al.,* 2014). The Western Pacific Pelagic longline (HI shallow-set) fishery is the high seas component of the HI shallow-set longline fishery. Because the fishery operating in U.S. waters and the high seas component of the fishery pose the same risk to marine mammals, NMFS maintains identical lists of marine mammals killed or injured in the fisheries. Therefore, NMFS is retaining short-finned pilot whales on the list of species or stocks that are incidentally killed or injured by the fishery.

Comment 4: HLA commented that pygmy or dwarf sperm whales should not be included in the list of species killed or injured in the Hawaii shallow-set longline fishery, because the MMPA requires NMFS to list the species in the LOF that are killed or seriously injured by a fishery. HLA cites the 2013 SAR, which reports a single interaction with a pygmy or dwarf sperm whale in 2008 that was classified as a non-serious injury.

Response: As described in the preamble to this final rule and in the MMPA implementing regulations (50 CFR 299.8(b)(2)), the LOF includes a list of marine mammal species or stocks incidentally killed or injured in each commercial fishery. While fishery classifications on the LOF are determined via the tier analysis process, which, as described in the preamble to the proposed LOF, evaluates the level of mortality and serious injury of marine mammals relative to the stocks' PBR levels, the list of species and/or stocks killed or injured is more inclusive, and also includes those that have been non-seriously injured. Therefore, it is appropriate to include Kogia species whale (pygmy or dwarf sperm whale) in the list for the Hawaii shallow-set longline fishery, given the documented non-serious injury in 2008 (Carretta *et al.,* 2014).

Comment 5: HLA notes that for fisheries that operate both in the U.S. EEZ and on the high seas, marine mammal species for which an interaction has occurred in either the EEZ or the high seas are included on the lists of species killed or injured in both the EEZ and the high seas (*i.e.,* on both Tables 1 or 2 and Table 3). This results in a mistaken implication that a given fishery may interact with a certain species in one geographic area (*e.g.,* within the EEZ) when that fishery has only been observed to interact with the species in another geographic area (*e.g.,* on the high seas). HLA requests that NMFS correct the LOF to only attribute species interactions in transboundary fisheries to those geographic regions where interactions are actually observed. This change would not result in underreporting of species killed or injured, but would avoid the arbitrary result of takes being attributed to fisheries in areas in which no take has ever been observed.

Response: As described in the preamble, NMFS has included high seas fisheries in Table 3 of the LOF since 2009. Several fisheries operate in both U.S. waters and on the high seas, creating some overlap between the fisheries listed in Tables 1 and 2 and those in Table 3. In these cases, the high seas component of the fishery is not considered a separate fishery, but an extension of a fishery operating within U.S. waters. For these fisheries, the lists of species and/or stocks killed or injured in Table 3 are identical to their Table 1 or 2 counterparts, except for those species or stocks with distributions known to occur on only one side of the EEZ boundary. Because the fisheries and the marine mammal lists are the same, takes of these animals are not being attributed to one geographic area or the other, even when that information may be available. This parallel list structure is explained in the footnotes for each table.

Comment 6: CBD recommends that NMFS conduct a Tier 2 analysis for the HI crab trap fishery because the total fishery-related mortality and serious injury (M/SI) of Central North Pacific (CNP) humpback whales (7.45 per year, as cited in Allen and Angliss, 2013; or 9.35 per year, as cited in NMFS' draft Negligible Impact Determination (79 FR 33726, June 12, 2014) exceeds 10% of the stock's PBR level. Further, CBD recommends that NMFS reclassify the HI crab trap fishery as Category II because reported entanglements of CNP humpback whales likely underestimate actual entanglements, and M/SI in the fishery likely exceeds 1% of the stock's PBR level. Given that the HI crab trap's 5-year annual average M/SI (0.55/yr) based on reported entanglements is just barely below 1% of PBR, if only one CNP humpback whale entanglement went unreported, M/SI would exceed 1% of PBR, necessitating a Category II classification.

Response: The level of commercial fishery-related M/SI of CNP humpback whales evaluated in the proposed LOF (1.1/year) was based on the number of confirmed commercial fishery-related M/SI presented in the draft 2013 Alaska SAR (0.55 from observer data in Alaska (0.40) and Hawaii (0.15); Allen and Angliss, 2013), plus unpublished values for M/SI attributed to the HI crab trap fishery (0.55). Using these values, a Tier 1 analysis indicated total commercial fishery-related M/SI was less than 10% of PBR, so a Tier 2 analysis was not necessary.

The commenter cites two alternative values for total commercial fisheries-related M/SI for CNP humpback whales. The first, 7.45 M/SI per year, is also from Allen and Angliss (2013), but includes not only the 0.55 M/SI per year described above from observer data in Alaska and Hawaii fisheries, but also 2.15 and 4.75 M/SI per year from Alaska and Hawaii stranding response networks, respectively. The interactions reported from stranding networks and responses cannot or have not been confirmed to be from commercial fisheries, and are thus not appropriate to be included in the tier analysis.

The second alternative M/SI value cited by the commenter, 9.35 M/SI per year, is described in NMFS' draft Negligible Impact Determination for CNP humpbacks, Hawaii sperm whales, and MHI insular false killer whales. The page of the NID cited by the commenter (p. 38) notes that this value includes both commercial and recreational takes. The value of 9.35 M/SI per year is not appropriate to include in the LOF tier analysis, which focuses exclusively on M/SI in commercial fisheries. If, in the future, the responsible fishery or fisheries involved in the interactions can be identified and M/SI attributed to commercial fisheries, they will be considered in future tier analyses. Effort is ongoing in both regions to identify fisheries from the entangling gear.

Although we do not accept the accuracy of the commenter's values, we find that even if we apply them to the tier analysis the Category III

classification remains unchanged. In both cases, total fisheries-related M/SI would exceed 10% of PBR (7.45/61.2 is 12.1% of PBR, and 9.35/61.2 is 15.3% of PBR). A Tier 2 analysis finds that the HI crab trap fishery's 5-year average M/SI from 2007–2011 is 0.55 per year, which is 0.9% of the stock's PBR. This is less than 1% of the stock's PBR level, so a Category III classification is warranted. At this time, we cannot speculate on the likely impacts of unreported or unobserved interactions, and instead rely on the data described above.

Comment 7: DLNR provided information regarding measures of participation in various fisheries, including that the State of Hawaii does not issue fishery-specific licenses for commercial fisheries. DLNR commented that it may be misleading to list in the LOF the number of licensed commercial fishers who reported using the gear type at least once during the fishing year period, without considering how many times that person used the gear.

Response: Section 118(c)(1) of the Marine Mammal Protection Act states that the Secretary shall include ''the approximate number of vessels or persons actively involved in, each such fishery.'' NMFS acknowledges that the Hawaii commercial fishing license is not specific to a fishery or gear type, and that the state-reported estimation of vessels/persons reflects the number of licensed fishermen who reported using the gear at least once during the fishing year period. The estimated number of vessels or persons column is intended to provide the best available approximation of active participation in the fishery for descriptive purposes and will not be used in determining current or future management of fisheries or observer coverage designations, if applicable.

Comment 8: DLNR commented that several fisheries managed by DLNR pose little to no risk to marine mammals, including the Hawaii Kona crab loop net fishery, Hawaii fish pond, Hawaii handpick, and Hawaii lobster diving fisheries. In these cases, DLNR urges NMFS to make it abundantly clear that there is a high degree of certainty that these fisheries pose minimal risk to marine mammals, and urges NMFS to delineate clear criteria with respect to when a commercial fishery should be removed from the LOF.

Response: NMFS recognizes that the fisheries referenced by DAR have a remote likelihood of incidental mortality or serious injury of marine mammals and maintains their classification as Category III on the Final LOF for 2015. The LOF is a complete list of all U.S. commercial fisheries. Fisheries are not removed from the LOF based on their posing a minimal risk to marine mammals. Instead, fisheries are removed from the LOF when there are no active permit/license holders, the gear is no longer authorized and permits are no longer given, or when a name change incorporates the fishery under a different name on the LOF.

Comment 9: DLNR supported several proposed changes to the LOF, including the addition of the Hawaii aquarium collecting fishery, removal of the Hawaii lobster tangle net fishery, removal of Hawaii charter vessel fishery, splitting of the Hawaii troll fishery into the troll and rod and reel fisheries, addition of the Central North Pacific stock of humpback whale to the list of species killed or injured in the Hawaii crab trap fishery, and removal of the Hawaiian monk seal from the list of species killed or injured in the Hawaii lobster trap fishery. DLNR also provided a description of the Hawaii aquarium collecting fishery.

Response: NMFS appreciates DLNR's support and collaboration in developing these changes. NMFS is finalizing the changes mentioned by the commenter, as proposed. NMFS will also use the information provided by DLNR in the description of the Hawaii aquarium collecting fishery in the fishery's fact sheet, which is being developed for release with a future LOF.

Comment 10: DLNR requested that NMFS continue to work with DLNR to review humpback whale interactions to more fully understand them, to accurately identify the fishery, and to develop possible mitigation measures.

Response: NMFS will continue to consult and work with DLNR to evaluate and address humpback whale entanglements.

Comment 11: Oceana recommends that NMFS add the CA/OR/WA stock of short-finned pilot whales and the Eastern North Pacific stock of gray whales to the list of species and/or stocks incidentally killed or injured in the CA thresher shark/swordfish drift gillnet fishery based on a 2013/2014 fishing season observer report.

Response: To determine which species and stocks are included as incidentally killed or injured in a fishery, NMFS annually reviews the information presented in the current SARs. The SARs are based upon the best available scientific information and provide the most current and inclusive information on each stock's PBR level and level of interaction with commercial fishing operations. The best available scientific information used in the SARs reviewed for the 2015 LOF generally summarizes data from 2007–2011. NMFS also reviews other sources of new information, including injury determination reports, bycatch estimation reports, observer data, logbook data, stranding data, disentanglement network data, fisher self-reports (*i.e.* MMPA reports), and anecdotal reports from that time period. The observed interactions referenced by the commenter will be evaluated in a future LOF.

Comments on Commercial Fisheries in the Atlantic Ocean, Gulf of Mexico, and Caribbean

Comment 12: CBD recommends that NMFS add the Gulf of Maine stock of humpback whales to the list of species/stocks incidentally killed or injured in the Southeastern U.S. Atlantic shark gillnet fishery based on a March 2012 self-report.

Response: The humpback whale entanglement in March 2012 occurred in a gillnet targeting smooth dogfish (also known as smooth hound) approximately two miles offshore of Hatteras, North Carolina. The smooth dogfish gillnet fishery is included in the larger Category I Mid-Atlantic Gillnet fishery, which already lists the Gulf of Maine stock of humpback whales as a marine mammal stock that is incidentally killed or injured in this fishery (see: *http://www.nmfs.noaa.gov/pr/pdfs/fisheries/lof2012/midatlantic_gillnet.pdf*). Therefore, we are not adding the Gulf of Maine humpback whale stock to the Southeastern U.S. Atlantic shark gillnet fishery.

Comments on Commercial Fisheries in the High Seas

Comment 13: CBD recommends that the Pacific Highly Migratory Species (HMS) drift gillnet fishery be listed as Category I because it includes an extension of the Category I CA thresher shark/swordfish drift gillnet (≥14 in mesh) fishery. CBD also recommends that NMFS revise the number of HSFCA permits based on a 2013 biological opinion that reports no observed drift gillnet effort on the high seas since 2001 (NMFS, 2013).

Response: NMFS agrees that when the CA thresher shark/swordfish drift gillnet (≥14 in mesh) fishery was reclassified as Category I on Table 1 in 2013, the Pacific HMS drift gillnet fishery should have also been elevated to Category I in Table 3 because it is an extension of the Table 1 fishery. Therefore, NMFS corrects this administrative error and clarifies that the Pacific HMS drift gillnet is a Category I fishery. NMFS finds no error in the number of HSFCA permits listed

on Table 3. As stated in the preamble, HSFCA permits are valid for five years, during which time FMPs can change. Therefore, some vessels/participants may possess valid HSFCA permits without the ability to fish under the permit because it was issued for a gear type that is no longer authorized under the most current FMP. For this reason, the number of HSFCA permits displayed in Table 3 is likely higher than the actual U.S. fishing effort on the high seas.

Summary of Changes From the Proposed Rule

NMFS corrects an administrative error and elevates the Pacific HMS drift gillnet fishery from Category II to Category I. As an extension of the Category I CA thresher shark/swordfish drift gillnet (≥14 in mesh) fishery, Pacific HMS should have been moved to Category I in 2013 when the CA thresher shark/swordfish drift gillnet (≥14 in mesh) fishery was reclassified.

Summary of Changes to the LOF for 2015

The following summarizes changes to the LOF for 2015, including the fisheries listed in the LOF, the estimated number of vessels/persons in a particular fishery, and the species and/or stocks that are incidentally killed or injured in a particular fishery. As described above (see ''Summary of Changes From the Proposed Rule''), the LOF for 2015 corrects an administrative error and moves the Pacific HMS drift gillnet fishery to Category I. Additionally, NMFS adds 7 Category III fisheries to the LOF and removes 6 fisheries from the LOF. The LOF for 2015 does not include any other changes to fishery classifications or to fisheries that are subject to a take reduction plan. NMFS makes changes to the list of species and/or stocks killed or injured in certain fisheries and the estimated number of vessels/persons in certain fisheries, as well as certain administrative changes. The classifications and definitions of U.S. commercial fisheries for 2015 are identical to those provided in the LOF for 2014 with the exception of those changes discussed below. State and regional abbreviations used in the following paragraphs include: AK (Alaska), CA (California), DE (Delaware), FL (Florida), GMX (Gulf of Mexico), HI (Hawaii), MA (Massachusetts), ME (Maine), NC (North Carolina), NY (New York), OR (Oregon), RI (Rhode Island), SC (South Carolina), VA (Virginia), WA (Washington), and WNA (Western North Atlantic).

Commercial Fisheries in the Pacific Ocean

Addition of Fisheries

NMFS adds ''HI aquarium collecting'' as a Category III fishery.

Removal of Fisheries

NMFS removes the following Category III fisheries from the LOF: ''OR salmon ranch,'' ''WA herring brush weir,'' ''WA herring spawn on kelp,'' ''CA abalone,'' ''HI lobster tangle net,'' and ''HI charter vessel.''

Fishery Name and Organizational Changes and Clarification

NMFS renames the Category II ''WA coastal Dungeness crab pot/trap'' fishery to ''WA coastal Dungeness crab pot.''

NMFS renames the Category III ''WA/OR North Pacific halibut longline/setline'' to the ''WA/OR Pacific halibut longline.''

NMFS renames the Category III ''Coastwide scallop dredge'' fishery to the ''Alaska scallop dredge.''

NMFS renames the Category III ''OR/CA hagfish pot or trap'' to the ''WA/OR/CA hagfish pot.''

NMFS renames the Category I ''HI deep-set (tuna target) longline/set line'' fishery to ''HI deep-set longline.''

NMFS renames the Category II ''HI shallow-set (swordfish target) longline/set line'' fishery to ''HI shallow-set longline.''

NMFS renames the Category III ''HI opelu/akule net'' fishery to ''HI lift net.''

NMFS renames Category III ''HI hukilau net'' fishery to ''HI seine net.''

NMFS renames the Category III ''HI vertical longline'' fishery to ''HI vertical line.''

NMFS renames the Category III ''HI MHI deep-sea bottomfish handline'' fishery to ''HI bottomfish handline.''

NMFS renames the Category III ''HI tuna handline'' fishery to ''HI pelagic handline.''

NMFS splits the Category III ''CA coonstripe shrimp, rock crab, tanner crab pot or trap'' fishery into two Category III fisheries, ''CA/OR coonstripe shrimp pot'' and ''CA rock crab pot'', and eliminates the tanner crab component of the pot fishery.

NMFS splits the Category III ''HI trolling, rod and reel'' fishery into two separate Category III fisheries, the ''HI troll'' and ''HI rod and reel'' fisheries.

Number of Vessels/Persons

NMFS updates the estimated number of vessels/persons in the Pacific Ocean (Table 1) as follows. Fisheries are labeled with their name on the 2015 LOF:

Category	Fishery	Number of vessels/persons (final 2014 LOF)	Number of vessels/persons (final 2015 LOF)
I	HI deep-set longline	129	128
II	AK Bristol Bay salmon drift gillnet	1,863	1,862
II	AK Bristol Bay salmon set gillnet	982	979
II	AK Cook Inlet salmon set gillnet	738	736
II	AK Peninsula/Aleutian Islands salmon drift gillnet	114	113
II	AK Yakutat salmon set gillnet	167	168
II	AK Cook Inlet salmon purse seine	82	83
II	AK Kodiak salmon purse seine	379	376
II	AK Bering Sea, Aleutian Islands flatfish trawl	34	32
II	AK Bering Sea, Aleutian Islands pollock trawl	95	102
II	AK Bering Sea, Aleutian Islands rockfish trawl	10	17
II	HI shallow-set longline	20	18
II	American Samoa longline	24	25
II	HI shortline	11	6
III	AK Kuskokwim, Yukon, Norton Sound, Kotzebue salmon gillnet	1,702	1,778
III	AK miscellaneous finfish set gillnet	2	54
III	AK Prince William Sound salmon set gillnet	30	29
III	AK roe herring and food/bait herring gillnet	990	920
III	HI inshore gillnet	36	42
III	AK Southeast salmon purse seine	415	315
III	AK miscellaneous finfish beach seine	1	2

Category	Fishery	Number of vessels/persons (final 2014 LOF)	Number of vessels/persons (final 2015 LOF)
III	AK roe herring and food/bait herring beach seine	6	10
III	AK roe herring and food/bait herring purse seine	367	356
III	AK salmon purse seine (excluding salmon purse seine fisheries listed as Category II).	935	936
III	HI lift net	22	21
III	HI throw net, cast net	29	20
III	HI seine net	26	21
III	AK North Pacific halibut, AK bottom fish, WA/OR/CA albacore, groundfish, bottom fish, CA halibut non-salmonid troll fisheries.	1,320 (120 AK)	1,320 (180 AK)
III	AK salmon troll	2,008	1,908
III	AK Bering Sea, Aleutian Islands Pacific cod longline	154	45
III	AK Bering Sea, Aleutian Islands rockfish longline	0	3
III	AK Bering Sea, Aleutian Islands Greenland turbot longline	36	4
III	AK Bering Sea, Aleutian Islands sablefish longline	28	22
III	AK Gulf of Alaska halibut longline	1,302	855
III	AK Gulf of Alaska Pacific cod longline	107	92
III	AK Gulf of Alaska rockfish longline	0	25
III	AK Gulf of Alaska sablefish longline	291	295
III	AK halibut longline/set line (state and Federal waters)	2,280	2,197
III	AK octopus/squid longline	2	3
III	AK state-managed waters longline/setline (including sablefish, rockfish, lingcod, and miscellaneous finfish).	1,323	464
III	HI kaka line	17	24
III	HI vertical line	9	6
III	AK Bering Sea, Aleutian Islands Atka mackerel trawl	9	13
III	AK Bering Sea, Aleutian Islands Pacific cod trawl	93	72
III	AK Gulf of Alaska flatfish trawl	41	36
III	AK Gulf of Alaska Pacific cod trawl	62	55
III	AK Gulf of Alaska pollock trawl	62	67
III	AK Gulf of Alaska rockfish trawl	34	43
III	AK shrimp otter trawl and beam trawl (statewide and Cook Inlet)	33	38
III	AK statewide miscellaneous finfish pot	243	4
III	AK Aleutian Islands sablefish pot	8	4
III	AK Bering Sea, Aleutian Islands Pacific cod pot	68	59
III	AK Bering Sea, Aleutian Islands crab pot	296	540
III	AK Bering Sea sablefish pot	6	2
III	AK Gulf of Alaska crab pot	389	381
III	AK Gulf of Alaska Pacific cod pot	154	128
III	AK Southeast Alaska crab pot	415	41
III	AK Southeast Alaska shrimp pot	274	269
III	AK shrimp pot, except Southeast	210	236
III	HI crab trap	9	7
III	HI fish trap	9	5
III	HI shrimp trap	4	6
III	HI crab net	6	4
III	HI Kona crab loop net	48	35
III	AK octopus/squid handline	0	7
III	American Samoa bottomfish handline	12	14
III	HI aku boat, pole and line	3	< 3
III	HI bottomfish handline	567	578
III	HI inshore handline	378	376
III	HI pelagic handline	459	484
III	AK herring spawn on kelp pound net	411	409
III	AK Southeast herring roe/food/bait pound net	4	2
III	AK scallop dredge	108 (12 AK)	108 (5 AK)
III	AK clam	156	130
III	AK herring spawn on kelp	266	339
III	AK urchin and other fish/shellfish	521	398
III	HI fish pond	16	5
III	HI handpick	57	58
III	HI lobster diving	29	23
III	HI spearfishing	143	159

List of Species and/or Stocks Incidentally Killed or Injured in the Pacific Ocean

NMFS updates the list of species and/or stocks incidentally killed or injured by fisheries in the Pacific Ocean (Table 1) as follows:

NMFS adds the Central North Pacific stock of humpback whales to the list of species and/or stocks killed or injured in the Category III HI crab trap fishery.

NMFS adds the South Central Alaska stock of northern sea otters to the list of species and/or stocks killed or injured in the Category II AK Cook Inlet salmon set gillnet fishery and the Category III

AK Prince William Sound set gillnet fishery.

NMFS adds the Alaska stock of ringed seals to the list of species and/or stocks killed or injured in the Category III AK Bering Sea, Aleutian Islands Pacific cod trawl fishery and the Category III AK Bering Sea, Aleutian Islands Pacific cod longline fishery.

NMFS removes the Hawaiian monk seal from the list of species and/or stocks killed or injured in the Category III HI bottomfish handline fishery (formerly ''HI Main Hawaiian Islands deep-sea bottomfish handline'') and the Category III HI lobster trap fishery.

Commercial Fisheries in the Atlantic Ocean, Gulf of Mexico, and Caribbean

Addition of Fisheries

NMFS adds the following Category III fisheries to the LOF: ''Gulf of Maine sea urchin dredge,'' ''Mid-Atlantic blue crab dredge,'' ''Mid-Atlantic whelk dredge,'' and ''Mid-Atlantic soft shell clam dredge''.

List of Species and/or Stocks Incidentally Killed or Injured in the Atlantic Ocean, Gulf of Mexico, and Caribbean

NMFS updates the list of marine mammal species and/or stocks incidentally killed or injured in commercial fisheries in the Atlantic, Gulf of Mexico, and Caribbean (Table 2) as follows:

NMFS adds the Canadian East Coast stock of minke whales, the Western North Atlantic stock of Kogia species whale (pygmy or dwarf sperm whale), and the Western North Atlantic stock of false killer whale and removes the Western North Atlantic stock of Northern bottlenose whale on the list of species and/or stocks incidentally killed or injured by the Category I Atlantic Ocean, Caribbean, Gulf of Mexico large pelagics longline fishery.

NMFS adds the Florida stock of West Indian manatee to the list of species and/or stocks incidentally killed or injured by the Category II Southeastern U.S. Atlantic, Gulf of Mexico shrimp trawl fishery.

NMFS adds the Northern South Carolina estuarine system stock of bottlenose dolphins to the list of the species and/or stocks incidentally killed or injured in the Category II Atlantic blue crab trap/pot fishery.

NMFS adds unknown stocks of bottlenose dolphin and renames the Central Florida coastal stock and Northern Florida coastal stocks as ''Bottlenose dolphin, unknown stocks'' on the list of the species and/or stocks incidentally killed or injured in the Category II Southeastern U.S. Atlantic shark gillnet fishery.

NMFS adds unknown stocks and the Northern North Carolina estuarine system stock of bottlenose dolphin and renames the Southern North Carolina estuarine system stock and the Southern migratory coastal stock as ''Bottlenose dolphin, unknown stock'' on the list of the species and/or stocks incidentally killed or injured in the Category II North Carolina roe mullet stop net fishery.

NMFS adds two stocks of bottlenose dolphins, Charleston estuarine system and Southern migratory coastal, to the list of the species and/or stocks incidentally killed or injured in the Category II Southeastern U.S. Atlantic, Gulf of Mexico shrimp trawl fishery.

NMFS adds the Northern South Carolina estuarine system stock of bottlenose dolphins to the list of species and/or stocks incidentally killed or injured in the Category III Southeast Atlantic inshore gillnet fishery.

NMFS adds two stocks of bottlenose dolphins, Choctawhatchee Bay and Florida Bay, to the list of species and/or stocks incidentally killed or injured in the Category III Atlantic Ocean, Gulf of Mexico, Caribbean commercial passenger fishing vessel fishery.

NMFS removes the Western North Atlantic stock of gray seal from the list of species and/or stocks incidentally killed or injured in the Category III Gulf of Maine herring and Atlantic mackerel stop seine/weir fishery.

NMFS removes the Western North Atlantic stock of long-finned and short-finned pilot whales from the list of species and/or stocks incidentally killed or injured in the Category I Mid-Atlantic gillnet fishery.

NMFS makes the following typographical corrections to the list of marine mammal species and/or stocks incidentally killed or injured: Remove Northern migratory coastal stock of bottlenose dolphin from the NC roe mullet stop net fishery; add Northern migratory coastal stock of bottlenose dolphin to, and remove Southern North Carolina estuarine system stock of bottlenose dolphin from, the VA pound net fishery; add Gulf of Mexico stock of Gervais beaked whale to the Atlantic Ocean, Caribbean, Gulf of Mexico large pelagics longline; and corrects a stock name listed under the Category III Georgia cannonball jellyfish trawl fishery from ''Southern South Carolina/Georgia'' stock of bottlenose dolphins to ''SC/GA coastal'' stock.

Commercial Fisheries on the High Seas

Fishery Name and Organizational Changes and Clarification

NMFS corrects an administrative error and moves the Pacific HMS drift gillnet fishery to Category I. As an extension of the Category I CA thresher shark/swordfish drift gillnet (≥14 in mesh) fishery, Pacific HMS should have been moved to Category I in 2013 when the CA fishery was reclassified.

Addition of Fisheries

NMFS adds the following Category III fisheries to the LOF: ''Northwest Atlantic trawl'' and ''Northwest Atlantic bottom longline.''

Number of Vessels/Persons

NMFS updates the estimated number of HSFCA permits (Table 3) as follows:

Category	Fishery	Number of HSFCA permits (final 2014 LOF)	Number of HSFCA permits (final 2015 LOF)
I	Atlantic Highly Migratory Species Longline	84	83
I	Western Pacific Pelagic (HI Deep-set component)	124	128
II	South Pacific Tuna Fisheries Purse Seine	40	38
II	Western Pacific Pelagic (HI Shallow-set component)	28	18
II	Atlantic Highly Migratory Species Handline/Pole and Line	3	2
II	Pacific Highly Migratory Species Handline/Pole and Line	46	41
II	South Pacific Albacore Troll Handline/Pole and Line	9	8
II	Western Pacific Pelagic Handline/Pole and Line	5	3
II	Atlantic Highly Migratory Species Troll	4	2
II	South Pacific Albacore Troll	33	35
II	South Pacific Tuna Fisheries Troll	2	3
II	Pacific Highly Migratory Species Liners Nei	3	1
III	Pacific Highly Migratory Species Longline	101	100
III	Pacific Highly Migratory Species Purse Seine	8	5

Category	Fishery	Number of HSFCA permits (final 2014 LOF)	Number of HSFCA permits (final 2015 LOF)
III	Pacific Highly Migratory Species Troll	262	253

List of Species and/or Stocks Incidentally Killed or Injured in High Seas Fisheries

NMFS updates the list of species and/or stocks incidentally killed or injured by fisheries in high seas fisheries (Table 3) as follows:

NMFS adds the Canadian East Coast stock of minke whales, Kogia species whale (pygmy or dwarf sperm whale), Western North Atlantic stock of false killer whales, Gulf of Mexico stock of Risso's dolphins, Gulf of Mexico oceanic stock of killer whales, and Western North Atlantic stock of Pantropical spotted dolphins to the list of species incidentally killed or injured by the Category I Atlantic highly migratory species longline fishery.

List of Fisheries

The following tables set forth the list of U.S. commercial fisheries according to their classification under section 118 of the MMPA. Table 1 lists commercial fisheries in the Pacific Ocean (including Alaska); Table 2 lists commercial fisheries in the Atlantic Ocean, Gulf of Mexico, and Caribbean; Table 3 lists commercial fisheries on the high seas; and Table 4 lists fisheries affected by TRPs or TRTs.

In Tables 1 and 2, the estimated number of vessels or persons participating in fisheries operating within U.S. waters is expressed in terms of the number of active participants in the fishery, when possible. If this information is not available, the estimated number of vessels or persons licensed for a particular fishery is provided. If no recent information is available on the number of participants, vessels, or persons licensed in a fishery, then the number from the most recent LOF is used for the estimated number of vessels or persons in the fishery. NMFS acknowledges that, in some cases, these estimates may be inflations of actual effort, such as for many of the Mid-Atlantic and New England fisheries. However, in these cases, the numbers represent the potential effort for each fishery, given the multiple gear types for which several state permits may allow. Changes made to Mid-Atlantic and New England fishery participants will not affect observer coverage or bycatch estimates, as observer coverage and bycatch estimates are based on vessel trip reports and landings data. Table 1 and 2 serve to provide a description of the fishery's potential effort (state and Federal). If NMFS is able to extract more accurate information on the gear types used by state permit holders in the future, the numbers will be updated to reflect this change. For additional information on fishing effort in fisheries found on Table 1 or 2, contact the relevant regional office (contact information included above in **SUPPLEMENTARY INFORMATION**).

For high seas fisheries, Table 3 lists the number of valid HSFCA permits currently held. Although this likely overestimates the number of active participants in many of these fisheries, the number of valid HSFCA permits is the most reliable data on the potential effort in high seas fisheries at this time. As noted previously in this rule, the number of HSFCA permits listed in Table 3 for the high seas components of fisheries that also operate within U.S. waters does not necessarily represent additional effort that is not accounted for in Tables 1 and 2. Many vessels holding HSFCA permits also fish within U.S. waters and are included in the number of vessels and participants operating within those fisheries in Tables 1 and 2.

Tables 1, 2, and 3 also list the marine mammal species and/or stocks incidentally killed or injured (seriously or non-seriously) in each fishery based on SARs, injury determination reports, bycatch estimation reports, observer data, logbook data, stranding data, disentanglement network data, fisher self-reports (*i.e.* MMPA reports), and anecdotal reports. The best available scientific information included in these reports is based on data through 2011. This list includes all species and/or stocks known to be killed or injured in a given fishery but also includes species and/or stocks for which there are anecdotal records of a mortality or injury. Additionally, species identified by logbook entries, stranding data, or fishermen self-reports (*i.e.,* MMPA reports) may not be verified. In Tables 1 and 2, NMFS has designated those species/stocks driving a fishery's classification (*i.e.,* the fishery is classified based on mortalities and serious injuries of a marine mammal stock that are greater than or equal to 50 percent [Category I], or greater than 1 percent and less than 50 percent [Category II], of a stock's PBR) by a ''1'' after the stock's name.

In Tables 1 and 2, there are several fisheries classified as Category II that have no recent documented mortalities or serious injuries of marine mammals, or fisheries that did not result in a mortality or serious injury rate greater than 1 percent of a stock's PBR level based on known interactions. NMFS has classified these fisheries by analogy to other Category I or II fisheries that use similar fishing techniques or gear that are known to cause mortality or serious injury of marine mammals, as discussed in the final LOF for 1996 (60 FR 67063, December 28, 1995), and according to factors listed in the definition of a ''Category II fishery'' in 50 CFR 229.2 (*i.e.,* fishing techniques, gear used, methods used to deter marine mammals, target species, seasons and areas fished, qualitative data from logbooks or fisher reports, stranding data, and the species and distribution of marine mammals in the area). NMFS has designated those fisheries listed by analogy in Tables 1 and 2 by a ''2'' after the fishery's name.

There are several fisheries in Tables 1, 2, and 3 in which a portion of the fishing vessels cross the EEZ boundary and therefore operate both within U.S. waters and on the high seas. These fisheries, though listed separately between Table 1 or 2 and Table 3, are considered the same fishery on either side of the EEZ boundary. NMFS has designated those fisheries in each table by a ''*'' after the fishery's name.

TABLE 1—LIST OF FISHERIES—COMMERCIAL FISHERIES IN THE PACIFIC OCEAN

Fishery description	Estimated Number of vessels/ persons	Marine mammal species and/or stocks incidentally killed or injured
CATEGORY I		
LONGLINE/SET LINE FISHERIES:		
HI deep-set longline * ∧	128	Bottlenose dolphin, HI Pelagic. False killer whale, MHI Insular. False killer whale, HI Pelagic.[1] False killer whale, Palmyra Atoll. Pantropical spotted dolphin, HI. Risso's dolphin, HI. Short-finned pilot whale, HI. Sperm whale, HI. Striped dolphin, HI.
GILLNET FISHERIES:		
CA thresher shark/swordfish drift gillnet (≥14 in mesh) *	19	Bottlenose dolphin, CA/OR/WA offshore. California sea lion, U.S. Humpback whale, CA/OR/WA. Long-beaked common dolphin, CA. Minke whale, CA/OR/WA. Northern elephant seal, CA breeding. Northern right-whale dolphin, CA/OR/WA. Pacific white-sided dolphin, CA/OR/WA. Risso's dolphin, CA/OR/WA. Short-beaked common dolphin, CA/OR/WA. Sperm Whale, CA/OR/WA.[1]
CATEGORY II		
GILLNET FISHERIES:		
CA halibut/white seabass and other species set gillnet (>3.5 in mesh).	50	California sea lion, U.S. Harbor seal, CA. Humpback whale, CA/OR/WA.[1] Long-beaked common dolphin, CA. Northern elephant seal, CA breeding. Sea otter, CA. Short-beaked common dolphin, CA/OR/WA.
CA yellowtail, barracuda, and white seabass drift gillnet (mesh size ≥3.5 in and <14 in)[2].	30	California sea lion, U.S. Long-beaked common dolphin, CA. Short-beaked common dolphin, CA/OR/WA.
AK Bristol Bay salmon drift gillnet[2]	1,862	Beluga whale, Bristol Bay. Gray whale, Eastern North Pacific. Harbor seal, Bering Sea. Northern fur seal, Eastern Pacific. Pacific white-sided dolphin, North Pacific. Spotted seal, AK. Steller sea lion, Western U.S.
AK Bristol Bay salmon set gillnet[2]	979	Beluga whale, Bristol Bay. Gray whale, Eastern North Pacific. Harbor seal, Bering Sea. Northern fur seal, Eastern Pacific. Spotted seal, AK.
AK Kodiak salmon set gillnet	188	Harbor porpoise, GOA.[1] Harbor seal, GOA. Sea otter, Southwest AK. Steller sea lion, Western U.S.
AK Cook Inlet salmon set gillnet	736	Beluga whale, Cook Inlet. Dall's porpoise, AK. Harbor porpoise, GOA. Harbor seal, GOA. Humpback whale, Central North Pacific.[1] Sea otter, South Central AK. Steller sea lion, Western U.S.
AK Cook Inlet salmon drift gillnet	569	Beluga whale, Cook Inlet. Dall's porpoise, AK. Harbor porpoise, GOA.[1] Harbor seal, GOA. Steller sea lion, Western U.S.

TABLE 1—LIST OF FISHERIES—COMMERCIAL FISHERIES IN THE PACIFIC OCEAN—Continued

Fishery description	Estimated Number of vessels/ persons	Marine mammal species and/or stocks incidentally killed or injured
AK Peninsula/Aleutian Islands salmon drift gillnet [2]	162	Dall's porpoise, AK. Harbor porpoise, GOA. Harbor seal, GOA. Northern fur seal, Eastern Pacific.
AK Peninsula/Aleutian Islands salmon set gillnet [2]	113	Harbor porpoise, Bering Sea. Steller sea lion, Western U.S.
AK Prince William Sound salmon drift gillnet	537	Dall's porpoise, AK. Harbor porpoise, GOA.[1] Harbor seal, GOA. Northern fur seal, Eastern Pacific. Pacific white-sided dolphin, North Pacific. Sea otter, South Central AK. Steller sea lion, Western U.S.[1]
AK Southeast salmon drift gillnet	474	Dall's porpoise, AK. Harbor porpoise, Southeast AK. Harbor seal, Southeast AK. Humpback whale, Central North Pacific.[1] Pacific white-sided dolphin, North Pacific. Steller sea lion, Eastern U.S.
AK Yakutat salmon set gillnet [2]	168	Gray whale, Eastern North Pacific. Harbor Porpoise, Southeastern AK. Harbor seal, Southeast AK. Humpback whale, Central North Pacific (Southeast AK).
WA Puget Sound Region salmon drift gillnet (includes all inland waters south of US-Canada border and eastward of the Bonilla-Tatoosh line-Treaty Indian fishing is excluded).	210	Dall's porpoise, CA/OR/WA. Harbor porpoise, inland WA.[1] Harbor seal, WA inland.
PURSE SEINE FISHERIES:		
AK Cook Inlet salmon purse seine	83	Humpback whale, Central North Pacific.[1]
AK Kodiak salmon purse seine	376	Humpback whale, Central North Pacific.[1]
TRAWL FISHERIES:		
AK Bering Sea, Aleutian Islands flatfish trawl	32	Bearded seal, AK. Gray whale, Eastern North Pacific. Harbor porpoise, Bering Sea. Harbor seal, Bering Sea. Humpback whale, Western North Pacific.[1] Killer whale, AK resident.[1] Killer whale, GOA, AI, BS transient.[1] Northern fur seal, Eastern Pacific. Ringed seal, AK. Ribbon seal, AK. Spotted seal, AK. Steller sea lion, Western U.S.[1] Walrus, AK.
AK Bering Sea, Aleutian Islands pollock trawl	102	Bearded Seal, AK. Dall's porpoise, AK. Harbor seal, AK. Humpback whale, Central North Pacific. Humpback whale, Western North Pacific. Northern fur seal, Eastern Pacific. Ribbon seal, AK. Ringed seal, AK. Spotted seal, AK. Steller sea lion, Western U.S.[1]
AK Bering Sea, Aleutian Islands rockfish trawl	17	Killer whale, ENP AK resident.[1] Killer whale, GOA, AI, BS transient.[1]
POT, RING NET, AND TRAP FISHERIES:		
CA spot prawn pot	28	Gray whale, Eastern North Pacific. Humpback whale, CA/OR/WA.[1]
CA Dungeness crab pot	570	Gray whale, Eastern North Pacific. Humpback whale, CA/OR/WA.[1]
OR Dungeness crab pot	433	Gray whale, Eastern North Pacific. Humpback whale, CA/OR/WA.[1]
WA/OR/CA sablefish pot	309	Humpback whale, CA/OR/WA.[1]
WA coastal Dungeness crab pot	228	Gray whale, Eastern North Pacific Humpback whale, CA/OR/WA.[1]
LONGLINE/SET LINE FISHERIES:		

TABLE 1—LIST OF FISHERIES—COMMERCIAL FISHERIES IN THE PACIFIC OCEAN—Continued

Fishery description	Estimated Number of vessels/ persons	Marine mammal species and/or stocks incidentally killed or injured
HI shallow-set longline * ^	18	Blainville's beaked whale, HI. Bottlenose dolphin, HI Pelagic. False killer whale, HI Pelagic.[1] Humpback whale, Central North Pacific. Kogia *spp.* whale (Pygmy or dwarf sperm whale), HI. Risso's dolphin, HI. Short-finned pilot whale, HI. Striped dolphin, HI.
American Samoa longline [2]	25	Bottlenose dolphin, unknown. Cuvier's beaked whale, unknown. False killer whale, American Samoa. Rough-toothed dolphin, American Samoa. Short-finned pilot whale, unknown.
HI shortline [2]	6	None documented.
CATEGORY III		
GILLNET FISHERIES:		
AK Kuskokwim, Yukon, Norton Sound, Kotzebue salmon gillnet.	1,778	Harbor porpoise, Bering Sea.
AK miscellaneous finfish set gillnet	54	Steller sea lion, Western U.S.
AK Prince William Sound salmon set gillnet	29	Harbor seal, GOA. Sea otter, South Central AK. Steller sea lion, Western U.S.
AK roe herring and food/bait herring gillnet	920	None documented.
CA set gillnet (mesh size <3.5 in)	304	None documented.
HI inshore gillnet	42	Bottlenose dolphin, HI. Spinner dolphin, HI.
WA Grays Harbor salmon drift gillnet (excluding treaty Tribal fishing).	24	Harbor seal, OR/WA coast.
WA/OR herring, smelt, shad, sturgeon, bottom fish, mullet, perch, rockfish gillnet.	913	None documented.
WA/OR lower Columbia River (includes tributaries) drift gillnet.	110	California sea lion, U.S. Harbor seal, OR/WA coast.
WA Willapa Bay drift gillnet	82	Harbor seal, OR/WA coast. Northern elephant seal, CA breeding.
MISCELLANEOUS NET FISHERIES:		
AK Southeast salmon purse seine	315	None documented in the most recent 5 years of data.
AK Metlakatla salmon purse seine	10	None documented.
AK miscellaneous finfish beach seine	2	None documented.
AK miscellaneous finfish purse seine	2	None documented.
AK octopus/squid purse seine	0	None documented.
AK roe herring and food/bait herring beach seine	10	None documented.
AK roe herring and food/bait herring purse seine	356	None documented.
AK salmon beach seine	31	None documented.
AK salmon purse seine (excluding salmon purse seine fisheries listed as Category II).	936	Harbor seal, GOA.
CA anchovy, mackerel, sardine purse seine	65	California sea lion, U.S. Harbor seal, CA.
CA squid purse seine	80	Long-beaked common dolphin, CA
	.....	Short-beaked common dolphin, CA/OR/WA.
CA tuna purse seine *	10	None documented.
WA/OR sardine purse seine	42	None documented.
WA (all species) beach seine or drag seine	235	None documented.
WA/OR herring, smelt, squid purse seine or lampara	130	None documented.
WA salmon purse seine	75	None documented.
WA salmon reef net	11	None documented.
HI lift net	21	None documented.
HI inshore purse seine	<3	None documented.
HI throw net, cast net	20	None documented.
HI seine net	21	None documented.
DIP NET FISHERIES:		
CA squid dip net	115	None documented.
WA/OR smelt, herring dip net	119	None documented.
MARINE AQUACULTURE FISHERIES:		
CA marine shellfish aquaculture	Unknown	None documented.
CA salmon enhancement rearing pen	>1	None documented.
CA white seabass enhancement net pens	13	California sea lion, U.S.
HI offshore pen culture	2	None documented.

TABLE 1—LIST OF FISHERIES—COMMERCIAL FISHERIES IN THE PACIFIC OCEAN—Continued

Fishery description	Estimated Number of vessels/ persons	Marine mammal species and/or stocks incidentally killed or injured
WA/OR salmon net pens	14	California sea lion, U.S. Harbor seal, WA inland waters.
TROLL FISHERIES:		
AK North Pacific halibut, AK bottom fish, WA/OR/CA albacore, groundfish, bottom fish, CA halibut non-salmonid troll fisheries*.	1,320 (180 AK)	None documented.
AK salmon troll	1,908	Steller sea lion, Eastern U.S. Steller sea lion, Western U.S.
American Samoa tuna troll	7	None documented.
CA/OR/WA salmon troll	4,300	None documented.
HI troll	1,755	Pantropical spotted dolphin, HI.
HI rod and reel	221	None documented.
Commonwealth of the Northern Mariana Islands tuna troll	40	None documented.
Guam tuna troll	432	None documented.
LONGLINE/SET LINE FISHERIES:		
AK Bering Sea, Aleutian Islands Pacific cod longline	45	Dall's Porpoise, AK. Northern fur seal, Eastern Pacific. Ringed seal, AK.
AK Bering Sea, Aleutian Islands rockfish longline	3	None documented.
AK Bering Sea, Aleutian Islands Greenland turbot longline	4	Killer whale, AK resident.
AK Bering Sea, Aleutian Islands sablefish longline	22	None documented.
AK Gulf of Alaska halibut longline	855	None documented.
AK Gulf of Alaska Pacific cod longline	92	Steller sea lion, Western U.S.
AK Gulf of Alaska rockfish longline	25	None documented.
AK Gulf of Alaska sablefish longline	295	Sperm whale, North Pacific.
AK halibut longline/set line (state and Federal waters)	2,197	None documented in the most recent 5 years of data.
AK octopus/squid longline	3	None documented.
AK state-managed waters longline/setline (including sablefish, rockfish, lingcod, and miscellaneous finfish).	464	None documented.
WA/OR/CA groundfish, bottomfish longline/set line	367	Bottlenose dolphin, CA/OR/WA offshore.
WA/OR Pacific halibut longline	350	None documented.
CA pelagic longline	1	None documented in the most recent 5 years of data.
HI kaka line	24	None documented.
HI vertical line	6	None documented.
TRAWL FISHERIES:		
AK Bering Sea, Aleutian Islands Atka mackerel trawl	13	Ribbon seal, AK. Steller sea lion, Western U.S.
AK Bering Sea, Aleutian Islands Pacific cod trawl	72	Ringed seal, AK. Steller sea lion, Western U.S.
AK Gulf of Alaska flatfish trawl	36	Northern elephant seal, North Pacific.
AK Gulf of Alaska Pacific cod trawl	55	Steller sea lion, Western U.S.
AK Gulf of Alaska pollock trawl	67	Dall's porpoise, AK. Fin whale, Northeast Pacific. Northern elephant seal, North Pacific. Steller sea lion, Western U.S.
AK Gulf of Alaska rockfish trawl	43	None documented.
AK food/bait herring trawl	4	None documented.
AK miscellaneous finfish otter/beam trawl	282	None documented.
AK shrimp otter trawl and beam trawl (statewide and Cook Inlet).	38	None documented.
AK state-managed waters of Cook Inlet, Kachemak Bay, Prince William Sound, Southeast AK groundfish trawl.	2	None documented.
CA halibut bottom trawl	53	None documented.
WA/OR/CA shrimp trawl	300	None documented.
WA/OR/CA groundfish trawl	160–180	California sea lion, U.S. Dall's porpoise, CA/OR/WA. Harbor seal, OR/WA coast. Northern fur seal, Eastern Pacific. Pacific white-sided dolphin, CA/OR/WA. Steller sea lion, Eastern U.S.
POT, RING NET, AND TRAP FISHERIES:		
AK statewide miscellaneous finfish pot	4	None documented.
AK Aleutian Islands sablefish pot	4	None documented.
AK Bering Sea, Aleutian Islands Pacific cod pot	59	None documented.
AK Bering Sea, Aleutian Islands crab pot	540	Gray whale, Eastern North Pacific.
AK Bering Sea sablefish pot	2	None documented.
AK Gulf of Alaska crab pot	381	None documented.
AK Gulf of Alaska Pacific cod pot	128	Harbor seal, GOA.
AK Southeast Alaska crab pot	41	Humpback whale, Central North Pacific (Southeast AK).

TABLE 1—LIST OF FISHERIES—COMMERCIAL FISHERIES IN THE PACIFIC OCEAN—Continued

Fishery description	Estimated Number of vessels/ persons	Marine mammal species and/or stocks incidentally killed or injured
AK Southeast Alaska shrimp pot	269	Humpback whale, Central North Pacific (Southeast AK).
AK shrimp pot, except Southeast	236	None documented.
AK octopus/squid pot	26	None documented.
AK snail pot	1	None documented.
CA/OR coonstripe shrimp pot	10	Gray whale, Eastern North Pacific Harbor seal, CA.
CA rock crab pot	150	Gray whale, Eastern North Pacific Harbor seal, CA.
CA spiny lobster	198	Gray whale, Eastern North Pacific.
WA/OR/CA hagfish pot	54	None documented.
WA/OR shrimp pot/trap	254	None documented.
WA Puget Sound Dungeness crab pot/trap	249	None documented.
HI crab trap	7	Humpback whale, Central North Pacific.
HI fish trap	5	None documented.
HI lobster trap	<3	None documented in recent years.
HI shrimp trap	6	None documented.
HI crab net	4	None documented.
HI Kona crab loop net	35	None documented.
HOOK-AND-LINE, HANDLINE, AND JIG FISHERIES:		
AK miscellaneous finfish handline/hand troll and mechanical jig.	456	None documented.
AK North Pacific halibut handline/hand troll and mechanical jig.	180	None documented.
AK octopus/squid handline	7	None documented.
American Samoa bottomfish	14	None documented.
Commonwealth of the Northern Mariana Islands bottomfish.	28	None documented.
Guam bottomfish	>300	None documented.
HI aku boat, pole, and line	<3	None documented.
HI bottomfish handline	578	None documented in recent years.
HI inshore handline	376	None documented.
HI pelagic handline	484	None documented.
WA groundfish, bottomfish jig	679	None documented.
Western Pacific squid jig	<3	None documented.
HARPOON FISHERIES:		
CA swordfish harpoon	30	None documented.
POUND NET/WEIR FISHERIES:		
AK herring spawn on kelp pound net	409	None documented.
AK Southeast herring roe/food/bait pound net	2	None documented.
HI bullpen trap	<3	None documented.
BAIT PENS:		
WA/OR/CA bait pens	13	California sea lion, U.S.
DREDGE FISHERIES:		
Alaska scallop dredge	108 (5 AK)	None documented.
DIVE, HAND/MECHANICAL COLLECTION FISHERIES:		
AK abalone	0	None documented.
AK clam	130	None documented.
AK Dungeness crab	2	None documented.
AK herring spawn on kelp	339	None documented.
AK urchin and other fish/shellfish	398	None documented
CA sea urchin	583	None documented.
HI black coral diving	<3	None documented.
HI fish pond	5	None documented.
HI handpick	58	None documented.
HI lobster diving	23	None documented.
HI spearfishing	159	None documented.
WA/CA kelp	4	None documented.
WA/OR sea urchin, other clam, octopus, oyster, sea cucumber, scallop, ghost shrimp hand, dive, or mechanical collection.	637	None documented.
WA shellfish aquaculture	684	None documented.
COMMERCIAL PASSENGER FISHING VESSEL (CHARTER BOAT) FISHERIES:		
AK/WA/OR/CA commercial passenger fishing vessel	>7,000 (2,702 AK)	Killer whale, unknown. Steller sea lion, Eastern U.S. Steller sea lion, Western U.S.
LIVE FINFISH/SHELLFISH FISHERIES:		
CA nearshore finfish live trap/hook-and-line	93	None documented.

TABLE 1—LIST OF FISHERIES—COMMERCIAL FISHERIES IN THE PACIFIC OCEAN—Continued

Fishery description	Estimated Number of vessels/ persons	Marine mammal species and/or stocks incidentally killed or injured
HI aquarium collecting	90	None documented.

List of Abbreviations and Symbols Used in Table 1: AI—Aleutian Islands; AK—Alaska; BS—Bering Sea; CA—California; ENP—Eastern North Pacific; GOA—Gulf of Alaska; HI—Hawaii; MHI—Main Hawaiian Islands; OR—Oregon; WA—Washington; [1] Fishery classified based on mortalities and serious injuries of this stock, which are greater than or equal to 50 percent (Category I) or greater than 1 percent and less than 50 percent (Category II) of the stock's PBR; [2] Fishery classified by analogy; * Fishery has an associated high seas component listed in Table 3; ∧ The list of marine mammal species and/or stocks killed or injured in this fishery is identical to the list of species and/or stocks killed or injured in high seas component of the fishery, minus species and/or stocks have geographic ranges exclusively on the high seas. The species and/or stocks are found, and the fishery remains the same, on both sides of the EEZ boundary. Therefore, the EEZ components of these fisheries pose the same risk to marine mammals as the components operating on the high seas.

TABLE 2—LIST OF FISHERIES—COMMERCIAL FISHERIES IN THE ATLANTIC OCEAN, GULF OF MEXICO, AND CARIBBEAN

Fishery description	Estimated Number of vessels/ persons	Marine mammal species and/or stocks incidentally killed or injured
CATEGORY I		
GILLNET FISHERIES:		
Mid-Atlantic gillnet	5,509	Bottlenose dolphin, Northern Migratory coastal.[1] Bottlenose dolphin, Southern Migratory coastal.[1] Bottlenose dolphin, Northern NC estuarine system.[1] Bottlenose dolphin, Southern NC estuarine system.[1] Bottlenose dolphin, WNA offshore. Common dolphin, WNA. Gray seal, WNA. Harbor porpoise, GME/BF. Harbor seal, WNA. Harp seal, WNA. Humpback whale, Gulf of Maine. Minke whale, Canadian east coast. Risso's dolphin, WNA. White-sided dolphin, WNA.
Northeast sink gillnet	4,375	Bottlenose dolphin, WNA offshore. Common dolphin, WNA. Fin whale, WNA. Gray seal, WNA. Harbor porpoise, GME/BF.[1] Harbor seal, WNA. Harp seal, WNA. Hooded seal, WNA. Humpback whale, Gulf of Maine. Long-finned Pilot whale, WNA. Minke whale, Canadian east coast. North Atlantic right whale, WNA. Risso's dolphin, WNA. Short-finned Pilot whale, WNA. White-sided dolphin, WNA.
TRAP/POT FISHERIES:		
Northeast/Mid-Atlantic American lobster trap/pot	11,693	Harbor seal, WNA. Humpback whale, Gulf of Maine. Minke whale, Canadian east coast. North Atlantic right whale, WNA.[1]
LONGLINE FISHERIES:		
Atlantic Ocean, Caribbean, Gulf of Mexico large pelagics longline *.	420	Atlantic spotted dolphin, GMX continental and oceanic. Atlantic spotted dolphin, WNA. Bottlenose dolphin, Northern GMX oceanic. Bottlenose dolphin, WNA offshore. Common dolphin, WNA. Cuvier's beaked whale, WNA. False killer whale, WNA. Gervais beaked whale, GMX. Killer whale, GMX oceanic. Kogia *spp.* (Pygmy or dwarf sperm whale), WNA. Long-finned pilot whale, WNA.[1] Mesoplodon beaked whale, WNA. Minke whale, Canadian East coast.

TABLE 2—LIST OF FISHERIES—COMMERCIAL FISHERIES IN THE ATLANTIC OCEAN, GULF OF MEXICO, AND CARIBBEAN—Continued

Fishery description	Estimated Number of vessels/ persons	Marine mammal species and/or stocks incidentally killed or injured
		Pantropical spotted dolphin, Northern GMX.
		Pantropical spotted dolphin, WNA.
		Risso's dolphin, Northern GMX.
		Risso's dolphin, WNA.
		Short-finned pilot whale, Northern GMX.
		Short-finned pilot whale, WNA.[1]
		Sperm whale, GMX oceanic.
CATEGORY II		
GILLNET FISHERIES:		
Chesapeake Bay inshore gillnet[2]	1,126	None documented in the most recent 5 years of data.
Gulf of Mexico gillnet[2]	724	Bottlenose dolphin, GMX bay, sound, and estuarine.
		Bottlenose dolphin, Northern GMX coastal.
		Bottlenose dolphin, Western GMX coastal.
NC inshore gillnet	1,323	Bottlenose dolphin, Northern NC estuarine system.[1]
		Bottlenose dolphin, Southern NC estuarine system.[1]
Northeast anchored float gillnet.[2]	421	Harbor seal, WNA.
		Humpback whale, Gulf of Maine.
		White-sided dolphin, WNA.
Northeast drift gillnet[2]	311	None documented.
Southeast Atlantic gillnet[2]	357	Bottlenose dolphin, Central FL coastal.
		Bottlenose dolphin, Northern FL coastal.
		Bottlenose dolphin, SC/GA coastal.
		Bottlenose dolphin, Southern migratory coastal.
Southeastern U.S. Atlantic shark gillnet	30	Bottlenose dolphin, unknown (Central FL, Northern FL, SC/GA coastal, or Southern migratory coastal).
		North Atlantic right whale, WNA.
TRAWL FISHERIES:		
Mid-Atlantic mid-water trawl (including pair trawl)	322	Common dolphin, WNA.
		Long-finned pilot whale, WNA.
		Risso's dolphin, WNA.
		Short-finned pilot whale, WNA.
		White-sided dolphin, WNA.[1]
Mid-Atlantic bottom trawl	631	Bottlenose dolphin, WNA offshore.
		Common dolphin, WNA.[1]
		Gray seal, WNA.
		Harbor seal, WNA.
		Long-finned pilot whale, WNA.[1]
		Risso's dolphin, WNA.[1]
		Short-finned pilot whale, WNA.[1]
		White-sided dolphin, WNA.
Northeast mid-water trawl (including pair trawl)	1,103	Gray seal, WNA.
		Harbor seal, WNA.
		Long-finned pilot whale, WNA.[1]
		Short-finned pilot whale, WNA.[1]
		Common dolphin, WNA.
		White-sided dolphin, WNA.
Northeast bottom trawl	2,987	Bottlenose dolphin, WNA offshore.
		Common dolphin, WNA.
		Gray seal, WNA.
		Harbor porpoise, GME/BF
		Harbor seal, WNA.
		Harp seal, WNA.
		Long-finned pilot whale, WNA.
		Minke whale, Canadian East Coast.
		Short-finned pilot whale, WNA.
		White-sided dolphin, WNA.[1]
Southeastern U.S. Atlantic, Gulf of Mexico shrimp trawl	4,950	Atlantic spotted dolphin, GMX continental and oceanic.
		Bottlenose dolphin, Charleston estuarine system.
		Bottlenose dolphin, Eastern GMX coastal.[1]
		Bottlenose dolphin, GMX bay, sound, estuarine.[1]
		Bottlenose dolphin, GMX continental shelf.
		Bottlenose dolphin, Northern GMX coastal.
		Bottlenose dolphin, SC/GA coastal.[1]
		Bottlenose dolphin, Southern migratory coastal.
		Bottlenose dolphin, Western GMX coastal.[1]
		West Indian manatee, Florida.

TABLE 2—LIST OF FISHERIES—COMMERCIAL FISHERIES IN THE ATLANTIC OCEAN, GULF OF MEXICO, AND CARIBBEAN—Continued

Fishery description	Estimated Number of vessels/ persons	Marine mammal species and/or stocks incidentally killed or injured
TRAP/POT FISHERIES:		
Southeastern U.S. Atlantic, Gulf of Mexico stone crab trap/pot [2].	1,282	Bottlenose dolphin, Biscayne Bay estuarine.
		Bottlenose dolphin, Central FL coastal.
		Bottlenose dolphin, Eastern GMX coastal.
		Bottlenose dolphin, FL Bay.
		Bottlenose dolphin, GMX bay, sound, estuarine (FL west coast portion).
		Bottlenose dolphin, Indian River Lagoon estuarine system.
		Bottlenose dolphin, Jacksonville estuarine system.
		Bottlenose dolphin, Northern GMX coastal.
Atlantic mixed species trap/pot [2]	3,467	Fin whale, WNA.
		Humpback whale, Gulf of Maine.
Atlantic blue crab trap/pot	8,557	Bottlenose dolphin, Central FL coastal.[1]
		Bottlenose dolphin, Charleston estuarine system.[1]
		Bottlenose dolphin, Indian River Lagoon estuarine system.[1]
		Bottlenose dolphin, Jacksonville estuarine system.[1]
		Bottlenose dolphin, Northern FL coastal.[1]
		Bottlenose dolphin, Northern GA/Southern SC estuarine system.[1]
		Bottlenose dolphin, Northern Migratory coastal.[1]
		Bottlenose dolphin, Northern NC estuarine system.[1]
		Bottlenose dolphin, Northern SC estuarine system.
		Bottlenose dolphin, SC/GA coastal.[1]
		Bottlenose dolphin, Southern GA estuarine system.[1]
		Bottlenose dolphin, Southern Migratory coastal.[1]
		Bottlenose dolphin, Southern NC estuarine system.[1]
		West Indian manatee, FL.[1]
PURSE SEINE FISHERIES:		
Gulf of Mexico menhaden purse seine	40–42	Bottlenose dolphin, GMX bay, sound, estuarine.
		Bottlenose dolphin, Northern GMX coastal.[1]
		Bottlenose dolphin, Western GMX coastal.[1]
Mid-Atlantic menhaden purse seine [2]	5	Bottlenose dolphin, Northern Migratory coastal.
		Bottlenose dolphin, Southern Migratory coastal.
HAUL/BEACH SEINE FISHERIES:		
Mid-Atlantic haul/beach seine	565	Bottlenose dolphin, Northern Migratory coastal.[1]
		Bottlenose dolphin, Northern NC estuarine system.[1]
		Bottlenose dolphin, Southern Migratory coastal.[1]
NC long haul seine	372	Bottlenose dolphin, Northern NC estuarine system.[1]
		Bottlenose dolphin, Southern NC estuarine system.
STOP NET FISHERIES:		
NC roe mullet stop net	13	Bottlenose dolphin, Northern NC estuarine system.
		Bottlenose dolphin, unknown (Southern migratory coastal or Southern NC estuarine system).
POUND NET FISHERIES:		
VA pound net	67	Bottlenose dolphin, Northern migratory coastal.
		Bottlenose dolphin, Northern NC estuarine system.
		Bottlenose dolphin, Southern Migratory coastal.[1]
CATEGORY III		
GILLNET FISHERIES:		
Caribbean gillnet	>991	None documented in the most recent 5 years of data.
DE River inshore gillnet	Unknown	None documented in the most recent 5 years of data.
Long Island Sound inshore gillnet	Unknown	None documented in the most recent 5 years of data.
RI, southern MA (to Monomoy Island), and NY Bight (Raritan and Lower NY Bays) inshore gillnet.	Unknown	None documented in the most recent 5 years of data.
Southeast Atlantic inshore gillnet	Unknown	Bottlenose dolphin, Northern SC estuarine system.
TRAWL FISHERIES:		
Atlantic shellfish bottom trawl	>58	None documented.
Gulf of Mexico butterfish trawl	2	Bottlenose dolphin, Northern GMX oceanic.
		Bottlenose dolphin, Northern GMX continental shelf.
Gulf of Mexico mixed species trawl	20	None documented.
GA cannonball jellyfish trawl	1	Bottlenose dolphin, SC/GA coastal.
MARINE AQUACULTURE FISHERIES:		
Finfish aquaculture	48	Harbor seal, WNA.
Shellfish aquaculture	Unknown	None documented.
PURSE SEINE FISHERIES:		

TABLE 2—LIST OF FISHERIES—COMMERCIAL FISHERIES IN THE ATLANTIC OCEAN, GULF OF MEXICO, AND CARIBBEAN—Continued

Fishery description	Estimated Number of vessels/ persons	Marine mammal species and/or stocks incidentally killed or injured
Gulf of Maine Atlantic herring purse seine	>7	Harbor seal, WNA. Gray seal, WNA.
Gulf of Maine menhaden purse seine	>2	None documented.
FL West Coast sardine purse seine	10	Bottlenose dolphin, Eastern GMX coastal.
U.S. Atlantic tuna purse seine *	5	Long-finned pilot whale, WNA. Short-finned pilot whale, WNA.
LONGLINE/HOOK-AND-LINE FISHERIES:		
Northeast/Mid-Atlantic bottom longline/hook-and-line	>1,207	None documented.
Gulf of Maine, U.S. Mid-Atlantic tuna, shark swordfish hook-and-line/harpoon.	428	Bottlenose dolphin, WNA offshore. Humpback whale, Gulf of Maine.
Southeastern U.S. Atlantic, Gulf of Mexico, and Caribbean snapper-grouper and other reef fish bottom longline/ hook-and-line.	>5,000	Bottlenose dolphin, GMX continental shelf.
Southeastern U.S. Atlantic, Gulf of Mexico shark bottom longline/hook-and-line.	<125	Bottlenose dolphin, Eastern GMX coastal. Bottlenose dolphin, Northern GMX continental shelf.
Southeastern U.S. Atlantic, Gulf of Mexico, and Caribbean pelagic hook-and-line/harpoon.	1,446	None documented.
U.S. Atlantic, Gulf of Mexico trotline	Unknown	None documented.
TRAP/POT FISHERIES:		
Caribbean mixed species trap/pot	>501	None documented.
Caribbean spiny lobster trap/pot	>197	None documented.
FL spiny lobster trap/pot	1,268	Bottlenose dolphin, Biscayne Bay estuarine Bottlenose dolphin, Central FL coastal. Bottlenose dolphin, Eastern GMX coastal. Bottlenose dolphin, FL Bay estuarine.
Gulf of Mexico blue crab trap/pot	4,113	Bottlenose dolphin, Eastern GMX coastal. Bottlenose dolphin, GMX bay, sound, estuarine. Bottlenose dolphin, Northern GMX coastal. Bottlenose dolphin, Western GMX coastal. West Indian manatee, FL.
Gulf of Mexico mixed species trap/pot	Unknown	None documented.
Southeastern U.S. Atlantic, Gulf of Mexico golden crab trap/pot.	10	None documented.
U.S. Mid-Atlantic eel trap/pot	Unknown	None documented.
STOP SEINE/WEIR/POUND NET/FLOATING TRAP FISHERIES:		
Gulf of Maine herring and Atlantic mackerel stop seine/ weir.	>1	Harbor porpoise, GME/BF. Harbor seal, WNA. Minke whale, Canadian east coast. Atlantic white-sided dolphin, WNA.
U.S. Mid-Atlantic crab stop seine/weir	2,600	None documented.
U.S. Mid-Atlantic mixed species stop seine/weir/pound net (except the NC roe mullet stop net).	Unknown	Bottlenose dolphin, Northern NC estuarine system.
RI floating trap	9	None documented.
DREDGE FISHERIES:		
Gulf of Maine sea urchin dredge	Unknown	None documented.
Gulf of Maine mussel dredge	Unknown	None documented.
Gulf of Maine, U.S. Mid-Atlantic sea scallop dredge	>403	None documented.
Mid-Atlantic blue crab dredge	Unknown	None documented.
Mid-Atlantic soft-shell clam dredge	Unknown	None documented.
Mid-Atlantic whelk dredge	Unknown	None documented.
U.S. Mid-Atlantic/Gulf of Mexico oyster dredge	7,000	None documented.
U.S. Mid-Atlantic offshore surf clam and quahog dredge	Unknown	None documented.
HAUL/BEACH SEINE FISHERIES:		
Caribbean haul/beach seine	15	None documented in the most recent 5 years of data.
Gulf of Mexico haul/beach seine	Unknown	None documented.
Southeastern U.S. Atlantic haul/beach seine	25	None documented.
DIVE, HAND/MECHANICAL COLLECTION FISHERIES:		
Atlantic Ocean, Gulf of Mexico, Caribbean shellfish dive, hand/mechanical collection.	20,000	None documented.
Gulf of Maine urchin dive, hand/mechanical collection	Unknown	None documented.
Gulf of Mexico, Southeast Atlantic, Mid-Atlantic, and Caribbean cast net.	Unknown	None documented.
COMMERCIAL PASSENGER FISHING VESSEL (CHARTER BOAT) FISHERIES:		

TABLE 2—LIST OF FISHERIES—COMMERCIAL FISHERIES IN THE ATLANTIC OCEAN, GULF OF MEXICO, AND CARIBBEAN—Continued

Fishery description	Estimated Number of vessels/ persons	Marine mammal species and/or stocks incidentally killed or injured
Atlantic Ocean, Gulf of Mexico, Caribbean commercial passenger fishing vessel.	4,000	Bottlenose dolphin, Biscayne Bay estuarine. Bottlenose dolphin, Central FL coastal. Bottlenose dolphin, Choctawhatchee Bay. Bottlenose dolphin, Eastern GMX coastal. Bottlenose dolphin, FL Bay. Bottlenose dolphin, GMX bay, sound, estuarine. Bottlenose dolphin, Indian River Lagoon estuarine system. Bottlenose dolphin, Jacksonville estuarine system. Bottlenose dolphin, Northern FL coastal. Bottlenose dolphin, Northern GA/Southern SC estuarine. Bottlenose dolphin, Northern GMX coastal. Bottlenose dolphin, Northern migratory coastal. Bottlenose dolphin, Northern NC estuarine. Bottlenose dolphin, Southern migratory coastal. Bottlenose dolphin, Southern NC estuarine system. Bottlenose dolphin, Southern SC/GA coastal. Bottlenose dolphin, Western GMX coastal.

List of Abbreviations and Symbols Used in Table 2: DE—Delaware; FL—Florida; GA—Georgia; GME/BF—Gulf of Maine/Bay of Fundy; GMX—Gulf of Mexico; MA—Massachusetts; NC—North Carolina; NY—New York; RI—Rhode Island; SC—South Carolina; VA—Virginia; WNA—Western North Atlantic; [1]Fishery classified based on mortalities and serious injuries of this stock, which are greater than or equal to 50 percent (Category I) or greater than 1 percent and less than 50 percent (Category II) of the stock's PBR; [2]Fishery classified by analogy; * Fishery has an associated high seas component listed in Table 3.

TABLE 3—LIST OF FISHERIES—COMMERCIAL FISHERIES ON THE HIGH SEAS

Fishery description	Number of HSFCA permits	Marine mammal species and/or stocks incidentally killed or injured
CATEGORY I		
LONGLINE FISHERIES:		
Atlantic Highly Migratory Species *	83	Atlantic spotted dolphin, WNA. Bottlenose dolphin, Northern GMX oceanic. Bottlenose dolphin, WNA offshore. Common dolphin, WNA. Cuvier's beaked whale, WNA. False killer whale, WNA. Killer whale, GMX oceanic. Kogia *spp.* whale (Pygmy or dwarf sperm whale), WNA. Long-finned pilot whale, WNA. Mesoplodon beaked whale, WNA. Minke whale, Canadian East coast. Pantropical spotted dolphin, WNA. Risso's dolphin, GMX. Risso's dolphin, WNA. Short-finned pilot whale, WNA.
Western Pacific Pelagic (HI Deep-set component) * ∧	128	Bottlenose dolphin, HI Pelagic. False killer whale, HI Pelagic. Pantropical spotted dolphin, HI. Risso's dolphin, HI. Short-finned pilot whale, HI. Sperm whale, HI. Striped dolphin, HI.
DRIFT GILLNET FISHERIES:		
Pacific Highly Migratory Species * ∧	4	Long-beaked common dolphin, CA. Humpback whale, CA/OR/WA. Northern right-whale dolphin, CA/OR/WA. Pacific white-sided dolphin, CA/OR/WA. Risso's dolphin, CA/OR/WA. Short-beaked common dolphin, CA/OR/WA
CATEGORY II		
DRIFT GILLNET FISHERIES:		
Atlantic Highly Migratory Species	1	Undetermined.
TRAWL FISHERIES:		

TABLE 3—LIST OF FISHERIES—COMMERCIAL FISHERIES ON THE HIGH SEAS—Continued

Fishery description	Number of HSFCA permits	Marine mammal species and/or stocks incidentally killed or injured
Atlantic Highly Migratory Species**	1	Undetermined.
CCAMLR	0	Antarctic fur seal.
Western Pacific Pelagic	0	Undetermined.
PURSE SEINE FISHERIES:		
South Pacific Tuna Fisheries	38	Undetermined.
Western Pacific Pelagic	3	Undetermined.
LONGLINE FISHERIES:		
CCAMLR	0	None documented.
South Pacific Albacore Troll	13	Undetermined.
South Pacific Tuna Fisheries **	8	Undetermined.
Western Pacific Pelagic (HI Shallow-set component) * ∧ ..	18	Blainville's beaked whale, HI. Bottlenose dolphin, HI Pelagic. False killer whale, HI Pelagic. Humpback whale, Central North Pacific. Kogia *spp.* whale (Pygmy or dwarf sperm whale), HI. Risso's dolphin, HI. Short-beaked common dolphin, CA/OR/WA. Short-finned pilot whale, HI. Striped dolphin, HI.
HANDLINE/POLE AND LINE FISHERIES:		
Atlantic Highly Migratory Species	2	Undetermined.
Pacific Highly Migratory Species	41	Undetermined.
South Pacific Albacore Troll	8	Undetermined.
Western Pacific Pelagic	3	Undetermined.
TROLL FISHERIES:		
Atlantic Highly Migratory Species	2	Undetermined.
South Pacific Albacore Troll	35	Undetermined.
South Pacific Tuna Fisheries**	3	Undetermined.
Western Pacific Pelagic	19	Undetermined.
LINERS NEI FISHERIES:		
Pacific Highly Migratory Species**	1	Undetermined.
South Pacific Albacore Troll	1	Undetermined.
Western Pacific Pelagic	1	Undetermined.
CATEGORY III		
LONGLINE FISHERIES:		
Northwest Atlantic Bottom Longline	1	None documented.
Pacific Highly Migratory Species*	100	None documented in the most recent 5 years of data.
PURSE SEINE FISHERIES		
Pacific Highly Migratory Species* ∧	8	None documented.
TRAWL FISHERIES:		
Northwest Atlantic	1	None documented.
TROLL FISHERIES:		
Pacific Highly Migratory Species*	253	None documented.

List of Terms, Abbreviations, and Symbols Used in Table 3:

CA—California; GMX—Gulf of Mexico; HI—Hawaii; OR—Oregon; WA—Washington; WNA—Western North Atlantic.

*Fishery is an extension/component of an existing fishery operating within U.S. waters listed in Table 1 or 2. The number of permits listed in Table 3 represents only the number of permits for the high seas component of the fishery.

**These gear types are not authorized under the Pacific HMS FMP (2004), the Atlantic HMS FMP (2006), or without a South Pacific Tuna Treaty license (in the case of the South Pacific Tuna fisheries). Because HSFCA permits are valid for five years, permits obtained in past years exist in the HSFCA permit database for gear types that are now unauthorized. Therefore, while HSFCA permits exist for these gear types, it does not represent effort. In order to land fish species, fishers must be using an authorized gear type. Once these permits for unauthorized gear types expire, the permit-holder will be required to obtain a permit for an authorized gear type.

∧The list of marine mammal species and/or stocks killed or injured in this fishery is identical to the list of marine mammal species and/or stocks killed or injured in U.S. waters component of the fishery, minus species and/or stocks that have geographic ranges exclusively in coastal waters, because the marine mammal species and/or stocks are also found on the high seas and the fishery remains the same on both sides of the EEZ boundary. Therefore, the high seas components of these fisheries pose the same risk to marine mammals as the components of these fisheries operating in U.S. waters.

TABLE 4—FISHERIES AFFECTED BY TAKE REDUCTION TEAMS AND PLANS

Take reduction plans	Affected fisheries
Atlantic Large Whale Take Reduction Plan (ALWTRP)—50 CFR 229.32	*Category I* Mid-Atlantic gillnet. Northeast/Mid-Atlantic American lobster trap/pot. Northeast sink gillnet. *Category II* Atlantic blue crab trap/pot. Atlantic mixed species trap/pot.

TABLE 4—FISHERIES AFFECTED BY TAKE REDUCTION TEAMS AND PLANS—Continued

Take reduction plans	Affected fisheries
Bottlenose Dolphin Take Reduction Plan (BDTRP)—50 CFR 229.35	Northeast anchored float gillnet. Northeast drift gillnet. Southeast Atlantic gillnet. Southeastern U.S. Atlantic shark gillnet*. Southeastern, U.S. Atlantic, Gulf of Mexico stone crab trap/pot ∧. *Category I* Mid-Atlantic gillnet. *Category II* Atlantic blue crab trap/pot. Chesapeake Bay inshore gillnet fishery. Mid-Atlantic haul/beach seine. Mid-Atlantic menhaden purse seine. NC inshore gillnet. NC long haul seine. NC roe mullet stop net. Southeast Atlantic gillnet. Southeastern U.S. Atlantic shark gillnet. Southeastern U.S. Atlantic, Gulf of Mexico shrimp trawl ∧. Southeastern, U.S. Atlantic, Gulf of Mexico stone crab trap/pot ∧. VA pound net.
False Killer Whale Take Reduction Plan (FKWTRP)—50 CFR 229.37 ...	*Category I* HI deep-set longline. *Category II* HI shallow-set longline.
Harbor Porpoise Take Reduction Plan (HPTRP)—50 CFR 229.33 (New England) and 229.34 (Mid-Atlantic).	*Category I* Mid-Atlantic gillnet. Northeast sink gillnet.
Pelagic Longline Take Reduction Plan (PLTRP)—50 CFR 229.36	*Category I* Atlantic Ocean, Caribbean, Gulf of Mexico large pelagics longline.
Pacific Offshore Cetacean Take Reduction Plan (POCTRP)—50 CFR 229.31.	*Category I* CA thresher shark/swordfish drift gillnet (≥14 in mesh).
Atlantic Trawl Gear Take Reduction Team (ATGTRT)	*Category II* Mid-Atlantic bottom trawl. Mid-Atlantic mid-water trawl (including pair trawl). Northeast bottom trawl. Northeast mid-water trawl (including pair trawl).

* Only applicable to the portion of the fishery operating in U.S. waters;
∧ Only applicable to the portion of the fishery operating in the Atlantic Ocean.

Classification

The Chief Counsel for Regulation of the Department of Commerce certified to the Chief Counsel for Advocacy of the Small Business Administration (SBA) at the proposed rule stage that this rule would not have a significant economic impact on a substantial number of small entities. No comments were received on that certification, and no new information has been discovered to change that conclusion. Accordingly, no regulatory flexibility analysis is required, and none has been prepared.

This rule contains collection-of-information requirements subject to the Paperwork Reduction Act. The collection of information for the registration of individuals under the MMPA has been approved by the Office of Management and Budget (OMB) under OMB control number 0648–0293 (0.15 hours per report for new registrants and 0.09 hours per report for renewals). The requirement for reporting marine mammal mortalities or injuries has been approved by OMB under OMB control number 0648–0292 (0.15 hours per report). These estimates include the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding these reporting burden estimates or any other aspect of the collections of information, including suggestions for reducing burden, to NMFS and OMB (see **ADDRESSES** and **SUPPLEMENTARY INFORMATION**).

Notwithstanding any other provision of law, no person is required to respond to nor shall a person be subject to a penalty for failure to comply with a collection of information subject to the requirements of the Paperwork Reduction Act unless that collection of information displays a currently valid OMB control number.

This rule has been determined to be not significant for the purposes of Executive Order 12866.

An environmental assessment (EA) was prepared under the National Environmental Policy Act (NEPA) in 1995 and 2005. The 1995 EA examined the effects of regulations implementing section 118 of the 1994 Amendments of the MMPA on the affected environment. The 2005 EA analyzed the environmental impacts of continuing the existing scheme (as described in the 1995 EA) for classifying fisheries on the LOF. The 1995 EA and the 2005 EA concluded that implementation of MMPA section 118 regulations would not have a significant impact on the human environment. NMFS reviewed the 2005 EA in 2009. NMFS concluded that because there were no changes to the process used to develop the LOF and implement section 118 of the MMPA, there was no need to update the 2005 EA. NMFS initiated an EA for the LOF in 2013 but did not finalize it because the no action alternative described in the 2005 EA is still the preferred alternative. This rule would not change NMFS' current process for classifying fisheries on the LOF; therefore, this rule is not expected to change the analysis or conclusion of the

2005 EA and FONSI, and no update is needed. If NMFS takes a management action, for example, through the development of a TRP, NMFS would first prepare an environmental document, as required under NEPA, specific to that action.

This rule would not affect species listed as threatened or endangered under the Endangered Species Act (ESA) or their associated critical habitat. The impacts of numerous fisheries have been analyzed in various biological opinions, and this rule will not affect the conclusions of those opinions. The classification of fisheries on the LOF is not considered to be a management action that would adversely affect threatened or endangered species. If NMFS takes a management action, for example, through the development of a TRP, NMFS would consult under ESA section 7 on that action.

This rule would have no adverse impacts on marine mammals and may have a positive impact on marine mammals by improving knowledge of marine mammals and the fisheries interacting with marine mammals through information collected from observer programs, stranding and sighting data, or take reduction teams.

This rule would not affect the land or water uses or natural resources of the coastal zone, as specified under section 307 of the Coastal Zone Management Act.

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Dated: December 19, 2014.

Samuel D. Rauch III,

Deputy Assistant Administrator for Regulatory Programs, National Marine Fisheries Service.

[FR Doc. 2014–30375 Filed 12–24–14; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 300

[Docket No. 140710571–4977–02]

RIN 0648–BE36

International Fisheries; Western and Central Pacific Fisheries for Highly Migratory Species; Restrictions on the Use of Fish Aggregating Devices in Purse Seine Fisheries for 2015; Correction

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

ACTION: Final rule; correction.

SUMMARY: NMFS published in the **Federal Register** of December 2, 2014, with an effective date of January 1, 2015, a final rule to establish restrictions on the use of fish aggregating devices (FADs) by U.S. purse seine vessels in the western and central Pacific Ocean (''International Fisheries; Western and Central Pacific Fisheries for Highly Migratory Species; Restrictions on the Use of Fish Aggregating Devices in Purse Seine Fisheries for 2015''). The final rule also included a requirement for the owners and operators of such vessels to submit ''daily FAD reports'' to NMFS. As indicated in the December 2, 2014, final rule, some of the FAD restrictions are to go into effect only if NMFS publishes a notice in the **Federal Register** announcing that they are in effect. NMFS intended to make the requirement to submit daily FAD reports also contingent on issuance of a **Federal Register** notice, but inadvertently wrote the final rule such that the reporting requirement would go into effect on January 1, 2015, irrespective of issuance by NMFS of a **Federal Register** notice. This document corrects that error in the final rule by making the requirement to submit daily FAD reports contingent on NMFS issuing a **Federal Register** notice announcing that it is in effect.

DATES: Effective January 1, 2015.

FOR FURTHER INFORMATION CONTACT: Tom Graham, NMFS Pacific Islands Regional Office, 808–725–5032.

SUPPLEMENTARY INFORMATION: NMFS published in the **Federal Register** of December 2, 2014 (79 FR 71327), a final rule to establish restrictions on the use of fish aggregating devices by U.S. purse seine vessels in the western and central Pacific Ocean (WCPO) during 2015. Some of the FAD restrictions in the final rule, specifically the FAD prohibitions during January and February and the limit of 3,061 FAD sets with associated prohibitions, were made contingent on NMFS issuing a subsequent **Federal Register** notice announcing that those restrictions are in effect. NMFS would issue such a **Federal Register** notice only if it determined that the Commission for the Conservation and Management of Highly Migratory Fish Stocks in the Western and Central Pacific Ocean (Commission) adopted particular arrangements at its Eleventh Regular Session, which took place December 1–5, 2014. The Commission did not adopt such arrangements at that session.

The final rule also included a requirement for vessel owners and operators to submit ''daily FAD reports'' to NMFS. The reports would be used by NMFS to estimate and project the number of sets on FADs with respect to the limit of 3,061 FAD sets. NMFS intended the daily FAD reporting requirement to be effective only if the limit of 3,061 FAD sets were put in effect. However, NMFS inadvertently wrote the final rule such that the daily FAD report requirement would go into effect on January 1, 2015, irrespective of the Commission decision or a subsequent **Federal Register** notice. This document corrects that error in the final rule by making the requirement to submit daily FAD reports contingent on NMFS issuing a **Federal Register** notice announcing that the reporting requirement is in effect.

Classification

This final rule has been determined to be not significant for the purposes of Executive Order 12866.

NMFS has determined that good cause exists to waive public notice and comment under 5 U.S.C. 553(b)(B) because it would be unnecessary and contrary to the public interest. It is unnecessary and contrary to the public interest because delaying this rule would only serve to place an unwarranted burden on the regulated community. If this correction to the final rule is not effective by January 1, 2015, then owners and operators of U.S. purse seine vessels in the WCPO would

be required to submit daily reports to NMFS that would not serve any useful purpose, which would be contrary to the public interest.

Further, NMFS has determined that good cause exists to waive the 30-day delay in effectiveness of this rule under 5 U.S.C. 553(d) because, as explained previously, this rule relieves a reporting requirement on the regulated community.

Because prior notice and opportunity for public comment for this correction to the final rule under 5 U.S.C. 553 have been waived, and are not required by any other law, the analytical requirements of the Regulatory Flexibility Act, 5 U.S.C. 601 *et seq.* are inapplicable.

Correction

Accordingly, the final rule, **Federal Register** Document Number 2014–28105, published on December 2, 2014, at 79 FR 71327, to be effective January 1, 2015, is corrected as follows:

On page 71330, in column 3, § 300.218(g) is correctly added to read as follows:

§ 300.218 Reporting and recordkeeping requirements.

* * * * *

(g) *Daily FAD reports.* If NMFS issues a notice in the **Federal Register** announcing that the requirement of this paragraph is in effect, the owner or operator of any fishing vessel of the United States equipped with purse seine gear must, within 24 hours of the end of each day that the vessel is at sea in the Convention Area, report to NMFS, in the format and manner directed by the Pacific Islands Regional Administrator, how many purse seine sets were made on FADs during that day.

Dated: December 16, 2014.

Samuel D. Rauch III,

Deputy Assistant Administrator for Regulatory Programs, National Marine Fisheries Service.

[FR Doc. 2014–30227 Filed 12–24–14; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 635

[Docket No. 120328229–4949–02]

RIN 0648–XD653

Atlantic Highly Migratory Species; Atlantic Bluefin Tuna Fisheries

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

ACTION: Temporary rule; inseason General category bluefin tuna quota transfer and retention limit adjustment.

SUMMARY: NMFS is transferring 21 metric tons (mt) of Atlantic bluefin tuna (BFT) quota from the General category December 2015 subquota period to the January 2015 subquota period (from January 1 through March 31, 2015, or until the available subquota for this period is reached, whichever comes first). NMFS also is adjusting the Atlantic tunas General category BFT daily retention limit for the January 2015 subquota period to three large medium or giant BFT from the default retention limit of one. This action is based on consideration of the regulatory determination criteria regarding inseason adjustments and applies to Atlantic tunas General category (commercial) permitted vessels and Highly Migratory Species (HMS) Charter/Headboat category permitted vessels when fishing commercially for BFT.

DATES: The quota transfer is effective January 1, 2015. The General category retention limit adjustment is effective January 1, 2015, through March 31, 2015.

FOR FURTHER INFORMATION CONTACT: Sarah McLaughlin or Brad McHale, 978–281–9260.

SUPPLEMENTARY INFORMATION: Regulations implemented under the authority of the Atlantic Tunas Convention Act (ATCA; 16 U.S.C. 971 *et seq.*) and the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act; 16 U.S.C. 1801 *et seq.*) governing the harvest of BFT by persons and vessels subject to U.S. jurisdiction are found at 50 CFR part 635. Section 635.27 divides the U.S. BFT quota recommended by the International Commission for the Conservation of Atlantic Tunas (ICCAT) among the various domestic fishing categories, per the allocations established in the 2006 Consolidated Highly Migratory Species Fishery Management Plan (2006 Consolidated HMS FMP) (71 FR 58058, October 2, 2006), as amended by the recently published Amendment 7 to the 2006 Consolidated HMS FMP (Amendment 7) (79 FR 71510, December 2, 2014,) and in accordance with implementing regulations. NMFS is required under ATCA to provide U.S. fishing vessels with a reasonable opportunity to harvest the ICCAT-recommended quota.

Inseason Transfer to the General Category

The 2010 ICCAT recommendation regarding western BFT management resulted in baseline U.S. quotas for 2011 and for 2012 of 923.7 mt (not including the separate 25 mt that ICCAT allocated to the United States to account for bycatch of BFT in pelagic longline fisheries in the Northeast Distant Gear Restricted Area). The allocation formula applied in the 2011 BFT quota rule (76 FR 39019, July 5, 2011) resulted in a codified quota of 435.1 mt for the General category fishery (a commercial tunas fishery in which handgear is used), which was then further divided according to the time-period allocations established in the 2006 Consolidated HMS FMP. The General category quota and time period subquotas as codified were not modified for 2012, 2013, or 2014. Although the 2014 ICCAT recommendation regarding western BFT management would result in an increase to the baseline U.S. BFT quota and subquotas for 2015, domestic implementation of that recommendation will take place in a separate rulemaking, likely in mid-2015.

Among other things, Amendment 7 revised the allocations to all quota categories, effective January 1, 2015. As a result, based on the currently codified quota of 923.7 mt, the General category quota is 403 mt. See § 635.27(a). Each of the General category time periods (January, June through August, September, October through November, and December) is allocated a portion of the annual General category quota. Although it is called the ''January'' subquota, the regulations allow the General category fishery under this quota to continue until the subquota is reached or March 31, whichever comes first. Based on the General category quota of 403 mt, the subquotas for each time period are as follows: 21.4 mt for January; 201.5 mt for June through August; 106.8 mt for September; 52.4 mt for October through November; and 21 mt for December. Any unused General category quota rolls forward within the fishing year, which coincides with the

calendar year, from one time period to the next, and is available for use in subsequent time periods.

During the Amendment 7 rulemaking, NMFS received comment from General category participants that NMFS should provide more quota to the January subquota period and should consider shifting subquota from December to the January period. Some of the comments expressed concern that, due to the timing of NMFS' implementation of quota rules and/or quota specifications (which are usually finalized mid-year), General category participants in the January period do not benefit from any increased opportunities that may become available to those fishing in the summer and fall. The final rule implementing Amendment 7 responded to this concern and allows NMFS to proactively transfer General category quota from one time period to an earlier time period in the same calendar year.

Under § 635.27(a)(9), NMFS has the authority to transfer quota among fishing categories or subcategories, after considering determination criteria provided under § 635.27(a)(8), including the five new criteria recently added in Amendment 7, which include: The usefulness of information obtained from catches in the particular category for biological sampling and monitoring of the status of the stock; the catches of the particular category quota to date and the likelihood of closure of that segment of the fishery if no adjustment is made; the projected ability of the vessels fishing under the particular category quota to harvest the additional amount of BFT before the end of the fishing year; the estimated amounts by which quotas for other gear categories of the fishery might be exceeded; effects of the adjustment on BFT rebuilding and overfishing; effects of the adjustment on accomplishing the objectives of the fishery management plan; variations in seasonal distribution, abundance, or migration patterns of BFT; effects of catch rates in one area precluding vessels in another area from having a reasonable opportunity to harvest a portion of the category's quota; review of dealer reports, daily landing trends, and the availability of the BFT on the fishing grounds; optimizing fishing opportunity; accounting for dead discards, facilitating quota monitoring, supporting other fishing monitoring programs through quota allocations and/or generation of revenue; and support of research through quota allocations and/or generation of revenue.

NMFS has considered the relevant determination criteria regarding inseason adjustments and their applicability to the General category fishery for the January 2015 subquota period. A principal consideration is the objective of providing opportunities to harvest the full annual U.S. BFT quota without exceeding it based on the goals of the 2006 Consolidated HMS FMP and Amendment 7, including to achieve optimum yield on a continuing basis and to optimize the ability of all permit categories to harvest their full BFT quota allocations.

General category landings in the winter BFT fishery, which typically occurs in the mid-Atlantic beginning in December or January each year, are highly variable and depend on availability of commercial-sized BFT to participants. As of early December, commercial-sized BFT are actively being landed. For the last three years, under a daily retention limit of two large medium or giant BFT, the available January subquota (23.1 mt) was reached on January 22, 2012, February 15, 2013, and March 21, 2014. For these same three years, the General category did not reach its available quota by the end of the year.

A quota transfer from the December 2015 to January 2015 period would provide additional opportunities to harvest the available U.S. BFT quota without exceeding it, while preserving the opportunity for General category fishermen to participate in the winter BFT fishery. NMFS also anticipates that up to 94.9 mt of underharvest of the 2014 adjusted U.S. BFT quota will be carried forward to 2015 to the Reserve, in accordance with the regulations implementing Amendment 7. This, in addition to the fact that any unused General category quota will roll forward to the next subperiod within the calendar year, and the anticipated increase in the U.S. quota and subquotas for 2015 as a result of ICCAT recommendations, make it very likely that General category quota will remain available through the end of 2015 for December fishery participants, even with the quota transfer. NMFS also may choose to transfer unused quota from the Reserve or other categories, inseason, based on consideration of the determination criteria. Therefore, NMFS anticipates that General category participants in all areas and time periods will have opportunities to harvest the General category quota. Thus, the quota transfer would allow fishermen to take advantage of the availability of fish on the fishing grounds now, consider the expected increases in available quota later in the year, and provide a reasonable opportunity to harvest the full U.S. BFT quota.

Other considerations consistent with the regulatory criteria include, but are not limited to, the following:

Biological samples collected from BFT landed by General category fishermen and provided by BFT dealers continue to provide NMFS with valuable parts and data for ongoing scientific studies of BFT age and growth, migration, and reproductive status. Continued BFT landings would support the collection of a broad range of data for these studies and for stock monitoring purposes. Without a quota transfer at this time, the quota available for the January through March 2015 period would be 21.4 mt (5.3 percent of the General category quota), and participants would have to stop BFT fishing activities once that amount is met, while commercial-sized BFT may remain available in the areas General category permitted vessels operate. Transferring the 21-mt quota available for December 2015 (5.2 percent of the General category quota) would result in 42.4 mt (10.5 percent of the General category quota) being available for the January subquota period.

This action will be taken consistent with the quotas previously implemented and analyzed in the 2011 BFT quota final rule, as adjusted by the final rule to implement Amendment 7, and consistent with the objectives of the 2006 Consolidated HMS FMP and Amendments, and is not expected to negatively impact stock health. It is also supported by the Supplemental Environmental Assessment prepared for the 2013 quota specifications and the Final Environmental Impact Statement/Regulatory Impact Review/Final Regulatory Flexibility Analysis prepared for Amendment 7.

Based on the considerations above, NMFS has decided to transfer 21 mt of General category quota allocated for the December period to the January period. The transfer will provide a reasonable opportunity to harvest the U.S. quota of BFT, without exceeding it, while maintaining an equitable distribution of fishing opportunities; allow the collection of a broad range of data for stock monitoring purposes; and be consistent with the objectives of the 2006 Consolidated HMS FMP and Amendments. Therefore, NMFS transfers the 21 mt to the General category January 2015 period, resulting in a subquota of 42.4 mt for that period and a December period subquota of 0 mt for the 2015 fishing year. NMFS will close the General category fishery when the adjusted General category January period subquota has been reached, or it will close automatically on March 31, 2015, and it will remain closed until the

General category fishery reopens on June 1, 2015.

Adjustment of General Category Daily Retention Limit

Unless changed, the General category daily retention limit starting on January 1 would be the default retention limit of one large medium or giant BFT (measuring 73 inches (185 cm) curved fork length (CFL) or greater) per vessel per day/trip (§ 635.23(a)(2)). This default retention limit would apply to General category permitted vessels and to HMS Charter/Headboat category permitted vessels when fishing commercially for BFT. For the 2014 fishing year, NMFS adjusted the daily retention limit from the default level of one large medium or giant BFT to two large medium or giant BFT for the January subquota period (78 FR 77362, December 23, 2013), which closed March 21, 2014, when the subquota was met (79 FR 15924, March 24, 2014); and four large medium or giant BFT for the June through August period (79 FR 30745, May 29, 2014) as well as the September, October through November, and December periods (79 FR 50854, August 26, 2014).

Under § 635.23(a)(4), NMFS may increase or decrease the daily retention limit of large medium and giant BFT over a range of zero to a maximum of five per vessel based on consideration of the relevant criteria provided under § 635.27(a)(8), and listed above. NMFS has considered the relevant criteria and their applicability to the General category BFT retention limit for the January 2015 subquota period. These considerations include, but are not limited to, the following:

As described above with regard to the quota transfer, additional opportunity to land BFT would support the collection of a broad range of data for the biological studies and for stock monitoring purposes. In 2012, 2013, and 2014, under a two-fish limit, the available January subquota (23.1 mt) was reached on January 22, February 15, and March 21, respectively, and in each of these years the General category did not reach its available quota by the end of the year. For the remainder of the 2014 General category fishery (*i.e.,* June through December), NMFS adjusted the daily retention limit to four fish, and preliminary landings information indicate that the General category will be close to but likely not fill its quota. As this action would be taken consistent with the previously implemented and analyzed quotas, it is not expected to negatively impact stock health. It is also supported by the Environmental Analysis for the 2011 final rule regarding General and Harpoon category management measures, which increased the General category maximum daily retention limit from three to five fish (76 FR 74003, November 30, 2011).

As above, the winter BFT fishery is variable, but as of early December 2014, commercial-sized BFT are actively being landed. Considering this information and the transfer of the December 2015 subquota to the quota for the January 2015 time period (for an adjusted total of 42.4 mt), the default one-fish limit likely would be overly restrictive. Increasing the daily retention limit from the default may mitigate rolling an excessive amount of unused quota from one time-period subquota to the next and thus help maintain an equitable distribution of fishing opportunities. Although NMFS has the authority to set the daily retention limit to up to five fish, the rate of harvest of the January subquota could be accelerated under a high limit (and higher fish availability), and result in a relatively short fishing season. A short fishing season may preclude or reduce fishing opportunities for some individuals or geographic areas because of the migratory nature and seasonal distribution of BFT.

Based on these considerations, NMFS has determined that a three-fish General category retention limit is warranted for the January 2015 subquota. It would provide a reasonable opportunity to harvest the U.S. quota of BFT without exceeding it, while maintaining an equitable distribution of fishing opportunities, help optimize the ability of the General category to harvest its full quota, allow collection of a broad range of data for stock monitoring purposes, and be consistent with the objectives of the 2006 Consolidated HMS FMP and Amendments. Therefore, NMFS increases the General category retention limit from the default limit (one) to three large medium or giant BFT per vessel per day/trip, effective January 1, 2015, through March 31, 2015, or until the 42.4-mt January subquota is harvested, whichever comes first.

Regardless of the duration of a fishing trip, the daily retention limit applies upon landing. For example, during the January 2015 subquota period, whether a vessel fishing under the General category limit takes a two-day trip or makes two trips in one day, the day/trip limit of three fish applies and may not be exceeded upon landing. This General category retention limit is effective in all areas, except for the Gulf of Mexico, where NMFS prohibits targeted fishing for BFT, and applies to those vessels permitted in the General category, as well as to those HMS Charter/Headboat permitted vessels fishing commercially for BFT.

Monitoring and Reporting

NMFS will continue to monitor the General category BFT fishery closely through the mandatory landings and catch reports. Dealers are required to submit landing reports within 24 hours of a dealer receiving BFT. Consistent with the regulations implementing Amendment 7, General and HMS Charter/Headboat category vessel operators are required to report the number and length of all BFT catch (*i.e.,* retained or discarded dead) through an online catch reporting system within 24 hours of the landing(s) or end of each trip, by accessing *hmspermits.noaa.gov*. Depending on the level of fishing effort and catch rates of BFT, NMFS may determine that additional retention limit adjustments or closures are necessary to ensure available quota is not exceeded or to enhance scientific data collection from, and fishing opportunities in, all geographic areas. Subsequent actions, if any, will be published in the **Federal Register**. In addition, fishermen may call the Atlantic Tunas Information Line at (888) 872–8862 or (978) 281–9260, or access *hmspermits.noaa.gov,* for updates on quota monitoring and inseason adjustments.

Classification

The Assistant Administrator for NMFS (AA) finds that it is impracticable and contrary to the public interest to provide prior notice of, and an opportunity for public comment on, this action for the following reasons:

The regulations implementing the 2006 Consolidated HMS FMP and Amendments provide for inseason retention limit adjustments to respond to the unpredictable nature of BFT availability on the fishing grounds, the migratory nature of this species, and the regional variations in the BFT fishery. Affording prior notice and opportunity for public comment to implement the quota transfer and daily retention limit for the January subquota time period is impracticable as NMFS needs to wait until it has necessary data and information about the fishery before it can select the appropriate retention limit for a time period prescribed by regulation. By the time NMFS has the necessary data, implementing the retention limit following a public comment period would preclude fishermen from harvesting BFT that are legally available consistent with all of the regulatory criteria. Analysis of available data shows that the General category BFT retention limits may be increased with minimal risks of

exceeding the ICCAT-allocated U.S. BFT quota.

Delays in increasing these retention limits would adversely affect those General and HMS Charter/Headboat category vessels that would otherwise have an opportunity to harvest more than the default retention limit of one BFT per day/trip and may exacerbate the problem of low catch rates and quota rollovers. Limited opportunities to harvest the respective quotas may have negative social and economic impacts for U.S. fishermen that depend upon catching the available quota within the designated time periods. Adjustment of the retention limit needs to be effective January 1, 2015, or as soon as possible thereafter, to minimize any unnecessary disruption in fishing patterns, to allow the impacted sectors to benefit from the adjustment, and to provide fishing opportunities for fishermen in geographic areas with access to the fishery only during this time period. Therefore, the AA finds good cause under 5 U.S.C. 553(b)(B) to waive prior notice and the opportunity for public comment. For these reasons, there is good cause under 5 U.S.C. 553(d) to waive the 30-day delay in effectiveness.

This action is being taken under 50 CFR 635.23(a)(4) and 635.27(a)(9), and is exempt from review under Executive Order 12866.

Authority: 16 U.S.C. 971 *et seq.* and 1801 *et seq.*

Dated: December 22, 2014.

Emily H. Menashes,

Acting Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. 2014–30341 Filed 12–22–14; 4:15 pm]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 648

[Docket No. 141002822–4999–02]

RIN 0648–BE56

Magnuson-Stevens Fishery Conservation and Management Act Provisions; Fisheries of the Northeastern United States; Northeast Groundfish Fishery; Fishing Year 2014; Interim Gulf of Maine Cod Management Measures; Correction

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

ACTION: Temporary rule, correction; extension of expiration date.

SUMMARY: This document makes corrections to the Gulf of Maine cod interim regulations published in the **Federal Register** on November 13, 2014. This notice allows gillnet vessels to switch their designation as either a Day or Trip gillnet vessel, an opportunity that was inadvertently not provided in the original interim action. This notice also makes several corrections and clarifications, including where the Gulf of Maine cod trip limit applies, to ensure consistency with measures implemented in the interim action. In this document, we extend the expiration date of certain temporary amendments.

DATES: Effective December 29, 2014, until May 12, 2015, except for amendatory instruction 2 of this rule, which expires on April 30, 2015. The expiration dates in amendatory instructions 2, 4a and c, and 5 through 12, published in FR Rule Doc. No. 2014–26844, November 13, 2014, at 79 FR 67362, for the amendments to §§ 648.2, 648.14, 648.80, 648.81, 648.82, 648.85, 648.86, 648.87, 648.88, and 648.89, respectively, are extended until May 12, 2015.

FOR FURTHER INFORMATION CONTACT: Brett Alger, Fishery Management Specialist, phone: 978–675–9315.

SUPPLEMENTARY INFORMATION:

Background

On November 13, 2014, we published interim management measures (79 FR 67362) to increase protection for Gulf of Maine (GOM) cod in response to a recently updated stock assessment that concluded the stock is severely depleted. The management measures included seasonal interim closure areas and a 200-lb (90.7-kg) GOM cod trip limit for all limited access commercial groundfish vessels. This document makes corrections to those measures; specifically, we are:

- Allowing gillnet vessels to change their annual declaration for the remainder of the 2014 fishing year;
- Clarifying that the 200-lb (90.7-kg) GOM cod trip limit applies specifically to the GOM Broad Stock Area (BSA);
- Correcting several labeling and typographical errors pertaining to the seasonal interim closure areas;
- Extending the effective dates noted for regulations implemented by the interim action consistent with the effective date published in the **Federal Register**; and
- Correcting the prohibitions and other regulations to clarify their meaning or correct cross-references.

Gillnet Category Designations

The Northeast Multispecies Fishery Management Plan (FMP) requires groundfish vessels fishing with gillnet gear to make an annual declaration as either a Day gillnet or Trip gillnet vessel. There are specific regulations and tagging requirements associated with each of these categories. For example, a Trip gillnet vessel is not limited in the number of nets may fish, but it must set and retrieve all of its gillnet gear in each trip. On the other hand, a Day gillnet vessel is limited in the number of nets it may fish, but can return to port while allowing the gear to remain in the water for a period of time, and then retrieve the gear on a subsequent trip. Once a vessel owner has elected one of these designations, the owner may not change the designation or fish under the other gillnet category for the remainder of the fishing year.

The interim rule modified gillnet management measures mid-season by reducing the number of nets that may be fished by Day gillnet vessels enrolled in a sector (see page 67367 of the interim rule) and instituting GOM cod trip limits. Vessel owners did not have a prior opportunity to consider these changes when they made their designation as a Day or Trip gillnet vessel at the beginning of the fishing year. This correction provides a one-time opportunity for gillnet vessels to change their designation after considering management changes made by the interim rule. Gillnet vessels can change their declaration for the remainder of the 2014 fishing year by submitting a revised gillnet tag form from December 29, 2014, through January 28, 2015.

Clarification on GOM Cod Trip Limits

The groundfish Regulated Mesh Area (RMA) boundaries were historically used for gear restrictions, and for setting trip limits in the commercial fishery and bag limits in the recreational fishery. In addition, Broad Stock Areas (BSA) were implemented in Amendment 16 to the FMP (75 FR 18262; April 9, 2010) to better attribute catch to specific groundfish stocks. There is a specific area northeast of Cape Cod where the GOM RMA and GOM BSA boundaries do not align (Figure 1), and which results in the GOM RMA overlapping the Inshore Georges Bank BSA. In this case, a vessel may be fishing in the Inshore Georges Bank BSA, but under the GOM RMA gear and trip regulations. The interaction of these overlapping areas was not addressed when developing the GOM cod interim rule,

and there is confusion regarding where the 200-lb (90.7-kg) GOM cod trip limit applies.

The intent of the interim action was to protect GOM cod. Given that the GOM BSA aligns with the GOM cod stock area, this action clarifies that the GOM cod 200-lb (90.7-kg) trip limit is applicable to commercial vessels when fishing in the GOM BSA. A vessel fishing in the area where the Inshore Georges Bank BSA and the GOM RMA boundaries overlap is not subject to the cod possession limit for the GOM BSA because the vessel is fishing outside of the GOM BSA. As a reminder, the GOM cod interim rule measures restrict commercial groundfish vessels to fishing in only a single BSA when declaring into the GOM BSA.

Figure 1 – Gulf of Maine RMA and Inshore Georges Bank BSA Overlap. The 200-lb (90.7-kg) trip limit applies vessels fishing in the Gulf of Maine Broad Stock Area

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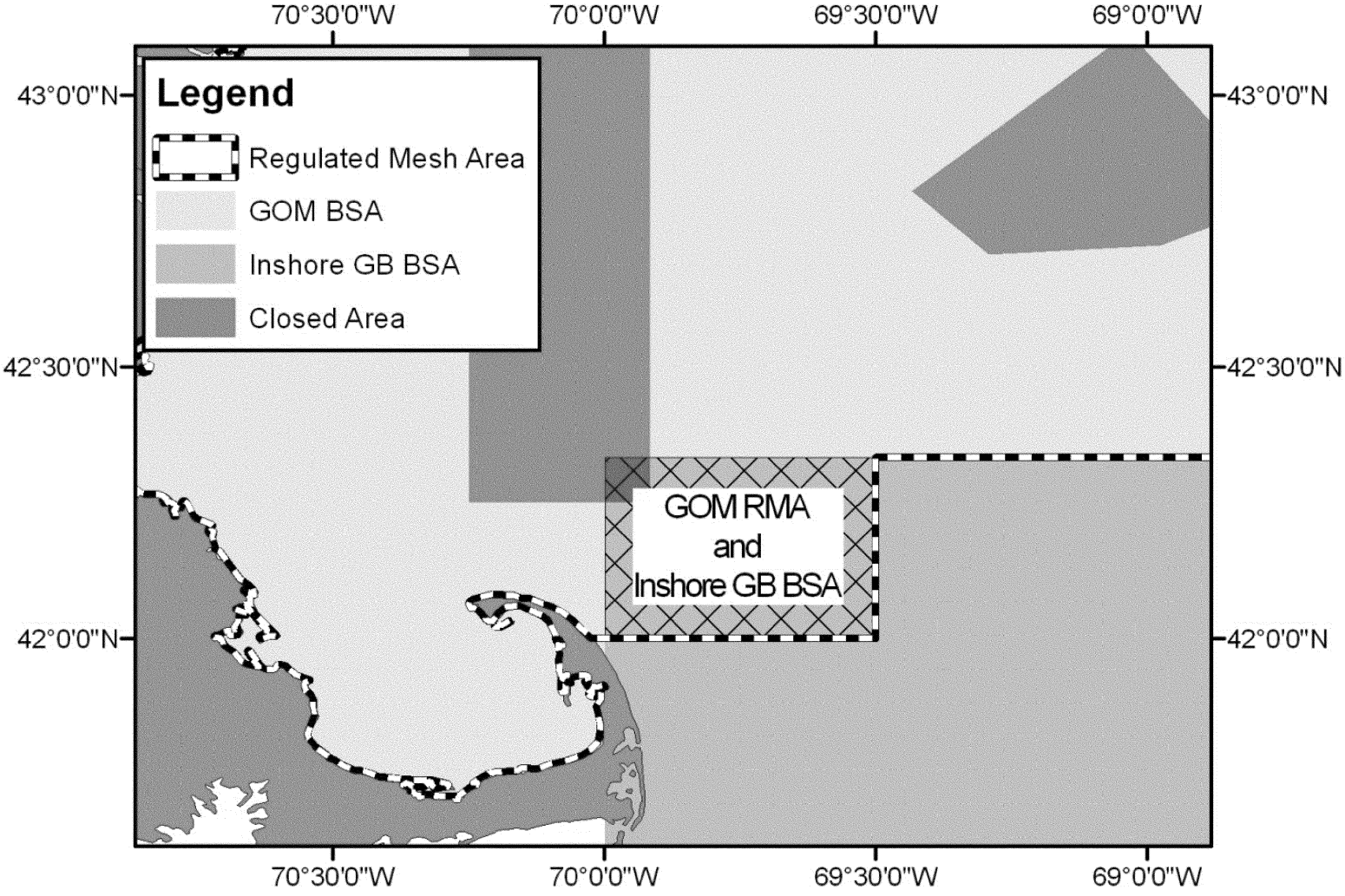

Closure Area Corrections

Several of the seasonal interim closure areas published in the GOM cod interim rule (79 FR 67362; November 13, 2014; see page 67363) had non-substantive errors, such as missing column headings and incorrect labels. We are clarifying these typographical errors in the regulations that describe the locations of the seasonal interim closure areas. This notice does not move any of the seasonal interim closure areas.

Effective Date Clarification

The management measures instituted in the GOM cod interim rule are effective from November 13, 2014, until May 12, 2015. The regulatory text accompanying the rule mistakenly states that the temporary regulations are effective through April 30, 2015 (the end of the 2014 fishing year). This rule clarifies this inconsistency so that all temporary regulations implemented in the interim rule are effective until May 12, 2015.

Classification

The Assistant Administrator (AA) for Fisheries, NOAA, finds that pursuant to 5 U.S.C. 553(b)(B), there is good cause to waive prior notice and an opportunity for public comment on this action, as notice and comment would be unnecessary, and contrary to the public interest. This notice implements a measure at § 648.4(c)(2)(iii)(C) allowing gillnet vessels to change their Day or Trip gillnet vessel status in-season. This opportunity was inadvertently left out of the GOM cod interim action and does not substantively change the regulations. This notice corrects and clarifies that the 200-lb (90.7-kg) trip limit for GOM cod applies when fishing in the GOM Broad Stock Area only to eliminate confusion and does not create any new measures. This notice also makes minor clerical changes to the seasonal interim closure areas at § 648.81(o)(1). Providing notice and comment on these changes is unnecessary because all are non-substantive and do not change the operation of the fishery. Moreover, delaying the correction of inconsistencies in regulatory text is contrary to the public interest, because it could affect the enforceability of the regulations and because inaccurate regulations could lead to public confusion and potentially to incorrect behavior. For the same reasons above, the Assistant Administrator finds good cause under 5 U.S.C. 553(d)(3) to waive the 30-day delay in effectiveness and makes this rule effective immediately upon publication.

List of Subjects in 50 CFR Part 648

Fisheries, Fishing, Recordkeeping and reporting requirements.

Dated: December 18, 2014.

Samuel D. Rauch III,

Deputy Assistant Administrator for Regulatory Programs, National Marine Fisheries Service.

Therefore, NOAA amends 50 CFR part 648 as follows:

PART 648—FISHERIES OF THE NORTHEASTERN UNITED STATES

■ 1. The authority citation for part 648 continues to read as follows:

Authority: 16 U.S.C. 1801 *et seq.*

■ 2. Section 648.4 is amended by:

■ a. Suspending from December 29, 2014 until April 30, 2015, paragraph (c)(2)(iii)(A), and

■ b. Temporarily adding from December 29, 2014 until April 30, 2015, paragraph (c)(2)(iii)(C).

The addition reads as follows:

§ 648.4 Vessel permits.

* * * * *

(c) * * *

(2) * * *

(iii) * * *

(C) For vessels fishing for NE multispecies with gillnet gear, with the exception of vessels fishing under the Small Vessel permit category, an annual declaration as either a Day or Trip gillnet vessel designation as described in § 648.82(j). A vessel owner electing a Day gillnet designation must indicate the number of gillnet tags that he/she is requesting, and must include a check for the cost of the tags, unless the vessel already possesses valid gillnet tags, as identified by the Regional Administrator. A permit holder letter will be sent to the owner of each eligible gillnet vessel, informing him/her of the costs associated with this tagging requirement and providing directions for obtaining valid tags. Unless otherwise specified in this paragraph (c)(2)(iii)(C) of this section, once a vessel owner has elected this designation, he/she may not change the designation or fish under the other gillnet category for the remainder of the fishing year. From December 29, 2014, to January 28, 2015 owners of vessels that are designated as Day or Trip gillnet vessels may elect to switch to a different gillnet vessel designation for the remainder of the 2014 fishing year. Incomplete applications, as described in paragraph (e) of this section, will be considered incomplete only for the purposes of obtaining authorization to fish in the NE multispecies gillnet fishery and otherwise will be processed or issued without a gillnet authorization.

* * * * *

■ 3. Section 648.14 is amended by

■ a. Suspending from December 29, 2014 until May 12, 2015, paragraphs (k)(12)(v)(K) and (L), (k)(13)(ii)(K) through (M), and (k)(16)(iii)(D) and (F); and

■ b. Temporarily adding from December 29, 2014 until May 12, 2015, paragraphs (k)(12)(v)(M) and (N), (k)(13)(ii)(N) through (P), and (k)(16)(iii)(G) and (H).

The additions read as follows:

§ 648.14 Prohibitions.

* * * * *

(k) * * *

(12) * * *

(v) * * *

(M) If fishing in the Regular B DAS Program specified in § 648.85(b)(6), fail to comply with the landing limits specified in § 648.85(b)(6)(iv)(L).

(N) If fishing under a Regular B DAS in the Regular B DAS program, fail to comply with the DAS flip requirements of § 648.85(b)(6)(iv)(E) if the vessel harvests and brings on board more than the landing limit for a groundfish stock of concern specified in § 648.85(b)(6)(iv)(L), other groundfish specified under § 648.86, or monkfish under § 648.94.

* * * * *

(13) * * *

(ii) * * *

(N) Possess or land per trip more than the possession or landing limits specified in § 648.86(a), (b), (c), (e), (g), (h), (j), (l), (m), (n), and (o); § 648.82(b)(9) and (10); § 648.85; or § 648.88, if the vessel has been issued a limited access NE multispecies permit or open access NE multispecies permit, as applicable.

(O) Fish for, possess at any time during a trip, or land regulated NE multispecies or ocean pout specified in § 648.86 after using up the vessel's annual DAS allocation or when not participating in the DAS program pursuant to § 648.82, unless otherwise exempted by § 648.82(b)(9), § 648.87, or § 648.89, or allowed pursuant to § 648.85(b)(6) or § 648.88.

(P) *Atlantic cod.* (*1*) Enter port in possession of more than the allowable limit of cod specified in § 648.86(b)(8), unless the vessel is fishing under the cod exemption specified in § 648.86(b)(10).

(*2*) Enter port in possession of more than the allowable limit of cod specified in § 648.86(b)(9).

(*3*) Fail to declare through VMS an intent to be exempt from the GOM cod

trip limit under § 648.86(b)(8), as required under § 648.86(b)(10), or fish north of the exemption line if in possession of more than the GOM cod trip limit specified under § 648.86(b)(8).

* * * * *

(16) * * *

(iii) * * *

(G) If fishing from a recreational vessel, a vessel with a charter/party permit, or a charter or party boat, fish for or possess cod in or from the GOM Broad Stock Area, or fail to abide by § 648.89(c)(9) if transiting with cod on board.

(H) If fishing from a recreational vessel, a vessel with a charter/party permit, or a charter or party boat, fail to comply with the GOM cod possession prohibition described in § 648.89(c)(9).

* * * * *

■ 4. Section 648.80 is amended by:

■ a. Suspending from December 29, 2014 until May 12, 2015, paragraphs (a)(3)(viii) and (a)(4)(ix); and

■ b. Temporarily adding from December 29, 2014 until May 12, 2015, paragraphs (a)(3)(ix) and (a)(4)(x).

The additions read as follows:

§ 648.80 NE Multispecies regulated mesh areas and restrictions and methods of fishing.

* * * * *

(a) * * *

(3) * * *

(ix) *Other restrictions and exemptions.* A vessel is prohibited from fishing in the GOM or GB Exemption Area as defined in paragraph (a)(17) of this section, except if fishing with exempted gear (as defined under this part) or under the exemptions specified in paragraphs (a)(5) through (7), (a)(9) through (a)(16) and (a)(18) through (a)(19), (d), (e), (h), and (i) of this section; or if fishing under a NE multispecies DAS; or if fishing on a sector trip; or if fishing under the Small Vessel or Handgear A permit specified in § 648.82(b)(9) and (10), respectively; or if fishing under a Handgear B permit specified in § 648.88(a); or if fishing under the scallop state waters exemptions specified in § 648.54 and paragraph (a)(11) of this section; or if fishing under a scallop DAS in accordance with paragraph (h) of this section; or if fishing pursuant to a NE multispecies open access Charter/Party or Handgear permit specified in § 648.88; or if fishing as a charter/party or private recreational vessel in compliance with § 648.89. Any gear used by a vessel in this area must be authorized under one of these exemptions. Any gear on a vessel that is not authorized under one of these exemptions must not be available for immediate use as defined in § 648.2.

(4) * * *

(x) *Large-mesh vessels.* When fishing in the GB Regulated Mesh Area, the minimum mesh size for any trawl net, or sink gillnet, and the minimum mesh size for any trawl net, or sink gillnet, when fishing in that portion of the GB Regulated Mesh Area that lies within the SNE Exemption Area, as described in paragraph (b)(10) of this section, that is not stowed and available for immediate use as defined in § 648.2, on a vessel or used by a vessel fishing under a DAS in the Large-mesh DAS program, specified in § 648.82(b)(0), is 8.5-inch (21.6-cm) diamond or square mesh throughout the entire net. This restriction does not apply to nets or pieces of nets smaller than 3 ft (0.9 m) × 3 ft (0.9 m), (9 sq ft (0.81 sq m)), or to vessels that have not been issued a NE multispecies permit and that are fishing exclusively in state waters.

* * * * *

■ 5. Section 648.81 is amended by:

■ a. Suspending from December 29, 2014 until May 12, 2015, paragraphs (d)(3) and (4), (o)(1)(iii), (iv), and (viii) through (x); and

■ b. Temporarily adding from December 29, 2014 until May 12, 2015, paragraphs (d)(5) and (6), and (o)(1)(xi) through (xv).

The additions read as follows:

§ 648.81 NE multispecies closed area and measures to protect EFH.

* * * * *

(d) * * *

(5) No fishing vessel or person on a fishing vessel may enter, fish in, or be in, and no fishing gear capable of catching NE multispecies, unless otherwise allowed in this part, may be in, or on board a vessel in the area known as the Cashes Ledge Closure Area, as defined by straight lines connecting the following points in the order stated, except as specified in paragraphs (d)(6) and (i) of this section (a chart depicting this area is available from the Regional Administrator upon request):

CASHES LEDGE CLOSURE AREA

Point	N.	W.
CL1	43°07′	69°02′
CL2	42°49.5′	68°46′
CL3	42°46.5′	68°50.5′
CL4	42°43.5′	68°58.5′
CL5	42°42.5′	69°17.5′
CL6	42°49.5′	69°26′
CL1	43°07′	69°02′

(6) Unless otherwise restricted under the EFH Closure(s) specified in paragraph (h) of this section, paragraph (d)(5) of this section does not apply to persons aboard fishing vessels or fishing vessels:

(i) That are fishing with or using exempted gear as defined under this part, or in the Midwater Trawl Gear Exempted Fishery as specified under § 648.80(d), and excluding pelagic gillnet gear capable of catching NE multispecies, except for vessels fishing with a single pelagic gillnet not longer than 300 ft (91.4 m) and not greater than 6 ft (1.83 m) deep, with a maximum mesh size of 3 inches (7.6 cm), provided:

(A) The net is attached to the boat and fished in the upper two-thirds of the water column;

(B) The net is marked with the owner's name and vessel identification number;

(C) There is no retention of regulated species; and

(D) There is no other gear on board capable of catching NE multispecies;

(ii) That are fishing under charter/party or recreational regulations, provided that:

(A) For vessels fishing under charter/party regulations in the Cashes Ledge Closure Area or Western GOM Area Closure, as described under paragraph (d) and (e) of this section, respectively, it has on board a letter of authorization issued by the Regional Administrator, as specified in § 648.89(e)(6);

(B) Fish species managed by the NEFMC or MAFMC that are harvested or possessed by the vessel, are not sold or intended for trade, barter or sale, regardless of where the fish are caught; and

(C) The vessel has no gear other than rod and reel or handline on board; and

(D) The vessel does not use any NE multispecies DAS during the entire period for which the letter of authorization is valid;

(iii) That are fishing with or using scallop dredge gear when fishing under a scallop DAS or when lawfully fishing in the Scallop Dredge Fishery Exemption Area as described in § 648.80(a)(11), provided the vessel does not retain any regulated NE multispecies during a trip, or on any part of a trip; or

(iv) That are fishing in the Raised Footrope Trawl Exempted Whiting Fishery, as specified in § 648.80(a)(15).

* * * * *

(o) * * *

(1) * * *

(xi) From March 1–March 31, the restrictions specified in this paragraph (o)(1) apply to Seasonal Interim Closure Area 3, which is defined by the

following points, connected in the order listed by straight lines, and bounded on the west by the coastline of Massachusetts and New Hampshire:

SEASONAL INTERIM CLOSURE AREA 3

[March 1–March 31]

Point	Latitude	Longitude
MAR1	43°00′ N	(1)
MAR2	43°00′ N	70°00′ W
MAR3	43°30′ N	70°00′ W
MAR4	43°30′ N	69°30′ W
MAR5	42°30′ N	69°30′ W
MAR6	42°30′ N	70°00′ W
MAR7	42°15′ N	70°00′ W
MAR8	42°15′ N	70°30′ W
MAR9	42°30′ N	70°30′ W
MAR10	42°30′ N	(2)

[1] The intersection of 43°00′ N latitude and the New Hampshire coastline.
[2] The intersection of 42°30′ N latitude and the Massachusetts coastline.

(xii) From April 1–April 30, the restrictions specified in this paragraph (o)(1) apply to Seasonal Interim Closure Area 4, which is defined by the following points, connected in the order listed by straight lines, and bounded on the west by the coastline of Massachusetts and New Hampshire:

SEASONAL INTERIM CLOSURE AREA 4

[April 1–April 30]

Point	Latitude	Longitude
APR1	43°00′ N	(1)
APR2	43°00′ N	70°00′ W
APR3	43°30′ N	70°00′ W
APR4	43°30′ N	69°30′ W
APR5	43°00′ N	69°30′ W
APR2	43°00′ N	70°00′ W
APR7	42°15′ N	70°00′ W
APR8	42°15′ N	70°30′ W
APR9	42°00′ N	70°30′ W
APR10	42°00′ N	(2)

[1] The intersection of 43°00′ N latitude and the New Hampshire coastline.
[2] The intersection of 42°00′ N latitude and the Massachusetts coastline.

(xiii) From September 1–October 31, the restrictions specified in this paragraph (o)(1) apply to Seasonal Interim Closure Area 8, which is defined by the following points, connected in the order listed by straight lines:

SEASONAL INTERIM CLOSURE AREA 8

[September 1–October 31]

Point	Latitude	Longitude
SEP1	43°00′ N	70°30′ W
SEP2	43°00′ N	70°00′ W
SEP3	42°15′ N	70°00′ W
SEP4	42°15′ N	70°30′ W
SEP1	43°00′ N	70°30′ W

(xiv) From November 1–November 30, the restrictions specified in this paragraph (o)(1) apply to Seasonal Interim Closure Area 9, which is defined by the following points, connected in the order listed by straight lines, and bounded on the west by the coastlines of Massachusetts and New Hampshire:

SEASONAL INTERIM CLOSURE AREA 9

[November 1–November 30]

Point	Latitude	Longitude
NOV1	43°00′ N	(1)
NOV2	43°00′ N	70°00′ W
NOV3	42°15′ N	70°00′ W
NOV4	42°15′ N	70°30′ W
NOV5	42°00′ N	70°30′ W
NOV6	42°00′ N	(2)

[1] The intersection of 43°00′ N latitude and the New Hampshire coastline.
[2] The intersection of 42°00′ N latitude and the Massachusetts coastline.

(xv) From December 1–December 31, the restrictions specified in this paragraph (o)(1) apply to Seasonal Interim Closure Area 10, which is defined by the following points, connected in the order listed by straight lines, and bounded on the west by the coastline of Massachusetts:

SEASONAL INTERIM CLOSURE AREA 10

[December 1–December 31]

Point	Latitude	Longitude
DEC1	42°30′ N	(1)
DEC2	42°30′ N	70°00′ W
DEC3	42°00′ N	70°00′ W
DEC4	42°00′ N	(2)

[1] The intersection of 42°30′ N latitude and the Massachusetts coastline.
[2] The intersection of 42°00′ N latitude and the Kingston, Massachusetts (mainland) coastline.

* * * * *

■ 6. Section 648.82 is amended by:
■ a. Suspending from December 29, 2014 until May 12, 2015, paragraphs (b)(7) and (b)(8); and
■ b. Temporarily adding from December 29, 2014 until May 12, 2015, paragraphs (b)(9) and (b)(10).

The additions read as follows:

§ 648.82 Effort-control program for NE multispecies limited access vessels.

* * * * *

(b) * * *

(9) *Small Vessel category.* (i) DAS allocation. A vessel qualified and electing to fish under the Small Vessel category may retain up to 300 lb (136.1 kg) of cod, haddock, and yellowtail flounder, combined, and one Atlantic halibut per trip, without being subject to DAS restrictions, and the daily possession limits specified for other regulated species and ocean pout, as specified at § 648.86, unless otherwise specified in this paragraph (b)(9). If the vessel elects to fish in the GOM Broad Stock Area, as specified in § 648.10(k)(3)(i), the vessel may not possess or retain more than 200 lb (90.7 kg) of cod for the entire trip. If the vessel elects to fish south of the GOM Broad Stock Area, as specified in § 648.10(k)(3)(i), the vessel may retain up 300 lb (136.1 kg) of cod. Any vessel may elect to switch into the Small Vessel category, as provided in § 648.4(a)(1)(i)(I)*(2),* if the vessel meets or complies with the following:

(A) The vessel is 30 ft (9.1 m) or less in length overall, as determined by measuring along a horizontal line drawn from a perpendicular raised from the outside of the most forward portion of the stem of the vessel to a perpendicular raised from the after most portion of the stern.

(B) If construction of the vessel was begun after May 1, 1994, the vessel must be constructed such that the quotient of the length overall divided by the beam is not less than 2.5.

(C) Acceptable verification for vessels 20 ft (6.1 m) or less in length shall be USCG documentation or state registration papers. For vessels over 20 ft (6.1 m) in length overall, the measurement of length must be verified in writing by a qualified marine surveyor, or the builder, based on the vessel's construction plans, or by other means determined acceptable by the Regional Administrator. A copy of the verification must accompany an application for a NE multispecies permit.

(D) Adjustments to the Small Vessel category requirements, including changes to the length requirement, if required to meet fishing mortality goals, may be made by the Regional Administrator following framework procedures of § 648.90.

(ii) [*Reserved*]

(10) *Handgear A category.* A vessel qualified and electing to fish under the Handgear A category, as described in § 648.4(a)(1)(i)(A), may retain up to 300 lb (135 kg) of cod, per trip, one Atlantic halibut and the daily possession limit for other regulated species and ocean pout, as specified under § 648.86, unless otherwise specified in this paragraph (b)(10). If the vessel elects to fish in the GOM Broad Stock Area, as specified in § 648.10(k)(3)(i), the vessel may not possess or retain more than 200 lb (90.7 kg) of cod for the entire trip. If the vessel elects to fish south of the GOM Broad Stock Area, as specified in § 648.10(k)(3)(i), the vessel may retain

up 300 lb (136.1 kg) of cod. If the GB cod trip limit applicable to a vessel fishing under a NE multispecies DAS permit, as specified in § 648.86(b)(9) is reduced below 300 lb (135 kg) per DAS by NMFS, the cod trip limit specified in this paragraph (b)(10) shall be adjusted to be the same as the applicable cod trip limit specified for NE multispecies DAS permits. For example, if the GB cod trip limit for NE multispecies DAS vessels was reduced to 250 lb (113.4 kg) per DAS, then the cod trip limit for a vessel issued a Handgear A category permit that is fishing outside of the GOM Broad Stock Area would also be reduced to 250 lb (113.4 kg). Qualified vessels electing to fish under the Handgear A category are subject to the following restrictions:

(i) The vessel must not use or possess on board gear other than handgear while in possession of, fishing for, or landing NE multispecies, and must have at least one standard tote on board.

(ii) A vessel may not fish for, possess, or land regulated species from March 1 through March 20 of each year.

(iii) Tub-trawls must be hand-hauled only, with a maximum of 250 hooks.

(iv) *Declaration.* For any such vessel that is not required to use VMS pursuant to § 648.10(b)(4), to fish for GB cod south of the GOM Broad Stock Area, as specified in § 648.10(k)(3)(i), a vessel owner or operator must obtain, and retain on board, a letter of authorization from the Regional Administrator stating an intent to fish south of the GOM Broad Stock Area and may not fish in any other area for a minimum of 7 consecutive days from the effective date of the letter of authorization. For any such vessel that is required, or elects, to use VMS pursuant to § 648.10(b)(4), to fish for GB cod south of the GOM Broad Stock Area, as specified in § 648.10(k)(3)(i), a vessel owner or operator must declare an intent to fish south of the GOM Broad Stock Area, on each trip through the VMS prior to leaving port, in accordance with instructions provided by the Regional Administrator. Such vessels may transit the GOM Broad Stock Area, as specified in § 648.10(k)(3)(i), provided that their gear is not available for immediate use as defined in § 648.2.

* * * * *

■ 7. Section 648.85 is amended by:

■ a. Suspending from December 29, 2014 until May 12, 2015, paragraph (b)(6)(iv)(K); and

■ b. Temporarily adding from December 29, 2014 until May 12, 2015, paragraph (b)(6)(iv)(L).

The addition reads as follows:

§ 648.85 Special management programs.

* * * * *

(b) * * *

(6) * * *

(iv) * * *

(L) *Landing limits.* Unless otherwise specified in this paragraph (b)(6)(iv)(L), or restricted pursuant to § 648.86, a NE multispecies vessel fishing in the Regular B DAS Program described in this paragraph (b)(6), and fishing under a Regular B DAS, may not land more than 100 lb (45.5 kg) per DAS, or any part of a DAS, up to a maximum of 1,000 lb (454 kg) per trip, of any of the following species/stocks from the areas specified in paragraph (b)(6)(v) of this section: Cod, American plaice, witch flounder, SNE/MA winter flounder, and GB yellowtail flounder; and may not land more than 25 lb (11.3 kg) per DAS, or any part of a DAS, up to a maximum of 250 lb (113 kg) per trip of CC/GOM yellowtail flounder. If the vessel elects to fish in the GOM Broad Stock Area, as specified in § 648.10(k)(3)(i), the vessel may not possess or retain more than 200 lb (90.7 kg) of cod for the entire trip. In addition, trawl vessels, which are required to fish with a haddock separator trawl, as specified in paragraph (a)(3)(iii)(A) of this section, or a Ruhle trawl, as specified in paragraph (b)(6)(iv)(J) of this section, and other gear that may be required in order to reduce catches of stocks of concern as described in paragraph (b)(6)(iv)(J) of this section, are restricted to the trip limits specified in paragraph (e) of this section.

* * * * *

■ 8. Section 648.86 is amended by:

■ a. Suspending from December 29, 2014 until May 12, 2015, paragraphs (b)(5) through (b)(7); and

■ b. Temporarily adding from December 29, 2014 until May 12, 2015, paragraphs (b)(8) through (b)(10).

The additions read as follows:

§ 648.86 NE Multispecies possession restrictions.

* * * * *

(b) * * *

(8) *GOM cod landing and possession limit.* Except as provided in paragraph (b)(10) of this section, or unless otherwise restricted under § 648.85, a vessel fishing under a NE multispecies limited access permit, including a vessel issued a monkfish limited access permit and fishing under the monkfish Category C or D permit provisions, may not possess or land more than 200 lb (90.7 kg) of cod in or from the GOM Broad Stock Area described in § 648.10(k)(3)(i). Cod on board a vessel subject to this landing and possession limit must be separated from other species of fish and stored so as to be readily available for inspection.

(i) *Declaration.* A vessel with a limited access NE multispecies permit that fishes or intends to fish on a NE multispecies trip in the GOM Broad Stock Area, as specified in § 648.10(k)(3)(i), must declare its intention to do so through the VMS or IVR, and is prohibited from fishing outside of this area for the remainder of the trip.

(ii) [*Reserved*]

(9) *GB cod landing and maximum possession limits.* Unless otherwise restricted under § 648.85, a vessel fishing under a NE multispecies DAS permit, including a vessel issued a monkfish limited access permit and fishing under the monkfish Category C or D permit provisions, may land up to 2,000 lb (907.2 kg) of cod per DAS, or part of a DAS, up to 20,000 lb (9,072 kg) provided it complies with the requirements specified in paragraph (b)(10) of this section.

(10) *Exemption.* A vessel with a NE multispecies limited access permit fishing under a NE multispecies trip is exempt from the landing limit described in paragraph (b)(8) of this section when fishing south of the GOM Broad Stock Area, as specified in § 648.10(k)(3)(i), provided that the vessel complies with the requirement of this paragraph (b)(10).

(i) *Declaration.* With the exception of a vessel declared into the U.S./Canada Management Area, as described in § 648.85(a)(3)(ii), a sector vessel, or a common pool vessel that is declared into the NE multispecies fishery and fishes or intends to fish south of the GOM Broad Stock Area, specified in § 648.10(k)(3)(i), must, prior to leaving port, declare its intention to do so through the VMS, in accordance with instructions to be provided by the Regional Administrator. In lieu of a VMS declaration, the Regional Administrator may authorize such vessels to obtain a letter of authorization. If a letter of authorization is required, such vessel may not fish north of the exemption area for a minimum of 7 consecutive days (when fishing under the multispecies DAS program), and must carry the letter of authorization on board.

(ii) A vessel with a limited access NE multispecies permit that is exempt from the GOM cod landing limit pursuant to paragraph (b)(10)(i) of this section may not fish in the GOM Broad Stock Area, as specified in § 648.10(k)(3)(i), but may transit the GOM Broad Stock Area,

provided that its gear is not available for immediate use as defined in § 648.2.

* * * * *

■ 9. Section 648.87 is amended by:

■ a. Suspending from December 29, 2014 until May 12, 2015, paragraphs (b)(1)(x), (c)(2)(ii)(E), and (c)(2)(iii); and

■ b. Temporarily adding from December 29, 2014 until May 12, 2015, paragraph (b)(1)(xi), (c)(2)(ii)(G), and (c)(2)(iv).

The additions read as follows:

§ 648.87 Sector Allocation.

* * * * *

(b) * * *

(1) * * *

(xi) *Trip limits.* With the exception of the GOM cod trip limit at § 648.86(b)(8), the Atlantic halibut trip limit at § 648.86(c), and the stocks listed in § 648.86(l), a sector vessel is not limited in the amount of allocated NE multispecies stocks that can be harvested on a particular fishing trip, unless otherwise specified in the operations plan.

* * * * *

(c) * * *

(2) * * *

(ii) * * *

(G) Trip limits on NE multispecies stocks for which a sector receives an allocation of ACE pursuant to paragraph (b)(1)(i) of this section (*i.e.,* all stocks except Atlantic halibut, ocean pout, windowpane flounder, and Atlantic wolffish), unless otherwise specified § 648.86(b)(8) and paragraph (b)(1)(xi) of this section.

(iv) *Regulations that may not be exempted for sector participants.* The Regional Administrator may not exempt participants in a sector from the following Federal fishing regulations: Specific time and areas within the NE multispecies year-round closure areas; permitting restrictions (*e.g.,* vessel upgrades, etc.); gear restrictions designed to minimize habitat impacts (*e.g.,* roller gear restrictions, etc.); reporting requirements; and AMs specified at § 648.90(a)(5)(i)(D). For the purposes of paragraph (c)(2)(i) of this section, the DAS reporting requirements specified at § 648.82; the SAP-specific reporting requirements specified at § 648.85; and the reporting requirements associated with a dockside monitoring program are not considered reporting requirements, and the Regional Administrator may exempt sector participants from these requirements as part of the approval of yearly operations plans. For the purpose of paragraph (c)(2)(i) of this section, the Regional Administrator may not grant sector participants exemptions from the NE multispecies year-round closures areas defined as Essential Fish Habitat Closure Areas as defined at § 648.81(h); the Fippennies Ledge Area as defined in paragraph (c)(2)(i)(A) of this section; Closed Area I and Closed Area II, as defined at § 648.81(a) and (b), respectively, during the period February 16 through April 30; and the Western GOM Closure Area, as defined at § 648.81(e), where it overlaps with any Seasonal Interim Closure Areas, as defined at § 648.81(o)(1). This list may be modified through a framework adjustment, as specified in § 648.90.

(A) *Fippennies Ledge Area.* The Fippennies Ledge Area is bounded by the following coordinates, connected by straight lines in the order listed:

FIPPENNIES LEDGE AREA

Point	N. Latitude	W. Longitude
1	42°50.0′	69°17.0′
2	42°44.0′	69°14.0′
3	42°44.0′	69°18.0′
4	42°50.0′	69°21.0′

(B) [Reserved]

* * * * *

■ 10. Section 648.88 is amended by:

■ a. Suspending from December 29, 2014 until May 12, 2015, paragraph (a)(3); and

■ b. Temporarily adding from December 29, 2014 until May 12, 2015, paragraph (a)(4).

The addition reads as follows:

§ 648.88 Multispecies open access permit restrictions.

(a) * * *

(4) The vessel may possess and land up to 75 lb (90.7 kg) of cod, and up to the landing and possession limit restrictions for other NE multispecies specified in § 648.86, provided the vessel complies with the restrictions specified in paragraph (a)(2) of this section. If either the GOM or GB cod trip limit applicable to a vessel fishing under a NE multispecies DAS permit, as specified in § 648.86(b)(8) and (9), respectively, is adjusted by NMFS, the cod trip limit specified in this paragraph (a)(4) shall be adjusted proportionally (rounded up to the nearest 25 lb (11.3 kg)). For example, if the GOM cod trip limit specified at § 648.86(b)(8) doubled, then the cod trip limit for the Handgear B category fishing in the GOM Broad Stock Area would also double to 150 lb (68 kg).

* * * * *

■ 11. Section 648.89 is amended by:

■ a. Suspending from December 29, 2014 until May 12, 2015, paragraphs (c)(8) and (e)(4); and

■ b. Temporarily adding from December 29, 2014 until May 12, 2015, paragraph (c)(9) and (e)(7).

The additions read as follows:

§ 648.89 Recreational and charter/party vessel restrictions.

* * * * *

(c) * * *

(9) *Private recreational and charter/party vessels.* (i) Unless otherwise restricted in paragraph (c)(2) of this section, each person on a private recreational vessel or a charter party boat may possess no more than 10 cod per day in, or harvested from, the EEZ, and no person on a vessel with a charter/party permit may possess more than 10 cod per day. Unless further restricted by the GOM Seasonal Interim Closure Areas specified under § 648.81(o)(1), charter or party boats and recreational vessels fishing in the EEZ, and vessels issued charter/party permits may not fish for or possess cod in or from the GOM Broad Stock Area as specified in § 648.10(k)(3)(i).

(ii) For purposes of counting fish, fillets will be converted to whole fish at the place of landing by dividing the number of fillets by two. If fish are filleted into a single (butterfly) fillet, such fillet shall be deemed to be from one whole fish.

(iii) Cod caught by more than one person aboard a vessel fishing pursuant to § 648.89 may be pooled in one or more containers. Compliance with the possession limits will be determined by dividing the number of fish on board by the number of persons on board. If there is a violation of the possession limit on board a vessel carrying more than one person, and cod is pooled together, the violation shall be deemed to have been committed by the owner or operator of the vessel.

(iv) Private recreational vessels, charter or party boats, and vessels issued charter/party permits in possession of cod caught lawfully outside the GOM Broad Stock Area may transit the GOM Broad Stock Area, provided all bait and hooks are removed from fishing rods and any cod on board has been gutted and stored.

* * * * *

(e) * * *

(7) *GOM Closed Areas.* Unless otherwise specified in this paragraph (e)(7), a vessel fishing under charter/party regulations may not fish in the GOM closed areas specified at § 648.81(d)(5), (e)(3), and (o)(1) during the time periods specified in those paragraphs, unless the vessel has on board a valid letter of authorization issued by the Regional Administrator pursuant to § 648.81(d)(6). The

conditions and restrictions of the letter of authorization must be complied with for the rest of the fishing year, beginning with the start of the participation period of the letter of authorization. A vessel fishing under charter/party regulations may not fish in the GOM Cod Spawning Protection Area specified at § 648.81(n)(1) or the GOM Seasonal Interim Closure Areas at § 648.81(o)(1) during the time periods specified in that paragraph, unless the vessel complies with the requirements specified at § 648.81(n)(2)(iii).

* * * * *

[FR Doc. 2014–30106 Filed 12–24–14; 8:45 am]

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Proposed Rules

Federal Register
Vol. 79, No. 248
Monday, December 29, 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.

SMALL BUSINESS ADMINISTRATION

13 CFR Parts 121, 124, 125, 126 and 127

[Docket No. SBA–2014–0006]

RIN 3245–AG58

Small Business Government Contracting and National Defense Authorization Act of 2013 Amendments

AGENCY: U.S. Small Business Administration.

ACTION: Proposed rule.

SUMMARY: The U.S. Small Business Administration (SBA or Agency) is proposing to amend its regulations to implement provisions of the National Defense Authorization Act of 2013, which pertain to performance requirements applicable to small business and socioeconomic program set aside contracts and small business subcontracting. SBA is also proposing to make changes to its regulations concerning the nonmanufacturer rule and affiliation rules. Further, SBA is proposing to allow a joint venture to qualify as small for any government procurement as long as each partner to the joint venture qualifies individually as small under the size standard corresponding to the NAICS code assigned in the solicitation. Finally, SBA is requesting comments on the timeline and procedures for North American Industry Classification System code appeals.

DATES: Comments must be received on or before February 27, 2015.

ADDRESSES: You may submit comments, identified by RIN: 3245–AG58, by any of the following methods:

- *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the instructions for submitting comments.
- *For mail, paper, disk, or CD/ROM submissions:* Brenda Fernandez, U.S. Small Business Administration, Office of Policy, Planning and Liaison, 409 Third Street SW., 8th Floor, Washington, DC 20416.
- *Hand Delivery/Courier:* Brenda Fernandez, U.S. Small Business Administration, Office of Policy, Planning and Liaison, 409 Third Street SW., 8th Floor, Washington, DC 20416.

SBA will post all comments on *www.regulations.gov.* If you wish to submit confidential business information (CBI) as defined in the User Notice at *www.regulations.gov,* please submit the information to Brenda Fernandez, U.S. Small Business Administration, Office of Policy, Planning and Liaison, 409 Third Street SW., 8th Floor, Washington, DC 20416, or send an email to *brenda.fernandez@sba.gov.* Highlight the information that you consider to be CBI and explain why you believe SBA should hold this information as confidential. SBA will review the information and make the final determination on whether it will publish the information.

FOR FURTHER INFORMATION CONTACT: Brenda Fernandez, Office of Policy, Planning and Liaison, 409 Third Street SW., Washington, DC 20416; (202) 207–7337; *brenda.fernandez@sba.gov.*

SUPPLEMENTARY INFORMATION:

Proposed Changes Pursuant to the National Defense Authorization Act of 2013

Section 1621 of the National Defense Authorization Act of 2013 (NDAA), Pub. L. 112–239, 126 Stat. 1632 (Jan. 2013), revised the Small Business Act regarding the responsibilities of Procurement Center Representatives (PCRs). Section 1621 clarifies that PCRs have the ability to review barriers to small business participation in Federal contracting and to review any bundled or consolidated solicitation or contract in accordance with the Small Business Act. SBA proposes to amend 13 CFR 125.2(b)(1)(i)(A), based on the changes in Section 1621(c)(6)(H) of the NDAA. This rule would add language to § 125.2(b)(1)(i)(A) and to § 125.2(b)(1)(ii), which clarifies that PCRs advocate for the maximum practicable utilization of small business concerns in Federal contracting, including advocating against the unjustified consolidation or bundling of contract requirements.

Pursuant to Section 1621(c)(6)(G) of the NDAA, SBA proposes new § 125.2(b)(1)(iv), which states that PCRs will consult with the agency's Office of Small and Disadvantaged Business (OSDBU) and Office of Small Business Program (OSBP) Director regarding an agency's decision to convert an activity performed by a small business concern to an activity performed by a Federal employee. SBA also proposes new § 125.2(b)(1)(v) pursuant to the language enacted by Section 1621(c)(6)(F) of the NDAA, which allows PCRs to receive unsolicited proposals from small business concerns and to provide those proposals to the appropriate agency's personnel for review and disposition.

SBA also proposes to amend paragraphs 125.2(b)(1) and (2), which pertain to Breakout PCRs (BPCRs). Sections 1621(e) and (f) of the NDAA effectively eliminate the statutory authority for the separate BPCR role. As a result, SBA proposes to reassign the responsibilities currently held by BPCRs to PCRs. SBA proposes to add § 125.2(b)(1)(i)(F), which states that PCRs also advocate full and open competition in Federal contracting and recommend the breakout for competition of items and requirements which previously have not been competed. SBA proposes the elimination of § 125.2(b)(2) that provided guidance on the role and responsibilities of BPCRs and proposes redesignating current § 125.2(b)(3) as the new § 125.2(b)(2) and removing any reference to BPCRs from that paragraph.

Section 1651 of the NDAA, as codified at 15 U.S.C. 657s, requires that the limitations on subcontracting for full or partial small business set-aside contracts, HUBZone contracts, 8(a) BD contracts, SDVO SBC contracts, and WOSB and EDWOSB contracts, be evaluated based on the percentage of the overall award amount that a prime contractor spends on its subcontractors. Significantly, the NDAA excludes from the limitations on subcontracting calculation the percentage of the award amount that the prime contractor spends on similarly situated entity subcontractors. When a contract is awarded pursuant to a small business set-aside or socioeconomic program set-aside, a similarly situated entity subcontractor is a small business concern subcontractor that is a participant of the same SBA program that qualified the prime contractor as an eligible offeror and awardee of the contract.

Currently, SBA's regulations contain different terms for compliance with the

performance of work requirements based on the type of small business program set-aside at issue. The method for calculating compliance not only varies by program set-aside type, but also based on whether the acquisition is for services, supplies, general construction, or specialty trade construction. Section 1651 of the NDAA creates a shift from the concept of a required percentage of work to be performed by a prime contractor to the concept of limiting a percentage of the award amount to be spent on subcontractors. The goal is the same: to ensure that a certain amount of work is performed by a prime contractor small business concern (SBC) that qualified for a small business program set-aside procurement due to its socioeconomic program status. SBA proposes to revise all references to ''performance of work'' requirements found in parts 121, 124, 125, 126, and 127 to ''limitations on subcontracting.''

The current method for determining whether a firm is in compliance with the limitation on subcontracting requirements requires the Contracting Officer (CO) to evaluate the percentage of the cost of the contract performance incurred for the prime contractor's personnel. This calculation excludes profit or fees from the cost of the contract and includes only those costs incurred for the prime contractor's personnel, which was defined as direct labor costs and any overhead which has only direct labor as its base, plus the contractor's General and Administrative rate multiplied by the labor cost. Additionally, Title 13, parts 124, 125, 126, and 127 repeated the performance of work requirements, and in places, contained additional information affecting the calculation for the performance of work requirements.

SBA proposes to totally revise § 125.6 to take into account the new definition and calculation for the limitations on subcontracting, as described in Section 1651 of the NDAA. SBA believes that it is critical that small businesses that obtain set aside contracts comply with applicable subcontracting limitations. The Government's policy of promoting contracting opportunities for small businesses, HUBZone SBCs, SDVO SBCs, WOSBs/EDWOSBs, and 8(a) SBCs is seriously undermined when firms pass on work in excess of applicable limitations to firms that are other than small or that are not otherwise eligible for specific types of small business contracts.

In addition, the section would be reorganized and simplified for easier use. Proposed § 125.6(a) would explain how to apply the limitations on subcontracting requirements to small business set-aside contracts. Instead of providing different methods of determining compliance based on the type of small business set-aside program at issue and the type of good or service sought, Section 1651(a) of the NDAA provides one method for determining compliance that is shared by almost all applicable small business set-aside programs, but varies based on whether the contract is for services, supplies or products, general construction, specialty trade construction, or a combination of both services and supplies.

The approach described in Section 1651(a) and (d) of the NDAA is to create a limit on the percentage of the award amount received by the prime contractor that may be spent on other-than-small subcontractors. Specifically, the NDAA provides that a small business awarded a small business set-aside, 8(a), SDVO small business, HUBZone, or WOSB/EDOSB award ''may not expend on subcontractors'' more than a specified amount. However, as noted below, work done by ''similarly situated entities'' does not count as subcontracted work for purposes of determining compliance with the limitation on subcontracting requirements. Proposed §§ 125.6(a)(1) and (a)(3) would address the limitations on subcontracting applicable to small business set-aside contracts requiring services or supplies. The limitation on subcontracting for both services and supplies is statutorily set at 50% of the award amount received by the prime contractor. *See* 15 U.S.C. 657s(a).

Proposed § 125.6(a)(3) addresses how the limitation on subcontracting requirement would be applied to a procurement that combines both services and supplies. This provision would clarify that the CO's selection of the applicable NAICS code will determine which limitation of subcontracting requirement applies.

Proposed §§ 125.6(a)(4) and (5) would address the limitations on subcontracting for general and specialty trade construction contracts. SBA proposes to keep the same percentages that currently apply: 15% for general construction and 25% for specialty trade construction.

As noted above, the NDAA prohibits subcontracting beyond a certain specified amount for any small business set-aside, 8(a), SDVO small business, HUBZone, or WOSB/EDOSB contract. Section 1651(b) of the NDAA creates an exclusion from the limitations on subcontracting for ''similarly situated entities.'' In effect, the NDAA deems any work done by a similarly situated entity not to constitute ''subcontracting'' for purposes of determining compliance with the applicable limitation on subcontracting. A similarly situated entity is a small business subcontractor that is a participant of the same small business program that the prime contractor is a certified participant of and which qualified the prime contractor to receive the award. Subcontracts between a small business prime contractor and a similarly situated entity subcontractor are excluded from the limitations on subcontracting calculation because it does not further the goals of SBA's government contracting and business development programs to penalize small business prime contract recipients that benefit the same small business program participants through subcontract awards.

SBA proposes to include three examples to § 125.6(b) to demonstrate how a small business concern or Federal agency should apply the exclusion for similarly situated entities and determine compliance with the limitations on subcontracting.

SBA has concerns about the practical application of a regulation that would require only a certain percentage of contract awards to be either retained by the prime contractor, or spent on a similarly situated entity. SBA's concern is that an approach that limits its review solely to the first tier of the contracting process (agreements between the prime contractor and its direct subcontractors) could be fraught with abuse. For example, if small business A is awarded a $500,000 small business set-aside service contract and subcontracts $450,000 of the work to small business B, if the limitation of subcontracting requirements apply only to the first tier, then the Government's review would be complete. Small businesses A and B clearly meet the 50% rule. However, if small business B could further subcontract all of its $450,000 to a large business with impunity, then SBA believes that the intent of the subcontracting limitation requirements would be circumvented and small businesses would not be properly protected. In such a case, a large business would have performed $450,000 of a $500,000 contract (or 90%) of a contract that was set-aside exclusively for small business. In SBA's view, a large business that ultimately performs 90% of a small business set-aside contract unduly benefits from a contract intended to be performed by small business.

SBA believes that the intent of the changes in the NDAA were to ensure that contracts awarded, and the benefits of those contracts, flow to the proper

beneficiaries. SBA does not believe that an intended consequence of the change was to make it easier to divert these benefits to ineligible entitles by merely moving contracts down one or two tiers in the contracting process. As such, SBA has retained a requirement that firms benefiting from contracts, and their similarly situated subcontractors, perform a required amount of work on the contract themselves. SBA believes that requiring firms awarded these contracts to perform significant portions of the work, as well as retain a significant portion of the contract award, will continue to help ensure that the benefits from these contracts flow to the intended parties.

SBA welcomes comments on this issue, including whether SBA's belief that there may be unintended consequences are misplaced, as well as comments about SBA's proposed solution. SBA also requests comments on whether prime contractors should be required to report to the contracting officer concerning meeting the performance of work requirements, and comments concerning the frequency and method of reporting.

SBA proposes to relocate the definitions that are relevant to the limitations on subcontracting that are currently found in § 125.6(e) to § 125.1 with the other definitions that are applicable to part 125. Section 1651(e) of the NDAA provides the definitions of ''similarly situated entity'' and ''covered small business concern.'' Proposed § 125.1(x) interprets the statutorily prescribed definition for similarly situated entity.

Proposed § 125.6(c) would explain how a small business concern certifies its compliance with the limitations on subcontracting and the date upon which compliance is determined.

Proposed § 125.6(d) would require that small business concern prime contractors, which intend to exclude subcontracts to similarly situated entities from the limitations on subcontracting, must identify those similarly situated entities and the percentage of the prime contract award amount that will be spent on each similarly situated subcontractor.

Proposed § 125.6(e) would address the process for continued compliance with the limitations on subcontracting when the award amount of a small business set-aside or small business program set-aside contract is modified. This process would require that the prime contractor provide the contracting officer with documentation to demonstrate how it will continue to satisfy the applicable limitations on subcontracting. SBA seeks comments on this process and specifically requests suggestions for how procuring agencies can more effectively monitor compliance with the limitations on subcontracting when the award amount has been modified after award.

Proposed § 125.6(i) would address how the limitations on subcontracting apply to members of a Small Business Teaming Arrangement (SBTA) that are exempt from affiliation according to § 121.103(b)(9). Proposed § 125.6(k) states that the limitations on subcontracting apply to the combined effort of the SBTA members, not to the individual members of the SBTA separately.

SBA proposes to add new paragraph 125.6(j), which would exempt small business set aside contracts valued between $3,000 and $150,000 from the limitations on subcontracting requirements. Section 46 of the Small Business Act mandates that the statutory performance of work requirements (limitations on subcontracting) apply to small business set-aside contracts with values above $150,000, and contracts of any amount awarded to socioeconomically disadvantaged contracting programs, such as 8(a) set-aside contracts, Women-Owned and Economically Disadvantaged Women-Owned small business set-aside contracts, HUBZone set-aside contracts and Service-Disabled Veteran-Owned set-aside contracts. 15 U.S.C. 657s. Although the limitations on subcontracting apply to all of these contracts, Section 46 does not specifically cite Section 15(j) of the Small Business Act, which is the statutory authority for non-socioeconomically disadvantaged small business set-asides between $3,000 and $150,000. Further, Section 15(j) of the Small Business Act does not mention any limitation on subcontracting requirements in connection with the performance of set aside contracts under Section 15(j). Thus, the FAR provides that ''[t]he contracting officer shall insert the clause at 52.219–14, Limitations on Subcontracting, in solicitations and contracts for supplies, services, and construction, if any portion of the requirement is to be set aside or reserved for small business and the contract amount is expected to exceed $150,000.'' FAR 19.508(e). Therefore, this proposed rule would not expand the application of the limitations on subcontracting to apply to small business set-asides below $150,000, but would merely adopt what the FAR has done. SBA wants to make clear, however, that the proposed rule would exempt the limitations on subcontracting requirements only with respect to small business set asides valued between $3,000 and $150,000. The limitation on subcontracting requirements would continue to apply to all 8(a), HUBZone, SDVO, and WOSB/EDWOSB set aside contract awards regardless of value, including but not limited to contracts with values between $3,000 and $150,000. SBA requests comments regarding whether the limitations on subcontracting should apply to small business set aside contracts valued between $3,000 and $150,000.

SBA's proposal to not apply the subcontracting limitations to non-socioeconomically disadvantaged small business set-aside contracts between $3,000 and $150,000 does not, however, reduce the importance of these limitations on small business set aside contracts over $150,000 and all contracts that are set aside for socioeconomically disadvantaged small businesses. It is critical that firms that obtain set aside and preferential contracts comply with applicable subcontracting limitations. The Government's policy of promoting contracting opportunities for small and socioeconomically disadvantaged businesses is seriously undermined when firms pass on work in excess of applicable limitations to firms that are other than small or that are not disadvantaged. In addition, SBA requests comments on whether, for policy reasons and for purposes of consistency, the performance of work/subcontracting limitation requirements should apply to small business set aside contract with a value between $3,000 and $150,000. If SBA were to amend its regulations to apply those requirements to small business set aside contracts valued between $3,000 and $150,000, then a corresponding change to the FAR would be required for consistency purposes.

Consistent with this concern, Section 1652 of the NDAA, codified at 15 U.S.C. 645 (Section 16 of the Small Business Act) prescribes penalties for concerns that violate the limitations on subcontracting requirements. SBA proposes to add new § 125.6(k) to incorporate these penalties into the regulations. Paragraph 125.6(k) states that concerns that violate the limitations on subcontracting are subject to the penalties listed in 15 U.S.C. 645(d) except that the fine associated with these penalties will be the greater of either $500,000 or the dollar amount spent in excess of the permitted levels for subcontracting.

This rule also proposes to revise § 121.103(h)(4). Paragraph (h) discusses the circumstances under which SBA

will find affiliation among joint venturers for size purposes. Paragraph (h)(4) addresses the ostensible subcontractor rule, which is the concept that a subcontractor who performs the majority of the primary and vital requirements of a contract or whom the prime contractor is unusually reliant upon may be considered a joint venturer with the prime contractor and thus affiliated with the prime contractor for size determination purposes. SBA proposes to revise this paragraph to exclude subcontractors that are similarly situated subcontractors, as that term is defined in 13 CFR 125.6(g)(3), from affiliation under the ostensible subcontractor rule. Such a position clearly flows from the NDAA's treatment of similarly situated subcontractors.

SBA proposes to amend §§ 124.510(a), (b), and (c) to reflect the limitations on subcontracting rules with respect to the 8(a) Business Development (BD) program. Part 124 addresses the 8(a) BD program and the limitations on subcontracting that apply to procurements set-aside for competition among 8(a) BD participants. SBA proposes to delete paragraphs (a) and (b) and add new paragraph (a). Currently, paragraphs (a) and (b) discuss how 8(a) BD participants can comply with the performance of work requirements even though these specifications are also discussed in § 125.6. To eliminate confusion and repetition, SBA proposes to remove current paragraph (b) and add a new paragraph (a), which will direct 8(a) BD participants to comply with the limitations on subcontracting set forth in § 125.6. The proposed rule would redesignate current paragraph (c) as paragraph (b) and include references to the limitations on subcontracting as opposed to the performance of work requirements in newly redesignated paragraph (b). The NDAA uses the term ''limitations on subcontracting'' to describe the concept that is currently referred to as ''performance of work requirements.'' This change provides consistency throughout the rules.

SBA proposes to revise §§ 125.15(a)(3) and (b)(3), which address the requirements for an SDVO SBC to submit an offer on a contract. SBA proposes to revise paragraph (a)(3) to state that a concern that represents itself as an SDVO SBC must also represent that it will comply with the limitations on subcontracting, as set forth in § 125.6, as part of its initial offer, including price. SBA proposes to revise paragraph (b)(3) to state that joint ventures that represent themselves as an SDVO SBC joint venture must comply with the applicable limitations on subcontracting, as set forth in § 125.6.

SBA also proposes to revise § 126.200(b)(6). This paragraph addresses the requirements that a concern must meet in order to receive SBA's certification as a qualified HUBZone SBC. Paragraphs (b)(6) and (d) are repetitive as both address the requirement that HUBZone SBCs must comply with the relevant performance of work requirements. SBA proposes to delete paragraph (d) and revise paragraph (b)(6). Specifically, proposed paragraph (b)(6) would state that the concern must represent in its application for the HUBZone program that it will comply with the applicable limitations on subcontracting requirements with respect to any procurement that it receives as a qualified HUBZone SBC.

SBA proposes to revise §§ 126.700 in its entirety, including revision of paragraph (a) and removal of paragraphs (b) and (c). This section currently addresses the performance of work requirements for HUBZone contracts. SBA proposes to retitle the section to include the terminology ''limitations on subcontracting''; remove references to the ''performance of work'' requirements; and replace the deleted text with a reference to 13 CFR 125.6 for guidance on the applicable limitations on subcontracting for HUBZone contracts. SBA believes that it would be confusing to have each section of SBA's set-aside program regulations to repeat the relevant limitations on subcontracting, and therefore SBA proposes to list all of the limitations on subcontracting requirements at § 125.6 and provide references to that section in each of the various small business government contracting and business development program sections.

SBA proposes to revise § 127.504(b), which addresses the requirements a concern must satisfy to submit an offer for an EDWOSB or WOSB requirement. Paragraph (b) states that the concern must meet the performance of work requirements in § 125.6. SBA proposes to revise this paragraph to replace the reference to ''performance of work requirement'' with ''limitations on subcontracting.''

SBA proposes to revise § 127.506(d), which addresses the requirements that a joint venture must satisfy in order to submit an offer for an EDWOSB or WOSB requirement. SBA proposes to revise this paragraph by replacing the reference to ''performance of work requirement'' with ''limitations on subcontracting.''

Section 1653 of the NDAA, as codified at 15 U.S.C. 637(d) (Section 8(d) of the Small Business Act), addresses amendments to the requirements for subcontracting plans. Section 1653(a)(2) of the NDAA states that the head of the contracting agency shall ensure that the agency collects, reports, and reviews data on the extent to which the agency's contractors meet the goals and objectives set out in their subcontracting plans. SBA proposes to add a new § 125.3(f)(8) to incorporate these provisions.

Section 1653(a)(3) of the NDAA modifies the Small Business Act to state that a contractor that fails to provide a written corrective action plan after receiving a marginal or unsatisfactory rating for its subcontracting plan performance or that fails to make a good faith effort to comply with its subcontracting plan will not only be in material breach of the contract, but such failure may also be considered in any past performance evaluation of the contractor. SBA proposes to revise § 125.3(f)(5) to incorporate this language. SBA is also proposing to add a new sentence to the end of § 125.3(f)(5), which prescribes the process for a Commercial Market Representative (CMR) to report firms that are found to have acted fraudulently or in bad faith to the SBA's Area Director for the Office of Government Contracting Area Office where the firm is headquartered.

Section 1653(a)(4) of the NDAA modifies the Small Business Act to state that contracting agencies also perform evaluations of a prime contractor's subcontracting plan performance, and that SBA's evaluations of subcontracting plan performance are completed as a supplement to the contracting agency's review. SBA proposes to revise § 125.3(f)(1) to incorporate this language.

Section 1653(a)(5) of the NDAA requires that if an SBC is identified as a potential subcontractor in an proposal, offer, bid or subcontracting plan in connection with a covered Federal contract, the prime contractor shall notify the SBC prior to such identification. Section 1653(a)(5) also requires that the Administrator establish a reporting mechanism that allows potential subcontractors to report fraudulent activity or bad faith behavior by a prime contractor with respect to a subcontracting plan. SBA proposes to incorporate these requirements in new §§ 125.3(c)(7) and (8).

Affiliation

SBA proposes to make changes to its regulations in § 121.103(f), which defines affiliation based on an identity of interest. Paragraph 121.103(f)

discusses the circumstances where an identity of interest between two or more persons leads to affiliation among those persons and their interests are aggregated. SBA is adding additional guidance on how to analyze affiliation due to an identity of interest. SBA believes that the additional clarifications will better enable concerned parties to understand and determine when they are affiliated.

SBA proposes to divide paragraph (f) into two paragraphs. Paragraph (f)(1) will include further clarification regarding the type of relationships between individuals that will create a presumption of affiliation due to an identity of interest. Specifically, SBA proposes to insert language clarifying that a presumption of affiliation exists for firms that conduct business with each other and are owned and controlled by persons who are married couples, parties to a civil union, parents and children, and siblings. This is a rebuttable presumption. This proposed rule is based on size appeal decisions that have been issued interpreting this regulation.

In paragraph (f)(2), SBA proposes to adopt a presumption that SBA established for the SBIR Program with respect to economic dependence. If a firm derives 70% or more of its revenue from another firm over the previous fiscal year, SBA will presume that the one firm is economically dependent on the other and, therefore, that the two firms are affiliated. Currently there is no fixed percentage that SBA applies when evaluating this criteria. SBA believes that providing clarity on this issue will be beneficial for firms, and enable them to more easily identify their affiliates. Further, this presumption is rebuttable, such as when a firm is new or a start-up and has only received a few contracts or subcontracts. Often new firms will not have as many partners and clients, and therefore will normally be generating more of their revenue from a much smaller number of other companies. Over time these firms should diversify and become less dependent on one entity.

Joint Ventures

SBA proposes to amend § 121.103(h) to broaden the exclusion from affiliation for small business size status, to allow two or more small businesses to joint venture for any procurement without being affiliated with regard to the performance of that procurement requirement. Currently, in addition to the exclusion from affiliation given to an 8(a) protégé firm that joint ventures with its mentor for any small business procurement, there is also an exclusion from affiliation between two or more small businesses that seek to perform a small business procurement as a joint venture where the procurement is bundled or large (*i.e.,* greater than half the size standard for a procurement assigned a NAICS code with a receipts-based size standard and greater than $10 million for a procurement assigned a NAICS code with an employee-based size standard). SBA proposes to remove the restriction on the type of contract for which small businesses may joint venture without being affiliated for size determination purposes. SBA is proposing this change for several reasons. First, this proposed change would encourage more small business joint venturing, in furtherance of the government-wide goals for small business participation in Federal contracting. Second, this change would respond to results from the Small Business Teaming Pilot Program indicating more small business opportunities and greater success on small contracts than on large contracts. Third, this change would better align with the new provisions of the NDAA governing the limitations on subcontracting, which allow a small business prime contractor to subcontract to as many similarly situated subcontractors as desired. If a small business prime contractor can subcontract significant portions of that contract to one or more other small businesses and, in doing so, meet the performance of work requirements for small business (without being affiliated with the small business subcontractor(s)), it is SBA's view that similar treatment should be afforded joint ventures—so that a joint venture of two or more small businesses could perform a procurement requirement as a small business when each is individually small.

Calculation of Annual Receipts

SBA proposes to amend § 121.104, which explains how SBA calculates annual receipts when determining the size of a business concern. SBA proposes to clarify that receipts include all income, and the only exclusions from income are the ones specifically listed in paragraph (a). It was always SBA's intent to include all income, except for the listed exclusions; however, SBA has found that some business concerns misinterpreted the current definition of receipts to exclude passive income. SBA's proposed change clarifies the intent to include all income, including passive income, in the calculation of receipts.

Recertification

SBA proposes to amend § 121.404(g)(2)(ii) by adding new paragraph (D) to clarify when recertification of size is required following the merger or acquisition of a firm that submitted an offer as a small business concern. Paragraph (D) clarifies that if the merger or acquisition occurs after offer but prior to award, the offeror must recertify its size to the contracting officer prior to award.

Small Business Innovation Research and Small Business Technology Transfer Programs

SBA proposes to amend § 121.702(a)(2), which addresses the size and eligibility requirements applicable to the Small Business Innovation and Research (SBIR) and Small Business Technology Transfer (STTR) Programs, to clarify that a single venture capital operating company (VCOC), hedge fund, or private equity firm may own more than 50% of the concern if that single VCOC, hedge fund, or private equity firm qualifies as a small business concern which is more than 50% directly owned and controlled by individuals who are citizens or permanent resident aliens of the United States. Business concerns and Federal agencies have misread the language of this paragraph to exclude all VCOCs, hedge funds, or private equity firms that own more than 50% of the small business concern, regardless of the investment entity's size. This paragraph explains the limitation on ownership by investment entities that are other than small and it is not meant to exclude those business concerns that are owned by investment entities that qualify as small business concerns.

Size Protests

SBA proposes to amend § 121.1001(a), which specifies who may initiate a size status protest. Small businesses and contracting officers have found the current language to be unclear because it contains a double negative, stating that any offeror that has not been eliminated for reasons not related to size may file a size protest. The intent is to provide standing to any offeror that is in line or consideration for award, but to not provide standing for an offeror that has been found to be non-responsive, technically unacceptable or outside of the competitive range.

In addition, the proposed rule would add a new § 121.1001(b)(11) that would authorize the SBA's Director, Office of Government Contracting, to initiate a formal size determination in connection with eligibility for the SDVO SBC and

the WOSB/EDWSOB programs. This change is needed to correct an oversight that did not authorize such requests for size determinations when those programs were added to SBA's regulations.

North American Industry Classification System Code Appeals

The Agency is seeking comments on what is the appropriate timeline for filing a NAICS code appeal. SBA's regulations currently state that, ''[a]n appeal from a contracting officer's NAICS code or size standard designation must be served and filed within 10 calendar days after the issuance of the solicitation or amendment affecting the NAICS code or size standard.'' 13 CFR 121.1103(b)(1). SBA's current rule is designed to work within the timeframe of a standard procurement, namely that firms will have 30 days from the date the solicitation is issued to submit an offer. However, the standard 30 day timeframe is not utilized in all procurements, and SBA is currently examining whether the current rule is adequate to address the needs of the various types of procurements and various timeframes that are available. Determining the appropriate timeline for filing a NAICS code appeal should take into consideration that for the NAICS code appeal process to be meaningful there must be sufficient time for a contracting officer to amend the solicitation to notify potentially interested parties of the pendency of the NAICS code appeal, *see Advanced Systems Technology, Inc.* v. *United States,* 69 Fed.Cl. 474 (2006), an opportunity for any interested party to draft and file a cogent response, and time for the Office of Hearings Appeals (OHA) to review the record to determine whether the contracting officer's NAICS code assignment is based on a clear error of fact or law and issue a decision. Sometimes a NAICS code appeal is filed within days of the procurement closing. *See generally NAICS Appeal of Phoenix Environmental Design, Inc.,* SBA No. NAICS–5582 (2014) (A timely NAICS code appeal filed on Friday, August 8, 2014, for a procurement closing on Friday, August 15, 2014.). SBA is also assessing the effect that a NAICs code appeal should have on the solicitation. Currently SBA's regulations require that the contracting officer, ''[s]tay the solicitation.'' 13 CFR 121.1103(c)(1)(i). SBA is requesting comments on whether its regulations should provide that contracting officer should not award the contract or that the agency should delay the offer or bid response date.

Nonmanufacturer Rule

SBA is proposing to clarify that the limitations on subcontracting and the nonmanufacturer rule do not apply to small business set-aside contracts valued between $3,000 and $150,000. The statutory nonmanufacturer rule, which is contained in section 8(a)(17) of the Small Business Act, 15 U.S.C. 637(a)(17), is an exception to the limitations on subcontracting. It provides that a concern may not be denied the opportunity to compete for a supply contract under Section 8(a) and 15(a) of the Small Business Act simply because it is not the actual manufacturer or processor of the product. Section 8(a)(17) of the Small Business Act does not, however, also reference section 15(j) of the Small Business Act, the authority requiring small business set-aside contracts valued between $3,000 and $150,000. Thus, there is no specific statutory requirement that the nonmanufacturer rule apply to the mandated small business set-asides between $3,000 and $150,000. SBA believes that not applying the nonmanufacturer rule to small business set-asides valued between $3,000 and $150,000 will spur small business competition by making it more likely that a contracting officer will set aside an acquisition for small business concerns because the agency will not have to request a waiver from SBA where there are no small business manufacturers available. In order to request a waiver, an agency must provide SBA with the solicitation and research on whether manufacturers exist and wait several weeks for SBA to verify the data and grant the waiver. Without a waiver, an offeror on a supply small business set-aside contract must either manufacture at least 50% of the product on its own or supply the product of a small business made in the United States. Many waiver requests below $150,000 are for name brand items (*e.g.,* computers) that are clearly not made by small businesses in the United States. Whether an agency can procure name brand items is not within the jurisdiction of SBA. The contracting officer must make that determination, which can be protested by interested parties.

SBA is proposing to amend § 121.1203 to require that contracting officers notify potential offerors of any waivers, whether class waivers or contract specific waivers, that will be applied to the procurement. SBA proposes that this notification of the application of a waiver be contained in the solicitation itself. Without notification that a waiver is being applied by the contracting officer, potential offerors cannot reasonably anticipate what if any requirements they must meet in order to perform the procurement in accordance with SBA regulations. SBA believes that providing notice of waivers in the solicitation will provide all potential offerors with the information needed to decide if they should submit an offer.

The proposed rule would also amend § 121.1203, regarding waivers to the nonmanufacturer rule. SBA proposes to amend § 121.1203(a) to specifically authorize SBA to grant a waiver to the nonmanufacturer rule for an individual contract award after a solicitation has been issued, provided the contracting officer agrees to provide all potential offerors additional time to respond. SBA believes that a waiver may be appropriate even after a solicitation has been issued, but wants to ensure that all potential offerors would be fully apprised of any waiver granted after the solicitation is issued and have a reasonable amount of time (depending upon the complexities of the procurement) to adjust their offers accordingly.

SBA is also proposing in § 121.1203(b) to allow some waivers to be granted after the contract has been awarded. SBA believes that granting post-award waivers, when additional items that are eligible for a waiver are sought through in-scope modifications, is reasonable and will increase the use of the waiver process and allow firms to complete for contracts in a manner consistent with SBA regulations. SBA envisions these types of post award waivers to be given in situations similar to the example contained in the proposed regulation—where a need for an item occurs after contract award, where requiring the item would be an in-scope modification, and where the item is one for which a waiver would have been granted if sought prior to contract award.

The proposed rule would also add a new § 121.1203(d), dealing with waivers to the nonmanufacturer rule for the purchase of software. SBA is proposing to address whether the nonmanufacturer rule should apply to certain software that can readily be treated as an item and not a service. SBA is proposing to treat this type of software as a product or item of supply rather than a service. SBA believes that this change will bring SBA's regulations in line with how most buyers already perceive these types of software. Readily available software that is generally available to both the public and private sector unmodified is almost universally perceived to be a supply item, even though SBA's regulations

currently would treat the production any type of software as a service. This change would also allow for certain types of software to be eligible for waivers of the nonmanufacturer rule. SBA is proposing to grant waivers on software that meet criteria that establishes that the Government is buying something that is more like a product or supply item than a service. Clearly, when the Government seeks to award a contract to a business concern to create or modify custom design software, that should be classified as a service requirement and the activity will remain classified in a service NAICS code to which the nonmanufacturer rule does not apply. For a service procurement set aside for small business, the prime (together with one or more similarly situated subcontractors) would have to perform the required percentage of work with its own employees. On the other hand, when the Government buys certain types of unmodified software that is generally available to both the public and the Government from a business concern, SBA believes that the contracting officer should classify the requirement as a commodity or supply. If the procurement is a supply contract set aside for small business, the prime contractor, together with any similarly situated subcontractors, would have to perform at least 50% of the cost of manufacturing the software, unless SBA granted a waiver of the nonmanufacturer rule.

In order to address this scenario, SBA proposes to amend § 121.201 by adding a footnote to NAICS code 511210, Software Publishers, explaining that this is the proper NAICS code to use when the Government is purchasing software that is eligible for a waiver of the nonmanufacturer rule. The 2012 NAICs manual provides the following definition for this industry:

> This industry comprises establishments primarily engaged in computer software publishing or publishing and reproduction. Establishments in this industry carry out operations necessary for producing and distributing computer software, such as designing, providing documentation, assisting in installation, and providing support services to software purchasers. These establishments may design, develop, and publish, or publish only.

SBA believes that this accurately reflects the type of companies that would be producing and supplying the Government with the type of software eligible for a waiver. Further, SBA is proposing that the procurement of this type of software would be treated by SBA as a supply requirement, and therefore the nonmanufacturer rule would apply, as long as the acquisition meets all of the requirements of the rule. SBA reiterates that the custom design or modification of software for the Government will generally continue to be treated as a service. Therefore, if the software being acquired requires any custom modifications in order to meet the needs of the Government, it is not eligible for a waiver of the nonmanufacturer rule because the contractor is performing a service, not providing a supply.

SBA proposes to amend § 121.406(b)(5) to make a technical correction. Section 121.406(b) addresses how a nonmanufacturer may qualify as a small business concern for a requirement to provide a manufactured product or other supply item. Currently, paragraph (b)(5) states that the SBA's Administrator or designee may waive the requirement set forth in paragraph (b)(1)(iii) of this section, that requires nonmanufacturers to supply the end item of a small business manufacturer, processor or producer made in the United States. The citation to paragraph (b)(1)(iii) is incorrect and as such, SBA proposes to amend this paragraph to include the correct citation, paragraph (b)(1)(iv).

In addition, the proposed rule would amend § 121.406(b)(7) to clarify that SBA's waiver of the nonmanufacturer rule has no effect on requirements external to the Small Business Act which involve domestic sources of supply, such as the Buy American Act and the Trade Agreements Act. This has always been SBA's policy, but because SBA has received several inquiries about this issue, SBA believes that for better clarity the policy should be specifically set forth in the regulatory text.

In order to clarify whether the nonmanufacturer rule applies, or whether a general or specific waiver is attached to a procurement, SBA proposes to add a new § 121.1206 to require contracting officers to receive specific waivers prior to posting a solicitation, and also to provide notification to all potential offerors of any waivers that will be applied (whether class or specific) to a given solicitation. SBA believes that this will help to provide clear guidance to prospective offerors. If a solicitation states that a waiver is being applied, prospective offerors will know that the nonmanufacturer rule will not apply to that procurement. If no notice of a waiver being applied is given, prospective offerors will know that the requirements of § 121.406 must all be met. This will give prospective offerors ample time to prepare, and will remove some of the uncertainty surrounding issuances of waivers to the nonmanufacturer rule. SBA also proposes that if a contracting officer seeks and is provided a waiver after issuing a solicitation, the contracting officer must give all potential offers a reasonable amount of additional time in order to respond to the solicitation. In SBA's view, whether a waiver applies or not has a meaningful impact on who may place an offer, and how prospective offerors may respond to a given solicitation. Therefore, SBA believes it is important that potential offerors have a reasonable amount of time to properly evaluate and respond to the solicitation.

Adverse Impact and Construction Requirements

SBA proposes to amend § 124.504 to clarify when a procurement for construction services is considered a new requirement. This section generally addresses when SBA must conduct an adverse impact analysis for the award of an 8(a) contract. SBA is not required to perform an adverse impact analysis for new requirements. Currently, paragraph (c)(1)(ii)(B) states that ''Construction contracts, by their very nature (*e.g.,* the building of a specific structure), are deemed new requirements.'' SBA proposes to clarify the definition of ''new requirement'' for construction contracts by specifying that generally, the building of a specific structure is considered a new requirement. However, recurring indefinite delivery or indefinite quantity (IDIQ) procurements for construction services are not considered new. SBA has found that agencies have misinterpreted the current language of § 124.504(c)(1)(ii)(B) to consider recurring IDIQ construction services procurements as new. SBA intends to clarify that such recurring requirements are not considered new. A determination of whether a construction contract is recurring or new will have to be made on a case by case basis, and there is a process in place that allows SBA to file an appeal with the procuring agency when there is a disagreement.

Certificate of Competency

SBA proposes to amend § 125.5(f), which addresses SBA's review of an application for the Certificate of Competency (COC) program. SBA proposes to insert new § 125.5(f)(3) to address how SBA should review an application for a COC based on a finding of non-responsibility due to financial capacity where the applicant is the apparent successful offeror for an IDIQ task order or contract. SBA frequently receives inquiries regarding the application of the COC process for

financial capacity to the potential award of an IDIQ contract. SBA clarifies this process by proposing changes to § 125.5(f). The proposed changes state that the SBA's Area Director will consider the firm's maximum financial capacity and if such COC is issued, it will be for a specific amount that serves as the limit of the firm's financial capacity for that contract. The contracting officer cannot deny the firm the award of an order or contract on the basis of financial incapacity if the firm has not reached the financial maximum identified by the Area Director.

SBA proposes to revise § 125.26 to replace the term ''Associate Administrator for Government Contracting'' with the term ''Director, Office of Government Contracting.'' There is no longer a position at SBA titled the Associate Administrator for Government Contracting and as a result, SBA proposes to update these regulations with the current title for the appropriate official who will receive correspondence related to SDVO protests.

Compliance With Executive Orders 12866, 13563, 12988, 13132, the Paperwork Reduction Act (44 U.S.C. Ch. 35), and the Regulatory Flexibility Act (5 U.S.C. 601–612) Executive Order 12866

The Office of Management and Budget (OMB) has determined that this proposed rule is a ''significant'' regulatory action for purposes of Executive Order 12866. Accordingly, the next section contains SBA's Regulatory Impact Analysis. However, this is not a major rule under the Congressional Review Act, 5 U.S.C. 801, et seq.

Regulatory Impact Analysis

1. Is there a need for the regulatory action?

The proposed rule implements Sections 1621, 1651, 1652, 1653 and 1654 of the National Defense Authorization Act of 2013, Pub. L. 112–239, 126 Stat. 1632, January 2, 2013; 15 U.S.C. 637(d), 644(l), 645, 657s. In addition, it makes several other changes needed to clarify ambiguities in or remedy perceived problems with the current regulations. These proposed changes should make SBA's regulations easier to use and understand.

2. What are the potential benefits and costs of this regulatory action?

The proposed regulations should benefit small business concerns by allowing small business concerns to use similarly situated subcontractors in the performance of a set aside contract, thereby expanding the capacity of the small business prime contractor and potentially enabling the firm to compete for and obtain larger contracts. It also strengthens the small business subcontracting provisions, which may result in more subcontract awards to small business concerns. The proposed regulations also seek to address or clarify issues that are ambiguous or subject to dispute, thereby providing clarity to contracting officers as well as small business concerns.

3. What are the alternatives to this final rule?

Many of the proposed regulations are required to implement statutory provisions, thus there are no alternatives for these regulations. The alternative to the proposed regulations that are not required by statute would be to not issue regulations, which would result in continued confusion, litigation and controversy.

Executive Order 13563

This executive order directs agencies to, among other things: (a) Afford the public a meaningful opportunity to comment through the Internet on proposed regulations, with a comment period that should generally consist of not less than 60 days; (b) provide for an ''open exchange'' of information among government officials, experts, stakeholders, and the public; and (c) seek the views of those who are likely to be affected by the rulemaking, even before issuing a notice of proposed rulemaking. As far as practicable or relevant, SBA considered these requirements in developing this rule, as discussed below.

1. *Did the agency use the best available techniques to quantify anticipated present and future costs when responding to E.O. 12866 (e.g., identifying changing future compliance costs that might result from technological innovation or anticipated behavioral changes)?*

To the extent possible, the agency utilized the most recent data available in the Federal Procurement Data System—Next Generation, System for Award Management and Electronic Subcontracting Reporting System.

2. *Public participation: Did the agency: (a) Afford the public a meaningful opportunity to comment through the Internet on any proposed regulation, with a comment period that should generally consist of not less than 60 days; (b) provide for an ''open exchange'' of information among government officials, experts, stakeholders, and the public; (c) provide timely online access to the rulemaking docket on Regulations.gov; and (d) seek the views of those who are likely to be affected by rulemaking, even before issuing a notice of proposed rulemaking?*

The proposed rule will have a 60 day comment period and will be posted on *www.regulations.gov* to allow the public to comment meaningfully on its provisions. In addition, the agency reached out to agencies, including the Forest Service, the Food and Drug Administration, and the Defense Logistics Agency. SBA then submitted the rule to the Office of Management and Budget for interagency review.

3. *Flexibility: Did the agency identify and consider regulatory approaches that reduce burdens and maintain flexibility and freedom of choice for the public?*

Yes, the proposed rule implements statutory provisions and will provide clarification to rules that were requested by agencies and stakeholders. The proposed rule will make it easier for small businesses to contract with the Federal government.

Executive Order 12988

This action meets applicable standards set forth set forth in section 3(a) and 3(b)(2) of Executive Order 12988, Civil Justice Reform, to minimize litigation, eliminate ambiguity, and reduce burden. This action does not have any retroactive or preemptive effect.

Executive Order 13132

SBA has determined that this proposed rule will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, for the purposes of Executive Order 13132, SBA has determined that this proposed rule has no federalism implications warranting preparation of a federalism assessment.

Paperwork Reduction Act, 44 U.S.C. Ch. 35

For the purposes of the Paperwork Reduction Act, SBA has determined that this rule, if adopted in final form, would not impose new government-wide reporting requirements on small business concerns.

Regulatory Flexibility Act, 5 U.S.C. 601–612

According to the Regulatory Flexibility Act (RFA), 5 U.S.C. 601, when an agency issues a rulemaking, it must prepare a regulatory flexibility

analysis to address the impact of the rule on small entities. However, section 605 of the RFA allows an agency to certify a rule, in lieu of preparing an analysis, if the rulemaking is not expected to have a significant economic impact on a substantial number of small entities. The RFA defines ''small entity'' to include ''small businesses,'' ''small organizations,'' and ''small governmental jurisdictions.'' This proposed rule concerns various aspects of SBA's contracting programs, as such the rule relates to small business concerns but would not affect ''small organizations'' or ''small governmental jurisdictions'' because those programs generally apply only to ''business concerns'' as defined by SBA regulations, in other words, to small businesses organized for profit. ''Small organizations'' or ''small governmental jurisdictions'' are non-profits or governmental entities and do not generally qualify as ''business concerns'' within the meaning of SBA's regulations.

There are approximately 326,000 concerns listed as small business concerns in the System for Award Management (SAM) that could potentially be impacted by the implementation of the NDAA 2013 contracting provisions. However, we cannot say with any certainty how many will be impacted because we do not know how many of these concerns will team together to submit offers, nor do we know how many will be awarded contracts as teams. The number of firms participating in teaming will be lower than the number of firms registered in SAM. However, as discussed elsewhere in this rule, including section 2 of the Regulatory Impact Analysis, there are no new compliance or other costs imposed by the proposed rule on small business concerns. Under current law, firms must adhere to certain performance requirements when performing set aside contracts. Further, SBA expects that costs now incurred by small business concerns as a result of ambiguous or indefinite regulations will be eliminated or reduced. Clarifying the confusion and uncertainty concerning the applicability of SBA contracting regulations would also reduce the time burden on the small business contracting community and therefore make it easier for them to contract with the Federal Government. In sum, the proposed amendments would not have a disparate impact on small businesses and would increase their opportunities to participate in federal government contracting without imposing any additional costs. For the reasons discussed, SBA certifies that this proposed rule would not have a significant economic impact on a substantial number of small business concerns.

List of Subjects

13 CFR Part 121

Government procurement; Government property; Grant programs—business, Individuals with disabilities; Loan programs—business; Small businesses.

13 CFR Part 124

Administrative practice and procedure, Government procurement, Minority businesses, Reporting and recordkeeping requirements, Small business, Technical assistance.

13 CFR Part 125

Government contracts, Government procurement, Reporting and recordkeeping requirements, Small businesses, Technical assistance.

13 CFR Part 126

Administrative practice and procedure, Government procurement, Penalties, Reporting and Recordkeeping requirements, Small business.

13 CFR Part 127

Government procurement, Reporting and recordkeeping requirements, Small businesses.

Accordingly, for the reasons stated in the preamble, SBA proposes to amend parts 121, 124, 125, 126, and 127 of title 13 of the Code of Federal Regulations as follows:

PART 121—SMALL BUSINESS SIZE REGULATIONS

■ 1. The authority citation for 13 CFR part 121 continues to read as follows:

Authority: 15 U.S.C. 632, 634(b)(6), 662 and 694a(9).

■ 2. Amend § 121.103 by adding paragraphs (f)(1) and (f)(2) and by revising paragraphs (h)(3)(i) and (h)(4) to read as follows:

§ 121.103 How does SBA determine affiliation?

* * * * *

(f) * * *

(1) Firms owned or controlled by married couples, parties to a civil union, parents and children, and siblings are presumed to be affiliated with each other if they conduct business with each other, such as subcontracts or joint ventures or share or provide loans, resources, equipment, locations or employees with one another. This presumption may be overcome by showing a clear line of fracture between the concerns. Other types of familial relationships are not grounds for affiliation on family relationships.

(2) SBA may presume an identity of interest based upon economic dependence if the concern in question derived 70% or more of its receipts from another concern in the previously completed fiscal year.

* * * * *

(h) * * *

(3) *Exception to affiliation for certain joint ventures.* (i) A joint venture of two or more business concerns may submit an offer as a small business for a Federal procurement, subcontract or sale so long as each concern is small under the size standard corresponding to the NAICS code assigned to the contract.

* * * * *

(4) A contractor and its ostensible subcontractor are treated as joint venturers, and therefore affiliates, for size determination purposes. An ostensible subcontractor is a subcontractor that is not a similarly situated entity, as that term is defined in § 125.6(g)(3), and: Performs primary and vital requirements of a contract, or of an order; or is a subcontractor upon which the prime contractor is unusually reliant. All aspects of the relationship between the prime and subcontractor are considered, including, but not limited to, the terms of the proposal (such as contract management, technical responsibilities, and the percentage of subcontracted work), agreements between the prime and subcontractor (such as bonding assistance or the teaming agreement), and whether the subcontractor is the incumbent contractor and is ineligible to submit a proposal because it exceeds the applicable size standard for that solicitation.

* * * * *

■ 3. Amend § 121.104 by revising the introductory text in paragraph (a) to read as follows:

§ 121.104 How does SBA calculate annual receipts?

(a) *Receipts* means all revenue in whatever form received or accrued from whatever source, including from the sales of products or services, interest, dividends, rents, royalties, fees, or commissions, reduced by returns and allowances. Generally, receipts are considered ''total income'' (or in the case of a sole proprietorship ''gross income'') plus ''cost of goods sold'' as these terms are defined and reported on Internal Revenue Service (IRS) tax return forms (such as Form 1120 for corporations; Form 1120S and Schedule K for S corporations; Form 1120, Form

1065 or Form 1040 for LLCs; Form 1065 and Schedule K for partnerships; Form 1040, Schedule F for farms; Form 1040, Schedule C for other sole proprietorships). Receipts do not include net capital gains or losses; taxes collected for and remitted to a taxing authority if included in gross or total income, such as sales or other taxes collected from customers and excluding taxes levied on the concern or its employees; proceeds from transactions between a concern and its domestic or foreign affiliates; and amounts collected for another by a travel agent, real estate agent, advertising agent, conference management service provider, freight forwarder or customs broker. For size determination purposes, the only exclusions from receipts are those specifically provided for in this paragraph. All other items, such as subcontractor costs, reimbursements for purchases a contractor makes at a customer's request, investment income, and employee-based costs such as payroll taxes, may not be excluded from receipts.

* * * * *

■ 4. Amend § 121.201 by adding the following paragraph as footnote 20 to NAICS code 511210.

§ 121.201 What size standards has SBA identified by North American Industry Classification System codes?

* * * * *

Footnotes

* * * * *

20. *NAICS code 511210*—For purposes of Government procurement, the purchase of software subject to potential waiver of the nonmanufacturer rule pursuant to *§ 121.1203(d)* should be classified under this NAICs code.

■ 5. Amend § 121.404 as follows:

■ a. Revise paragraph (f); and

■ b. Add paragraph (g)(2)(ii)(D) to read as follows:

§ 121.404 When is the size status of a business concern determined?

* * * * *

(f) For purposes of architect-engineering, design/build or two-step sealed bidding procurements, a concern must qualify as small as of the date that it certifies that it is small as part of its initial bid or proposal (which may or may not include price).

(g) * * *

(2) * * *

(ii) * * *

(D) If the merger or acquisition occurs after offer but prior to award, the offeror must recertify its size to the contracting officer prior to award.

* * * * *

■ 6. Amend § 121.406 by revising paragraph (b)(5) introductory text, (b)(7), and (d) to read as follows:

§ 121.406 How does a small business concern qualify to provide manufactured products or other supply items under a small business set-aside, service-disabled veteran-owned small business set-aside, WOSB or EDWOSB set-aside, or 8(a) contract?

* * * * *

(b) * * *

(5) The Administrator or designee may waive the requirement set forth in paragraph (b)(1)(iv) of this section under the following two circumstances:

* * * * *

(7) SBA's waiver of the nonmanufacturer rule means that the firm can supply the product of any size business without regard to the place of manufacture. However, any SBA waiver has no effect on requirements external to the Small Business Act which involve domestic sources of supply, such as the Buy American Act and the Trade Agreements Act.

* * * * *

(d) The performance requirements (limitations on subcontracting) and the nonmanufacturer rule do not apply to small business set aside acquisitions with an estimated value between $3,000 and $150,000.

* * * * *

■ 8. Amend § 121.702 by revising paragraph (a)(2) to read as follows:

§ 121.702 What size and eligibility standards are applicable to the SBIR and STTR programs?

* * * * *

(a) * * *

(2) No single venture capital operating company, hedge fund, or private equity firm may own more than 50% of the concern unless that single venture capital operating company, hedge fund, or private equity firm qualifies as a small business concern that is more than 50% directly owned and controlled by individuals who are citizens or permanent resident aliens of the United States.

* * * * *

■ 9. Amend § 121.1001 as follows:

■ a. Revise paragraphs (a)(1)(i) and (a)(2)(i); and

■ b. Add paragraph (b)(11) to read as follows:

§ 121.1001 Who may initiate a size protest or request a formal size determination?

(a) * * * (1) * * *

(i) Any offeror that the contracting officer has not eliminated from consideration for any procurement-related reason, such as non-responsiveness, technical unacceptability or outside of the competitive range;

* * * * *

(2) * * *

(i) Any offeror that the contracting officer has not eliminated from consideration for any procurement related reason, such as non-responsiveness, technical unacceptability or outside of the competitive range;

* * * * *

(b) * * *

(11) In connection with eligibility for the SDVO SBC and the WOSB/EDWSOB programs, the Director, Office of Government Contracting, may initiate a formal size determination.

■ 10. Revise § 121.1203 to read as follows:

§ 121.1203 When will a waiver of the Nonmanufacturer Rule be granted for an individual contract?

(a) Where appropriate, SBA will generally grant waivers for an individual contract or order prior to the issuance of a solicitation, or, where a solicitation has been issued, when the contracting officer provides all potential offerors additional time to respond.

(b) SBA may grant a waiver after contract award, where the contracting officer has determined that the modification is within the scope of the contract and the agency followed the regulations prior to issuance of the solicitation and properly and timely requested a waiver for any other items under the contract, where required.

Example: The Government seeks to buy spare parts to fix Item A. After conducting market research, the government determines that Items B, C, and D that are being procured may be eligible for waivers and requests and receives waivers from SBA for those items prior to issuing the solicitation. After the contract is awarded, the Government determines that it will need additional spare parts to fix Item A. The Government determines that adding the additional parts as a modification to the original contract is within scope. The contracting officer believes that one of the additional parts is also eligible for a waiver from SBA, and requests the waiver at the time of the modification. If all other criteria are met, SBA would grant the waiver, even though the contract has already been awarded.

(c) An individual waiver for a product in a specific solicitation will be approved when the SBA Director, Office of Government Contracting, reviews and accepts a contracting officer's determination that no small business manufacturer or processor can reasonably be expected to offer a product meeting the specifications of a

solicitation, including the period of performance.

(d) *Waivers for the purchase of software.* (1) SBA may grant an individual waiver for the procurement of a software item provided that the software being sought is an item that is of a type customarily used by the general public or by non-governmental entities for purposes other than governmental purposes, and the item:

(i) Has been sold, leased, or licensed to the general public, or has been offered for sale, lease, or license to the general public;

(ii) Is sold in substantial quantities in the commercial marketplace; and

(iii) Is offered to the Government, under a contract or subcontract at any tier, without modification, in the same form in which it is sold in the commercial marketplace.

(2) If the value of services provided related to the purchase of a supply item that meets the requirements of paragraph (a)(1) of this section exceed the value of the item itself, the procurement should be identified as a service procurement, even if the services are provided as part of the same license, lease, or sale terms. If a contracting officer cannot make a determination of the value of services being provided, SBA will assume that the value of the services is greater than the value of items or supplies, and will not grant a waiver.

(3) Subscription services, remote hosting of software, data, or other applications on servers or networks of a party other than the U.S. Government are considered by SBA to be services and not the procurement of a supply item. Therefore SBA will not grant waivers of the nonmanufacturer rule for these types of services.

■ 11. Amend § 121.1204 by revising paragraphs (b)(1)(ii) and (iii) to read as follows:

§ 121.1204 What are the procedures for requesting and granting waivers?

* * * * *

(b) * * *

(1) * * *

(ii) The proposed solicitation number, NAICS code, dollar amount of the procurement, and a brief statement of the procurement history;

(iii) A determination by the contracting officer that no small business manufacturer or processor reasonably can be expected to offer a product meeting the specifications (including period of performance) required by a particular solicitation. Include a narrative describing market research and supporting documentation; and

* * * * *

■ 12. Add § 121.1206 to read as follows:

§ 121.1206 How will potential offerors be notified of applicable waivers?

(a) Contracting officers must provide written notification to potential offerors of any waivers being applied to a specific acquisition, whether it is a class waiver or a contract specific waiver. This notification must be provided at the time a solicitation is issued. If the notification is provided after a solicitation is issued, the contracting officer must provide potential offerors a reasonable amount of additional time to respond to the solicitation.

(b) If a contracting officer does not provide notice, and additional reasonable time for responses when required, then the waiver cannot be applied to the solicitation. This applies to both class waivers and individual waivers.

PART 124—8(a) BUSINESS DEVELOPMENT/SMALL DISADVANTAGED BUSINESS STATUS DETERMINATIONS

■ 13. The authority citation for part 124 is revised to read as follows:

Authority: 15 U.S.C. 634(b)(6), 636(j), 637(a), 637(d), 644 and Pub. L. 99–661, Pub. L. 100–656, sec.1207, Pub. L. 101–37, Pub. L. 101–574, section 8021, Pub. L. 108–87, and 42 U.S.C. 9815.

■ 14. Amend § 124.504 by revising paragraph (c)(1)(ii)(B) to read as follows:

§ 124.504 What circumstances limit SBA's ability to accept a procurement for award as an 8(a) contract?

* * * * *

(c) * * *

(1) * * *

(ii) * * *

(B) Procurements for construction services (e,g., the building of a specific structure) are generally deemed to be new requirements. However, recurring indefinite delivery or indefinite quantity task or delivery order construction services are not considered new (*e.g.,* a recurring procurement requiring all construction work at base X).

* * * * *

■ 15. Amend § 124.510 by revising the section heading and the text to read as follows:

§ 124.510 What limitations on subcontracting apply to an 8(a) contract?

(a) To assist the business development of Participants in the 8(a) BD program, there are limitations on the percentage of an 8(a) contract award amount that may be spent on subcontractors. The prime contractor recipient of an 8(a) contract must comply with the limitations on subcontracting at § 125.6 of this chapter.

(b) *Indefinite delivery and indefinite quantity contracts.* (1) In order to ensure that the required limitations on subcontracting requirements on an indefinite delivery or indefinite quantity 8(a) award are met by the Participant, the Participant cannot subcontract more than the required percentage to subcontractors that are not similarly situated entities for each performance period of the contract (*i.e.,* during the base term and then during each option period thereafter). However, the contracting officer, in his or her discretion, may require the Participant to meet the applicable limitation on subcontracting or comply with the nonmanufacturer rule for each order.

(i) This includes Multiple Award Contracts that were set-aside, partially set-aside or reserved solely for 8(a) BD Participants.

(ii) For orders that are set aside for eligible 8(a) Participants under full and open contracts or reserves, the Participant must meet the applicable limitation on subcontracting requirement or comply with the nonmanufacturer rule for each order.

(2) The applicable SBA District Director may waive the provisions in paragraph (b)(1) of this section requiring a Participant to meet the applicable limitation on subcontracting requirement for each performance period (or for each order for an order set aside solely for eligible 8(a) Participants under full and open multiple award contracts or reserves). Instead, the District Director may permit the Participant to subcontract in excess of the limitations on subcontracting where the District Director makes a written determination that larger amounts of subcontracting are essential during certain stages of performance. However, the 8(a) Participant and procuring activity's contracting officer must provide written assurances that the Participant will ultimately comply with the requirements of this section prior to contract completion. The procuring activity's contracting officer does not have the authority to waive the provisions of paragraph (b)(1) of this section requiring a Participant to meet the applicable limitation on subcontracting requirement for each performance period, even if the agency has a Partnership Agreement with SBA.

Example. Two task orders are issued under an 8(a) indefinite quantity service contract during the base period of the contract. The amount paid to the Participant on each of the two task orders is $100,000. The Participant

subcontracts $40,000 to subcontractors that are not similarly situated on the first task order. Where the relevant SBA District Director has not waived the requirements of paragraph (b)(1), the Participant could not subcontract more than $60,000 to subcontractors that are not similarly situated on the second task order in order to meet the requirement that it not subcontract more than 50% of the amount paid to it to subcontractors that are not similarly situated during the relevant performance period (*i.e.,* in order to ensure that it would not subcontract more than $100,000, out of the $200,000 paid to it, to subcontractors that are not similarly situated).

(3) Where the Participant does not ultimately comply with the performance of work requirements by the end of the contract, SBA will not grant future waivers for the Participant. Further, the contracting officer must document an 8(a) Participant's compliance with the limitation on subcontracting requirements as part of its performance evaluation in accordance with the procedures set forth in FAR 42.1502. The contracting officer must also evaluate compliance for future contract awards in accordance with the procedures set forth in FAR 9.104–6.

■ 16. Amend § 124.513 by revising paragraph (b) to read as follows:

§ 124.513 Under what circumstances can a joint venture be awarded an 8(a) contract?

* * * * *

(b) *Size of concerns to an 8(a) joint venture.* (1) A joint venture of at least one 8(a) Participant and one or more other business concerns may submit an offer as a small business for a competitive 8(a) procurement, or be awarded a sole source 8(a) procurement, so long as each concern is small under the size standard corresponding to the NAICS code assigned to the procurement.

(2) Notwithstanding the provisions of paragraph (b)(1) of this section, a joint venture between a protégé firm and its approved mentor (*see* § 124.520) will be deemed small provided the protégé qualifies as small for the size standard corresponding to the NAICS code assigned to the contract and has not reached the dollar limits set forth in § 124.519.

* * * * *

PART 125—GOVERNMENT CONTRACTING PROGRAMS

■ 17. The authority citation for 13 CFR part 125 is revised to read as follows:

Authority: 15 U.S.C. 632(p), (q); 634(b)(6), 637, 644, 657(f), 657q; and 657s.

■ 18. Amend § 125.1 by adding paragraph (x) to read as follows:

§ 125.1 What definitions are important to SBA's Government Contracting Programs?

* * * * *

(x) *Similarly situated entity* is a subcontractor that has the same small business program status as the prime contractor. This means that: For a HUBZone requirement, a subcontractor that is HUBZone certified; for a small business set-aside, partial set-aside, or reserve a subcontractor that is a small business concern; for an SDVO SBC requirement, a subcontractor that is a self-certified SDVO SBC; for an 8(a) requirement, a subcontractor that is an 8(a) certified; or a WOSB or EDWOSB contract, a subcontractor that is self-certified as a WOSB or EDWOSB. In addition to sharing the same small business program status as the prime contractor, a similarly situated entity must also be small for the NAICS code that is assigned to the procurement.

■ 19. Amend § 125.2 as follows:

■ a. Revise paragraph (b)(1)(i)(A);

■ b. Add paragraph (b)(1)(i)(F);

■ c. Revise paragraph (b)(1)(ii);

■ d. Revise paragraph (b)(1)(iii)(C);

■ e. Add paragraphs (b)(1)(iv) and (v);

■ f. Remove paragraph (b)(2) and redesignate paragraph (b)(3) as paragraph (b)(2); and

■ g. Revise redesignated paragraph (b)(2).

§ 125.2 What are SBA's and the procuring agency's responsibilities when providing contracting assistance to small businesses?

* * * * *

(b) * * *

(1) * * *

(i) * * *

(A) SBA has PCRs who are generally located at Federal agencies and buying activities which have major contracting programs. At the SBA's discretion, PCRs will review all acquisitions that are not totally set aside for small businesses to determine whether a set aside or sole source award to a small business under one of SBA's programs is appropriate and to identify alternative strategies to maximize the participation of small businesses in the procurement. PCRs also advocate for the maximum practicable utilization of small business concerns in Federal contracting, including by advocating against the consolidation or bundling of contract requirements, as defined in § 125.1, and reviewing any justification provided by the agency for consolidation or bundling. This review includes acquisitions that are Multiple Award Contracts where the agency has not set-aside all or part of the acquisition or reserved the acquisition for small businesses. It also includes acquisitions where the agency has not set-aside orders placed against Multiple Award Contracts for small business concerns.

* * * * *

(F) PCRs also advocate competitive procedures and recommend the breakout for competition when appropriate. They may appeal the failure by the buying activity to act favorably on a recommendation in accord with the appeal procedures in paragraph (b)(2) of this section. PCRs also review restrictions and obstacles to competition and make recommendations for improvement.

(ii) *PCR recommendations.* The PCR must recommend to the procuring activity alternative procurement methods that would increase small business prime contract participation if a PCR believes that a proposed procurement includes in its statement of work goods or services currently being performed by a small business and is in a quantity or estimated dollar value the magnitude of which renders small business prime contract participation unlikely; will render small business prime contract participation unlikely (*e.g.,* ensure geographical preferences are justified); or is for construction and seeks to package or consolidate discrete construction projects. If a PCR does not believe a bundled or consolidated requirement is necessary and justified the PCR shall advocate against the consolidation or bundling of such requirements and recommend to the procuring activity alternative procurement methods which would increase small business prime contract participation. Such alternatives may include:

* * * * *

(iii) * * *

(C) Recommending that the small business subcontracting goals be based on total contract dollars in addition to goals based on a percentage of total subcontracted dollars;

* * * * *

(iv) PCRs will consult with the agency OSDBU with regard to agency decisions to convert an activity performed by a small business concern to an activity performed by a Federal employee.

(v) PCRs may receive unsolicited proposals from small business concerns and shall transmit those proposals to the agency personnel responsible for reviewing such proposals. The agency personnel shall provide the PCR with information regarding the disposition of such proposal.

(2) *Appeals of PCR recommendations.* In cases where there is disagreement between a PCR and the contracting officer over the suitability of a particular

acquisition for a small business set-aside, partial set-aside or reserve, whether or not the acquisition is a bundled, substantially bundled or consolidated requirement, the PCR may initiate an appeal to the head of the contracting activity. If the head of the contracting activity agrees with the contracting officer, SBA may appeal the matter to the Secretary of the Department or head of the agency. The time limits for such appeals are set forth in FAR 19.505 (48 CFR 19.505).

* * * * *

■ 20. Amend § 125.3 as follows:
■ a. Add paragraphs (c)(8) and (c)(9);
■ b. Revise the first sentence of paragraph (f)(1);
■ c. Revise paragraph (f)(5); and
■ d. Add paragraph (f)(8) to read as follows:

§ 125.3 What types of subcontracting assistance are available to small businesses?

* * * * *

(c) * * *

(8) A prime contractor that identifies a small business by name as a subcontractor in a proposal, offer, bid or subcontracting plan must notify those subcontractors in writing prior to identifying the concern in the proposal, bid, offer or subcontracting plan.

(9) Anyone who has a reasonable basis to believe that a prime contractor or a subcontractor may have made a false statement to an employee or representative of the Federal Government, or to an employee or representative of the prime contractor, with respect to subcontracting plans must report the matter to the SBA Office of Inspector General. All other concerns as to whether a prime contractor or subcontractor has complied with SBA regulations or otherwise acted in bad faith may be reported to the Government Contracting Area Office where the firm is headquartered.

* * * * *

(f) *Compliance Reviews.* (1) A prime contractor's performance under its subcontracting plan is evaluated by means of on-site compliance reviews and follow-up reviews, as a supplement to evaluations performed by the contracting agency, either on a contract-by-contract basis or, in the case of contractors having multiple contracts, on an aggregate basis. * * *

* * * * *

(5) Any contractor that fails to comply with paragraph (f)(4) of this section, or any contractor that fails to demonstrate a good-faith effort, as set forth in paragraph (d) of this section:

(i) may be considered for liquidated damages under the procedures in 48 CFR 19.705–7 and the clause at 52.219–16; and

(ii) shall be in material breach of such contract or subcontract, and such failure to demonstrate good faith must be considered in any past performance evaluation of the contractor. This action shall be considered by the contracting officer upon receipt of a written recommendation to that effect from the CMR. The CMR's recommendation must include a copy of the compliance report and any other relevant correspondence or supporting documentation. Furthermore, if the CMR has a reasonable basis to believe that a contractor has made a false statement to an employee or representative of the Federal Government, or to an employee or representative of the prime contractor, the CMR must report the matter to the SBA Office of Inspector General. All other concerns as to whether a prime contractor or subcontractor has complied with SBA regulations or otherwise acted in bad faith may be reported to the Area Government Contracting Office where the firm is headquartered.

* * * * *

(8) The head of the contracting agency shall ensure that:

(i) the agency collects and reports data on the extent to which contractors of the agency meet the goals and objectives set forth in subcontracting plans; and

(ii) the agency periodically reviews data collected and reported pursuant to paragraph (f)(8)(i) of this section for the purpose of ensuring that such contractors comply in good faith with the requirements of this section.

* * * * *

■ 21. Amend § 125.5 by adding a paragraph (f)(3) to read as follows:

§ 125.5 What is the Certificate of Competency Program?

* * * * *

(f) * * *

(3) Where a contracting officer finds a concern to be nonresponsible for reasons of financial capacity on an indefinite delivery or indefinite quantity task or delivery order contract, the Area Director will consider the firm's maximum financial capacity. If the Area Director issues a COC, it will be for a specific amount that is the limit of the firm's financial capacity for that contract. The contracting officer may subsequently determine to exceed the amount, but cannot deny the firm award of an order or contract on financial grounds if the firm has not reached the financial maximum the Area Director identified in the COC letter.

* * * * *

■ 22. Revise § 125.6 by revising the heading and text to read as follows:

§ 125.6 What are the prime contractor's limitations on subcontracting?

(a) *General.* In order to be awarded a full or partial small business set-aside contract, an 8(a) contract, an SDVO SBC contract, a HUBZone contract, a WOSB or EDWOSB contract pursuant to part 127 of this chapter, with a value greater than $150,000, a small business concern must agree that:

(1) In the case of a contract for services (except construction), no more than 50% of the amount paid by the government to the prime may be paid to firms, at any tier, that are not similarly situated. Any work that a similarly situated entity further subcontracts to an entity that is not similarly situated will count towards the 50% subcontract amount that cannot be exceeded.

(2) In the case of a contract for supplies or products (other than from a nonmanufacturer of such supplies), no more than 50% of the amount paid by the government to the prime may be paid to firms, at any tier, that are not similarly situated. Any work that a similarly situated entity further subcontracts to an entity that is not similarly situated will count towards the 50% subcontract amount that cannot be exceeded.

(iii) In the case of a contract for supplies from a nonmanufacturer, the concern shall supply the product of a domestic small business manufacturer or processor, unless a waiver as described in § 121.406(b)(5) of this chapter is granted.

(3) Where a contract combines services and supplies, the contracting officer shall select the appropriate NAICS code as prescribed in § 121.402(b) of this chapter. The contracting officer's selection of the applicable NAICS code is determinative as to which limitation on subcontracting and performance requirement applies. In no case shall the requirements of paragraph (a)(1) and (a)(2) of this section both apply to the same contract. The relevant limitation on subcontracting in paragraph (a)(1) or (a)(2) of this section shall apply only to that portion of the contract award amount.

Example to paragraph (a)(3). A procuring agency is acquiring both services and supplies through a small business set aside. The total value of the requirement is $3,000,000, with the supply portion comprising $2,500,000, and the services portion comprising $500,000. The contracting officer appropriately assigns a manufacturing NAICS code to the requirement. Because the services portion of the contract is excluded from consideration, a small business manufacturer, together with

one or more similarly situated small business manufacturers, must perform at least 50% of the cost of manufacturing the supplies or products, or at least 50% of the $2,500,000 supply portion of the requirement (not including the costs of materials).

(4) In the case of a contract for general construction, no more than 85% of the amount paid by the government to the prime may be paid to firms, at any tier, that are not similarly situated. Any work that a similarly situated entity further subcontracts to an entity that is not similarly situated will count towards the 15% subcontract amount that cannot be exceeded.

(5) In the case of a contract for special trade contractors, no more than 75% of the amount paid by the government to the prime may be paid to firms, at any tier, that are not similarly situated Any work that a similarly situated entity further subcontracts to an entity that is not similarly situated will count towards the 75% subcontract amount that cannot be exceeded.

(b) *Subcontracts to similarly situated entities.* A small business concern prime contractor that receives a contract listed in § 125.6(a) and spends contract amounts on a subcontractor that is a similarly situated entity shall not consider those subcontracted amounts as subcontracted for purposes of determining whether the small business concern prime contractor has violated § 125.6(a). Moreover, such subcontract to a similarly situated entity shall also be excluded from consideration under the ostensible subcontractor rule (§ 121.103(h)(4)).

(1) A small business concern prime contractor must enter a written agreement with every similarly situated entity to detail the percentage of work forecasted to be performed by each entity. The agreement must identify the solicitation number at issue, be signed by each entity, and be attached to the prime contractor's offer.

(2) Whether particular specific entities perform the forecasted amount of work is not material, as long as the similarly situated entities collectively meet the performance of work requirement.

(3) SBA may consider any party's failure to comply with the spirit and intent of such a subcontract as a basis for debarment on the grounds, including but not limited to, that the parties have violated the terms of a Government contract or subcontract pursuant to FAR 9.406–2(b)(1)(i).

Example 1 to paragraph (b): An SDVO SBC sole source contract is awarded in the total amount of $500,000 for hammers. The prime contractor is a manufacturer and subcontracts 51% of the total amount received, less the cost of materials ($100,000) or $204,000, to an SDVO SBC subcontractor that manufactures the hammers in the U.S. The prime contractor does not violate the limitation on subcontracting requirement because the amount subcontracted to a similarly situated entity (less the cost of materials) is excluded from the limitation on subcontracting calculation.

Example 2 to paragraph (b): A competitive 8(a) BD contract is awarded in the total amount of $1,000,000 for janitorial services. The prime contractor subcontracts $800,000 of the janitorial services to another 8(a) BD certified firm. The prime contractor does not violate the limitation on subcontracting for services because the amount subcontracted to a similarly situated entity is excluded from the limitation on subcontracting.

Example 3 to paragraph (b): A WOSB set-aside contract is awarded in the total amount of $1,000,000 for landscaping services. The prime contractor subcontracts $500,001 to an SDVO SBC subcontractor that is not also a WOSB under the WOSB program. The prime contractor is in violation of the limitation on subcontracting requirement because it has subcontracted more than 50% of the contract amount to an SDVO SBC subcontractor, which is not considered similarly situated to a WOSB prime contractor.

(c) *Certification to meet limitations on subcontracting.* A small business concern submitting an offer for a contract listed in § 125.6(a) must certify that it will meet the applicable limitation on subcontracting. If it is not apparent in the offer that the applicable limitation on subcontracting will be met, the contracting officer may seek a Certificate of Competency pursuant to § 125.5. The procuring agency contracting officer must be satisfied that the small business concern prime contractor will satisfy the applicable limitation on subcontracting at the time of award.

(d) *Identify subcontractors and percentage of award amount subcontracted.* If a small business concern prime contractor that receives a contract listed in § 125.6(a) intends to use similarly situated entities in order to comply with the limitations on subcontracting, it must identify the similarly situated entities in its offer and the percentage of the prime contract award amount that will be spent on each similarly situated entity must be identified in a written agreement, in compliance with § 125.6(b).

(e) *Modifications of award amount.* If the prime contractor modifies a subcontractor's award amount after award of the prime contract, increasing the percentage of the prime contractor's award amount spent on subcontractors that are not similarly situated entities such that the prime contractor is no longer in compliance with the requirements of § 125.6(a), the prime contractor must notify the contracting officer in writing of the change and how the change will affect the prime contractor's compliance with the limitations on subcontracting.

(f) *HUBZone procurement for commodities.* In the case of a HUBZone contract for the procurement of agricultural commodities, a HUBZone SBC may not purchase the commodity from a subcontractor if the subcontractor will supply the commodity in substantially the final form in which it is to be supplied to the Government.

(g) *Request to change applicable limitation on subcontracting.* SBA may use different percentages if the Administrator determines that such action is necessary to reflect conventional industry practices among small business concerns that are below the numerical size standard for businesses in that industry group. Representatives of a national trade or industry group or any interested SBC may request a change in subcontracting percentage requirements for the categories defined by six digit industry codes in the North American Industry Classification System (NAICS) pursuant to the following procedures:

(1) *Format of request.* Requests from representatives of a trade or industry group and interested SBCs should be in writing and sent or delivered to the Director, Office of Government Contracting, U.S. Small Business Administration, 409 3rd Street SW., Washington, DC 20416. The requester must demonstrate to SBA that a change in percentage is necessary to reflect conventional industry practices among small business concerns that are below the numerical size standard for businesses in that industry category, and must support its request with information including, but not limited to:

(i) Information relative to the economic conditions and structure of the entire national industry;

(ii) Market data, technical changes in the industry and industry trends;

(iii) Specific reasons and justifications for the change in the subcontracting percentage;

(iv) The effect such a change would have on the Federal procurement process; and

(v) Information demonstrating how the proposed change would promote the purposes of the small business, 8(a), SDVO, HUBZone, WOSB, or EDWOSB programs.

(2) *Notice to public.* Upon an adequate preliminary showing to SBA, SBA will publish in the **Federal Register** a notice of its receipt of a

request that it considers a change in the subcontracting percentage requirements for a particular industry. The notice will identify the group making the request, and give the public an opportunity to submit information and arguments in both support and opposition.

(3) *Comments.* SBA will provide a period of not less than 30 days for public comment in response to the **Federal Register** notice.

(4) *Decision.* SBA will render its decision after the close of the comment period. If SBA decides against a change, SBA will publish notice of its decision in the **Federal Register**. Concurrent with the notice, SBA will advise the requester of its decision in writing. If SBA decides in favor of a change, SBA will propose an appropriate change to this part.

(h) *Determining compliance with applicable limitation on subcontracting.* The period of time used to determine compliance for a total or partial set-aside contract will be the base term and then each subsequent option period. For an order set aside under a full and open contract or a full and open contract with reserve, the agency will use the period of performance for each order to determine compliance unless the order is competed amongst small and other-than-small businesses (in which case the subcontracting limitations will not apply).

(1) The contracting officer, in his or her discretion, may require the concern to perform the applicable percentage of work or comply with the nonmanufacturer rule for each order awarded under a total or partial set aside contract.

(2) Compliance will be considered an element of responsibility and not a component of size eligibility.

(i) *Small Business Teaming Arrangements (SBTAs).* Where an offeror is exempt from affiliation under § 121.103(b)(9) of this chapter and qualifies as a small business concern for a reserve of a bundled contract, the limitations on subcontracting apply to the cooperative effort of the small business team members of the Small Business Teaming Arrangement, not its individual members. The contracting officer must document a small business concern's compliance with the limitations on subcontracting as part of the small business' performance evaluation in accordance with the procedures set forth in FAR 42.1502. The contracting officer must also evaluate compliance for future contract awards in accordance with the procedures set forth in FAR 9.104–6.

(j) *Inapplicability of limitations on subcontracting.* The performance requirements (limitations on subcontracting) do not apply to: (1) small business set-aside contracts with a value greater than the micro-purchase threshold but not greater than the simplified acquisition threshold; or (2) subcontracts.

(k) *Penalties.* Whoever violates the requirements set forth in § 125.6(a) shall be subject to the penalties prescribed in 15 U.S.C. 645(d), except that the fine shall be treated as the greater of $500,000 or the dollar amount spent, in excess of permitted levels, by the entity on subcontractors.

■ 23. Amend § 125.15 by revising paragraphs (a)(3), (b)(1), and (b)(3) to read as follows:

§ 125.15 What requirements must an SDVO SBC meet to submit an offer on a contract?

(a) * * *

(3) It will comply with the limitations on subcontracting requirements set forth in § 125.6;

* * * * *

(b) * * *

(1) *Size of concerns to an SDVO SBC joint venture.* A joint venture of at least one SDVO SBC and one or more other business concerns may submit an offer as a small business for a competitive SDVO SBC procurement, or be awarded a sole source SDVO contract, so long as each concern is small under the size standard corresponding to the NAICS code assigned to the procurement.

* * * * *

(3) *Limitations on subcontracting.* For any SDVO contract, the joint venture must comply with the applicable limitations on subcontracting required by § 125.6 of this chapter.

* * * * *

§ 125.20 [Amended]

■ 24. Amend § 125.20 as follows:

■ a. In paragraph (b)(1), remove ''$5,500,000'' and add in its place ''$6,000,000''; and

■ b. In paragraph (b)(2), remove ''$3,000,000'' and add in its place ''$3,500,000''.

§ 125.26 [Amended]

■ 25. Amend § 125.26 by removing the phrase ''Associate Administrator for Government Contracting'' and adding in its place the phrase ''Director, Office of Government Contracting'' in paragraph (b).

PART 126—HUBZONE PROGRAM

■ 26. The authority citation for part 126 continues to read as follows:

Authority: 15 U.S.C. 632(a), 632(j), 632(p), 644, and 657a.

■ 27. Amend § 126.200 by revising paragraph (b)(6) and removing paragraph (d) to read as follows:

§ 126.200 What requirements must a concern meet to receive SBA certification as a qualified HUBZone SBC?

* * * * *

(b) * * *

(6) *Subcontracting.* The concern must represent, as provided in the application, that it will comply with the applicable limitations on subcontracting requirements in connection with any procurement that it receives as a qualified HUBZone SBC, as set forth in § 126.5 and § 126.700.

* * * * *

■ 28. Amend § 126.601 by revising paragraph (f) to read as follows:

§ 126.601 What additional requirements must a HUBZone SBC meet to bid on a contract?

* * * * *

(f) A qualified HUBZone SBC may submit an offer on a HUBZone contract for supplies as a nonmanufacturer if it meets the requirements of the nonmanufacturer rule set forth at § 121.406 of this chapter.

* * * * *

■ 29. Amend § 126.700 by revising the title and text to read as follows:

§ 126.700 What are the limitations on subcontracting requirements for HUBZone contracts?

A prime contractor receiving an award as a qualified HUBZone SBC must meet the limitations on subcontracting requirements set forth in § 125.6 of this chapter.

PART 127—WOMEN-OWNED SMALL BUSINESS FEDERAL CONTRACT PROGRAM

■ 30. The authority citation for part 127 continues to read as follows:

Authority: 15 U.S.C. 632, 634(b)(6), 637(m), and 644.

■ 31. Amend § 127.504 by revising paragraph (b) to read as follows:

§ 127.504 What additional requirements must a concern satisfy to submit an offer on an EDWOSB or WOSB requirement?

* * * * *

(b) The concern must also meet the applicable limitations on subcontracting requirements as set forth in § 125.6 of this chapter.

■ 32. Amend § 127.506 by revising paragraphs (a) and (d) to read as follows:

§ 127.506 May a joint venture submit an offer on an EDWOSB or WOSB requirement?

* * * * *

(a) *Size of concerns.* A joint venture of at least one WOSB EDWOSB and one or more other business concerns may submit an offer as a small business for a competitive WOSB or EDWOSB procurement so long as each concern is small under the size standard corresponding to the NAICS code assigned to the procurement;

* * * * *

(d) The joint venture must comply with the limitations on subcontracting, as required by § 125.6 of this chapter;

* * * * *

Dated: December 10, 2014.

Maria Contreras-Sweet,

Administrator.

[FR Doc. 2014–29753 Filed 12–24–14; 8:45 am]

BILLING CODE 8025–01–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2014–0929; Directorate Identifier 2014–NM–118–AD]

RIN 2120–AA64

Airworthiness Directives; The Boeing Company Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: We propose to adopt a new airworthiness directive (AD) for certain The Boeing Company Model 767 airplanes. This proposed AD was prompted by reports that six fasteners may not have been installed in the left and right stringer 37 (S–37) between body station (BS) 428 and 431 lap splices on certain airplanes. This proposed AD would require a general visual inspection of S–37 lap splices for missing fasteners; and all applicable related investigative and corrective actions. We are proposing this AD to detect and correct missing fasteners, which could result in cracks in the fuselage skin that could adversely affect the structural integrity of the airplane.

DATES: We must receive comments on this proposed AD by February 12, 2015.

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

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

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

Examining the AD Docket

You may examine the AD docket on the Internet at *http://www.regulations.gov* by searching for and locating Docket No. FAA–2014–0929; or in person at the Docket Management Facility between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The AD docket contains this proposed AD, the regulatory evaluation, any comments received, and other information. The street address for the Docket Office (phone: 800–647–5527) is in the **ADDRESSES** section. Comments will be available in the AD docket shortly after receipt.

FOR FURTHER INFORMATION CONTACT: Berhane Alazar, Aerospace Engineer, Airframe Branch, ANM–120S, FAA, Seattle Aircraft Certification Office (ACO), 1601 Lind Avenue SW., Renton, WA 98057–3356; phone: 425–917–6590; fax: 425–917–6590; email: *Berhane.Alazar@faa.gov.*

SUPPLEMENTARY INFORMATION:

Comments Invited

We invite you to send any written relevant data, views, or arguments about this proposal. Send your comments to an address listed under the **ADDRESSES** section. Include ''Docket No. FAA–2014–0929; Directorate Identifier 2014–NM–118–AD'' at the beginning of your comments. We specifically invite comments on the overall regulatory, economic, environmental, and energy aspects of this proposed AD. We will consider all comments received by the closing date and may amend this proposed AD because of those comments.

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

Discussion

We received reports that six fasteners may not have been installed in the left and right stringer 37 (S–37) between BS 428 and 431 lap splices on certain airplanes during production. This condition, if not corrected, could result in cracks in the fuselage skin that could adversely affect the structural integrity of the airplane.

Relevant Service Information

We reviewed Boeing Alert Service Bulletin 767–53A0251, dated August 7, 2013. For information on the procedures and compliance times, see this service information at *http://www.regulations.gov* by searching for and locating Docket No. FAA–2014–0929.

FAA's Determination

We are proposing this AD because we evaluated all the relevant information and determined the unsafe condition described previously is likely to exist or develop in other products of these same type designs.

Proposed AD Requirements

This proposed AD would require accomplishing the actions specified in the service information described previously, except as discussed under ''Differences Between this Proposed AD and the Service Information.''

The phrase ''related investigative actions'' is used in this proposed AD. ''Related investigative actions'' are follow-on actions that (1) are related to the primary action, and (2) further investigate the nature of any condition found. Related investigative actions in an AD could include, for example, inspections.

The phrase ''corrective actions'' is used in this proposed AD. ''Corrective actions'' are actions that correct or address any condition found. Corrective actions in an AD could include, for example, repairs.

Explanation of ''RC'' Steps in Service Information

The FAA worked in conjunction with industry, under the Airworthiness Directives Implementation Aviation Rulemaking Committee, to enhance the AD system. One enhancement was 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 crucial AD requirements and help provide consistent judgment in AD compliance. The actions specified in the service information described previously include steps that are labeled as RC (required for compliance) because these steps have a direct effect on detecting, preventing, resolving, or eliminating an identified unsafe condition.

As noted in the specified service information, steps labeled as RC must be done to comply with the proposed AD. However, steps that are not labeled as RC are recommended. Those steps that are not labeled as RC may be deviated from, done as part of other actions, or done using accepted methods different from those identified in the service information without obtaining approval of an alternative method of compliance (AMOC), provided the steps labeled as RC can be done and the airplane can be put back in a serviceable condition. Any substitutions or changes to steps labeled as RC will require approval of an AMOC.

Differences Between This Proposed AD and the Service Information

Boeing Alert Service Bulletin 767–53A0251, dated August 7, 2013, specifies to contact the manufacturer for instructions on how to repair certain conditions, but this proposed AD would require repairing those conditions in one of the following ways:

- In accordance with a method that we approve; or
- Using data that meet the certification basis of the airplane, and that have been approved by the Boeing Commercial Airplanes Organization Designation Authorization (ODA) whom we have authorized to make those findings.

Costs of Compliance

We estimate that this proposed AD affects 23 airplanes of U.S. registry.

We estimate the following costs to comply with this proposed AD:

ESTIMATED COSTS

Action	Labor cost	Parts cost	Cost per product	Cost on U.S. operators
General visual inspection	1 work-hour × $85 per hour = $85	$0	$85	$1,955

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

ON-CONDITION COSTS

Action	Labor cost	Parts cost	Cost per product
Detailed and high frequency eddy current inspections and fastener installation.	13 work-hours × $85 per hour = $1,105	$0	$1,105

We have received no definitive data that would enable us to provide cost estimates for the repairs specified in this proposed AD.

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

Authority for This Rulemaking

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

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

Regulatory Findings

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

For the reasons discussed above, I certify this proposed regulation:

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

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

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

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

List of Subjects in 14 CFR Part 39

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

The Proposed Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

The Boeing Company: Docket No. FAA–2014–0929; Directorate Identifier 2014–NM–118–AD.

(a) Comments Due Date

We must receive comments by February 12, 2015.

(b) Affected ADs

None.

(c) Applicability

This AD applies to The Boeing Company Model 767–200, –300, –300F, and –400ER series airplanes, certificated in any category, as identified in Boeing Alert Service Bulletin 767–53A0251, dated August 7, 2013.

(d) Subject

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

(e) Unsafe Condition

This AD was prompted by reports that six fasteners may not have been installed in the left and right stringer 37 (S–37) between body station 428 and 431 lap splices on certain airplanes. We are issuing this AD to detect and correct missing fasteners, which could result in cracks in the fuselage skin that could adversely affect the structural integrity of the airplane.

(f) Compliance

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

(g) Inspections, Related Investigative Actions, and Corrective Actions

Except as provided by paragraph (h)(2) of this AD, at the applicable time specified in paragraph 1.E., ''Compliance,'' of Boeing Alert Service Bulletin 767–53A0251, dated August 7, 2013: Do an external general visual inspection of the S–37 lap splice for missing fasteners, and do all applicable related investigative and corrective actions; in accordance with the Accomplishment Instructions of Boeing Alert Service Bulletin 767–53A0251, dated August 7, 2013, except as provided by paragraph (h)(1) of this AD. Do all applicable related investigative and corrective actions before further flight.

(h) Exceptions to Service Information Specifications

(1) Where Boeing Alert Service Bulletin 767–53A0251, dated August 7, 2013, specifies to contact Boeing for repair instructions: Before further flight, do the repair using an FAA-approved method.

(2) Where Paragraph 1.E., ''Compliance,'' of Boeing Alert Service Bulletin 767–53A0251, dated August 7, 2013, specifies a compliance time ''after the original issue date of this service bulletin,'' this AD requires compliance within the specified compliance time after the effective date of this AD.

(i) Alternative Methods of Compliance (AMOCs)

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

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

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

(4) Except as required by paragraph (h)(1) of this AD: If the service information contains steps that are labeled as RC, those steps must be done to comply with this AD; any steps that are not labeled as RC are recommended. Those steps that are not labeled as RC may be deviated from, done as part of other actions, or done using accepted methods different from those identified in the specified service information without obtaining approval of an AMOC, provided the steps labeled as RC can be done and the airplane can be put back in a serviceable condition. Any substitutions or changes to steps labeled as RC require approval of an AMOC.

(j) Related Information

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

(2) For service information identified in this AD, contact Boeing Commercial Airplanes, Attention: Data & Services Management, P. O. Box 3707, MC 2H–65, Seattle, WA 98124–2207; telephone 20–544–5000, 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.

Issued in Renton, Washington, on December 17, 2014.

Michael Kaszycki,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 2014–30271 Filed 12–24–14; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2014–0928; Directorate Identifier 2014–NM–040–AD]

RIN 2120–AA64

Airworthiness Directives; Airbus Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: We propose to adopt a new airworthiness directive (AD) for all Airbus Model A330–200 Freighter, A330–200, A330–300, A340–200, A340–300, A340–500, and A340–600 series airplanes. This proposed AD was prompted by a report of skin disbonding on a composite side panel of a rudder installed on an A310 airplane. This proposed AD would require a review of the maintenance records of the rudder to determine if any composite side shell panel repair has been done; a thermography inspection limited to the repair areas or complete side shells, as applicable, to identify possible in-service rudder repairs, damages, or fluid ingress; and applicable related investigative and corrective actions. We are proposing this AD to detect and correct the rudder skin disbonding, which could affect the structural integrity of the rudder, and could result in reduced controllability of the airplane.

DATES: We must receive comments on this proposed AD by February 12, 2015.

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 Airbus SAS, Airworthiness Office—EAL, 1 Rond Point Maurice Bellonte, 31707 Blagnac

Cedex, France; telephone +33 5 61 93 36 96; fax +33 5 61 93 45 80; email *airworthiness.A330-A340@airbus.com;* Internet *http://www.airbus.com.* You may view this referenced service information at the FAA, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, WA. For information on the availability of this material at the FAA, call 425–227–1221.

Examining the AD Docket

You may examine the AD docket on the Internet at *http://www.regulations.gov* by searching for and locating Docket No. FAA–2014–0928; 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: 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:

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–2014–0928; Directorate Identifier 2014–NM–040–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 2014–0033, dated February 4, 2014 (referred to after this as the Mandatory Continuing Airworthiness Information, or ''the MCAI''), to correct an unsafe condition for all Airbus Model A330–200 Freighter, A330–200, A330–300, A340–200, A340–300, A340–500, and A340–600 series airplanes. The MCAI states:

> A case of skin disbonding was reported on a composite side panel of a rudder installed on an A310 aeroplane.
>
> The investigation results revealed that this disbonding started from a skin panel area previously repaired in-service in accordance with the Structural Repair Manual (SRM).
>
> The initial damage has been identified as a disbonding between the core and skin of the repaired area. This damage may not be visually detectable and likely propagates during normal operation due to the variation of pressure during ground-air-ground cycles.
>
> Composite rudder side shell panels are also installed on A330 and A340 aeroplanes, which may have been repaired in-service using a similar method.
>
> This condition, if not detected and corrected, could affect the structural integrity of the rudder, possibly resulting in reduced control of the aeroplane.
>
> For the reasons described above, this [EASA] AD requires a one-time thermography inspection of a repaired rudder or a rudder whose maintenance records are incomplete and, depending on findings, accomplishment of applicable corrective and follow-up actions [including repetitive inspections.

The related investigative actions in this AD include, as applicable, an ultrasonic inspection, an elasticity laminate checker inspection, a tap test inspection, detailed inspections, thermography inspections, and ventilation of the core. The repetitive inspections include detailed inspections and thermography inspections. The corrective actions in this AD include repairs.

The compliance time for the related investigative actions is before further flight after accomplishing the applicable inspection required by paragraph (g)(1) or (g)(2)(ii) of this AD.

The intervals for the repetitive inspections are either 900 flight hours or 1,000 flight cycles, depending on the applicable conditions identified in the service information.

The compliance times for the corrective actions range, depending on the applicable conditions identified in the service information, from before further flight to within 4,500 flight cycles but not to exceed 24 months after accomplishing the applicable inspection required by paragraphs (g)(1) or (g)(2)(ii) of this AD.

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–2014–0928.

Relevant Service Information

Airbus has issued the following service information:

- Airbus Service Bulletin A330–55–3043, dated February 7, 2013.
- Airbus Service Bulletin A340–55–4039, dated February 7, 2013.
- Airbus Service Bulletin A340–55–5007, dated February 7, 2013.

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

FAA's Determination and Requirements of 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.

Costs of Compliance

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

We also estimate that it would take about 45 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 $210,375, or $3,825 per product.

We have received no definitive data that would enable us to provide cost estimates for the on-condition actions specified in this proposed AD.

Paperwork Reduction Act

A federal agency may not conduct or sponsor, and a person is not required to respond to, nor shall a person be subject to penalty for failure to comply with a collection of information subject to the requirements of the Paperwork Reduction Act unless that collection of information displays a current valid OMB control number. The control number for the collection of information required by this proposed AD is 2120–0056. The paperwork cost associated with this proposed AD has been detailed in the Costs of Compliance section of this document and includes time for reviewing instructions, as well as completing and reviewing the collection of information. Therefore, all reporting associated with this proposed

AD is mandatory. Comments concerning the accuracy of this burden and suggestions for reducing the burden should be directed to the FAA at 800 Independence Ave. SW., Washington, DC 20591, ATTN: Information Collection Clearance Officer, AES–200.

Authority for This Rulemaking

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

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

Regulatory Findings

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

For the reasons discussed above, I certify this proposed regulation:

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

List of Subjects in 14 CFR Part 39

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

The Proposed Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

Airbus: Docket No. FAA–2014–0928; Directorate Identifier 2014–NM–040–AD.

(a) Comments Due Date

We must receive comments by February 12, 2015.

(b) Affected ADs

None.

(c) Applicability

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

(1) Airbus Model A330–201, –202, –203, –223, –223F, –243, –243F, –301, –302, –303, –321, –322, –323, –341, –342, and –343 airplanes, all manufacturer serial numbers.

(2) Airbus Model A340–211, –212, –213, –311, –312, –313, –541, and –642 airplanes, all manufacturer serial numbers.

(d) Subject

Air Transport Association (ATA) of America Code 55, Stabilizers.

(e) Reason

This AD was prompted by a report of skin disbonding on a composite side panel of a rudder installed on an A310 airplane. We are issuing this AD to detect and correct the rudder skin disbonding, which could affect the structural integrity of the rudder, and could result in reduced controllability of the airplane.

(f) Compliance

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

(g) Review the Maintenance Records

Within 24 months after the effective date of this AD: Review the maintenance records of the rudder to determine if any composite side shell panel repair has been accomplished on the rudder since first installation on an airplane.

(1) If, based on the maintenance record review, any repair identified in Figure A–GBBAA (Sheet 01 and 02) or Figure A–GBCAA (Sheet 02) of the service information specified in paragraphs (g)(1)(i) through (g)(1)(iii) of this AD is found: Within 24 months after the effective date of this AD, do a thermography inspection for repair, damages, and fluid ingress, limited to the repaired areas, in accordance with the Accomplishment Instructions of the applicable service information specified in paragraphs (g)(1)(i) through (g)(1)(iii) of this AD:

(i) Airbus Service Bulletin A330–55–3043, dated February 7, 2013 (for Model A330–201, –202, –203, –223, –223F, –243, –243F, –301, –302, –303, –321, –322, –323, –341, –342, and –343 airplanes).

(ii) Airbus Service Bulletin A340–55–4039, dated February 7, 2013 (for Model A340–211, –212, –213, –311, –312, and –313 airplanes).

(iii) Airbus Service Bulletin A340–55–5007, dated February 7, 2013 (for Model A340–541 and –642 airplanes).

(2) For a rudder for which maintenance records are unavailable or incomplete, do the actions specified in paragraph (g)(2)(i) and (g)(2)(ii) of this AD:

(i) No later than 3 months before accomplishment of the thermography inspection, as required by paragraph (g)(2)(ii) of this AD, contact Airbus to request related rudder manufacturing reworked data by submitting the serial number of the rudder to Airbus.

(ii) Within 24 months after the effective date of this AD: Do a thermography inspection for any repair on complete side shells to identify and mark any repair, in accordance with the Accomplishment Instructions of the applicable service information specified in paragraphs (g)(1)(i) through (g)(1)(iii) of this AD.

(h) Related Investigative Actions, Corrective Actions, and Repetitive Inspections

After the inspection as required by paragraph (g)(1) or (g)(2) of this AD: At the applicable compliance times specified in paragraph 1.E., ''Compliance,'' of Tables 3, 4A, 4B, 4C, 4D, and 5 of the applicable service information specified in paragraphs (g)(1)(i) through (g)(1)(iii) of this AD, accomplish all applicable related investigative and corrective actions, in accordance with the Accomplishment Instructions of the applicable service information specified in paragraphs (g)(1)(i) through (g)(1)(iii) of this AD; except as provided by paragraphs (i)(1) and (i)(2) of this AD. Options provided in the service information specified in paragraphs (g)(1)(i) through (g)(1)(iii) of this AD for accomplishing the actions are acceptable for the corresponding requirements of this paragraph provided that the related investigative and corrective actions are done at the applicable times specified in paragraph 1.E., ''Compliance,'' of the applicable service information specified in paragraphs (g)(1)(i) through (g)(1)(iii) of this AD, including applicable repetitive inspection intervals. Thereafter repeat the inspections of the restored and repaired areas at the applicable compliance time specified in paragraph 1.E., ''Compliance,'' of Tables 3, 4A, 4B, 4C, 4D, and 5 of the applicable service information specified in paragraphs (g)(1)(i) through (g)(1)(iii) of this AD.

(i) Exceptions to the Service Information

(1) Where the applicable service information specified in paragraphs (g)(1)(i) through (g)(1)(iii) of this AD specifies a compliance time relative to the date of the service information, this AD requires compliance within the specified compliance time after the effective date of this AD.

(2) If the service information in paragraphs (g)(1)(i) through (g)(1)(iii) of this AD specifies to contact Airbus: At the applicable

compliance times specified in paragraph 1.E., ''Compliance,'' of the applicable service information specified in paragraphs (g)(1)(i) through (g)(1)(iii) of this AD, repair 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).

(j) Provisions for Certain Airplanes

Airplanes fitted with a rudder having a serial number (S/N) that is not in the range of S/N TS–1001 through S/N TS–1043 inclusive, S/N TS–2001 through S/N TS–2074 inclusive, S/N TS–3000 through S/N TS–3525 inclusive, S/N TS–4001 through S/N TS–4170 inclusive, S/N TS–6001 through S/N TS–6246 inclusive, or S/N TS–5001 through S/N TS–5138 inclusive, are not affected by the requirements of paragraphs (g) and (h) of this AD provided that it is determined that no repair has been accomplished on the composite side shell panel of that rudder since first installation on the airplane.

(k) Parts Installation Limitations

As of the effective date of this AD, no person may install, on any airplane, a rudder, unless the record review and thermography inspection specified in paragraph (g) of this AD has been done on that rudder and thereafter all applicable related investigative actions, repetitive inspections, and corrective actions are done as required by paragraph (h) of this AD, except as provided in paragraph (j) of this AD.

(l) Repair Prohibition

As of the effective date of this AD, no person may accomplish a side shell repair on any rudder using a structure repair manual procedure identified in Figure A–GBBAA (Sheet 01 and 02) or Figure A–GBCAA (Sheet 02) of the service information specified in paragraphs (g)(1)(i) through (g)(1)(iii) of this AD, as applicable, on any airplane.

(m) 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 EASA; or Airbus's EASA DOA. If approved by the DOA, the approval must include the DOA-authorized signature.

(3) *Reporting Requirements:* A federal agency may not conduct or sponsor, and a person is not required to respond to, nor shall a person be subject to a penalty for failure to comply with a collection of information subject to the requirements of the Paperwork Reduction Act unless that collection of information displays a current valid OMB Control Number. The OMB Control Number for this information collection is 2120–0056. Public reporting for this collection of information is estimated to be approximately 5 minutes per response, including the time for reviewing instructions, completing and reviewing the collection of information. All responses to this collection of information are mandatory. Comments concerning the accuracy of this burden and suggestions for reducing the burden should be directed to the FAA at: 800 Independence Ave. SW., Washington, DC 20591, Attn: Information Collection Clearance Officer, AES–200.

(n) Related Information

(1) Refer to Mandatory Continuing Airworthiness Information (MCAI) EASA Airworthiness Directive 2014–0033, dated February 4, 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–2014–0928.

(2) For service information identified in this AD, contact Airbus SAS, Airworthiness Office—EAL, 1 Rond Point Maurice Bellonte, 31707 Blagnac Cedex, France; telephone +33 5 61 93 36 96; fax +33 5 61 93 45 80; email *airworthiness.A330-A340@airbus.com;* Internet *http://www.airbus.com.* You may view this 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 December 17, 2014.

Michael Kaszycki,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 2014–30270 Filed 12–24–14; 8:45 am]

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SECURITIES AND EXCHANGE COMMISSION

17 CFR Chapter II

[Release Nos. 33–9694, 34–73891, 39–2500, IC–31389; IA–3986; File No. S7–13–14]

List of Rules To Be Reviewed Pursuant to the Regulatory Flexibility Act

AGENCY: Securities and Exchange Commission.

ACTION: Publication of list of rules scheduled for review.

SUMMARY: The Securities and Exchange Commission is publishing a list of rules to be reviewed pursuant to Section 610 of the Regulatory Flexibility Act. The list is published to provide the public with notice that these rules are scheduled for review by the agency and to invite public comment on whether the rules should be continued without change, or should be amended or rescinded to minimize any significant economic impact of the rules upon a substantial number of such small entities.

DATES: Comments should be submitted by January 28, 2015.

ADDRESSES: Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/other.shtml*); or
- Send an email to *rule-comments@sec.gov.* Please include File Number S7–13–14 on the subject line; or
- Use the Federal eRulemaking Portal (*http://www.regulations.gov*). Follow the instructions for submitting comments.

Paper Comments

- Send paper comments to Brent Fields, Secretary, Securities and Exchange Commission, 100 F Street NE., Washington, DC 20549–1090.

All submissions should refer to File No. S7–13–14. This file number should be included on the subject line if email is used. To help us 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/other.shtml*). Comments also are 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. All comments received will be posted without change; we do not edit personal

identifying information from submissions. You should submit only information that you wish to make available publicly.

FOR FURTHER INFORMATION CONTACT: Anne Sullivan, Office of the General Counsel, 202–551–5019.

SUPPLEMENTARY INFORMATION: The Regulatory Flexibility Act (''RFA''), codified at 5 U.S.C. 600–611, requires an agency to review its rules that have a significant economic impact upon a substantial number of small entities within ten years of the publication of such rules as final rules. 5 U.S.C. 610(a). The purpose of the review is ''to determine whether such rules should be continued without change, or should be amended or rescinded . . . to minimize any significant economic impact of the rules upon a substantial number of such small entities.'' 5 U.S.C. 610(a). The RFA sets forth specific considerations that must be addressed in the review of each rule:

- The continued need for the rule;
- the nature of complaints or comments received concerning the rule from the public;
- the complexity of the rule;
- the extent to which the rule overlaps, duplicates or conflicts with other federal rules, and, to the extent feasible, with state and local governmental rules; and
- the length of time since the rule has been evaluated or the degree to which technology, economic conditions, or other factors have changed in the area affected by the rule. 5 U.S.C. 610(c).

The Securities and Exchange Commission, as a matter of policy, reviews all final rules that it published for notice and comment to assess not only their continued compliance with the RFA, but also to assess generally their continued utility. When the Commission implemented the Act in 1980, it stated that it ''intend[ed] to conduct a broader review [than that required by the RFA], with a view to identifying those rules in need of modification or even rescission.'' Securities Act Release No. 6302 (Mar. 20, 1981), 46 FR 19251 (Mar. 30, 1981). The list below is therefore broader than that required by the RFA, and may include rules that do not have a significant economic impact on a substantial number of small entities. Where the Commission has previously made a determination of a rule's impact on small businesses, the determination is noted on the list.

The Commission particularly solicits public comment on whether the rules listed below affect small businesses in new or different ways than when they were first adopted.[1] The rules and forms listed below are scheduled for review by staff of the Commission during the next 12 months. The list includes 25 rules adopted by the Commission in 2003.

Title: Transactions of Investment Companies With Portfolio and Subadviser Affiliates

Citation: 17 CFR 270.10f–3; 17 CFR 270.12d3–1; 17 CFR 270.17a–6; 17 CFR 270.17a–10; 17 CFR 270.17d–1; 17 CFR 270.17e–1

Authority: 15 U.S.C. 80a–1 *et seq.,* 80a–34(d), 80a–37, 80a–39.

Description: The rule and rule amendments (i) expand the exemptions for investment companies (''funds'') to engage in transactions with ''portfolio affiliates''—companies that are affiliated with the fund solely as a result of the fund (or an affiliated fund) controlling them or owning more than five percent of their voting securities and (ii) permit funds to engage in transactions with subadvisers of affiliated funds.

Prior Commission Determination Under 5 U.S.C. 601: A Final Regulatory Flexibility Analysis was prepared in accordance with Section 604 of the Regulatory Flexibility Act in conjunction with the adoption of Release No. IC–25888 (January 14, 2003). The Commission considered comments to the proposing release and to the Initial Regulatory Flexibility Analysis prepared in Release No. IC–25557 (Apr. 30, 2002) at that time.

* * * * *

Title: Conditions for Use of Non-GAAP Financial Measures

Citation: 17 CFR 244.100, 17 CFR 244.101, 17 CFR 244.102, and 17 CFR 229.10.

Authority: 15 U.S.C. 77b(b), 15 U.S.C. 77f, 15 U.S.C. 77g, 15 U.S.C. 77h, 15 U.S.C. 77s(a), 15 U.S.C. 77z–3, 15 U.S.C. 78c, 15 U.S.C. 78d, 15 U.S.C. 78j, 15 U.S.C. 78*l*, 15 U.S.C. 78m, 15 U.S.C. 78*o,* 15 U.S.C. 78w, 15 U.S.C. 78mm, 15 U.S.C. 7202(a), and 15 U.S.C. 7261.

Description: The Commission adopted rules and amendments requiring public companies that disclose or release financial information that is calculated or presented on the basis of methodologies other than in accordance with Generally Accepted Accounting Principles (GAAP) to include, in that disclosure or release, a presentation of the most directly comparable GAAP financial measure and a reconciliation of the disclosed non-GAAP financial measure to that measure. The amendments also provide additional guidance to registrants that include non-GAAP financial measures in Commission filings and require registrants to furnish to the Commission earnings releases or similar announcements on Form 8–K.

Prior Commission Determination Under 5 U.S.C. 610: Pursuant to Section 605(b) of the Regulatory Flexibility Act, the Chairman of the Commission certified that the rules and amendments would not have a significant economic impact on a substantial number of small entities in Release No. 33–8145 (November 5, 2002). The Commission solicited comments concerning the impact on small entities and the RFA certification, but received no comments. The final rule was adopted by the Commission in Release No. 33–8176 (January 22, 2003).

* * * * *

Title: Insider Trades During Pension Fund Blackout Periods

Citation: 17 CFR 240.13a–11, 17 CFR 240.15d–11, 17 CFR 245.100, 17 CFR 245.101, 17 CFR 245.102, 17 CFR 245.103, and 17 CFR 245.104.

Authority: 15 U.S.C. 78c, 15 U.S.C. 78m, 15 U.S.C. 78w(a), 15 U.S.C. 78mm, 15 U.S.C. 80a–29, 15 U.S.C. 80a–37, 15 U.S.C. 7202(a), and 15 U.S.C. 7244(a).

Description: The Commission adopted rules and amendments to clarify the application and prevent the evasion of Section 306(a) of the Sarbanes-Oxley Act of 2002, which prohibits any director or executive officer of an equity security issuer from acquiring or transferring any equity security of the issuer during a pension plan blackout period that temporarily prevents plan participants or beneficiaries from engaging in equity securities transactions through their plan accounts, if the director or executive officer acquired the equity security in connection with his or her service or employment as a director or executive officer. In addition, the rules specify the content and timing of the notice that issuers must provide to their directors and executive officers, and to the Commission about the imposition of a pension plan blackout period.

Prior Commission Determination Under 5 U.S.C. 610: A Final Regulatory Flexibility Analysis was prepared in accordance with Section 604 of the Regulatory Flexibility Act in conjunction with the adoption of Release No. 34–47225 (January 22, 2003). The Commission considered comments received on the proposing release and the Initial Regulatory Flexibility Analysis prepared in Release

[1] Several of the rulemakings identified below included non-substantive rule amendments, such as conforming cross references. The Commission requests that commenters focus on the substantive aspects of the rulemakings indicated in the list.

No. 34–46778 (November 6, 2002) at that time.

* * * * *

Title: Disclosure Required by Sections 406 and 407 of the Sarbanes-Oxley Act of 2002.

Citation: 17 CFR 229.401 and 17 CFR 229.406.

Authority: 15 U.S.C. 77e, 15 U.S.C. 77f, 15 U.S.C. 77g, 15 U.S.C. 77j, 15 U.S.C. 77q, 15 U.S.C. 77s, 15 U.S.C. 77z–3, 15 U.S.C. 78*l,* 15 U.S.C. 78m, 15 U.S.C. 78*o,* 15 U.S.C. 78w, 15 U.S.C. 78mm, 15 U.S.C. 7202(a), 15 U.S.C. 7264, and 15 U.S.C. 7265.

Description: The Commission adopted amendments to require companies, other than registered investment companies, to disclose information relating to whether an audit committee financial expert serves on the company's audit committee and the adoption and implementation of a code of ethics that applies to its principal executive officer, principal financial officer, principal accounting officer or controller, or persons performing similar functions.

Prior Commission Determination Under 5 U.S.C. 610: A Final Regulatory Flexibility Analysis was prepared in accordance with Section 604 of the Regulatory Flexibility Act in conjunction with the adoption of Release No. 33–8177 (January 23, 2003). The Commission considered comments received on the proposing release and the Initial Regulatory Flexibility Analysis prepared in Release No. 33–8138 (October 22, 2002) at that time.

* * * * *

Title: Retention of Records Relevant to Audits and Reviews

Citation: 17 CFR 210 2–06

Authority: 15 U.S.C. 7202(a), 18 U.S.C. 1519, 15 U.S.C. 77g, 15 U.S.C. 77h, 15 U.S.C. 77j, 15 U.S.C. 77s, 15 U.S.C. 77z–3, 15 U.S.C. 78c, 15 U.S.C. 78j–1, 15 U.S.C. 78l, 15 U.S.C. 78m, 15 U.S.C. 78n, 15 U.S.C. 78q, 15 U.S.C. 78w, 15 U.S.C. 78mm, 15 U.S.C. 80a–8, 15 U.S.C. 80a–29, 15 U.S.C. 80a–30, 15 U.S.C. 80a–31, and 15 U.S.C. 80a–37.

Description: The rules were adopted pursuant to Section 802 of the Sarbanes-Oxley Act of 2002 to require accounting firms to retain for seven years certain records relevant to their audits and reviews of issuers' financial statements. Records to be retained include an accounting firm's workpapers and certain other documents that contain conclusions, opinions, analyses, or financial data related to the audit or review.

Prior Commission Determination Under 5 U.S.C. 601: A Final Regulatory Flexibility Act Analysis was prepared in accordance with Section 604 of the Regulatory Flexibility Act in conjunction with the adoption of Release No. 33–8189 (January 24, 2003). The Commission considered comments to the proposing release and to the Initial Regulatory Flexibility Analysis prepared in Release No. 33–8151 (November 21, 2002) at that time.

* * * * *

Title: Certification of Management Investment Company Shareholder Reports and Designation of Certified Shareholder Reports as Exchange Act Periodic Reporting Forms; Disclosure Required by Sections 406 and 407 of the Sarbanes-Oxley Act of 2002.

Citation: 17 CFR 270.8b–15; 17 CFR 270.30a–1; 17 CFR 270.30a–2; 17 CFR 270.30a–3; 17 CFR 270.30b1–1; 17 CFR 270.30b1–3; 17 CFR 270.30b2–1; 17 CFR 270.30d–1; 17 CFR 274.101; 17 CFR 274.128.

Authority: 15 U.S.C. 77f, 77g, 77h, 77j, 77s, 78c(b), 78l, 78m, 78n, 78o(d), 80a–1 *et seq.,* 80a–8, 80a–24, 80a–26, 80a–29, 80a–34(d), 80a–37, 80a–39, secs. 3(a) and 302, Pub. L. 107–204, 116 Stat. 745.

Description: The Commission adopted rule and form amendments to require registered management investment companies to file certified shareholder reports on new Form N–CSR in accordance with Section 302 of the Sarbanes-Oxley Act. The Commission also adopted new rules to require registered investment management companies to maintain disclosure controls and procedures, to disclose whether they had adopted a code of ethics for their principal executive and senior financial officers, and to disclose whether they have at least one ''audit committee financial expert'' serving on their audit committees, as required by that Act.

Determination Under 5 U.S.C. 601: A Final Regulatory Flexibility Analysis was prepared in accordance with Section 604 of the Regulatory Flexibility Act in conjunction with the adoption of Release No. IC–25914 (January 27, 2003). The Commission considered comments to the proposing release and to the Initial Regulatory Flexibility Analysis prepared in Release Nos. IC–25723 (Aug. 30, 2002) and 25775 (Oct. 22, 2002) at that time.

* * * * *

Title: Disclosure in Management's Discussion and Analysis about Off-Balance Sheet Arrangements and Aggregate Contractual Obligations.

Citation: 17 CFR 229.303.

Authority: 15 U.S.C. 77g, 15 U.S.C. 77j, 15 U.S.C. 77s, 15 U.S.C. 77z–2, 15 U.S.C. 77z–3, 15 U.S.C. 78*l,* 15 U.S.C. 78m, 15 U.S.C. 78n, 15 U.S.C. 78u–5, 15 U.S.C. 78w, 15 U.S.C. 78mm, 15 U.S.C. 7202(a), and 15 U.S.C. 7261(a).

Description: The Commission adopted the amendments to require disclosure of off-balance sheet arrangements in a separately captioned subsection of the Management's Discussion and Analysis section of a registrant's disclosure documents. The amendments also require registrants, other than smaller reporting companies, to provide tabular disclosure of aggregate contractual obligations as of the latest fiscal year-end balance sheet date.

Prior Commission Determination Under 5 U.S.C. 610: A Final Regulatory Flexibility Analysis was prepared in accordance with Section 604 of the Regulatory Flexibility Act in conjunction with the adoption of Release No. 33–8182 (January 28, 2003). The Commission solicited comments concerning the impact on small entities and the Initial Regulatory Flexibility Analysis prepared in Release No. 33–8144 (November 4, 2002), but received no comments.

* * * * *

Title: Implementation of Standards of Professional Conduct for Attorneys

Citation: 17 CFR part 205.

Authority: 15 U.S.C. 7202, 7245, 7262.

Description: The Commission adopted a rule establishing standards of professional conduct for attorneys who appear and practice before the Commission on behalf of issuers. Section 307 of the Sarbanes-Oxley Act of 2002 requires the Commission to prescribe minimum standards of professional conduct for attorneys appearing and practicing before the Commission in any way in the representation of issuers. The rule requires an attorney to report evidence of a material violation of securities laws or breach of fiduciary duty or similar violation by the issuer up-the-ladder within the company.

Prior Commission Determination Under 5 U.S.C. 610: A Final Regulatory Flexibility Analysis was prepared in accordance with Section 604 of the Regulatory Flexibility Act in conjunction with the adoption of Release No. 33–8185 (January 29, 2003). The Commission solicited comments concerning the impact on small entities and the Initial Regulatory Flexibility Analysis prepared in Release No. 33–8150 (Nov. 21, 2002), but received no comments.

* * * * *

Title: Proxy Voting by Investment Advisers

Citation: 17 CFR 275.204–2; 17 CFR 275.206(4)–6.

Authority: 15 U.S.C. 80b–2(a)(11)(F), 80b–2(a)(17), 80b–3, 80b–4, 80b–6(4), 80b–6a, 80b–11.

Description: The rule and rule amendments require investment advisers that exercise voting authority over client securities to adopt written policies and procedures that are reasonably designed to ensure the adviser votes proxies in the best interest of clients, disclose to clients information about those policies and procedures and how clients may obtain information on how the adviser has voted their proxies, and retain certain records relating to proxy voting.

Prior Commission Determination Under 5 U.S.C. 601: A Final Regulatory Flexibility Analysis was prepared in accordance with Section 604 of the Regulatory Flexibility Act regarding rule 206(4)–6 and rule 204–2 under the Investment Advisers Act of 1940 in conjunction with the adoption of Release No. IA–2106 (January 31, 2003). The Commission considered comments to the proposing release and to the Initial Regulatory Flexibility Analysis prepared in Release No. IA–2059 (September 20, 2002) at that time.

* * * * *

Title: Disclosure of Proxy Voting Policies and Proxy Voting Records by Registered Management Investment Companies

Citation: 17 CFR 270.30b1–4; 17 CFR 274.11A; 17 CFR 274.11a–1; 17 CFR 274.11b; 17 CFR 274.128; 17 CFR 274.130.

Authority: 15 U.S.C. 77f, 77g, 77h, 77j, 77s, 78c(b), 78l, 78m, 78n, 78o(d), 80a–1 *et seq.,* 80a–24, 80a–26, and 80a–29, 80a–34(d), 80a–37, 80a–39.

Description: The rule and rule amendments require registered management investment companies (i) to provide disclosure about how they vote proxies relating to portfolio securities they hold, (ii) to disclose the policies and procedures that they use to determine how to vote proxies relating to portfolio securities, and (iii) to file with the Commission and to make available to shareholders the specific proxy votes that they cast in shareholder meetings of issuers of portfolio securities.

Determination Under 5 U.S.C. 601: A Final Regulatory Flexibility Analysis was prepared in accordance with Section 604 of the Regulatory Flexibility Act in conjunction with the adoption of Release No. IC–25922 (January 31, 2003). The Commission considered comments to the proposing release and to the Initial Regulatory Flexibility Analysis prepared in Release No. IC–25739 (Sept. 20, 2002) at that time.

* * * * *

Title: Custody of Investment Company Assets with a Securities Depository

Citation: 17 CFR 270.17f–4.

Authority: 15 U.S.C. 80a–1 *et seq.,* 80a–34(d), 80a–37, 80a–39.

Description: The rule amendments expand the types of investment companies that may maintain assets with a depository, and update the conditions they must follow to use a depository. The amendments respond to developments in securities depository practices and commercial law since the rule was adopted.

Prior Commission Determination Under 5 U.S.C. 601: A Final Regulatory Flexibility Analysis was prepared in accordance with Section 604 of the Regulatory Flexibility Act in conjunction with the adoption of Release No. IC–25934 (February 13, 2003). The Commission considered comments to the proposing release and to the Initial Regulatory Flexibility Analysis prepared in Release No. IC–25266 (Nov. 15, 2001) at that time.

* * * * *

Title: Definition of Terms in and Specific Exemptions for Banks, Savings Associations, and Savings Banks Under Sections 3(a)(4) and 3(a)(5) of the Securities Exchange Act of 1934

Citation: 17 CFR 240.3a5–1, 17 CFR 240.3b–18, 17 CFR 240.15a–8, and 17 CFR 240.15a–11

Authority: 15 U.S.C. 77c, 77d, 77g, 77j, 77s, 77z–2, 77z–3, 77eee, 77ggg, 77nnn, 77sss, 77ttt, 78c, 78d, 78e, 78f, 78g, 78i, 78j, 78j–1, 78k, 78k–1, 78*l,* 78m, 78n, 78o, 78p, 78q, 78s, 78u–5, 78w, 78x, 78*ll,* 78mm, 79q, 79t, 80a–20, 80a–23, 80a–29, 80a–37, 80b–3, 80b–4, and 80b–11.

Description: The Commission adopted amendments to its rule granting an exemption to banks from dealer registration for a de minimis number of riskless principal transactions, and to its rule that defines terms used in the bank exception to dealer registration for asset-backed transactions. The Commission also adopted a new exemption for banks from the definition of broker and dealer under the Securities Exchange Act of 1934 for certain securities lending transactions. In addition, the Commission extended the exemption from rescission liability under Exchange Act Section 29 to contracts entered into by banks acting in a dealer capacity before March 31, 2005. These rules addressed certain of the exceptions for banks from the definitions of ''broker'' and ''dealer'' that were added to the Securities Exchange Act by the Gramm-Leach-Bliley Act.

Prior Commission Determination Under 5 U.S.C. 610: Pursuant to Section 605(b) of the Regulatory Flexibility Act, the Commission certified that the amendment to the rule would not have a significant economic impact on a substantial number of small entities. This certification was incorporated into the proposing release, Release No. 34–46745 (November 5, 2002). As stated in the adopting release, No. 34–47364 (February 14, 2003), the Commission received no comments concerning the impact on small entities or the Regulatory Flexibility Act Certification.

* * * * *

Title: Regulation Analyst Certification

Citation: 17 CFR 242.500 through 505.

Authority: 15 U.S.C. 77g, 77q(a), 77s(a), 78b, 78c, 78g(c)(2), 78i(a), 78j, 78k–1(c), 78*l,* 78m, 78mm, 78n, 78o(b), 78o(c), 78o(g), 78q(a), 78q(b), 78q(h), 78w(a), 78dd–1, 80a–23, 80a–29, and 80a–37.

Description: Regulation Analyst Certification (''Regulation AC'') requires that brokers, dealers, and certain persons associated with a broker or dealer include in research reports certifications by the research analyst that the views expressed in the report accurately reflect his or her personal views, and disclose whether or not the analyst received compensation or other payments in connection with his or her specific recommendations or views. Broker-dealers are also required to obtain periodic certifications by research analysts in connection with the analyst's public appearances.

Prior Commission Determination Under 5 U.S.C. 610: Pursuant to Section 605(b) of the Regulatory Flexibility Act, the Commission certified that Regulation AC would not have a significant economic impact on a substantial number of small entities. This certification, including the reasons supporting the certification, was set forth in the proposing release, Release No. 33–8119 (August 2, 2002). The Commission solicited comments on the potential impact of Regulation AC on small entities in the proposing release. No comments were received that discussed the Regulatory Flexibility Act Certification. However, in the adopting release, Release No. 33–8193 (February 20, 2003), in response to other comments, the Commission revised its estimates and concluded that the total burden in hours required to comply with proposed Regulation AC would be approximately 5.78 hours per year, per small firm, as compared to the original estimate of two hours and two minutes per year, per small firm.

* * * * *

Title: Standards Relating to Listed Company Audit Committees

Citation: 17 CFR 229.401 and 17 CFR 240.10A–3.

Authority: 15 U.S.C. 77b, 15 U.S.C. 77f, 15 U.S.C. 77g, 15 U.S.C. 77h, 15 U.S.C. 77j, 15 U.S.C. 77q, 15 U.S.C. 77s, 15 U.S.C. 78c(b), 15 U.S.C. 78j–1, 15 U.S.C. 78*l,* 15 U.S.C. 78m, 15 U.S.C. 78n, 15 U.S.C. 78*o,* 15 U.S.C. 78w, 15 U.S.C. 78mm, 15 U.S.C. 80a–8, 15 U.S.C. 80a–20, 15 U.S.C. 80a–24(a), 15 U.S.C. 80a–29, 15 U.S.C. 80a–37, and 15 U.S.C. 7202.

Description: The Commission adopted rules to direct the national securities exchanges and national securities associations to prohibit the listing of any security of an issuer that is not in compliance with the audit committee requirements mandated by the Sarbanes-Oxley Act of 2002. In addition, the Commission adopted amendments changing its disclosure requirements regarding audit committees.

Prior Commission Determination Under 5 U.S.C. 610: A Final Regulatory Flexibility Analysis was prepared in accordance with Section 604 of the Regulatory Flexibility Act in conjunction with the adoption of Release No. 33–8220 (April 9, 2003). The Commission solicited comments concerning the impact on small entities and the Initial Regulatory Flexibility Analysis prepared in Release No. 33–8173 (January 8, 2003), but received no comments.

* * * * *

Title: Customer Identification Programs for Mutual Funds

Citation: 17 CFR 270.0–11

Authority: 15 U.S.C. 80a–1 *et seq.,* 80a–34(d), 80a–37, 80a–39.

Description: The rule implements section 326 of the USA PATRIOT Act of 2001 and requires investment companies (i) to implement procedures to verify the identity of any person seeking to open an account, (ii) to the extent reasonable and practicable, to maintain records of the information used to verify the person's identity, and (iii) to determine whether the person appears on any lists of known or suspected terrorists or terrorist organizations provided to investment companies by any government agency.

Prior Commission Determination Under 5 U.S.C. 601: A Final Regulatory Flexibility Analysis was prepared in accordance with Section 604 of the Regulatory Flexibility Act in conjunction with the adoption of Release No. IC–26031 (April 29, 2003). The Commission considered comments to the proposing release and to the Initial Regulatory Flexibility Analysis prepared in Release No. 34–46192 (July 12, 2002) at that time.

* * * * *

Title: Improper Influence on Conduct of Audits

Citation: 17 CFR 240 13b2–2.

Authority: 15 U.S.C. 7202(a), 15 U.S.C. 7242, 15 U.S.C. 77e, 15 U.S.C. 77f, 15 U.S.C. 77g, 15 U.S.C. 77h, 15 U.S.C. 77j, 15 U.S.C. 77s, 15 U.S.C. 78c, 15 U.S.C. 78j–1, 15 U.S.C 78l, 15 U.S.C. 78m, 15 U.S.C. 78n, 15 U.S.C. 78o, 15 U.S.C. 78q, 15 U.S.C. 78w, 15 U.S.C. 80a–6, 15 U.S.C. 80a–8, 15 U.S.C 80a–20, 15 U.S.C. 80a–29, 15 U.S.C 80a–30, and 15 U.S.C. 80a–37.

Description: The rules were adopted pursuant to the requirements of Section 303 of the Sarbanes-Oxley Act of 2002 to prohibit officers and directors of an issuer, and persons acting under the direction of an officer or director, from taking any action to coerce, manipulate, mislead, or fraudulently influence the auditor of the issuer's financial statements if that person knew or should have known that such action, if successful, could result in rendering the financial statements materially misleading.

Prior Commission Determination Under 5 U.S.C. 601: A Final Regulatory Flexibility Act Analysis was prepared in accordance with Section 604 of the Regulatory Flexibility Act in conjunction with the adoption of Release No. 34–47890 (May 20, 2003). The Commission considered comments to the proposing release and to the Initial Regulatory Flexibility Analysis prepared in Release No. 34–46685 (October 18, 2002) at that time.

* * * * *

Title: Management's Reports on Internal Control Over Financial Reporting and Certification of Disclosure in Exchange Act Periodic Reports

Citation: 17 CFR 210.1–02, 17 CFR 210.2–02, 17 CFR 229.307, 17 CFR 229.308, 17 CFR 240.12b–15, 17 CFR 240.13a–14, 17 CFR 240.13a–15, 17 CFR 240.15d–14, 17 CFR 240.15d–15.

Authority: 15 U.S.C. 77e, 15 U.S.C. 77f, 15 U.S.C. 77g, 15 U.S.C. 77j, 15 U.S.C. 77q, 15 U.S.C. 77s, 15 U.S.C. 78*l,* 15 U.S.C. 78m, 15 U.S.C. 78*o,* 15 U.S.C. 78w, 15 U.S.C. 78mm, 15 U.S.C. 80a–8, 15 U.S.C. 80a–29, 15 U.S.C. 80a–30, 15 U.S.C. 80a–37, 15 U.S.C. 7202(a), 15 U.S.C. 7241, 15 U.S.C. 7262, 15 U.S.C. 7263, and 18 U.S.C. 1350.

Description: The rules and amendments were adopted in light of Congress' directive in Section 404 of the Sarbanes-Oxley Act of 2002 to require reporting companies, other than registered investment companies, to include in their annual reports a report of management on the company's internal control over financial reporting. The internal control report must include management's assessment of the effectiveness of the company's internal control over financial reporting as of the end of its most recent fiscal year, as well as a statement that the registered public accounting firm that audited the company's financial statements included in the annual report has issued an attestation report on management's assessment. The rules also require companies to file the registered public accounting firm's attestation report as part of its annual report. Further, the rules require that management evaluate any change in the company's internal control over financial reporting that occurred during a fiscal quarter that has or is reasonably likely to materially affect the company's internal control over financial reporting. In addition, the amendments require companies to provide the certifications required by Sections 302 and 906 of the Sarbanes-Oxley Act as exhibits to certain periodic reports.

In 2010, the Dodd-Frank Wall Street Reform and Consumer Protection Act amended Section 404 of the Sarbanes-Oxley Act to provide that Section 404(b) shall not apply with respect to any audit report prepared for an issuer that is neither an accelerated filer, nor a large accelerated filer, as defined in Exchange Act Rule 12b–2. In 2010, the Commission adopted conforming amendments to its rules.

Prior Commission Determination Under 5 U.S.C. 610: A Final Regulatory Flexibility Analysis was prepared in accordance with Section 604 of the Regulatory Flexibility Act in conjunction with the adoption of Release No. 33–8238 (June 5, 2003). The Commission solicited comments with respect to the rules and amendments in two separate proposing releases, Release Nos. 33–8138 (October 22, 2002) and 33–8212 (March 21, 2003). The Commission also solicited comments concerning the impact on small entities and the Initial Regulatory Flexibility Analysis, but received no comments on the impact on small entities of the new certification requirements.

* * * * *

Title: Certain Research and Development Companies

Citation: 17 CFR 270.3a–8

Authority: 15 U.S.C. 80a–1 *et seq.,* 80a–34(d), 80a–37, 80a–39.

Description: The rule provides a nonexclusive safe harbor from the definition of an investment company for

certain bona fide research and development companies.

Prior Commission Determination Under 5 U.S.C. 601: A Final Regulatory Flexibility Analysis was prepared in accordance with Section 604 of the Regulatory Flexibility Act in conjunction with the adoption of Release No. IC–26077 (June 16, 2003). The Commission solicited comments concerning the impact on small entities and the Initial Regulatory Flexibility Analysis prepared in Release No. IC–25835 (Nov. 26, 2002) but received no comments.

* * * * *

Title: Custody of Funds or Securities of Clients by Investment Advisers

Citation: 17 CFR 275.206(4)–2; 17 CFR 279.1

Authority: 15 U.S.C. 80b–1 *et seq.,* 80b–2(a)(11)(F), 80b–2(a)(17), 80b–3, 80b–4, 80b–6(4), 80b–6a, 80b–11

Description: The amendments to the custody rule conformed the rule to modern custodial practices and required advisers that have custody of client funds or securities to maintain those assets with broker-dealers, banks, or other qualified custodians. The amendments were designed to enhance protections for client assets while reducing burdens on advisers that have custody of client assets.

Prior Commission Determination Under 5 U.S.C. 601: A Final Regulatory Flexibility Analysis was prepared in accordance with Section 604 of the Regulatory Flexibility Act with respect to amended rule 206(4)–2 under the Advisers Act and to amended Part 1A, Item 9 and Part II, Item 14 of Form ADV in conjunction with the adoption of Release No. IA– 2176 (September 25, 2003). The Commission solicited comments concerning the impact on small entities and the Initial Regulatory Flexibility Analysis prepared in Release No. IA–2044 (July 18, 2002), but received no comments.

* * * * *

Title: Amendments to Investment Company Advertising Rules

Citation: 17 CFR 270.34b–1

Authority: 15 U.S.C. 80a–1 *et seq.,* 80a–34(d), 80a–37, 80a–39.

Description: The rule amendments (i) require enhanced disclosure in investment company advertisements to encourage advertisements that convey balanced information to prospective investors, particularly with respect to past performance, and (ii) implement section 24(g) of the Investment Company Act by permitting the use of a prospectus under section 10(b) of the Securities Act with respect to securities issued by an investment company that includes information the substance of which is not included in the investment company's statutory prospectus.

Prior Commission Determination Under 5 U.S.C. 601: A Final Regulatory Flexibility Analysis was prepared in accordance with Section 604 of the Regulatory Flexibility Act in conjunction with the adoption of Release No. IC–26195 (September 29, 2003). The Commission considered comments to the proposing release and to the Initial Regulatory Flexibility Analysis prepared in Release No. IC–25575 (May 17, 2002) at that time.

* * * * *

Title: Purchases of Certain Equity Securities by the Issuer and Others

Citation: 17 CFR 228.703; 17 CFR 229.703; 17 CFR 240.10b–18; 17 CFR 249.220f; 17 CFR 249.308a; 17 CFR 249.308b; 17 CFR 249.310; 17 CFR 249.310b; 17 CFR 249.33117 CFR 270.23c–1; 17 CFR 274.128; 17 CFR 274.201

Authority: 15 U.S.C. 77f, 77g, 77h, 77j, 77K, 77s, 77z–2, 77z–3, 77aa(25), 77aa(26), 77ddd, 77eee, 77ggg, 77hhh, 77iii, 77jjj, 77nnn, 77sss, 77ttt, 78c, 78c(b),), 78d, 78i, 78j, 78j–1, 78k, 78k–1, 78l, 78l, 78m, 78n, 78o, 78p, 78q, 78s, 78l, 78m, 78n, 78o(d), 78u–5, 78w, 78x, 78ll, 78mm, 79e, 79j, 79n, 79q, 79t, 80a–1 *et seq.,* 80a–8, 80a–9, 80a–20, 80a–23, 80a–24, 80a–26, 80a–29, 80a–30, 80a–24, 80a–26, 80a–29, 80a–34(d), 80a–38(a), 80a–37, 80a–39, 80b–3, 80b–4, 80b–11, 7201 *et seq.,* 18 U.S.C. 1350.

Description: The rule amendments provide issuers with a ''safe harbor'' from liability for manipulation when they repurchase their common stock in the market in accordance with the rule's manner, timing, price, and volume conditions. The amendments are intended to simplify and update the safe harbor provisions in light of market developments since the rule's adoption. To enhance the transparency of issuer repurchases, the Commission also adopted amendments to a number of regulations and forms regarding disclosure of repurchases of equity securities by the issuer and affiliated purchasers (both open market and private transactions), regardless of whether the repurchases are effected in accordance with the issuer repurchase safe harbor rule.

Prior Commission Determination Under 5 U.S.C. 601: A Final Regulatory Flexibility Analysis was prepared in accordance with Section 604 of the Regulatory Flexibility Act in conjunction with the adoption of Release No. 33–8335 (November 10, 2003). The Commission solicited comments concerning the impact on small entities and the Initial Regulatory Flexibility Analysis prepared in Release No. 34–46980 (December 10, 2002), but received no comments.

* * * * *

Title: Disclosure Regarding Nominating Committee Functions and Communications Between Security Holders and Boards of Directors

Citation: 17 CFR 270.30a–2; 17 CFR 274.128

Authority: 15 U.S.C. 80a–1 *et seq.,* 80a–34(d), 80a–37, 80a–39.

Description: The rule amendments impose new disclosure requirements and amendments to existing disclosure requirements to enhance the transparency of the operations of boards of directors. Specifically, the Commission adopted enhancements to existing disclosure requirements regarding the operations of board nominating committees and a new disclosure requirement concerning the means, if any, by which security holders may communicate with directors. These rules require disclosure but do not mandate any particular action by a company or its board of directors; rather, the new disclosure requirements are intended to make more transparent to security holders the operation of the boards of directors of the companies in which they invest.

Prior Commission Determination Under 5 U.S.C. 601: A Final Regulatory Flexibility Analysis was prepared in accordance with Section 604 of the Regulatory Flexibility Act in conjunction with the adoption of Release No. IC–26262 (November 24, 2003). The Commission solicited comments on the proposing release and on the Initial Regulatory Flexibility Analysis prepared in Release No. 34–48301 (August 8, 2003). The Commission received no comments on the Initial Regulatory Flexibility Analysis, but it did receive comments on the impact of the proposed rules on small business issuers. The Commission considered those comments in the adopting release.

* * * * *

Title: Processing Requirements for Cancelled Security Certificates

Citation: 17 CFR 240.17f–1, 17 CFR 240.17Ad–7, 17 CFR 240.17Ad–12, and 17 CFR 240.17Ad–19

Authority: 15 U.S.C. 77c, 77d, 77g, 77j, 77s, 77z–2, 77z–3, 77eee, 77ggg, 77nnn, 77sss, 77ttt, 78c, 78d, 78e, 78f, 78g, 78i, 78j, 78j–1, 78k, 78k–1, 78*l,* 78m, 78n, 78o, 78p, 78q, 78s, 78u–5, 78w, 78x, 78*ll,* 78mm, 79q, 79t, 80a–20, 80a–23, 80a–29, 80a–37, 80b–3, 80b–4, 80b–11, 7202, 7241, 7262, and 7263, and 18 U.S.C. 1350.

Description: This rule requires every transfer agent to establish and implement written procedures for the cancellation, storage, transportation, destruction, or other disposition of securities certificates. The rule requires transfer agents to mark each cancelled securities certificate with the word ''cancelled''; maintain a secure storage area for cancelled certificates; maintain a retrievable database of all cancelled, destroyed, or otherwise disposed of certificates; and have specific procedures for the destruction of cancelled certificates. Additionally, the Commission amended its lost and stolen securities rule and its transfer agent safekeeping rule to make it clear that these rules apply to unissued and cancelled certificates.

Prior Commission Determination Under 5 U.S.C. 610: A Final Regulatory Flexibility Analysis was prepared in accordance with Section 604 of the Regulatory Flexibility Act in conjunction with the adoption of Release No. 34–48931 (December 16, 2003). The Commission solicited comment on the Initial Regulatory Flexibility Analysis prepared in the proposing release, Release No. 34–43401 (October 2, 2000), but received no comment on that analysis. The Commission did receive comments related to small business, and considered those comments in the adopting release.

* * * * *

Title: Compliance Programs of Investment Companies and Investment Advisers

Citation: 17 CFR 270.38a–1; 17 CFR 275.204–2; 17 CFR 275.206(4)–7

Authority: 15 U.S.C. 80a–1 *et seq.,* 80a–34(d), 80a–37, 80a–39, 80b–1 *et seq.,* 80b–2(a)(11)(F), 80b–2(a)(17), 80b–3, 80b–4, 80b–6(4), 80b–6a, 80b–11

Description: The rules require each investment company and investment adviser registered with the Commission and each business development company to (i) adopt and implement written compliance policies and procedures, (ii) review those policies and procedures annually, and (iii) appoint a compliance officer to be responsible for administering the policies and procedures. The rules also impose a new recordkeeping requirement.

Prior Commission Determination Under 5 U.S.C. 601: A Final Regulatory Flexibility Analysis was prepared in accordance with Section 604 of the Regulatory Flexibility Act regarding rule 38a–1 under the Investment Company Act of 1940, new rule 206(4)–7 under the Investment Advisers Act, and amendments to rule 204–2 under the Investment Advisers Act, and to Part 1, Schedule A, Item 2(a) of Form ADV in conjunction with the Commission's adoption of Release No. IA–2204 (December 17, 2003). The Commission considered comments on the proposing release and on the Initial Regulatory Flexibility Analysis prepared in Release No. IC–25925 (Feb. 5, 2003) at that time.

* * * * *

Title: Recordkeeping Requirements for Registered Transfer Agents

Citation: 17 CFR 240. 240.17Ad–7

Authority: 15 U.S.C. 77c, 77d, 77g, 77j, 77s, 77z–2, 77z–3, 77eee, 77ggg, 77nnn, 77sss, 77ttt, 78c, 78d, 78e, 78f, 78g, 78i, 78j, 78j–1, 78k, 78k–1, 78*l,* 78m, 78n, 78o, 78p, 78q, 78s, 78u–5, 78w, 78x, 78*ll,* 78mm, 79q, 79t, 80a–20, 80a–23, 80a–29, 80a–37, 80b–3, 80b–4, 80b–11, 7202, 7241, 7262, and 7263, and 18 U.S.C. 1350.

Description: The Commission amended its rule concerning recordkeeping requirements for registered transfer agents. The amendments made it clear that registered transfer agents may use electronic, microfilm, and microfiche media as a substitute for hard copy records, including cancelled stock certificates, for purposes of complying with the Commission's transfer agent recordkeeping rules and that a third party on behalf of a registered transfer agent may place into escrow the required software information.

Prior Commission Determination Under 5 U.S.C. 610: A Final Regulatory Flexibility Analysis was prepared in accordance with Section 604 of the Regulatory Flexibility Act in conjunction with Release No. 34–48949 (December 18, 2003). The Commission received comment letters in response to the Initial Regulatory Flexibility Analysis in the proposing release, Release No. 34–48036 (June 16, 2003), that did not address the issues presented in the proposing release.

By the Commission.

Dated: December 19, 2014.

Brent J. Fields,

Secretary.

[FR Doc. 2014–30265 Filed 12–24–14; 8:45 am]

BILLING CODE 8011–01–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Parts 101 and 105

[Docket No. USCG–2013–1087]

RIN 1625–AC15

Seafarers' Access to Maritime Facilities

AGENCY: Coast Guard, DHS.

ACTION: Notice of proposed rulemaking, notice of public meeting.

SUMMARY: The Coast Guard proposes to require each owner or operator of a facility regulated by the Coast Guard to implement a system that provides seafarers and other individuals with access between vessels moored at the facility and the facility gate, in a timely manner and at no cost to the seafarer or other individual. Generally, transiting through a facility is the only way that a seafarer or other individual can egress to shore beyond the facility to access basic shoreside businesses and services, and meet with family members and other personnel that do not hold a Transportation Worker Identification Credential. This proposed rule would help to ensure that no facility owner or operator denies or makes it impractical for seafarers or other individuals to transit through the facility, and would require them to document their access procedures in their Facility Security Plans. This proposed rule would implement section 811 of the Coast Guard Authorization Act of 2010.

DATES: Comments and related material must either be submitted to our online docket via *http://www.regulations.gov* on or before February 27, 2015 or reach the Docket Management Facility by that date. Comments sent to the Office of Management and Budget (OMB) on collection of information must reach OMB on or before February 27, 2015.

The Coast Guard will hold a public meeting in Washington, DC to solicit comments on the proposals in this notice on January 23, 2015 from 9:00 a.m. to 12:00 p.m. The deadline to reserve a seat is January 16, 2015.

ADDRESSES: You may submit comments identified by docket number USCG–2013–1087 using any one of the following methods:

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

(2) *Fax:* 202–493–2251.

(3) *Mail:* Docket Management Facility (M–30), U.S. Department of Transportation, West Building Ground Floor, Room W12–140, 1200 New Jersey

Avenue SE., Washington, DC 20590–0001.

(4) *Hand delivery:* Same as mail address above, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The telephone number is 202–366–9329.

To avoid duplication, please use only one of these four methods. See the ''Public Participation and Request for Comments'' portion of the **SUPPLEMENTARY INFORMATION** section below for instructions on submitting comments.

Collection of Information Comments: If you have comments on the collection of information discussed in section VI.D. of this notice of proposed rulemaking (NPRM), you must also send comments to the Office of Information and Regulatory Affairs (OIRA), Office of Management and Budget. To ensure that your comments to OIRA are received on time, the preferred methods are by email to *oira_submission@omb.eop.gov* (include the docket number and ''Attention: Desk Officer for Coast Guard, DHS'' in the subject line of the email) or fax at 202–395–6566. An alternate, though slower, method is by U.S. mail to the Office of Information and Regulatory Affairs, Office of Management and Budget, 725 17th Street NW., Washington, DC 20503, ATTN: Desk Officer, U.S. Coast Guard.

The public meeting will be held at the Department of Transportation Headquarters, Oklahoma Room, 1200 New Jersey Avenue SE., Washington, DC 20590; the building telephone number is 202–366–1035. The meeting is open to the public. Seating is limited, so please reserve a seat as soon as possible, but no later than January 16, 2015. To reserve a seat, please email *Mason.C.Wilcox@uscg.mil* with the participant's first and last name for all U.S. Citizens, and additionally official title, date of birth, country of citizenship, and passport number with expiration date for non-U.S. Citizens. To gain entrance to the Department of Transportation Headquarters building, all meeting participants must present government-issued photo identification (*i.e.,* state issued driver's license). If a visitor does not have a photo ID, that person will not be permitted to enter the facility. All visitors and any items brought into the facility will be required to go through security screening each time they enter the building. For information on facilities or services for individuals with disabilities or to request special assistance at the public meeting, contact LT Mason Wilcox at the telephone number or email address indicated under the **FOR FURTHER INFORMATION CONTACT** section of this notice.

A live video feed of the meeting will be available upon request to LT Mason Wilcox at *Mason.C.Wilcox@uscg.mil.*

FOR FURTHER INFORMATION CONTACT: If you have questions on this proposed rule, call or email LT Mason Wilcox, Cargo and Facilities Division (CG–FAC–2), Coast Guard; telephone 202–372–1123, email *Mason.C.Wilcox@uscg.mil.* If you have questions on viewing or submitting material to the docket, call Ms. Cheryl Collins, Program Manager, Docket Operations, telephone 202–366–9826.

SUPPLEMENTARY INFORMATION:

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I. Public Participation and Request for Comments

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

A. Submitting Comments

If you submit a comment, please include the docket number for this rulemaking (USCG–2013–1087), indicate the specific section of this document to which each comment applies, and provide a reason for each suggestion or recommendation. You may submit your comments and material online or by fax, mail, or hand delivery, but please use only one of these means. We recommend that you include your name and a mailing address, an email address, or a phone number in the body of your document so that we can contact you if we have questions regarding your submission.

To submit your comment online, go to *http://www.regulations.gov* and insert ''USCG–2013–1087'' in the ''Search'' box. Click on ''Submit a Comment in the ''Actions'' column. If you submit your comments by mail or hand delivery, submit them in an unbound format, no larger than 8½ by 11 inches, suitable for copying and electronic filing. If you submit comments by mail and would like to know that they reached the Facility, please enclose a stamped, self-addressed postcard or envelope.

We will consider all comments and material received during the comment period and may change this proposed rule based on your comments.

B. Viewing Comments and Documents

To view comments, as well as documents mentioned in this preamble as being available in the docket, go to *http://www.regulations.gov* and insert ''USCG–2013–1087'' in the ''Search'' box. Click ''Search.'' Click the ''Open Docket Folder'' in the ''Actions'' column. If you do not have access to the Internet, you may view the docket online by visiting 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. We have an agreement with the Department of Transportation to use the Docket Management Facility.

C. Privacy Act

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

D. Public Meeting

We plan to hold a public meeting regarding the proposals in this NPRM. The meeting will be held on January 23, 2015 from 9:00 a.m. to 12:00 p.m. The meeting will be held at the location

indicated under the **ADDRESSES** section above. The deadline to reserve a seat is January 16, 2015. Information on reserving a seat for the meeting is provided under the **ADDRESSES** section above.

II. Abbreviations

CBP United States Customs and Border Protection
CDC Certain Dangerous Cargoes
CGAA 2010 Coast Guard Authorization Act of 2010
CFR Code of Federal Regulations
COTP Captain of the Port
DoS Declaration of Security
DHS Department of Homeland Security
FR Federal Register
FSP Facility Security Plan
ISPS Code International Ship and Port Facility Security Code
MTSA Maritime Transportation Security Act of 2002
NMSAC National Maritime Security Advisory Committee
NPRM Notice of Proposed Rulemaking
RA Regulatory Analysis
SCI Seamen's Church Institute's Center for Seafarers' Rights
SME Subject Matter Expert
§ Section symbol
TWIC Transportation Worker Identification Credential
U.S.C. United States Code

III. Executive Summary

A. Purpose of the Regulatory Action

Throughout the maritime sector, vessels arrive at Maritime Transportation Security Act of 2002 (MTSA)-regulated facilities for any number of commercial and other purposes.[1] Vessels are operated by seafarers, who are individuals assigned to work on a vessel and who may be at sea for days, weeks, or months as part of their employment on that vessel. Generally, transiting through a MTSA-regulated facility is the only way for seafarers to access the shore, and services, businesses, family members and friends, among other things, beyond the vessel and facility. Additionally, individuals providing services for seafarers or having another legitimate purpose for accessing the vessel, generally can only access a vessel moored at a MTSA-regulated facility by transiting through the facility.

1. Need for the Regulatory Action

This regulatory action is necessary to implement section 811 of the Coast Guard Authorization Act of 2010 (Pub. L. 111–281, codified at 46 U.S.C. 70103 note) (CGAA 2010), which requires facility owners and operators to ensure shore access for seafarers and other individuals. Specifically, section 811 requires each MTSA-regulated facility to ''provide a system for seamen assigned to a vessel at that facility, pilots, and representatives of seamen's welfare and labor organizations to board and depart the vessel through the facility in a timely manner at no cost to the individual.''

This regulatory action is necessary to help ensure that owners and operators of facilities regulated by the Coast Guard, under MTSA (Pub. L. 107–295, codified at 46 U.S.C. 70101 *et seq.*), provide seafarers assigned to vessels moored at the facility with the ability to board and depart vessels to access the shore through the facility in a timely manner and at no cost to the seafarer.

Additionally, this regulatory action is necessary to help ensure that facility owners and operators provide the same no-cost access between a vessel and facility gate to other individuals with a legitimate purpose for accessing the vessel. These individuals include: representatives of seafarers' welfare and labor organizations; port workers organizations; port engineers or superintendents; classification society surveyors; ship's agents; pilots; and other authorized personnel performing work for a vessel moored at the facility, in accordance with the Declaration of Security (DoS)or other arrangement between the vessel and facility.

This regulatory action applies to owners and operators of MTSA-regulated facilities, which are facilities required by MTSA to implement national maritime security initiatives. One of the required security features is the provision of security measures for access control. Coast Guard access-control regulations at 33 CFR 105.255 require MTSA-regulated facilities to control an individual's access to the facility and designated secure areas within the facility unless that individual is either authorized to access that area or is escorted by someone who is authorized to access the area. Accordingly, facility owners and operators must consider the security implications of permitting seafarers and other individuals to transit through their facilities. Nonetheless, other Coast Guard regulations addressing MTSA-regulated facility security requirements at 33 CFR 105.200(b)(9) require such facilities to ensure coordination of shore leave for these persons.

2. Legal Authority for the Regulatory Action

Section 811 of the CGAA 2010 requires each MTSA-regulated facility, in its Facility Security Plan (FSP), to ''provide a system for seamen assigned to a vessel at that facility, pilots, and representatives of seamen's welfare and labor organizations to board and depart the vessel through the facility in a timely manner at no cost to the individual.'' The Secretary of Homeland Security (Secretary) is authorized under 46 U.S.C. 70124 to issue regulations necessary to implement 46 U.S.C. 70103. The Secretary delegated to the Commandant of the Coast Guard the authority to carry out the functions and exercise the authorities in 46 U.S.C. 70103 (DHS Delegation 0170.1(97)).

Additionally, the Secretary is authorized under 33 U.S.C. 1226 to take certain actions to advance port, harbor, and coastal facility security. The Secretary is authorized under 33 U.S.C. 1231 to promulgate regulations to implement 33 U.S.C. chapter 26, including 33 U.S.C. 1226. The Secretary has delegated this authority to the Commandant of the Coast Guard (DHS Delegation 0170.1(70) and (71)).

B. Summary of the Major Provisions of the Regulatory Action

We propose to require each owner or operator of a MTSA-regulated facility to implement a system for providing seafarers and other individuals with access between vessels moored at the facility and the facility gate. Each owner or operator would be required to implement a system, within 1 year after publication of the final rule, that incorporates specific methods of providing access in a timely manner, at no cost to the individual, and in accordance with existing access control provisions in 33 CFR part 105. We also propose to require each owner or operator to ensure that the FSP includes a section describing the system for seafarers' access.

This rule would not affect the authority of the U.S. Customs and Border Protection (CBP) to inspect and process individuals seeking entry to the U.S. For those seafarers and other individuals subject to CBP's authority, this rule would apply to facility owners and operators only after such seafarers and other individuals have been inspected, processed, and admitted to the U.S. by CBP.

C. Summary of Costs and Benefits

This rule would affect approximately 2,498 MTSA-regulated facilities. We estimate that the annualized cost at 7 percent would be $2.8 million and the total 10-year cost would be $19.9 million—also discounted at 7 percent. This rule would provide benefits to industry by ensuring that an annual average of 907 seafarers would be able

[1] For purposes of this rule, ''MTSA-regulated facility'' is described in 33 CFR 105.105, and is detailed more fully below in the Background section.

to obtain shore leave access through the facilities, reducing regulatory uncertainty, conforming to the intent of the International Ship and Port Facility Security Code (ISPS Code), ensuring the safety, health, and welfare of seafarers, and providing regulatory flexibility to accommodate facility sizes and functions. Facilities have options as to which method of access they would prefer to use.

IV. Background

Under MTSA, the Coast Guard is authorized to regulate maritime facilities. For purposes of MTSA, the term ''facility'' means ''any structure or facility of any kind located in, on, under, or adjacent to any waters subject to the jurisdiction of the United States.'' 46 U.S.C. 70101(a)(2).

Existing Coast Guard regulations at 33 CFR part 105 implementing MTSA apply to certain facilities including: waterfront facilities handling dangerous cargoes;[2] waterfront facilities handling liquefied natural gas[3] and liquefied hazardous gas;[4] facilities transferring oil or hazardous materials[5] in bulk; facilities that receive vessels certificated to carry more than 150 passengers; facilities that receive vessels subject to the International Convention for the Safety of Life at Sea, 1974 (SOLAS), Chapter XI; facilities that receive foreign cargo vessels greater than 100 gross register tons; generally, facilities that receive U.S. cargo and miscellaneous vessels greater than 100 gross register tons; and barge fleeting facilities that receive barges carrying, in bulk, cargoes regulated under the Coast Guard's regulations regarding tank vessels or certain dangerous cargoes (CDCs).[6] This rulemaking applies to the above-described facilities regulated by the Coast Guard pursuant to the authority granted in MTSA.

MTSA provides the Coast Guard with statutory authorities and mandates to advance the Coast Guard's maritime security mission to detect, deter, disrupt, and respond to attacks and other disasters that might affect the United States, its territory, population, vessels, facilities, and critical maritime infrastructure. On July 1, 2003, the Coast Guard published a series of six temporary interim rules to promulgate maritime security requirements mandated by MTSA. (*See* Implementation of National Maritime Security Initiatives, 68 FR 39240 (July 1, 2003).) One of the six interim rules specifically addressed security measures at maritime facilities. (*See* Facility Security, 68 FR 39315 (July 1, 2003)). The interim rule added part 105 ''Maritime Security: Facilities'' to subchapter H of Title 33 of the CFR. The interim rule required facility owners, operators, and security personnel to implement measures for controlling access to maritime facilities. In crafting the interim rule, we recognized both the need for facility access control measures, and the competing need for seafarers and other individuals to have the ability to board and depart vessels through the facilities. Thus, the interim rule included a requirement that each facility owner or operator ''[e]nsure coordination of shore leave for vessel personnel or crew change-out, as well as access through the facility for visitors of the vessel (including representatives of seafarers' welfare and labor organizations), with vessel operators in advance of a vessel's arrival[.]'' (*See* 68 FR 39317).

On October 22, 2003, the Coast Guard published a final rule adopting, with changes, the July 1, 2003, interim rule on security measures at maritime facilities. (*See* Facility Security, 68 FR 60515 (Oct. 22, 2003)). Specifically, the final rule adopted the provision regarding coordination of shore leave, and also included an additional provision that permits facility owners or operators to ''. . . refer to treaties of friendship, commerce, and navigation between the U.S. and other nations [when coordinating shore leave].'' This new provision was added in response to public comments regarding the difficulty that some foreign seafarers have experienced when seeking shore leave. (*See* 68 FR 60520).

The regulatory text adopted in the October 22, 2003, final rule remains unchanged today, although it has been relocated to 33 CFR 105.200(b)(9). Section 105.200(b)(9) provides, in part, that each facility owner or operator is currently required to ''[e]nsure coordination of shore leave for vessel personnel or crew change-out, as well as access through the facility for visitors of the vessel (including representatives of seafarers' welfare and labor organizations), with vessel operators in advance of a vessel's arrival.''

This current regulatory requirement for shore leave is bolstered by international agreement. The United States is a signatory to the ISPS Code, which sets forth international ship and port security measures. Like the Coast Guard's implementation of MTSA that requires both secure facilities and shore leave, ISPS Code furthers facility security, but not at the expense of the seafarer. The preamble to ISPS Code (paragraph 11), ratified in December 2002, states: ''Contracting Governments when approving ship and port FSPs should pay due cognizance to the fact that ship's personnel live and work on the vessel and need shore leave and access to shore-based seafarer welfare facilities, including medical care.'' In light of this international agreement, if the U.S. is known internationally for having facilities that do not provide shore leave access, other countries may consider denying shore leave access to U.S. seafarers while they are abroad.

The Coast Guard understands that, currently, approximately 90 percent of MTSA-regulated facility owners and operators comply with the current shore leave requirements in 33 CFR 105.200(b)(9) and provide seafarers and other individuals access between the vessel and the facility gate.[7] However, we have received complaints that some facility owners and operators are still denying seafarers and other individuals any access between the vessel and facility gate despite 33 CFR 105.200(b)(9) because of how some facility owners and operators implement or interpret that requirement. The apparent rationale for denying such access is that 33 CFR 105.200(b)(9) only requires coordination of shore leave if there is actual shore leave to coordinate, and there is no shore leave to coordinate if access to shore is denied altogether. We have received other complaints that some facilities comply with 33 CFR 105.200(b)(9) by permitting access to and from vessels, but make shore access impractical for seafarers and other individuals by placing extreme limitations on escort availability or by charging exorbitant fees. For example, we have received complaints of wait-times up to 3-hours for TWIC-holding facility personnel or taxi drivers to arrive and escort seafarers through a facility. The seafarers seeking access are often TWIC-holders themselves, and there is only a short distance between the vessel and the facility gate, the span of which is visible to security guards at the gate. Nonetheless, some facilities have prohibited TWIC-holding seafarers from walking between the vessel and facility gate. We have received other complaints of facilities charging $400–$500 (in addition to requiring the vessel agent to independently hire its own

[2] ''Dangerous cargoes'' are defined at 33 CFR 126.3.

[3] ''Liquefied natural gas'' is defined at 33 CFR 127.005.

[4] ''Liquefied hazardous gas'' is defined at 33 CFR 127.005.

[5] ''Hazardous materials'' are defined at 33 CFR 154.105.

[6] ''CDCs'' are defined at 33 CFR 160.204.

[7] Based on the Seamen's Church Institute's (SCI) Center for Seafarers' Rights surveys from 2006 to 2014.

TWIC-holding escorts) before allowing seafarers ashore. We have also received complaints of facilities completely denying seafarers the ability to disembark a vessel to go ashore.

To address these complaints, the Coast Guard issued guidance in October 2008 (ALCOAST 529/08) and October 2009 (ALCOAST 575/09), advising Coast Guard Captains of the Port (COTPs) to encourage facility owners and operators to remedy inadequate access issues. Subsequent to those efforts, we also conducted a joint evaluation of seafarers' access issues with CBP, culminating in additional Coast Guard guidance instructing COTPs to compile lists of facilities identified as deficient with respect to seafarers' access. In January 2010, the COTPs had reviewed 62 percent of all FSPs and reported that 4 percent lacked adequate seafarers' access provisions.

While the Coast Guard was addressing these complaints, Congress mandated seafarers' access in section 811 of the CGAA 2010. This mandate requires each FSP to ''provide a system for seamen assigned to a vessel at that facility, pilots, and representatives of seamen's welfare and labor organizations to board and depart the vessel through the facility in a timely manner at no cost to the individual.'' The National Maritime Security Advisory Committee (NMSAC) also considered section 811 in a working group that met on March 22 and May 3, 2011, resulting in a resolution containing recommended definitions for the statutory terms ''system,'' ''timely,'' and ''no cost to the individual.'' The NMSAC resolution provided the Coast Guard with useful conceptual information. Although the Coast Guard did not adopt the exact text of the NMSAC definitions in this NPRM, the proposals in this NPRM are consistent with the NMSAC recommendations. The NMSAC resolution is available for viewing in the public docket for this rulemaking.

This proposed rule would implement section 811 by amending current regulations to comply with statutory requirements for each facility owner or operator to provide seafarers associated with a vessel moored at the facility, and other individuals, access between the vessel and facility gate in a timely manner and at no cost to the seafarer or other individual.

This rule would not affect the authority of CBP to inspect and process individuals seeking entry to the U.S. For those seafarers and other individuals subject to CBP's authority, this rule would apply to facility owners and operators only after such seafarers and other individuals have been inspected, processed, and admitted to the U.S. by CBP.

V. Discussion of Proposed Rule

The following discussion explains the proposed changes to 33 CFR part 105 that would implement section 811. In addition to the proposed changes discussed below, we propose several minor technical amendments to 33 CFR 105.200 that would clarify acronyms and improve readability, but are not intended to make any substantive changes. Finally, we propose a provision on the Federalism issues associated with the Coast Guard's maritime security regulations in 33 CFR part 105.

A. 33 CFR 105.200(b)(9)

We propose to amend 33 CFR 105.200(b)(9), which contains the existing seafarers' access requirements. This amendment would require each facility owner or operator to coordinate shore leave in accordance with new specific requirements implementing section 811 set forth in 33 CFR 105.237. This cross-reference to the proposed specific requirements for seafarers' access would remove any possible ambiguity in, or opportunity for misinterpretation of, the existing seafarers' access requirements in 33 CFR 105.200(b)(9).

We also propose to replace the current parenthetical explanation of the term ''visitors'' in § 105.200(b)(9) with a reference to the proposed list of ''individuals covered'' in proposed § 105.237. Currently, paragraph (b)(9) requires access through a facility for shore leave for vessel personnel, crew change-out, and ''visitors to the vessel (including representatives of seafarers' welfare and labor organizations).'' Because section 811 also specifies individuals that must be provided access through a facility, we propose to incorporate in 33 CFR 105.237(b) the individuals covered under the existing seafarers' access requirement in current 33 CFR 105.200(b)(9) with the new proposed list of individuals covered under section 811.

B. 33 CFR 105.237

We propose to add this new section, implementing section 811, which would require each facility owner or operator to implement a system for providing access to and from vessels moored at the facility and the facility gate.

33 CFR 105.237(a)

Proposed paragraph (a) would set forth the general requirements for a system of seafarers' access, which incorporates the language of section 811. Each owner or operator would be required to implement a system that incorporates specific methods of providing access in a timely manner, at no cost to the individual, and in accordance with the provisions in 33 CFR part 105.

Part 105 sets forth facility security requirements, and facility owners and operators would have to provide seafarers' access within these facility security requirement parameters. The proposed rule would provide facility owners and operators flexibility to implement a system to provide seafarers' access that is tailored to each facility. We propose to require implementation of the system within 1 year after publication of the final rule to provide facility owners and operators time to tailor a system specific to the facility.

33 CFR 105.237(b)

Section 811 lists the individuals to whom Congress intended facility owners and operators provide access through their facilities. Specifically, section 811 requires ''[e]ach Facility Security Plan . . . to provide a system for seamen assigned to a vessel at that facility, pilots, and representatives of seamen's welfare and labor organizations to board and depart the vessel through the facility. . . .'' Additionally, current 33 CFR 105.200(b)(9) requires access through a facility for shore leave for vessel personnel, crew change-out, and ''visitors to the vessel (including representatives of seafarers' welfare and labor organizations).'' Because these two lists overlap, and both identify the individuals to whom facility owners or operators must provide access to and from vessels, we propose to provide one list of individuals covered by seafarers' access requirements.

Proposed paragraph (b), ''Individuals covered'', would list individuals covered by seafarers' access requirements. The proposed paragraph (b) lists:

- Seafarers assigned to a vessel moored at the facility;
- vessel pilots and other authorized personnel performing work for a vessel moored at a facility (to cover individuals that are not considered seafarers or pilots);
- representatives of seafarers' welfare and labor organizations; and
- other authorized individuals, in accordance with a DoS or other arrangement between the vessel and facility, to cover visitors to a vessel other than representatives of seafarers' welfare and labor organizations.

The categories of ''other authorized personnel'' and ''other authorized individuals'' would be broad categories to cover individuals such as port workers organizations, port engineers and superintendents, technicians, port agents, new crew (not yet technically assigned to the vessel), marine insurance writers, cargo surveyors, and family members of the seafarers and other vessel personnel. We propose the provision covering any other authorized individuals in order to provide flexibility that would enable the vessel and facility owners and operators to work directly with each other regarding individuals authorized to transit between the vessel and facility gate.

33 CFR 105.237(c)

Section 811 requires facility owners or operators to provide seafarers' access in a ''timely'' manner. Due to the wide variety of facility types, sizes, and the nature of their operations, this rulemaking does not propose a single regulatory definition of ''timely'' access that would apply to all facilities. Instead, we propose under paragraph (c) to require each facility owner or operator to provide access without unreasonable delay, subject to review by the COTP. Proposed paragraph (c) also lists factors the facility owners or operators would have to consider when determining what ''timely access without unreasonable delay'' means for each vessel moored at its facility. The COTP would review each FSP to ensure that the facility owner or operator has appropriately considered the enumerated factors. The enumerated factors in proposed paragraph (c) relate to the amount of time that is reasonable for individuals to wait for access through the facility and the methods that the facility owner or operator would use for providing such access. The factors are:

- The length of time a vessel is scheduled to remain in port. For example, if a ship is in port for 6 hours, the COTP could determine that a 2-hour wait for access each way would be unreasonable. If the ship is in port for 2 weeks, the COTP could determine that a 2-hour wait for access is reasonable.
- The distance of egress/ingress between the vessel and facility gate. This distance can influence the appropriate method(s) of providing timely access between vessel and facility gate (*e.g.,* van, taxi, pedestrian walkway, escort, etc.). For example, if the distance between the vessel and facility gate is less than the average city block, the COTP could determine that it is unreasonable to require individuals to wait for a taxi instead of using a pedestrian walkway.
- The vessel's watch schedules. A vessel's watch schedule is relevant to providing timely access because a vessel crew's operations are based on various watch-hour rotations to ensure the safety and security of the vessel. The facility owner or operator would be required to take the vessel's watch schedule into account in development of an access plan that ensures vessel crews have access to shore leave during the time they are not on watch.
- A facility's safety and security procedures required by law. These are relevant to providing timely access because they can determine the appropriate method(s) of providing timely access between a vessel and facility gate. For example, a pedestrian walkway might not be appropriate at a large container facility with extensive heavy equipment operations if the walkway would put pedestrians in the pathway of those operations, causing safety concerns for both pedestrians and operations. Similarly, the security footprint of a facility that handles CDCs might also preclude the use of pedestrian walkways as a method for providing access between a vessel and the facility gate due to the hazardous nature of the environment for pedestrians and any security concerns for the cargo.
- Any other factors specific to the vessel or facility that could affect access to and from the vessel. There may be other factors specific to the vessel or facility that could be relevant to providing timely access, such as bunkering and stores operations that may limit movement throughout the facility for safety. The COTP would review these other factors included in the FSP and how the facility considers them in determining how to provide shore access in a timely manner.

Defining timely access without unreasonable delay through the application of factors would provide flexibility to account for a diverse regulated population of maritime facilities. This approach would also provide appropriate COTP oversight to verify that ''timeliness'' is reasonable in each case.

33 CFR 105.237(d)

Proposed paragraph (d) of 33 CFR 105.237 would require each facility owner or operator to provide seafarers' access using one or more specific methods. The owner or operator would be required to either choose one of the listed methods or combine multiple methods to create an appropriate system for that facility. Whichever method they choose, facility owners or operators would ultimately be responsible for ensuring that all individuals covered by the regulations are provided timely access between the vessel and the facility gate.

In order to provide timely access, facility owners and operators would choose their own method of providing that access. They could choose a method listed in proposed paragraph (d) or they could choose any other method, provided that the COTP approves it. The methods listed in proposed paragraph (d) are:

- On-call or regularly scheduled escorts.[8] On-call escorting would require the facility to provide a means of communication, such as a phone number or other means of communication that seafarers could call to arrange access, and the facility would dispatch one or more escorts upon request. Regularly scheduled escorts could operate on a set schedule or at specific times pre-arranged between facility and vessel personnel based on the vessel's crew watch changes. Facility owners and operators would be permitted to choose the option(s) most suitable to their specific business operations so long as they are sufficiently timely.
- Taxi services to provide escorted access through the facility. If a facility chose to permit access between the vessel and the facility gate only via taxi, regardless of whether the seafarer required a taxi beyond the facility gate, then that taxi fare would be considered a cost that the owner or operator imposes on the seafarer as a surcharge or tax on shore access. The owner or operator would be required to either pay that cost or provide an alternative method of timely, no-cost access through the facility for seafarers and other individuals. When the seafarer uses the taxi for travel to destinations beyond the facility boundaries (*i.e.,* not solely for transit between the vessel and the facility gate), the seafarer would be responsible for paying the standard, local taxi fare to their destination, including the portion of transit between the vessel and facility gate, provided that there is no additional surcharge for transiting the facility.
- Seafarers' welfare organizations to facilitate the access, such as acting as escorts. The Coast Guard understands some seafarers' welfare organizations currently provide this service at facilities, and we do not want to disrupt

[8] If access is provided through secure areas of the facility, the Transportation Worker Identification Credential (TWIC) requirements in 33 CFR 101.514 would apply.

existing arrangements successfully providing shore access.

• Monitored pedestrian routes between the vessel and facility gate. Monitored pedestrian routes could include side-by-side escorting or other monitoring sufficient to observe whether the escorted individual is engaged in activities other than those for which escorted access has been granted. (See 33 CFR 101.105 ''Escorting''). The Coast Guard notes that NVIC 03–07 provides guidance on monitoring protocols.

Section 811 places the requirement to provide access on the facility owner or operator. Accordingly, facility owners and operators would not be permitted to rely solely on third parties, such as taxi services or seafarers' welfare organizations, to provide access between the vessel and facility gate. Taxi services may not always be available to provide timely access to all of the seafarers at a given facility. Similarly, the seafarers' welfare organizations are philanthropic organizations that voluntarily provide important services to seafarers, and may or may not have the resources to provide timely access to all of the seafarers at a facility. Owners and operators relying on one or more third parties as their primary method of providing the required access would also be required to include a back-up method of providing timely, no-cost access provisions in their FSPs.

Facility owners and operators could also choose to develop their own method(s) for providing access between the vessel and facility gate, apart from the listed methods. In all cases, the method(s) included in the FSP would be subject to COTP review and approval.

33 CFR 105.237(e)

Section 811 specifically requires facility owners or operators to provide seafarers' access at no cost to the individual. We propose to codify that requirement in 33 CFR 105.237(e). The Coast Guard has received complaints indicating that some facility owners and operators currently provide access through their facilities, but only do so by allowing taxis to shuttle seafarers between the vessel and the facility gates for a specific fee. Such an arrangement would not meet the requirement in Section 811 or in proposed § 105.237(e) to provide access at no cost.

33 CFR 105.237(f)

Section 811 specifically requires that approved FSPs must provide a system for seafarers' access. We propose to require facility owners or operators to describe the seafarers' access systems in their FSPs. In the FSP, owners or operators would be required to document the: (1) Location of transit areas used for providing seafarers' access; (2) duties, and number of facility personnel assigned to each duty, associated with providing seafarers' access; (3) methods of escorting and/or monitoring individuals transiting through the facility; (4) agreements or arrangements between the facility and private parties, nonprofit organizations, or other parties to facilitate seafarers' access; and (5) maximum length of time an individual would wait for seafarers' access.

Documenting this information in the FSP would ensure that the facility's system for seafarers' access is described in sufficient detail for facility personnel to implement and for Coast Guard personnel, specifically COTPs, to confirm regulatory compliance. In accordance with 33 CFR 105.410 (for facilities submitting an initial FSP) or 33 CFR 105.415 (for facilities amending an existing approved FSP), which already require that all FSP updates be submitted for COTP approval at least 60 days before any operational change, we propose requiring facilities to update their FSPs and submit them for COTP review a minimum of 60 days before implementing any operational changes that would be necessitated by this rule. Because we propose requiring implementation of the system within 1 year after publication of the final rule under proposed § 105.237(a), all FSP updates would need to be submitted no later than 10 months after the publication of the final rule.

C. 33 CFR 105.405

We propose updating 33 CFR 105.405, which dictates the format and content of the FSP, to add the proposed requirement that an FSP include a section on the facility's system for seafarers' access.

D. 33 CFR 101.112 (Federalism)

A Presidential Memorandum, dated May 20, 2009, entitled ''Preemption,'' [9] requires an agency to codify a preemption provision in its regulations if the agency intends to preempt State law. We propose to add a new section 33 CFR 101.112, which would provide a statement regarding the preemption principles that apply to 33 CFR part 105.

We believe the field-preemption Federalism principles articulated in *United States* v. *Locke* and *Intertanko* v. *Locke* [10] apply to 33 CFR part 105, at least insofar as a State or local law or regulation applicable to MTSA-regulated facilities for the purpose of their protection would conflict with a Federal regulation (*i.e.,* it would either actually conflict or would frustrate an overriding Federal need for uniformity).

E. Public Comments

We invite the public to comment on any part of this proposed rule and the assumptions and estimates used in the ''Preliminary Regulatory Analysis (RA) and Initial Regulatory Flexibility Analysis,'' which is available in the public docket for this rulemaking. Specifically, we request comments on the following:

1. We request comments on whether 1 year is an appropriate timeframe to implement the system that would be required under this proposed rule.

2. In formulating the proposed 33 CFR 105.237(b) ''Individuals covered'', we sought to include the individuals to whom facility owners or operators should be required to provide timely, no-cost access through their facilities based on the language of section 811 and the existing seafarers' access requirements in 33 CFR 105.200(b)(9). We request comments on whether this proposal provides an appropriately inclusive list of individuals who should be allowed to access a vessel, or whether the list is too broad or too narrow.

3. As stated above in this preamble, instead of proposing a single regulatory definition of ''timely access'' that would apply to all facilities, we propose factors for facility owners and operators to consider (and document in the FSP) so that they provide ''timely access'' without unreasonable delay. We request comments on whether this approach provides the necessary flexibility for a diverse regulated population, while also providing COTP oversight to ensure that ''timely access'' is reasonable in each case.

4. We request comments on whether the proposed 33 CFR 105.237(d) provides an appropriately inclusive list of methods for providing seafarers' access, or whether there any other methods that should be on the list.

5. We request comments on our estimate, discussed below under Section VI. Regulatory Analyses, that there is a 10.3 percent non-compliance rate of MTSA-regulated facilities with respect to providing seafarers' access.

6. We request comments on our cost estimates, discussed below under Section VI. Regulatory Analyses, for FSP amendments and changes to facility operations to implement the proposed rule's provisions.

[9] 74 FR 24693.

[10] 529 U.S. 89, 120 S.Ct. 1135 (March 6, 2000).

7. We request comments on the regulatory alternatives to implementing section 811 discussed below under Section VI. Regulatory Analyses.

VI. Regulatory Analyses

We developed this proposed rule after considering numerous statutes and executive orders related to rulemaking. Below we summarize our analyses based on these statutes or executive orders. Details regarding the regulatory analyses are located in the preliminary Regulatory Analysis (RA), which can be found by following the directions in paragraph I.B. above.

A. Regulatory Planning and Review

Executive Orders 13563 (''Improving Regulation and Regulatory Review'') and 12866 (''Regulatory Planning and Review'') direct agencies to assess the costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects, distributive impacts, and equity). Executive Order 13563 emphasizes the importance of quantifying both costs and benefits, of reducing costs, of harmonizing rules, and of promoting flexibility. The economic impact of this rulemaking is not economically significant (*i.e.,* the rulemaking has an annual effect on the economy of $100 million or more a year).

This proposed rule is not a ''significant regulatory action'' under section 3(f) of Executive Order 12866, and does not require an assessment of potential costs and benefits under section 6(a)(3) of that Order. The rule has not been reviewed by the Office of Management and Budget. Nonetheless, we developed an analysis of the costs and benefits of the proposed rule to ascertain its probably impacts on industry. We consider all estimates and analysis in this RA to be preliminary and subject to change in consideration of public comments.

Section 811 of the CGAA 2010 requires each MTSA-regulated facility, in its FSP, to ''provide a system for seamen assigned to a vessel at that facility, pilots, and representatives of seamen's welfare and labor organizations to board and depart the vessel through the facility in a timely manner at no cost to the individual.'' The CGAA 2010 builds on the requirements set forth under 33 CFR 105.200(b)(9), which stipulates that each facility owner or operator is currently required to ''[e]nsure coordination of shore leave. . . .'' We propose to require each owner or operator of a MTSA-regulated facility to implement a system for providing seafarers and other individuals with access between vessels moored at the facility and the facility gate. Each owner or operator would be required to implement a system within 1 year after publication of the final rule that incorporates specific methods of providing access in a timely manner, at no cost to the individual, and in accordance with existing access control provisions in 33 CFR part 105. We also propose to require each owner or operator to ensure that the FSP includes a section describing the system for seafarers' access. This proposed rule proposes six methods of providing access as acceptable means of implementing a system of access. They are as follows:

(1) Regularly scheduled escort between the vessel and the facility gate that conforms to the vessel's watch schedule as agreed upon between the vessel and facility;

(2) An on-call escort between the vessel and the facility gate;

(3) Arrangements with taxi services;

(4) Arrangements with seafarers' welfare organizations to facilitate the access;

(5) Monitored pedestrian access routes between the vessel and facility gate; or

(6) A method, other than those described above, approved by the COTP.

If a MTSA-regulated facility provides a method of access via third party (*e.g.,* taxi service, seafarers' welfare organization, etc.), they would need to have a ''back-up'' method so as to ensure access is provided in a timely manner, provided it is approved by the COTP.

Table 1 provides a summary of the affected population, costs, and benefits to this proposed rule.

TABLE 1—SUMMARY OF AFFECTED POPULATION, COSTS, AND BENEFITS

Category	Notice of proposed rulemaking
Applicability	Owners or operators of a facility regulated by the Coast Guard are required to implement a system that provides seafarers and other individuals with access between the shore and vessels moored at the facility.
Affected population	2,498 MTSA-regulated Facilities. Seafarers and other covered individuals that would receive access under the proposed rule.
Total Cost to Industry and Government* (7% discount rate).	10-year: $19.9 million. Annualized: $2.8 million.
Benefits	Provides access through facilities for an average of 907 seafarers and other covered individuals that were otherwise denied access annually. Reduces regulatory uncertainty by harmonizing regulations with Sec. 811 of Pub. L. 111–281. Conforms with the intent of the ISPS Code. Ensures the safety, health, and welfare of seafarers.

* Please refer to the preliminary RA in the docket for details.

A summary of the RA follows:

Affected Population

The effect of the proposed rule would be to require facilities regulated by MTSA to implement a system of access for seafarers and other individuals, and to document that system in their FSPs. Many facilities already have a system that would likely satisfy this proposed rule, but they would still need to update their FSPs to document that system. Other facilities would have to both implement a system and update their FSPs to document it.

Based on information about MTSA-regulated facilities captured in the Coast Guard's internal database, the Marine Inspection, Safety and Law Enforcement (MISLE), there are 2,498 facilities affected by this rulemaking. We anticipate that all (2,498 facilities) would need to modify their FSPs within 10 months [11] of publication of the final

[11] As explained above in the discussion of proposed § 105.237(f), the deadline to implement operational changes resulting from this rule would be one year after the final rule is published. Since Coast Guard regulations already require FSP amendments to be submitted for Coast Guard approval no later than 60 days before implementing

rule to document their system of providing access for seafarers and other individuals. Any needed changes in subsequent years would be accomplished under existing updates to FSPs or occurs as facilities changes ownership.[12]

In addition to documenting a system of access in their FSPs, some facilities may need to modify operations to implement that system. Based on a 2011 survey conducted by the Seamen's Church Institute's (SCI) Center for Seafarers' Rights and discussions with the SCI, we estimate that 10.3 percent of the facilities would need to update their existing systems of access to conform to the standards of this rulemaking.[13] We used the 10.3 percent as our estimated non-compliance rate. At this rate, 257 out of the total 2,498 facilities affected by this rulemaking would need to develop and implement a system of access through the facility for seafarers and other individuals and document it in their FSPs.

Costs

There are two main types of costs: administrative and operational. Table 2 provides the outline of the proposed regulations and the effects that these changes will have on the affected population.

TABLE 2—COST MATRIX

Section(s) and Descriptions		Population	Costs and Benefits
§ 101.112	Adds Federalism language	All facilities	No cost because it deals with the interaction between the federal government and states.
§ 105.200(b)(1)–(6)	Rewords language to clarify by adding the word "personnel" and removing the words "within that structure"..	All facilities	No cost because it clarifies parameter of security personnel
	Spells out acronyms.		It clarifies the acronyms
	Rewords language to clarify ..		It is a grammatical change only.
§ 105.200(b)(9)	Replaces the word, "coordination" with "implementation of a system, in accordance with § 105.237 of this subpart, coordinating". Refers to § 105.237(b)(4).	All facilities All seafarers and covered individuals that would receive access under this rule.	Cost to implement a system of access for seafarers and covered individuals going through a facility.
§ 105.200(b)(14)	Adds reference to § 105.255(c).	All facilities All seafarers and covered individuals that would receive access under this rule.	No cost. Narrows reference from entire section to paragraph (c).
§ 105.237(a)–(d)	(a) Facilities must have procedures in place to allow access through the facility. (b) Provides list of seafarers and covered individuals. (c) Timing of access is dependent on COTP. (d) Outlines methods of access. (d)(3) Individual cost is limited to local taxi fare.	Non-conforming facilities All seafarers and covered individuals that would receive access under this rule.	Cost for non-conforming facilities to implement a system of access for seafarers and covered individuals going through a facility.
§ 105.237(e)	Stipulates no cost to the individual.	All facilities All seafarers and covered individuals that would receive access under this rule.	Cost may be passed onto the vessel.
§ 105.237(f)	Stipulates that a system of access must be documented in the FSP.	All facilities	Paperwork cost to add description in the FSP.
§ 105.405(a)(9)	Specifies the location in the FSP where facilities must outline escorting procedures.	All facilities	Paperwork cost to add description in the FSP.

All MTSA-regulated facilities are expected to incur administrative costs and would need to update their FSPs to document their system of access. While all MTSA-regulated facilities describe a system of access, the description may not contain all of the proposed elements. Thus, we determined that all facilities' FSPs would undergo modification to incorporate a description of seafarers' access.

operational changes, the deadline for submitting FSP amendments resulting from this rule would be 10 months after publication of the final rule.

[12] The number of FSPs have been decreasing from 2004 to 2014. Therefore, we did not cost out changes to ownership.

[13] Based on the 2011 SCI report 26 ports were surveyed. From those 26 ports, 17 terminals would not conform to the requirement of this proposed rule (pg. 3–4). Upon further investigation by USCG, the Seamen's Church Institute stated that in 2011, they reviewed 165 terminals. The non-compliance rate is 17 terminals out compliance ÷ 165 terminals surveyed = 10.3 percent non-compliance rate.

2,498 Population * (($63.40 wage[14] * 6 hours[15]) + $6.07 stationery[16]) = $965,402

We estimate that 257 facilities (10.3 percent of 2,498 facilities) would be expected to incur operational costs and would also need to modify their systems of access to conform to their modified FSPs. The proposed rule provides six methods for providing access: (1) Regularly scheduled shuttle service, (2) on-call service, (3) taxi service, (4) arrangements with the seafarers' welfare organizations, (5) monitoring of pedestrian routes, or (6) any other system, provided that the method is approved by the COTP. This proposed rule would require a ''back-up'' method of access if a facility chooses a method that relies on a third party. The back-up method would be how the facility ensures access if the third party fails to provide access. For the purposes of this RA, we assume that facilities would have a ''back-up'' system in place if using the seafarers' welfare organization. We did not assume a back-up method for the other since methods 1, 2, or 5 does not deal with third parties, and because we assume that facilities would have a sufficient number of taxis available for method 3. For the purposes of this RA, we focus on the first five methods as primary methods of access, because facilities would choose the sixth option only if it had higher value (*e.g.,* lower costs) than one of the first five.

Based on information from Coast Guard internal subject matter experts (SMEs) and the costs associated with implementing the various methods, we expect that a small percentage of facilities are large enough, or carry out dangerous or hazardous operations, to warrant the purchase of a van. Some facilities would opt to use taxi service, as it provides flexibility to the facility as a relatively cheaper alternative. Some would choose to use a seafarers' welfare organization (Method 4) to provide transit, but due to these organizations' limited resources, facilities would not be able to solely depend on a seafarers' welfare organization to provide escort. We assume that most facilities would choose monitoring (Method 5) since the majority of them are small[17] enough that existing security guards and/or monitoring equipment in place would be sufficient. However, if facilities choose this method, we anticipate 1 hour of training annually to review security protocol in the event that a seafarer leaves the designated passageway.

Table 3 provides the number of affected facilities and the per-facility cost to modify operations to include a system of access and to document it in their FSPs. Costs are broken down into initial cost to affected populations and then annually recurring costs.[18]

TABLE 3—PER-FACILITY ADMINISTRATIVE AND OPERATIONAL COSTS

[By method]

Cost description	Population	Initial cost	Annual recurring cost
Cost Per Facility (FSP Documentation)	2,498	386	0
Cost Per Facility Operations:			
Method 1: Regularly Scheduled Shuttle	26	63,759	35,655
Method 2: On-call Service	51	52,154	24,050
Method 3: Taxi	51	7,619	3,208
Methods 4: Seafarers' Welfare Organization	26	3,208	1,203
Method 5: Monitoring of Pedestrian Routes	103	181	181
Method 6: Alternate means of access, approved by the COTP	N/A	N/A	N/A

Table 4 provides the key unit costs for the methods. Please refer to the standalone RA for the calculations of the costs by method.

TABLE 4—KEY INPUTS FOR METHODS 1–5

Key input	Cost	Source
Security guard wage	$19.41	*http://www.bls.gov/oes/2012/may/oes339032.htm.*
Cargo and Freight Agents Wage.	$30.18	*http://www.bls.gov/oes/2012/may/oes435011.htm.*
Managers	$63.35	*http://www.bls.gov/oes/2012/may/oes113071.htm.*
Secretaries	$35.81	*http://www.bls.gov/oes/2012/may/oes436011.htm.*
Van	ranges from $25,060 to $35,620.	*http://www.ford.com/commercial-trucks/e-serieswagon/models/.* *http://www.toyota.com/sienna/trims-prices.html.* *http://www.gm.com/vehicles/browseByType.html#/?price=120000&brand=all&type=van&appState=list.*
Cost of Gas	$4.04	*http://fuelgaugereport.aaa.com/?redirectto=http://fuelgaugereport.opisnet.com/index.asp.*
Average Miles per Gallon	13	*http://www.fueleconomy.gov/feg/byclass/Vans__Passenger_Type2012.shtml.*
Driving Speed	ranges from 15 mph to 30 mph.	*http://www.panynj.gov/port/pdf/highway-speed-limits-2008.pdf.* *http://www.massport.com/port-of-boston/Conley%20Terminal/TerminalProcess.aspx.* *http://www.fmtcargo.com/terminal_guides/fmt_guide_burns_harbor.pdf.* *http://www.fmtcargo.com/terminal_guides/fmt_guide_cleveland.pdf.*

[14] See Chapter 3.1 of the standalone RA for information regarding wages.

[15] In COI 1627–007, we estimate that it takes 100 hours to create a new FSP made up of 18 sections. We estimate that it would take 6 hours (100 hours ÷ 18 sections = 5.55 hours) to create a new section in the FSP.

[16] Executive Administrative Assistant hourly wage $34.81 * 0.1667 hours + $0.10 paper = $6.07. See chapter 3.1 of the standalone RA for information regarding wages.

[17] Based on information from Coast Guard facility inspectors nationwide due to the fact that MISLE and other Coast Guard databases do not capture the physical sizes of these facilities.

[18] Please refer to table 5 for 10-year breakdown in total cost.

TABLE 4—KEY INPUTS FOR METHODS 1–5—Continued

Key input	Cost	Source
		http://www.fmtcargo.com/terminal_guides/fmt_guide_port_manatee.pdf. *http://www.fmtcargo.com/terminal_guides/fmt_guide_lake_charles.pdf.* *http://www.fmtcargo.com/terminal_guides/fmt_guide_milwaukee.pdf.*
Driving Time	0.33 hours	SME.
TWIC	$401.00	*http://www.tsa.gov/what_we_do/layers/twic/twic_faqs.shtm#twic_process.*
Taxi Driver Wage	$17.92	*http://www.bls.gov/oes/2012/may/oes533041.htm.*
Miles to an enrollment Center.	100 miles	*STCW.*
Average Commute Speed	28.87	*http://nhts.ornl.gov/2009/pub/stt.pdf.*
Mileage Reimbursement Rate.	$0.56	*http://www.gsa.gov/portal/content/100715.*

Table 5 provides the total costs over 10 years, to include the initial cost and annually recurring costs.

TABLE 5—SUMMARY OF INDUSTRY COSTS 10-YEAR, 7 AND 3 PERCENT DISCOUNT RATES

	Undiscounted cost	Annualized 7% discount cost	Annualized 3% discount cost
Year 1	$5,773,631	$5,395,917	$5,605,467
Year 2	2,367,130	2,067,543	2,231,247
Year 3	2,367,130	1,932,283	2,166,259
Year 4	2,367,130	1,805,872	2,103,164
Year 5	2,367,130	1,687,731	2,041,907
Year 6	2,367,130	1,577,319	1,982,434
Year 7	2,367,130	1,474,130	1,924,693
Year 8	2,367,130	1,377,691	1,868,634
Year 9	2,367,130	1,287,562	1,814,208
Year 10	2,367,130	1,203,329	1,761,367
Total	27,077,801	19,809,376	23,499,382
Annualized		2,820,410	2,754,844

Based on information from the SMEs, we estimate that it would take between 15 and 30 minutes for an E–4, E–5, or E–6 to review the updated FSP. We calculate the one-time cost to review all FSPs to be as follows: 2,498 FSPs * $48.33 wage rate/hour * 0.5 hours = $60,364

Table 6 provides the 10-year cost to both the government and industry.

TABLE 6—SUMMARY OF INDUSTRY AND GOVERNMENT COSTS 10-YEAR, 7 AND 3 PERCENT DISCOUNT RATES

	Undiscounted cost	Annualized 7% discount cost	Annualized 3% discount cost
Year 1	$5,833,995	$5,452,332	$5,664,073
Year 2	2,367,130	2,067,543	2,231,247
Year 3	2,367,130	1,932,283	2,166,259
Year 4	2,367,130	1,805,872	2,103,164
Year 5	2,367,130	1,687,731	2,041,907
Year 6	2,367,130	1,577,319	1,982,434
Year 7	2,367,130	1,474,130	1,924,693
Year 8	2,367,130	1,377,691	1,868,634
Year 9	2,367,130	1,287,562	1,814,208
Year 10	2,367,130	1,203,329	1,761,367
Total	27,138,165	19,865,791	23,557,987
Annualized		2,828,442	2,761,715

For more details, please refer to the cost chapter of the preliminary RA in the docket.

Benefits

The primary benefit to this rule is to provide individuals, with a legitimate purpose, access to or egress from the vessel to the facility gate. The Center for Seafarers' Rights organization, reports on the number of seafarers that are denied access through the terminal. Based on the SCI's surveys from 2006 to

2014, there was an average of 907 seafarers that were denied shore leave access due to terminal restrictions. While it was reported that there were denials of access to other individuals with a legitimate purpose, we do not have the numbers of facilities that do not provide access nor do we have the numbers of other individuals denied access. The benefit to this rule is that seafarers and other authorized individuals that would otherwise be denied access due to terminal restrictions would be able to obtain shore leave access.

Providing seafarers' access ensures the safety, health, and welfare of seafarers. Generally, transiting through a MTSA-facility is the only way for seafarers to access the shore, visit doctors, obtain prescriptions, visit businesses, visit family members and friends, among other things, beyond the facility.

Another benefit to this rule is that it conforms to international conventions, specifically the International Ship and Port Facility Security Code. In light of this international agreement, if the U.S. is known internationally for having facilities that do not provide shore leave access, other countries may consider denying shore leave access to U.S. seafarers while they are abroad.

Additionally, individuals providing services for seafarers or having another legitimate purpose for accessing the vessel, such as representatives of seafarers' welfare and labor organizations, port workers organizations, port engineers or superintendents, generally can only access vessels moored at MTSA-regulated facilities by transiting through the facility.

Finally, this rule reduces regulatory uncertainty by harmonizing the Coast Guard's regulations with section 811 of the CGAA (Pub. L. 111–281).

The benefits to this rulemaking are described in Table 7.

TABLE 7—SUMMARY OF BENEFITS

Implications	Definitions
Seafarers' Access	From 2006 to 2014, there were an average 907 reported seafarers that were denied access due to terminal restrictions. This ensures that these seafarers would be allowed access. Ensures the safety, health, and welfare of seafarers.
International Conventions	Conforms with the intent of the ISPS Code.
Regulatory Uncertainty	Reduces regulatory uncertainty by harmonizing the Coast Guard's regulations with Sec. 811 of Pub. L. 111–281.

Alternatives

We propose several ways to ensure seafarers' access: the proposed alternative (which is the chosen alternative), and four other alternatives.

Proposed Alternative:

The proposed alternative is to amend Coast Guard regulations to require MTSA-regulated facilities to implement a system of seafarers' access and to amend their FSPs to document that system. This alternative was chosen because it provides regulatory flexibility at the least cost option that would comply with the intent of the statute.

Other Considered Alternatives:

Alternative 1—No change to regulations. Instead of amending the current regulations, COTPs would deny approval of FSPs that do not adequately address shore leave procedures in their security plans. While this approach may address some deficiencies at some facilities, we reject this alternative because it would not provide clear and consistent regulatory standards for facilities to implement and COTPs to enforce. Additionally, the current regulation in 33 CFR 105.200(b)(9) does not explicitly require facility owners and operators to provide timely, no cost access to seafarers, or to include seafarers' access provisions in their security plans. Section 811 makes these issues mandatory, necessitating an update to our regulations.

Alternative 2—Require a section of the Declaration of Security (DoS) between the facility and the vessel to include the facility's seafarers' access procedures. We rejected this alternative due to the heavy burden it would place on the industry (see Chapters 1.3 and 5.2 of the preliminary RA for more details on the cost of this alternative). Additionally, this alternative would not specifically target facilities with existing seafarers' access issues, and would require a DoS between many facilities and vessels that would not otherwise be required to have one.

Alternative 3—Require facilities to implement specific and prescriptive procedures for seafarers' access and to include these procedures in their FSPs. This alternative would not allow facilities any flexibility or choice in the method of access appropriate for their facility and operations. One example of a prescriptive measure would be to require that all facilities provide shuttle service for all seafarers, 24-hours a day. Although this would solve the issues associated with seafarers' access, we do not support this alternative due to the heavy burden it would place on industry, resulting from prescribed major procedural and operational changes required for all facilities and higher costs associated with implementing such prescriptive regulations.

Alternative 4—Publish guidance to industry clarifying that 33 CFR 105.200(b)(9) affirmatively requires facility owners/operators to provide shore leave and visitor access. We do not support this approach, because this approach has already been implemented, but has not completely solved the problems with seafarers' access at some facilities. Some remaining facilities still deny seafarers' access altogether or make shore access impractical based on a misinterpretation of our existing regulations (*i.e.,* they contend that since 33 CFR 105.200(b)(9) only requires coordination of shore leave if there is actual shore leave to coordinate, and there is no shore leave to coordinate if access to shore is denied altogether). Though this alternative has been implemented, we have continued to receive complaints that some facilities grant seafarers' access to and from vessels, but make it impractical by placing extreme limitations on escort availability or charging exorbitant fees.

Additionally, the current regulation in 33 CFR 105.200(b)(9) does not require facility owners and operators to provide timely, no cost access to seafarers, or to include seafarers' access provisions in their FSPs. Section 811 makes these issues mandatory, necessitating an update to our regulations to avoid regulatory uncertainty.

B. Small Entities

Under the Regulatory Flexibility Act (5 U.S.C. 601–612), we have considered whether this proposed rule would have a significant economic impact on a substantial number of small entities. The term ''small entities'' comprises small businesses, not-for-profit organizations that are independently

owned and operated and are not dominant in their fields, and governmental jurisdictions with populations of fewer than 50,000 people.

An Initial Regulatory Flexibility Analysis discussing the impact of this proposed rule on small entities is available in the docket where indicated under the ''Public Participation and Request for Comments'' section of this preamble.

Based on available data, we identified 1,393 owners of the 2,498 facilities affected by this proposed rule. Of the 1,393 owners, we researched a sample of 304 owners to determine the size and revenue characteristics of the population. Based on the sample population of 304 owners, we estimate that approximately 77 percent are small entities, as defined by the Small Business Administration (SBA) or other applicable size standards. Facility owners are entities that could be businesses, non-profit organizations, or government agencies. For more details, please refer to the Initial Regulatory Flexibility Analysis chapter in the preliminary RA, available in the docket. Because we have no way to determine which facilities (and, therefore, which entities) would need to implement a system of access, we performed two analyses. The first assesses the impact on small entities for the FSP documentation only. The second estimates the impact from a combined FSP documentation and implementation.

Assuming all small entities only have to document a system of access in their FSP, this proposed rule would have an impact on small entities of less than 1 percent of revenues for all small entities.

For facilities that have to modify operations and document the new system of access in their FSP, 68 percent would have an impact of 1 percent or less, 26 percent would have an impacts of greater than 1 percent to 10 percent, and 6 percent would have a revenue impact of greater than 10 percent. Table 8 provides the breakdown of impacts.

TABLE 8—REVENUE IMPACT ON SMALL ENTITIES

Revenue impact	Initial implementation cost	Annual recurring costs
FSP Only Cost		
Cost to Modify FSP	$386	
0% < Impact <= 1%	100%	
FSP Plus Access Implementation		
Per facility cost (weighted average)	$18,724	$9,210
0% < Impact <= 1%	66%	82%
1% < Impact <= 3%	23%	8%
3% < Impact <= 5%	1%	4%
5% < Impact <= 10%	4%	3%
Above 10%	6%	3%

C. Assistance for Small Entities

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Pub. L. 104–121), we want to assist small entities in understanding this proposed rule so that they can better evaluate its effects on them and participate in the rulemaking. If the proposed rule would affect your small business, organization, or governmental jurisdiction and you have questions concerning its provisions or options for compliance, please consult LT Mason Wilcox, Cargo and Facilities Division (CG–FAC–2), Coast Guard; telephone 202–372–1123, email *Mason.C.Wilcox@uscg.mil.* 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.

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).

D. Collection of Information

This proposed rule would call for a collection of information under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520). As defined in 5 CFR 1320.3(c), ''collection of information'' comprises reporting, recordkeeping, monitoring, posting, labeling, and other, similar actions. The title and description of the information collections, a description of those who must collect the information, and an estimate of the total annual burden follow. The estimate covers the time for reviewing instructions, searching existing sources of data, gathering and maintaining the data needed, and completing and reviewing the collection.

Under the provisions of this proposed rule, the affected facilities and vessels would be required to update their FSPs to include provisions of seafarers' access. This requirement would be added to an existing approved collection covered by Office of Management and Budget (OMB) control number 1625–0077.

Title: Security Plans for Ports, Vessels, Facilities, and Outer Continental Shelf Facilities and other Security-Related Requirements

OMB Control Number: 1625–0077.

Summary of the Collection of Information: This proposed rule would modify an existing collection of information, in proposed §§ 105.200 through 105.405, for owners and operators of certain MTSA-regulated facilities. MTSA-regulated facilities would need to include a description of seafarers' access in their FSPs. These requirements would require a one-time change in previously approved OMB Collection 1625–0077.

Proposed Use of Information: The Coast Guard would use this information to determine whether a facility is providing adequate seafarers' access provisions between the vessel and the facility gate.

Description of the Respondents: The respondents are owners and operators of

MTSA-regulated facilities regulated by the Coast Guard under 33 CFR Chapter I, subchapter H.

Number of Respondents: The adjusted number of respondents is 10,158 for vessels, 5,234 for facilities, and 56 for Outer Continental Shelf facilities. Of these 5,234 facilities, 2,498 would be required to modify their existing FSPs.

Frequency of Response: There will be a one-time response for all 2,498 respondents. The FSP would need to be updated within 10 months after publication of the final rule.

Burden of Response: This includes a one-time, 14,988-hour burden. The burden resulting from this NPRM is 6 hours per respondent.

Estimate of Total Annual Burden: The estimated implementation period burden for facilities is 6 hours per FSP amendment. Since 2,498 facilities would be required to modify their existing FSPs, the total burden would be 14,988 hours = (2,498 facilities * 6 hours).

The current burden listed in this collection of information is 1,108,043 hours. The new burden, as a result of this proposed rulemaking, would be 1,123,031 hours (1,108,043 + 14,988).

As required by the Paperwork Reduction Act of 1995 (44 U.S.C. 3507(d)), we will submit a copy of this proposed rule to the OMB for review of the collection of information.

We ask for public comment on the proposed collection of information to help us determine how useful the information is; whether it can help us perform our functions better; whether it is readily available elsewhere; how accurate our estimate of the burden of collection is; how valid our methods for determining burden are; how we can improve the quality, usefulness, and clarity of the information; and how we can minimize the burden of collection.

If you submit comments on the collection of information, submit them both to OIRA and to the Docket Management Facility where indicated under **ADDRESSES**, by the date under **DATES**.

You need not respond to a collection of information unless it displays a currently valid control number from OMB. Before the Coast Guard could enforce the collection of information requirements in this proposed rule, OMB would need to approve the Coast Guard's request to collect this information.

E. Federalism

A rule has implications for Federalism under Executive Order 13132, Federalism, if it has a substantial direct effect on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. We have analyzed this proposed rule and have determined that it is consistent with the fundamental Federalism principles and preemption requirements described in Executive Order 13132.

This proposed rule would update existing regulations in 33 CFR part 105 by requiring each owner or operator of a facility regulated by the Coast Guard to implement a system that provides seafarers and other individuals with access through the facility. Additionally, this proposed rule would add requirements to amend security plans in order to ensure compliance.

It is well-settled that States may not regulate in categories reserved for regulation by the Coast Guard. (See the decision of the Supreme Court in the consolidated cases of *United States* v. *Locke* and *Intertanko* v. *Locke,* 529 U.S. 89, 120 S. Ct. 1135 (March 6, 2000)). The Coast Guard believes the Federalism principles articulated in *Locke* apply to the regulations promulgated under the authority of MTSA. States and local governments are foreclosed from regulating within the fields covered by regulations found in 33 CFR parts 101, 103, 104, and 106. However, with regard to regulations found in 33 CFR part 105, State maritime facility regulations are not preempted so long as these State laws or regulations are more stringent than what is required by 33 CFR part 105 and no actual conflict or frustration of an overriding need for national uniformity exists.

While it is well settled that State law or regulations will be preempted where Congress intended Coast Guard regulations to have preemptive effect, the Coast Guard recognizes the key role that State and local governments may have in making regulatory determinations. Additionally, for rules with federalism implications and preemptive effect, Executive Order 13132 specifically directs agencies to consult with State and local governments during the rulemaking process. If you believe this rule has implications for federalism under Executive Order 13132, please contact the person listed in the **FOR FURTHER INFORMATION** section of this preamble.

F. Unfunded Mandates Reform Act

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

G. Taking of Private Property

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

H. Civil Justice Reform

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

I. Protection of Children

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

J. Indian Tribal Governments

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

K. Energy Effects

We have analyzed this proposed rule under Executive Order 13211, Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use. We have determined that it is not a ''significant energy action'' under that order. Though it is a ''significant regulatory action'' under Executive Order 12866, it is not likely to have a significant adverse effect on the supply, distribution, or use of energy. The Administrator of the Office of Information and Regulatory Affairs has not designated it as a significant energy action. Therefore, it does not require a Statement of Energy Effects under Executive Order 13211.

L. Technical Standards

The National Technology Transfer and Advancement Act (NTTAA) (15 U.S.C. 272 note) directs agencies to use voluntary consensus standards in their regulatory activities unless the agency provides Congress, through the Office of Management and Budget, with an explanation of why using these standards would be inconsistent with applicable law or otherwise impractical. Voluntary consensus standards are technical standards (*e.g.,* specifications of materials, performance, design, or operation; test methods; sampling procedures; and related management systems practices) that are developed or adopted by voluntary consensus standards bodies.

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

M. Environment

We have analyzed this proposed 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 made a preliminary determination that this action is one of a category of actions that do not individually or cumulatively have a significant effect on the human environment. A preliminary environmental analysis checklist supporting this determination is available in the docket where indicated under the ''Public Participation and Request for Comments'' section of this preamble. This rule is likely to be categorically excluded under section 2.B.2, figure 2–1, paragraph (34)(a) and (c) of the Instruction and 6(a) of the final agency policy published at 67 FR 48243 on July 23, 2002. This rule involves regulations which are editorial or procedural, regulations concerning training, qualifying, licensing, and disciplining of maritime personnel and regulations concerning vessel operation safety standards. We seek any comments or information that may lead to the discovery of a significant environmental impact from this proposed rule.

List of Subjects

33 CFR Part 101

Harbors, Incorporation by reference, Maritime security, Reporting and recordkeeping requirements, Security measures, Vessels, Waterways.

33 CFR Part 105

Maritime security, Reporting and recordkeeping requirements, Security measures.

For the reasons discussed in the preamble, the Coast Guard proposes to amend 33 CFR parts 101 and 105 as follows:

33 CFR—Navigation and Navigable Waters

PART 101—MARITIME SECURITY: GENERAL

■ 1. The authority citation for part 101 continues to read as follows:

Authority: 33 U.S.C. 1226, 1231; 46 U.S.C. Chapter 701; 50 U.S.C. 191, 192; Executive Order 12656, 3 CFR 1988 Comp., p. 585; 33 CFR 1.05–1, 6.04–11, 6.14, 6.16, and 6.19; Department of Homeland Security Delegation No. 0170.1.

■ 2. Add § 101.112 to read as follows:

§ 101.112 Federalism.

(a) [RESERVED]

(b) The regulations in 33 CFR part 105 have preemptive effect over State or local regulations insofar as a State or local law or regulation applicable to the facilities covered by part 105 would conflict with the regulations in part 105, either by actually conflicting or frustrating an overriding Federal need for uniformity.

PART 105—MARITIME SECURITY: FACILITIES

■ 3. The authority citation for part 105 continues to read as follows:

Authority: 33 U.S.C. 1226, 1231; 46 U.S.C. 70103; 50 U.S.C. 191; 33 CFR 1.05–1, 6.04–11, 6.14, 6.16, and 6.19; Department of Homeland Security Delegation No. 0170.1.

§ 105.200 [Amended]

■ 4. Amend § 105.200 as follows:

■ a. In paragraph (b)(1), after the words ''Define the'', remove the words ''security organizational structure'' and add, in their place, the words ''organizational structure of the security personnel''; and after the word ''responsibilities'', remove the words ''within that structure'';

■ b. In paragraph (b)(4), remove the words ''an FSP'' and add, in their place, the words ''a Facility Security Plan (FSP)'';

■ c. In paragraph (b)(6), remove the acronym ''TWIC'' and add, in its place, the words ''Transportation Worker Identification Credential (TWIC)'';

■ d. In paragraph (b)(6)(i), after the words ''FSP are permitted to'', add the words ''serve as an'', and at the end of the sentence, remove the symbol '';'', and add, in its place, the symbol ''.'';

■ e. In paragraph (b)(6)(ii), after the words ''or other authorized individual,'', remove the word ''should'' and add, in its place, the words ''in the event that'', and at the end of the sentence, remove the symbol and word ''; and'', and add, in its place, the symbol ''.'';

■ f. In paragraph (b)(6)(iii), after the word ''employees'', remove the symbol ''.''; remove the word ''what'', and add, in its place, the word ''which''; and after the words ''are secure areas and'', add the words ''which are'';

■ g. In paragraph (b)(8), after the abbreviation ''(DoS)'', add the symbol ''.'';

■ h. In paragraph (b)(9), after the word ''Ensure'', remove the words ''coordination of'', and add, in their place, the words ''implementation of a system, in accordance with § 105.237 of this subpart, coordinating''; and after the words ''for visitors to the vessel'', remove the words ''(including representatives of seafarers' welfare and labor organizations)'' and add, in their place, the words '', as described in § 105.237(b)(4) of this subpart''

■ i. In paragraph (b)(14), after the words ''and of their obligation to inform'', remove the acronym ''TSA'' and add, in its place, the words ''Transportation Security Administration (TSA)''; and

■ j. In paragraph (b)(15), after the words ''protocols consistent with'', remove the words ''section 105.255(c)'' and add, in their place, the words ''paragraph (c) of § 105.255''.

■ 5. Add § 105.237 to read as follows:

§ 105.237 System for seafarers' access.

(a) *Access Required.* Each facility owner or operator must implement a system by (365 DAYS AFTER DATE OF PUBLICATION OF FINAL RULE) for providing access through the facility that enables individuals to transit to and from a vessel moored at the facility and the facility gate in accordance with the requirements in this section. The system must provide timely access as described in paragraph (c) of this section and incorporate the access methods described in paragraph (d) of this section at no cost to the individuals covered. The system must comply with the Transportation Worker Identification Credential (TWIC) provisions in this part.

(b) *Individuals Covered.* The individuals to whom the facility owner or operator must provide the access described in this section include—

(1) The seafarers assigned to a vessel moored at the facility;

(2) The pilots and other authorized personnel performing work for a vessel moored at the facility;

(3) Representatives of seafarers' welfare and labor organizations; and

(4) Other authorized individuals in accordance with the Declaration of Security (DoS) or other arrangement between the vessel and facility.

(c) *Timely Access.* The facility owner or operator must provide the access described in this section without unreasonable delay, subject to review by the Captain of the Port (COTP). The facility owner or operator must consider the following when establishing timely access without unreasonable delay:

(1) Length of time the vessel is in port.

(2) Distance of egress/ingress between the vessel and facility gate.

(3) The vessel watch schedules.

(4) The facility's safety and security procedures as required by law.

(5) Any other factors specific to the vessel or facility that could affect access to and from the vessel.

(d) *Access Methods.* The facility owner or operator must ensure that the access described in this section is provided through one or more of the following methods:

(1) Regularly scheduled escort between the vessel and the facility gate that conforms to the vessel's watch schedule as agreed upon between the vessel and facility.

(2) An on-call escort between the vessel and the facility gate.

(3) Arrangements with taxi services, ensuring that any costs for providing the access described in this section, above the taxi's standard fees charged to any customer, are not charged to the individual to whom such access is provided. If a facility provides arrangements with taxi services as the only method for providing the access described in this section, the facility is responsible to pay the taxi fees for transit within the facility.

(4) Arrangements with seafarers' welfare organizations to facilitate the access described in this section.

(5) Monitored pedestrian access routes between the vessel and facility gate.

(6) A method, other than those in paragraphs (d)(1) through (d)(5) of this section, approved by the COTP.

(7) If an access method relies on a third party, a back-up access method that will be used if the third-party is unable to or does not provide the required access in any instance. An owner or operator must ensure that the access required in paragraph (a) of this section is actually provided in all instances.

(e) *No cost to individuals.* The facility owner or operator must provide the access described in this section at no cost to the individual to whom such access is provided.

(f) *Described in the Facility Security Plan (FSP).* On or before [INSERT DATE 10 MONTHS AFTER PUBLICATION OF THE FINAL RULE], the facility owner or operator must document the facility's system for providing the access described in this section in the approved FSP in accordance with 33 CFR 105.410 or 33 CFR 105.415. The description of the facility's system must include—

(1) Location of transit area(s) used for providing the access described in this section;

(2) Duties and number of facility personnel assigned to each duty associated with providing the access described in this section;

(3) Methods of escorting and/or monitoring individuals transiting through the facility;

(4) Agreements or arrangements between the facility and private parties, nonprofit organizations, or other parties, to facilitate the access described in this section; and

(5) Maximum length of time an individual would wait for the access described in this section, based on the provided access method(s).

■ 6. Amend § 105.405 as follows:

■ a. In paragraph (a), at the end of the first sentence, remove the text ''(a)'';

■ b. Redesignate paragraphs (a)(9) through (a)(18) as (a)(10) through (a)(19);

■ c. In newly designated paragraphs (a)(18) and (a)(19), at the beginning of the paragraphs, add the word ''The'' before the word ''Facility''; and

■ d. Add new paragraph (a)(9) as follows:

§ 105.405 Format and content of the Facility Security Plan (FSP).

(a) * * *

(9) System for seafarers' access;

* * * * *

Dated: December 17, 2014.

J.C. Burton,

Captain, U.S. Coast Guard, Director of Inspections & Compliance.

[FR Doc. 2014–30013 Filed 12–24–14; 8:45 am]

BILLING CODE 9110–04–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R07–OAR–2014–0399; FRL–9920–67–Region 7]

Approval and Promulgation of Implementation Plans; State of Missouri; St. Louis Inspection and Maintenance Program

AGENCY: Environmental Protection Agency.

ACTION: Proposed rule.

SUMMARY: The Environmental Protection Agency (EPA) proposes to approve State Implementation Plan (SIP) revisions submitted by the State of Missouri relating to the Inspection and Maintenance (I/M) Program. On August 16, 2007, and December 7, 2007, the Missouri Department of Natural Resources (MDNR) requested to amend the SIP to replace the St. Louis centralized transient I/M240 vehicle test program Gateway Clean Air Program (GCAP) and associated state rule with a de-centralized, OBD only vehicle I/M program called, the Gateway Vehicle Inspection Program (GVIP), and a new I/M rule reflecting these changes. In this action, EPA is also proposing approval of three additional SIP revisions submitted by Missouri related to the state's I/M program including minor clarification edits to the new I/M rule, exemptions for specially constructed vehicles or ''kit-cars,'' exemptions for Plugin Hybrid Electric Vehicles (PHEV), and rescission of Missouri State Highway Patrol rules from the Missouri SIP.

These revisions to Missouri's SIP do not have an adverse effect on air quality as demonstrated in the technical support document which is a part of this docket. EPA's approval of these SIP revisions is being done in accordance with the requirements of the Clean Air Act (CAA).

DATES: Comments must be received on or before January 28, 2015.

ADDRESSES: Submit your comments, identified by Docket ID No. EPA–R07–OAR–2014–0399, by one of the following methods:

1. *www.regulations.gov:* Follow the on-line instructions for submitting comments.

2. *Email: brown.steven@epa.gov*

3. *Mail or Hand Delivery or Courier:* Steven Brown, Environmental Protection Agency, Air Planning and Development Branch, 11201 Renner Boulevard, Lenexa, Kansas 66219.

Instructions: Direct your comments to Docket ID No. EPA–R07–OAR–2014–0399. EPA's policy is that all comments received will be included in the public docket without change and may be made available online at *www.regulations.gov,* including any personal information provided, unless the comment includes information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Do not submit information that you consider to be CBI or otherwise protected through *www.regulations.gov* or email. The *www.regulations.gov* Web

site is an ''anonymous access'' system, which means EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an email comment directly to EPA without going through *www.regulations.gov,* your email address will be automatically captured and included as part of the comment that is placed in the public docket and made available on the Internet. If you submit an electronic comment, EPA recommends that you include your name and other contact information in the body of your comment and with any disk or CD–ROM you submit. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment. Electronic files should avoid the use of special characters, any form of encryption, and be free of any defects or viruses.

Docket. All documents in the electronic docket are listed in the *www.regulations.gov* index. Although listed in the index, some information is not publicly available, *e.g.,* CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, will be publicly available only in hard copy. Publicly available docket materials are available either electronically in *www.regulations.gov* or in hard copy at the Environmental Protection Agency, Air Planning and Development Branch, 11201 Renner Boulevard, Lenexa, Kansas 66219. EPA requests that you contact the person listed in the **FOR FURTHER INFORMATION CONTACT** section to schedule your inspection. The interested persons wanting to examine these documents should make an appointment with the office at least 24 hours in advance.

FOR FURTHER INFORMATION CONTACT: Steven Brown Environmental Protection Agency, Air Planning and Development Branch, 11201 Renner Boulevard, Lenexa, Kansas 66219 at (913) 551–7718, or by email at *brown.steven@epa.gov.*

SUPPLEMENTARY INFORMATION: Throughout this document ''we,'' ''us,'' or ''our'' refer to EPA. This section provides additional information by addressing the following:

I. What is being addressed?
II. Have the requirements for approval of a SIP revision been met?
III. What action is EPA taking?
IV. Statutory and Executive Order Reviews

I. What is being addressed?

EPA is proposing approval into the SIP, revisions to St. Louis vehicle I/M program to replace the centralized, transient I/M240 vehicle I/M program (GCAP) with the de-centralized, OBD only, vehicle I/M program (GVIP). MDNR submitted to EPA five SIP revision submissions to address the vehicle I/M program replacement and associated state rule plus one supplemental demonstration. They are as follows:

On August 16, 2007, MDNR requested that Missouri Rule 10 CSR 10–5.380, ''Motor Vehicle Emissions Inspection'' be rescinded and replaced with the new rule 10 CSR 10–5.381, ''On-Board Diagnostics Motor Vehicle Emissions Inspection.'' In that same submittal letter, MDNR also requested that Missouri Rule 10 CSR 10–5.375, ''Motor Vehicles Emissions Inspection Waiver'' be rescinded. EPA does not plan on taking any action on 10 CSR 10–5.375 as it is not a part of the SIP.

On December 14, 2007, MDNR submitted the new GVIP plan and performance standard demonstration to show that the GVIP program meets the basic requirements as described in 40 CFR part 51 subpart S. This submission also requests that EPA approve the plan to replace the GCAP I/M program with the new GVIP program.

On December 21, 2007, Missouri submitted a revision requesting that the Missouri State Highway Patrol rules be removed from the Missouri SIP because the new rule 10 CSR 10–5.381 does not rely on the Missouri Highway Patrol rules for enforcement. More details can be found in the technical support document that is a part of this docket.

On January 2, 2009, MDNR submitted a required supplemental demonstration for I/M network type and program evaluation as required by 40 CFR 51.353. This demonstration is required within one year after the I/M program begins.

On June 17, 2009, Missouri submitted a revision to I/M rule 10 CSR 10–5.381 which includes minor clarification edits and exempts specially constructed vehicles or ''kit-cars'' from the rule.

On December 10, 2012, Missouri submitted another revision to exempt Plugin Hybrid Electric Vehicles (PHEV) from the I/M program as codified in rule 10 CSR 10–5.381. As part of our review, EPA performed a separate analysis of all the state's SIP submissions and a cumulative analysis as documented in the technical support document that is part of this docket.

II. Have the requirements for approval of a SIP revision been met?

The state submission has met the public notice requirements for SIP submissions in accordance with 40 CFR 51.102. The submission also satisfied the completeness criteria of 40 CFR part 51, appendix V. In addition, as explained in this proposed action and in more detail in the technical support document which is part of this docket, the revisions meet the substantive SIP requirements of the CAA, including section 110(l) and implementing regulations. EPA has determined that the revisions meet all applicable CAA regulations, policy and guidance as detailed in the technical support document.

III. What action is EPA taking?

EPA is proposing to approve these SIP revisions. While these SIP revisions were submitted in separate requests, they are direct changes to the St. Louis Vehicle Inspection Program and are being addressed in one SIP action. We are processing this as a proposed action. Final rulemaking will occur after consideration of any comments provided in response to this proposal.

IV. Statutory and Executive Order Reviews

Under the CAA, the Administrator is required to approve a SIP submission that complies with the provisions of the Act and applicable Federal regulations. 42 U.S.C. 7410(k); 40 CFR 52.02(a). Thus, in reviewing SIP submissions, EPA's role is to approve state choices, provided that they meet the criteria of the CAA. Accordingly, this proposed action merely approves state law as meeting Federal requirements and does not impose additional requirements beyond those imposed by state law. For that reason, this proposed action:

- Is not a ''significant regulatory action'' 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);
- Does not impose an information collection burden under the provisions of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*);
- Is certified as not having a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*);
- Does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4);
- Does not have Federalism implications as specified in Executive Order 13132 (64 FR 43255, August 10, 1999);

• Is not an economically significant regulatory action based on health or safety risks subject to Executive Order 13045 (62 FR 19885, April 23, 1997);

• Is not a significant regulatory action subject to Executive Order 13211 (66 FR 28355, May 22, 2001);

• Is not subject to requirements of Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) because application of those requirements would be inconsistent with the CAA; and

• Does not provide EPA with the discretionary authority to address, as appropriate, disproportionate human health or environmental effects, using practicable and legally permissible methods, under Executive Order 12898 (59 FR 7629, February 16, 1994).

In addition, this rule does not have tribal implications as specified by Executive Order 13175 (65 FR 67249, November 9, 2000), because the SIP is not approved to apply in Indian country located in the state, and EPA notes that it will not impose substantial direct costs on tribal governments or preempt tribal law.

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Carbon monoxide, Incorporation by reference, Intergovernmental relations, Lead, Nitrogen dioxide, Ozone, Particulate matter, Reporting and recordkeeping requirements, Sulfur oxides, Volatile organic compounds.

Dated: December 10, 2014.

Becky Weber,

Acting Regional Administrator, Region 7.

For the reasons stated in the preamble, the Environmental Protection Agency proposes to amend 40 CFR part 52 as set forth below:

PART 52—APPROVAL AND PROMULGATION OF IMPLEMENTATION PLANS

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

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

Subpart AA—Missouri

■ 2. In § 52.1320, the table in paragraph (c) is amended by removing the entry ''10–5.380'' and adding the entry ''10–5.381'' to read as follows:

§ 52.1320 Identification of Plan.

* * * * *

(c) * * *

EPA-APPROVED MISSOURI REGULATIONS

Missouri citation	Title	State effective date	EPA approval date	Explanation
Missouri Department of Natural Resources				
*	*	*	*	*
Chapter 5—Air Quality Standards and Air Pollution Control Regulations for the St. Louis Metropolitan Area				
*	*	*	*	*
10–5.381	On-Board Diagnostics Motor Vehicle Emissions Inspection.	12/30/12	12/29/14 *[Insert **Federal Register** citation].*	
*	*	*	*	*

* * * * *

[FR Doc. 2014–29869 Filed 12–24–14; 8:45 am]

BILLING CODE 6560–50–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 224

[Docket No. 130808698–4999–02]

RIN 0648–XC809

Endangered and Threatened Wildlife and Plants; Notice of 12-Month Finding on Petitions To List the Pinto Abalone as Threatened or Endangered Under the Endangered Species Act (ESA)

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

ACTION: Notice of 12-month finding and availability of a status review report.

SUMMARY: We, NMFS, announce a 12-month finding on two petitions to list the pinto abalone (*Haliotis kamtschatkana*) as threatened or endangered under the Endangered Species Act (ESA). We have completed a comprehensive status review of the pinto abalone in response to these petitions. Based on the best scientific and commercial information available, we have determined that the species does not warrant listing at this time. We conclude that the pinto abalone is not currently in danger of extinction throughout all or a significant portion of its range and is not likely to become so within the foreseeable future. The species will remain on the NMFS Species of Concern list, with one revision to apply the Species of Concern status throughout the species' range (Alaska to Mexico). We also announce the availability of the pinto abalone status review report.

DATES: This finding was made on December 29, 2014.

ADDRESSES: The pinto abalone status review report is available electronically at: *http://www.westcoast.fisheries.noaa.gov/*. You may also receive a copy by submitting a request to the Protected Resources Division, West Coast Region, NMFS, 501 West Ocean Blvd., Suite 4200, Long Beach, CA 90802–4213, Attention: Pinto Abalone 12-month Finding.

FOR FURTHER INFORMATION CONTACT: Melissa Neuman, NMFS, West Coast Region (562) 980–4115; or Lisa Manning, NMFS, Office of Protected Resources (301) 427–8466.

SUPPLEMENTARY INFORMATION:

Background

The pinto abalone (*Haliotis kamtschatkana*) was added to the National Marine Fisheries Service's (NMFS') ''Species of Concern'' list on April 15, 2004 (69 FR 19975). On July 1, 2013, the National Marine Fisheries Service (NMFS) received a petition from the Natural Resources Defense Council (NRDC) requesting that the pinto

abalone be listed as threatened or endangered under the Endangered Species Act (ESA) and that critical habitat be designated for the species. On August 5, 2013, we received a second petition, filed by the Center for Biological Diversity (CBD) to list the pinto abalone under the ESA and designate critical habitat. On November 18, 2013, NMFS determined that the petitions presented substantial information indicating that the petitioned action may be warranted for pinto abalone (a ''positive 90-day finding'') and published the finding in the **Federal Register** (78 FR 69033), pursuant to 50 CFR 424.14.

In the fall of 2013, we assembled a Status Review Team (SRT) to compile and review the best available information, assess the extinction risk and threats facing the species, and produce an ESA status review report for pinto abalone. The status review report (NMFS 2014) provides a thorough account of pinto abalone biology and natural history, and an assessment of demographic risks, threats and limiting factors, and overall extinction risk for the species. The status review report was subjected to independent peer review as required by the Office of Management and Budget Final Information Quality Bulletin for Peer Review (M–05–03; December 16, 2004). The key background information and findings of the status review report are summarized below.

Species Description

The pinto abalone is a marine gastropod of the genus *Haliotis*. It is one of seven species of abalone native to the west coast of North America and occurs in both rocky intertidal and subtidal habitats from Baja California to Alaska (Geiger 1999). Like all abalone, pinto abalone are benthic, occurring on hard substrate, relatively sedentary, and generally herbivorous, feeding on attached or drifting algal material. The shell is scallop-edged, multi-colored (mottled red and/or green), and characterized by irregular lumps, with three to seven open respiratory pores that are slightly raised above the shell's surface and paralleling a deep groove (Stevick 2010). The pinto abalone's muscular foot is tan and is used to adhere to hard substrate and for locomotion. The epipodium (the circular fringe of skin around the foot) and tentacles are mottled yellow to dark tan with vertical banding patterns. The maximum recorded shell length for pinto abalone is 190 mm (see status review report). The maximum age is not known, but estimated longevity of at least 15–20 years is reasonable for pinto abalone (Shepherd *et al.* 2000, cited in Committee on the Status of Endangered Wildlife in Canada (COSEWIC) 2009)

Distribution

Of the seven species of abalone found along the west coast of North America (Geiger 1999), pinto abalone have the broadest latitudinal range, extending from Salisbury Sound, Sitka Island, Alaska to Bahia Tortugas, Baja California, Mexico (Campbell 2000), and are the predominant abalone found in Washington and Alaska, and in British Columbia, Canada. Other than a few observations on the Oregon coast, we are not aware of any records of pinto abalone along the outer coast of Washington from Neah Bay to Cape Mendocino in California, indicating a gap in the species distribution (Geiger 2000 and 2004 (ABMAP: *http://www.vetigastropoda.com/ABMAP/NEPacific.html*)).

Two subspecies of pinto abalone have been recognized by taxonomists, based on differences in shell shape and pattern (McLean 1966). The northern form (*Haliotis kamtschatkana kamtschatkana*) is generally distributed from Alaska south to Point Conception, California. The southern form, or ''threaded abalone'' (*Haliotis kamtschatkana assimilis*) is generally distributed from central California to Turtle Bay in Baja California, Mexico (Geiger 1999). As discussed below under ''the Species Question'' section of this notice, recent evidence suggests that the two subspecies overlap throughout their range, with examples of the northern form observed in Baja California and examples of the southern form in British Columbia and Washington.

Population Structure and Genetics

We are aware of only one published assessment of population structure in *H. kamtschatkana* to date, conducted by Withler *et al.* (2001). The assessment estimated variation at 12 microsatellite loci for abalone sampled at 18 sites located throughout coastal British Columbia and at one site in Sitka Sound, Alaska. The results indicated a lack of differentiation among sites and suggest historically high gene flow among populations within the region from British Columbia to Alaska. This study is limited in that it only examines populations in one part of the species range and uses one set of microsatellite loci; however, it represents the best available information to date regarding population structure.

Other studies have examined whether there is a genetic basis for the delineation of two subspecies, which has been based entirely on differences in shell morphology. Studies thus far have examined the portions of the mitochondrial genes cytochrome oxidase subunit one (COI) and cytochrome b (Cyt b), as well as the reproductive proteins lysin and VERL (vitelline envelope receptor for lysin), and have found no genetic differentiation between the two purported subspecies (Gruenthal and Burton 2005, Straus 2010, Supernault *et al.* 2010, Schwenke and Park, unpublished data cited in the status review report). We discuss this further in the section of this notice titled ''the Species Question.''

Habitat

Pinto abalone are generally found in rocky intertidal and subtidal habitats with ample algal cover. The specific depth ranges and habitats occupied vary across the species range, as described below. The species occurs in areas with little freshwater influence (salinity ≥ 30 parts per thousand), and can tolerate wide ranges in temperature, from 2 to 24 degrees Celsius, based on laboratory experiments (Paul and Paul 1998).

In the northern part of its range (*e.g.,* Alaska to Washington), the species occurs in shallower habitats ranging from the lower intertidal to 20m deep relative to mean lower low water (MLLW); they are most commonly found from the intertidal to 10m deep relative to MLLW (Rothaus *et al.* 2008). In Alaska, pinto abalone are primarily found in the lower intertidal and subtidal surge zones on the outer coast of Southeast Alaska, as well as in the Inside Passage of southern Southeast Alaska (Alaska Department of Fish and Game (ADF&G) comments to NMFS, 17 January 2014). In British Columbia, pinto abalone occur on rocky intertidal and subtidal habitats within areas ranging from sheltered bays to exposed coastlines (COSEWIC 2009). In Washington, the recorded depth range of pinto abalone is 3 to 20 m deep relative to MLLW. Occupied habitats vary with respect to exposure and contain hard substrate (bedrock and boulders/cobble) with ample quantities of benthic diatoms and micro- and macro-algae.

In the southern part of the range, pinto abalone occur in deeper subtidal waters from approximately 12 to 40 m deep relative to MLLW (Geiger and Owen 2012) and are commonly found on open rock surfaces. Distribution in areas along the Southern California mainland is patchy and may be correlated with substrate type, relief, algal composition, and the presence of intermittent sand channels that may

accumulate drift kelp (an important food source). Pinto abalone appear to prefer flat rock over uneven rock, low relief with scattered rock and boulders over high relief habitats, and areas with *Pelagophycus porra, Laminaria farlowii, Agarum fimbriatum, Pterygophora californica,* and coralline algae (articulated and crustose) (unpublished data from Bill Hagey *et al.* and Melissa Neuman *et al.,* cited in the status review report). A recent study reported that in Mexico, *H. k. assimilis* and *H. sorenseni* occurred at depths ranging from 11 to 25 m (relative to MLLW), with the majority found between 13 to 15 m and 19 to 21 m deep, although this may reflect a bias toward the depths that were visited most frequently (Boch *et al.* 2014).

Movement

Little is known about movement patterns of larval or juvenile pinto abalone anywhere in their range. The planktonic larval stage is short (approximately 5–6 days; Olsen 1984, cited in Sloan and Breen 1988), and thus dispersal is likely to be limited and almost certainly determined primarily by patterns of water movement in nearshore habitats near spawning sites. Larval settlement and metamorphosis in pinto abalone is likely to be associated with chemical cues present in crustose red algae, as has been found for red abalone (*H. rufescens*) (Morse and Morse 1984). Small juvenile (<10 mm) pinto abalone are difficult to find in the field, but are occasionally observed under boulders and on smooth bedrock or boulders that are bare or encrusted with coralline algae, mostly at deeper depths (*e.g.,* −5 to −15 m) than adults are typically found (Breen 1980a). Other grazers (*e.g.,* sea urchins, chitons, limpets, and adult abalone) may be important in maintaining encrusting coralline algae (Sloan and Breen 1988).

To our knowledge there is no published information on direct observations of movement behavior of small (<20 mm) juvenile pinto abalone in the field. However, distribution patterns of juveniles and adults indicate an ontogenetic shift in habitat use, with small juveniles (<10 mm shell length) occupying highly cryptic habitats in deeper waters and migrating to shallower depths and more exposed habitats as they increase in size (Sloan and Breen 1988). This shift may be associated with changes in diet (Sloan and Breen 1988) and predation risk (Griffiths and Gosselin 2004) with size.

Movement generally decreases as individuals grow in size and age. Tagging studies and observational surveys conducted in British Columbia indicate that although adult pinto abalone have the ability to move several meters a day and tens of meters in a year, they typically exhibit minimal movement, likely staying within close proximity to their settlement habitat (Sloan and Breen 1988). Laboratory and field observations indicate that individuals tend to be more active at night (Sloan and Breen 1988) and during the spawning season (spring through summer months). Observations of spawning behavior in the wild (Breen and Adkins 1980a) and in the laboratory (Quayle 1971) indicate that pinto abalone form aggregations, stack on top of each other, and migrate to the highest point available during spawning events. The reason for this behavior is unknown, but may serve to increase fertilization rates by aggregating spawners and increasing the chances for the eggs to encounter sperm (which tend to be in the water column) before they land on the bottom (Sloan and Breen 1988).

Diet

After a short 5–6 day lecithotrophic (non-feeding) larval phase (Olsen 1984, cited in Sloan and Breen 1988), juveniles settle and immediately begin feeding (Morse 1984; Morse and Morse 1984, cited in Sloan and Breen 1988). Laboratory observations and gut content analyses of hatchery-reared juveniles show that post-metamorphic juveniles graze on minute benthic diatoms, microalgae, and bacteria associated with encrusting coralline algae and rock surfaces (Olsen 1984, Norman-Boudreau *et al.* 1986, cited in Sloan and Breen 1988). Juveniles may also feed on the crustose coralline algae itself (Garland *et al.* 1985, cited in Sloan and Breen 1988). These observations are consistent with the microhabitats within which small juveniles are found in the wild (smooth or crustose coralline encrusted bedrock and boulders) (Breen 1980a).

Juveniles shift to feeding on macroalgae as they grow in size and age. Adults have been observed to feed directly on attached macroalgae (Sloan and Breen 1988), but drift macroalgae is believed to be the primary food resource (Breen 1980a). Laboratory studies indicate that adults prefer *Macrocystis* and *Nereocystis,* but will feed on diatoms and brown, red, and green algae, including *Laminaria, Pterygophora,* and *Costaria* (Paul *et al.* 1977; unpublished data by Breen and unpublished student reports by P. Gee and J. Lee, Simon Fraser University, cited in Sloan and Breen 1988). Adults avoided *Fucus distichus* and *Agarum cribrosum* (Paul *et al.* 1977; unpublished student reports by P. Gee and J. Lee, Simon Fraser University, cited in Sloan and Breen 1988). Diet composition likely varies by location within the species range, depending on what is available.

Reproduction and Spawning Density

Although size at maturity can vary by location (depending on factors such as water temperature and food availability and quality), pinto abalone become emergent and are generally reproductively mature at a size of about 50 mm shell length (SL) (about 2–5 years in age), with all abalone mature at a size of about 70 mm SL (Leighton 1959, Ault 1985, Campbell *et al.* 1992). Pinto abalone have separate sexes and are ''broadcast'' spawners. Gametes from both parents are released into the water, and fertilization is entirely external. Resulting embryos and larvae are minute and defenseless, receive no parental care or protection, and are subject to a broad array of physical and biological sources of mortality. Like other species with a broadcast-spawning reproductive strategy, abalone produce large numbers of gametes (*e.g.,* millions of eggs or sperm per individual per year) to overcome high mortality in early life stages and survive across generations. As broadcast spawners, pinto abalone are also subject to selection for other reproductive traits, such as spatial and temporal synchrony in spawning and mechanisms to increase the probability of fertilization.

An important factor in successful reproduction is the density of spawning adults. A reduction in adult density could result in increased growth, survival, and gamete production due to decreased intraspecific competition; however, for broadcast spawners, these advantages may be countered by decreases in the rate of successful fertilization if individuals are sparsely distributed (Levitan 1995, Levitan and Sewell 1998, Gascoigne and Lipcius 2004). A critical distance of 1 m has been identified for abalone species; that is, it is estimated that individuals of the opposite sex need to be within 1 m of one another to increase the chances of successful fertilization (Babcock and Keesing 1999). Evidence for critical adult density thresholds below which recruitment failure occurs has been found for broadcast-spawning species across a broad taxonomic range, and a few estimates have been developed for abalone species. Babcock and Keesing (1999) estimated critical density thresholds at 0.15–0.20 per square meter (sq m) for *Haliotis laevigata* Donovan, 1808. Shepherd *et al.* (2001) and Shepherd and Rodda (2001) noted that these density thresholds can vary according to coastal topography. For

example, coastal topography can create larval retention areas where threshold density may be lower than in areas where larvae are more easily dispersed. Neuman *et al.* (2010) reviewed recruitment patterns in three long-term data sets for black abalone (*H. cracherodii*) in California. In each case, recruitment failed when declining population densities fell below 0.34 per sq m.

Critical density thresholds have not been estimated for pinto abalone, but evidence suggests that the aggregative nature of the species may facilitate successful reproduction despite low overall mean densities. In 2009, Seamone and Boulding (2011) studied aggregation characteristics during the spawning season at three sites in Barkley Sound, BC. Mean densities at the study sites were 0.12, 0.48, and 0.64 abalone per sq m. Based on critical density thresholds estimated for other abalone species, recruitment failure would be expected at the site with a density of 0.12 per sq m. However, Seamone and Boulding (2011) found that the mean distance between individual pinto abalone at all three study sites was significantly less than 1.0 m, indicating aggregation. These aggregations were independent of sex, and therefore, the probability of encountering an individual of the opposite sex increased with increasing overall mean density. Nonetheless, pinto abalone at all three sites were sufficiently aggregated during the spawning season to potentially increase fertilization rates and compensate for low densities.

Populations at the San Juan Islands Archipelago in Washington do appear to be experiencing recruitment failure (Rothaus *et al.* 2008). There, the mean density of emergent abalone has declined from 0.18 per sq m in 1992 to 0.01 per sq m in 2013 (Rothaus *et al.* 2008, Washington Department of Fish and Wildlife (WDFW) 2014), and the percentage of emergent juveniles (<90mm SL) has also declined from 31.9 percent in 1979 to 7.1 percent in 2013 (WDFW 2014). However, there is evidence of recent recruitment events in all other areas throughout the species' range, despite low densities that are, in most areas, below the critical density thresholds that have been estimated for other abalone species (*i.e.,* 0.15 to 0.34 adults per sq m).

In Alaska, density data are not available but ADF&G has observed mixed age classes in some areas in Southeast Alaska, including juveniles, indicating recent recruitment (pers. comm. with S. Walker, ADF&G, cited in status review report). In British Columbia, recurring and recent recruitment has been observed in several areas. Mean adult densities at index sites have declined since the fishery closed in 1990, from 0.41 to 0.23 per sq m between 1989 and 2006 along the Central Coast and from 0.27 to 0.15 per sq m between 1990 and 2007 at Haida Gwaii (COSEWIC 2009). However, observations of small, immature pinto abalone (<70 mm SL) indicate that recruitment has been occurring despite low densities. In fact, densities of immature pinto abalone have increased, from 0.14 to 0.18 per sq m between 1989 and 2006 along the Central Coast and from 0.20 to 0.27 per sq m between 1990 and 2007 at Haida Gwaii (COSEWIC 2009). The 2011 surveys along the Central Coast and 2012 surveys at Haida Gwaii show increases in both immature and mature pinto abalone densities, with overall densities at most of the sites meeting or exceeding the short-term recovery goal of 0.32 per sq m established by Department of Fisheries and Oceans Canada (DFO) (2007) (pers. comm. with J. Lessard, DFO, on 24 April 2014). The most recent data for other areas in British Columbia indicate that mean densities of emergent abalone (all sizes) vary greatly from 0.0098 per sq m on the south coast of Vancouver Island in 2005 (DFO 2007) to 0.15 per sq m at the Broken Group Islands in Barkley Sound in the early 2000s (Tomascik and Holmes 2003). Tomascik and Holmes (2003) noted evidence of recruitment, with juveniles making up 42 percent of the sampled population.

In northern California, mean densities exceeded the critical density thresholds estimated for other abalone species (Babcock and Keesing 1999, Neuman *et al.* 2010) in Sonoma County (data from 2007–2012) and in Mendocino County (data from 2007–2013) at survey sites deeper than 10 m (unpublished data, L. Rogers-Bennett, California Department of Fish and Wildlife (CDFW), 24 April 2014). In addition, smaller size classes of pinto abalone (15 to 49mm SL) were well represented at the Mendocino County sites, indicating recent recruitment (unpublished data, L. Rogers-Bennett, CDFW, 24 April 2014). In southern California, data from directed pinto abalone surveys as well as opportunistic observations while surveying other abalone species show low densities, ranging from 0.0002 per sq m at San Miguel Island to 0.0286 per sq m at Point Loma in 2006–2012 (unpublished data, I. Taniguchi, CDFW, 24 April 2014) and from 0 to 0.15 per sq m off San Diego in pinto abalone surveys conducted in 2014 (unpublished data, A. Bird, CSUF). Observations of small pinto abalone at Santa Cruz Island, Point Loma, and at several other sites off San Diego indicate recent recruitment events occurring despite low mean densities. In Mexico, density data are generally not available except for a recent survey conducted in 2012 on the El Rosario Coast (Boch *et al.* 2014). The estimated density of pinto abalone was 0.0139 per sq m (NMFS 2014), with the majority being small abalone 40–80mm SL, indicating that recent recruitment has occurred (Boch *et al.* 2014).

Overall, although the available data indicate that mean densities of pinto abalone in most areas are presently below the critical density thresholds (as estimated for other abalone species), recurring and/or recent recruitment events continue to be observed in areas throughout the species' range. The ''Abundance'' section of this notice provides more detail regarding pinto abalone abundance and trends. We note that abalone appear to experience natural fluctuations in abundance and reproductive success, which may be partly driven by environmental variables. For example, Breen (1986) presents several examples of natural declines and recovery in unfished stocks of pinto abalone and other abalone species. Thus, we might expect population abundance and recruitment levels to vary from year to year and across longer time frames.

Larval Dispersal

Effective methods for marking and direct tracking of larval movements do not exist (*e.g.,* McShane *et al.* 1988). As a result, larval dispersal distances are estimated using indirect methods, including (a) examination of spatial relationships of newly recruited cohorts to known aggregations of breeding adults (Prince *et al.* 1988); (b) the use of molecular tools to evaluate the relatedness of adult populations and newly recruited cohorts (Hamm and Burton 2000, Chambers *et al.* 2006); and (c) the use of objects such as drift cards or drift bottles as surrogates for larvae and collecting data on recovery times and locations (*e.g.,* Tegner and Butler 1985, Chambers *et al.* 2005, Hurn *et al.* 2005). Each of these methods includes biases and sources of error that must be considered when interpreting the results.

Because specific studies for pinto abalone are limited, we look to the information that is available regarding dispersal distances for other abalone species. Studies using the three methods discussed above give consistent results indicating limited larval dispersal

distances in abalone species, including *Haliotis cracherodii, rubra,* and *rufescens* (Prince *et al.* 1987 and 1988, McShane *et al.* 1988, McShane 1992, Hamm and Burton 2000, Chambers *et al.* 2005 and 2006, Gruenthal 2007, Gruenthal *et al.* 2007). Given that most abalone larvae are in the plankton for a period of about 3–10 days before settlement and metamorphosis (*e.g.,* McShane 1992), it seems clear that abalone in general have limited capacity for dispersal over distances beyond a few kilometers and are able to do so only rarely. Available information on the genetic structure of pinto abalone populations suggests that long-distance dispersal events occur frequently enough to maintain high gene flow among populations over distances of at least 1000 km (Withler *et al.* 2001).

Larval Settlement and Recruitment

Studies on abalone settlement cues suggest that availability of crustose coralline algae in appropriate habitats may be significant to the success of the larval recruitment process in pinto abalone (Morse and Morse 1984, Morse 1990, Morse 1992). Crustose coralline algae is ubiquitous in rocky benthic habitats along the west coast of North America, but an understanding of the processes that sustain these algal populations has not been established to our knowledge. Field observations along the British Columbia coast indicate differential distribution of juveniles and adults, with juveniles observed at deeper depths, suggesting that settlement of larvae occurs in deeper habitats (Sloan and Breen 1988). Thus, settlement may be influenced by other environmental factors in addition to the presence of crustose coralline algae.

Recruitment is defined here as the appearance in one or more locations of measurable numbers of new post-metamorphic individuals. Prince *et al.* (1987, 1988), McShane *et al.* (1988), and McShane (1992) have presented evidence that recruitment of abalone is most likely to occur in relatively close spatial proximity to aggregations of breeding adults, at least in part a consequence of the relatively short duration of the planktonic larval phase. Other data suggest that abalone recruitment may be influenced by distribution of breeding adults, densities of adults on a local scale, availability of benthic recruitment substrata that provide appropriate chemical cues for settlement and metamorphosis of larvae, regional and local flow regimes that control larval dispersal from natal sites, and possibly predation and starvation of larvae (Strathmann 1985, McShane *et al.* 1988, McShane 1992).

As discussed above (see ''Reproduction and Spawning Density'' section of this notice), data from index site surveys indicate that populations in Washington are experiencing recruitment failure, whereas populations in areas throughout the rest of the species' range have had successful recruitment despite continued declines and low overall densities in most areas. A study by Zhang *et al.* (2007) estimating stock recruitment relationships for populations at Haida Gwaii and along the Central Coast found that poaching, rather than lack of recruitment, is an important factor limiting recovery in British Columbia. This is corroborated by preliminary results from 2011 and 2012 surveys in these areas, showing an increase in population densities that is most likely due to reduced poaching within these areas (pers. comm. with Joanne Lessard, DFO, on 24 April 2014). There is also evidence of recent recruitment events in northern California (unpublished data, L. Rogers-Bennett, CDFW, 24 April 2014), southern California (unpublished data, I. Taniguchi, CDFW, 24 April 2014; unpublished data, A. Bird, CSUF, and E. Parnell, UCSD/Scripps, cited in status review report), and Mexico (Boch *et al.* 2014) from surveys targeting pinto abalone as well as opportunistic observations on surveys for other abalone species. ADF&G has observed mixed age classes in some areas in Southeast Alaska, including juveniles (S. Walker, pers. comm., cited in status review report).

We note that the cryptic nature of juvenile pinto abalone make the detection of recruitment events difficult. Small juveniles (< 10 mm SL) have occasionally been observed under boulders and on smooth bedrock or boulders that are bare or encrusted with coralline algae (Breen 1980a). Juveniles tend to occupy highly cryptic habitats in deeper waters compared to adults (Sloan and Breen 1988). In surveys along the coast of British Columbia, only 60 percent of juveniles 10–70 mm in size were exposed, compared to 90 percent of individuals 70–90 mm size and almost all individuals greater than 90 mm in size (Boutillier *et al.* 1985, cited in Sloan and Breen 1988). Thus, recruitment events may be occurring but going undetected in regions that are not surveyed on a regular, consistent basis.

Growth

Because young post-metamorphic abalone are often cryptic in coloration and habitat use, direct measurements of growth rate in the field are difficult. As a result, much of the information available on growth in pinto abalone come from lab studies and growth models.

Available data on pinto abalone growth in captive settings suggest that young animals reach sizes of about 22 mm SL (range 8–32 mm SL) in their first year (Olsen 1984), then grow at rates of approximately 18 mm per year for the next several years (Sloan and Breen 1988). Growth begins to slow at lengths of about 50 mm SL, corresponding to the onset of sexual maturity. Growth appears to vary based on many factors besides age, including location, water temperature, season, food availability and quality, and exposure to wave action. The maximum recorded shell lengths for pinto abalone are 165 mm (Breen 1980a) and 190 mm (see status review report).

Mortality

The status review report provides a detailed review of mortality in abalone, taken largely from Shepherd and Breen's (1992) review. We summarize the information here. Early life stages of abalone, particularly the larval stages, likely experience high mortality rates even in pristine settings. For larval stages, factors contributing to mortality include inappropriate oceanographic conditions (*e.g.,* temperature, salinity) and habitats as well as predation. Little is known regarding mortality for newly-metamorphosed and small (<40–50 mm shell length) abalone, but habitat disturbances and predation may contribute to mortality (see status review report).

Larger, emergent abalone (>40–50 mm shell length) face mortality from human removal, disease, predation, variation in food supply, physical disturbance, and pollution. Human removal of pinto abalone occurs through commercial, recreational, and subsistence harvest; purposeful illegal harvest; and accidental lethal injury. We discuss fisheries harvest of pinto abalone for commercial, recreational, and subsistence purposes in more detail under the ''Abundance'' section of this notice. Predation by sea otters has been highlighted as an important factor contributing to the continued decline of pinto abalone populations in places like Alaska where sea otter populations are increasing (ADF&G comments to NMFS, 17 January 2014). Other sources of natural mortality include diseases such as withering syndrome, ganglioneuritis (and the related amyotrophia), vibriosis, and shell deformities (sabellidosis). These sources of mortality and their impact on the species are discussed in more detail in the ''Summary of Factors

Affecting the Species'' section later in this document.

Abundance

There are two types of data that can be examined to provide a better understanding of variation in pinto abalone abundance over time: fishery-dependent and fishery-independent data. Due to the general lack of formal data, we also include observations reported by individuals or groups of people. We summarize the available information by region (Alaska, British Columbia, Washington, Oregon, California, and Mexico), because both species abundance and the level of information available vary by geographic region. The status review report provides a more detailed account of the available information for each region.

Alaska

Several fisheries for pinto abalone have existed in Alaska, including a commercial fishery and sport fishery (both of which are now closed) and personal use and subsistence fisheries (both of which are still in operation). Data are not available on the number of pinto abalone taken in the fisheries, but trends in commercial fisheries harvest levels indicate a decline in pinto abalone, with harvest in Southeast Alaska falling from a peak of 378,685 lbs in 1979/1980 to a low of 14,352 lbs in 1995/1996 (the fishery closed in 1995; Rumble and Hebert 2011). Between the 1993/1994 season and 1994/1995 season, harvest per unit effort for the fishery was estimated to have declined by 64 percent (Rumble and Hebert 2011).

Commercial harvest of pinto abalone in Southeast Alaska began in the 1960s with a significant increase in effort and harvest in the late 1970s and early 1980s, followed by a steep decline in catch in the late 1980s and 1990s (Rumble and Hebert 2011). The increase in effort can be attributed in large part to an increase in value from less than one dollar per pound in the early 1970s to greater than six dollars per pound in 1993–1994 (Woodby *et al.* 2000). Harvest peaked at 378,685 pounds in 1979–1980, followed by a decline in harvest that was likely due in part to declines in pinto abalone abundance as well as changes in regulations to limit the fishery, including harvest limits and area and seasonal closures (Rumble and Hebert 2011). The commercial fishery for pinto abalone was closed in 1995 and remains closed (Woodby *et al.* 2000). Commercial harvest was primarily conducted using scuba or hookah dive gear in the subtidal zone, though pinto abalone can be picked by hand in the intertidal zone during extreme low tides (Rumble and Hebert 2011).

Data from the subsistence abalone fishery are available from 1972 to 1997 and indicate a significant decline (98 percent decrease) in the subsistence harvest from an average of 350–397 pinto abalone per household in 1972 to an average of 3–9 pinto abalone per household in 1997 (Bowers *et al.* 2011). Subsistence harvest of pinto abalone in Alaska is believed to remain low (ADF&G comments to NMFS on 17 January 2014). In 2012, the Alaska Board of Fisheries reduced the daily bag limit for subsistence harvest to 5 abalone, with no closed season and no annual limit (Bowers *et al.* 2011). Prior to 2012, the daily bag limit for subsistence harvest was 50 abalone. The minimum size limit is 3.5 inches and legal harvest methods include snorkel equipment, abalone irons, or collection by hand. Scuba and hookah diving for subsistence abalone harvest has been prohibited since 1996.

Abalone harvest has also occurred in the sport abalone fishery (for non-residents) and personal use abalone fishery (for state residents), but data on trends in harvest are not available. In the sport fishery, the daily bag limit was 5 abalone per day (minimum size: 3.5 inches), with no closed season. Scuba and hookah gear were allowed until 1996. The Alaska Board of Fisheries closed the sport abalone fishery in 2012 and it remains closed to present. In the personal use abalone fishery, the daily bag limit was 50 abalone per person (except in one area around Sitka where the daily bag limit was 20 abalone per person), with a minimum size limit of 3.5 inches and no closed season. In 2012, the Alaska Board of Fisheries reduced the daily bag limit to 5 abalone per person. Scuba and hookah diving were allowed until 1996. The personal use abalone fishery remains open, but harvest is believed to be low (ADF&G comments to NMFS on 17 January 2014).

There are limited fishery-independent data on pinto abalone populations in Alaska. No long-term monitoring of pinto abalone populations in Alaska has been conducted. However, observations of pinto abalone have been made by ADF&G biologists while conducting dive surveys to monitor other benthic invertebrate species for management purposes. From 1996 to 2000, about 125 to almost 250 pinto abalone were observed per year during red sea urchin dive surveys; in 2001, the number observed dropped to about 50 pinto abalone, and in 2002–2011, fewer than 20 pinto abalone were observed per year (ADF&G comments to NMFS, 17 January 2014). These observations suggest a continued decline in pinto abalone populations since closure of the commercial fishery. ADF&G noted an increase in empty abalone shells observed on red sea urchin survey transects in Southeast Alaska between 2001 and 2012 (pers. comm. with K. Hebert, ADF&G). These observations are coincident with increased sea otter abundance in Southeast Alaska and suggest that sea otters are having an impact on pinto abalone abundance where the two species overlap (pers. comm. with K. Hebert, ADF&G). The one exception to this observed pattern is in Sitka Sound, where sea otters and a small population of pinto abalone appear to co-exist (pers. comm. with K. Hebert, ADF&G). ADF&G has observed mixed age classes in some areas in Southeast Alaska, including juveniles (S. Walker, pers. comm.).

British Columbia

Although also limited, data are available from both fishery-dependent and fishery-independent sources regarding the abundance of pinto abalone in British Columbia, making this region relatively data rich compared to other regions of the coast. The available data indicate a decline in pinto abalone populations during and even after closure of abalone fisheries, with signs of increases in abundance in the past five years attributed to a reduction in poaching.

Harvest of pinto abalone has a long history in British Columbia. Pinto abalone were harvested in commercial, recreational, and traditional First Nations food, social, and ceremonial fisheries. Prior to the advent of scuba gear around 1960, abalone harvest by First Nations and recreational fishers occurred primarily at low tide by shore picking (Farlinger and Campbell 1992), although some First Nations used a two-pronged spear to take abalone as deep as 2 m below the lowest tide (Jones 2000). After the advent of scuba gear, the recreational fishery became widespread along the coast (Farlinger and Campbell 1992). No landing statistics are available for either the First Nations or recreational fisheries (Sloan and Breen 1988, Farlinger and Campbell 1992). However, during the recreational fishery in 1983, McElderry and Richards (1984) estimated that scuba divers in the Strait of Georgia collected 1,172 pinto abalone per thousand sport dives and that between 76,000 and 172,000 recreational dives occurred in that year in the Canadian portion of the Strait of Georgia.

The commercial abalone fishery began in British Columbia as early as 1889 as a small, local, and sporadic fishery (Mowat 1890), but expanded significantly in the 1970s when landings increased to nearly 60 metric tons (mt) in 1972 and then to 273 mt in 1976 (Federenko and Sprout 1982). Commercial landings peaked at over 480 and 400 mt in 1977 and 1978, but dropped to about 200 mt in 1979 when a quota was put in place for the first time. Landings leveled out to between 44 and 47 mt under quota management and numerous other management actions taken following 1977 (Sloan and Breen 1988). Reasons for the increase in abalone harvest in the 1970's include the advent of scuba and dry-diving suits, allowing more diver submergence time; the advent of on-board boat freezers; emergence of a market in Japan for pinto abalone; tripling of the price per pound between 1972 and 1976 to over three Canadian dollars per pound; restricted access to salmon and herring fisheries; and unrestricted access to the abalone fishery prior to 1977 (Sloan and Breen 1988, Farlinger and Campbell 1992). All pinto abalone fisheries in British Columbia were closed in December 1990 due to observed declines and overall low population levels (Egli and Lessard 2011) and remain closed to date.

Breen (1986) estimated that at the beginning of 1976 the abalone stock stood at 1,800 mt in areas that were open to harvest (closed areas (Fedorenko and Sprout 1982): Juan Perez Sound, Lower Johnstone Strait, Strait of Georgia, and Strait of Juan de Fuca). By the end of 1980, the stock size had been reduced to an estimated 450 mt (Breen 1986). The SRT attempted to estimate the number of individual pinto abalone landed each year from 1952–1990 in the commercial fishery, based on landed biomass and the predicted mean weight of legal-sized northern abalone (≥ 90 mm from 1952–1976 and ≥ 100 mm after 1976). An estimated 2.5 million abalone were harvested in 1977, with at least a million abalone harvested each year from 1976 to 1979 and over 240,000 harvested each year during the last decade of the fishery (see status review report). Most of the commercial harvest occurred at Haida Gwaii (formerly known as the Queen Charlotte Islands) and along the North Coast (Sloan and Breen 1988, Egli and Lessard 2011).

Fishery-independent data for pinto abalone in British Columbia primarily consist of data from index site surveys conducted by the DFO since 1978, although some data exist for the period prior to the 1970s (*i.e.,* prior to when the fishery expanded significantly). Surveys from the early 1900's indicate pinto abalone were present in sufficient numbers for harvesting around Haida Gwaii and in Queen Charlotte Sound (Thompson 1914). Exploratory surveys conducted in the same areas in 1955 found few pinto abalone in southeastern Haida Gwaii, and many areas with no abalone, indicating a decline in the region's population (Quayle 1962, Sloan and Breen 1988). In contrast, surveys conducted in 1978 in the same area found few sites with no abalone and an estimated density of 0.58 legal-sized abalone per sq m with an overall mean density of 2.5 abalone per sq m (Breen and Adkins 1979, Sloan and Breen 1988). Breen (1986) attributed these differences between surveys in 1914, 1955, and 1978 to natural variation in pinto abalone abundance, rather than to differences in survey methods or observer experience. Pinto abalone were previously not thought to occur in the Strait of Georgia (formerly known as the Gulf of Georgia) (Thompson 1914), but have since been found there, though relatively scarce compared to other areas in British Columbia and only at depths of 7m or greater (Quayle 1962, Sloan and Breen 1988).

DFO index site surveys for pinto abalone have been conducted every 4–5 years since 1978, providing valuable time series and size frequency data. Surveys at Haida Gwaii and along the North and Central Coast began in 1978, and on the West Coast of Vancouver Island, Queen Charlotte Strait, and the Strait of Georgia in 2003 and 2004. The status review report summarizes the best available data on pinto abalone abundance and trends from these surveys. The data indicate that although recruitment is occurring, the density of mature adults (defined as pinto abalone ≥ 100 mm SL for the purposes of the index site surveys) has been declining, either due to a high rate of juvenile mortality before they reach maturity or due to a high rate of adult mortality that is offsetting juvenile survival (COSEWIC 2009). Densities of immature abalone have increased by 29 percent at the Central Coast sites since 1989 and by 35 percent at the Haida Gwaii sites since 1990, whereas densities of mature abalone have declined by about 44 percent since 1990 (the year the abalone fisheries closed) (COSEWIC 2009).

Overall, the survey data from 1978 to 2009 indicate that mature abalone densities declined by 88–89 percent and total abalone densities have declined by 81–83 percent at the Central Coast and Haida Gwaii sites (COSEWIC 2009). However, preliminary results from more recent surveys in 2011 and 2012 indicate signs of increasing populations, potentially due to reductions in illegal take. In 2009, abalone were found at 41 percent of the 34 sites surveyed in Queen Charlotte Strait, with an overall density of 0.109 per sq m and a mature abalone density of 0.072 per sq m (Lessard and Egli 2011). These densities were four times greater than the densities found in 2004 and indicate that abalone populations in Queen Charlotte Strait are stable (Lessard and Egli 2011). Results from the 2011 surveys along the Central Coast show an increase in the mean density of abalone (all sizes) and a decrease in the estimated mortality rate between 2006 and 2011 (pers. comm. with J. Lessard, DFO, on 24 April 2014). The density of mature abalone (≥ 70 mm shell length) was at or above the short-term recovery objective of 0.32 abalone per sq m (as defined in DFO's 2007 Recovery Strategy for pinto abalone) at 6 of the 8 index survey sites and above the long-term goal of one abalone per sq m at one site (pers. comm. with J. Lessard, DFO, on 24 April 2014). Similarly, results from the 2012 surveys at Haida Gwaii indicate an increase in the mean density of both immature and mature abalone and a decrease in the estimated mortality rate between 2007 and 2012, as well as densities of mature abalone (≥ 70 mm shell length) at or above the recovery objective of 0.32 abalone per sq m at 5 of the 9 index survey sites (pers. comm. with Joanne Lessard, DFO, on 24 April 2014). Evidence of successful juvenile recruitment throughout the years and these recent increases in adult abundance and density indicate that removing or reducing illegal harvest to minimal levels would likely allow populations to rebuild. However, with the continued spread of sea otters in the region, populations are not expected to return to levels observed during the 1970s when sea otters were absent from the region (COSEWIC 2009).

Washington

Data on abundance and trends in pinto abalone populations in Washington are limited to fishery-independent data from timed swim and index site surveys. Although estimates of recreational harvest are available, they do not provide information on trends in abundance over time. Overall, the survey data indicate that populations in Washington have declined over time, despite closure of the fisheries in 1994, and local recruitment failure may be occurring.

Fishery-dependent data for Washington are limited. Washington has never had a commercial fishery for pinto abalone. Subsistence harvest by

indigenous peoples and early residents reportedly occurred, but the magnitude and extent of the fishery are not well documented (WDFW 2014). Pinto abalone were first recognized as a recreationally harvestable shellfish with a daily possession limit of 3 abalone by Washington Administrative Code (WAC) orders first published in 1959. Between 1959 and when the recreational fishery was closed in 1994, the possession limit fluctuated between 3 and 5 abalone per day and several other measures, including minimum size limits and gear restrictions, were imposed to manage the fishery.

Although recreational harvest records were not collected, some estimates of annual harvest are available from compilations of recreational sport diver interviews, returned questionnaires, diver logbook records, and information from dive clubs (Bargmann 1984, Gesselbracht 1991). In the early 1980s, approximately 91 percent of pinto abalone harvest occurred in the North Puget Sound region, including the San Juan Islands Archipelago, and the remainder occurred in the Strait of Juan de Fuca and just north of Admiralty Inlet (Bargmann 1984). Bargmann (1984) estimated that sport divers harvested 34,800 and 3,400 pinto abalone annually from the North Sound and the Strait/Admiralty regions, respectively, based on data over the period from April 1982 to March 1983. Gesselbracht (1991, cited in WDFW 2014) estimated that 40,934 pinto abalone were harvested annually, based on interviews with sport divers from September 1989 to August 1990.

Fishery-independent data are available from timed swim and index site surveys in the San Juan Islands Archipelago. Both sets of data indicate continuing declines in pinto abalone populations since the fisheries closed in 1994. From 1979–1981, WDFW conducted timed swim surveys (designed to quantify pinto abalone abundance) at 30 sites, with a mean encounter rate of about 1.1 pinto abalone per minute or 25.5 pinto abalone per dive (WDFW 2014). These were likely underestimates of pinto abalone abundance, because swim times were not adjusted for the time taken to measure abalone size (WDFW 2014). In contrast, WDFW divers encountered an average of about 1.1 abalone per dive across all 30 sites in 2010–2011, indicating a reduction in encounter rate of about 96 percent (WDFW 2014). This reduction in the encounter rate of pinto abalone per dive indicates a decline in pinto abalone density among the 30 survey sites. In 2005, Rogers-Bennett *et al.* (2007 and 2011) surveyed 10 sites in the San Juan Islands Archipelago where pinto abalone populations were abundant in the past, and found only 17 pinto abalone (range in shell length = 75–142 mm); 14 of those abalone were found at just two sites. This number was substantially lower than the number of pinto abalone found at the sites in 1979 by WDFW (Rogers-Bennett *et al.* 2011). Index site surveys show similar declines in pinto abalone densities around the San Juan Islands Archipelago. From 1992 to 2013, WDFW has conducted periodic surveys at 10 index sites, originally selected in areas known to have high pinto abalone abundance. The mean density at the 10 index sites declined from 0.18 abalone per sq m in 1992 to 0.04 abalone per sq m in 2006 (Rothaus *et al.* 2008) and 0.01 abalone per sq m in 2013 (WDFW 2014).

Recent data suggests limited recruitment is occurring in the San Juan Islands Archipelago. The proportion of emergent juvenile pinto abalone (shell length < 90mm) seen during index site surveys has declined from 31.8 percent in 1979 to 17.4 percent in 1992, and most recently to 7.1 percent in 2013 (WDFW 2014). In addition, only four emergent and three juvenile abalone were observed on 60 abalone recruitment modules deployed in August and September 2004 (Bouma *et al.* 2012). The mean size of pinto abalone has also increased by an average of 0.5 mm per year, from about 97.6 mm in 1979 (measured during timed swim surveys; n=755) to about 118.4 mm in 2013 (measured during index site surveys; n=56) (WDFW 2014). This increase indicates a trend in the populations from smaller, young abalone to a higher proportion of larger and presumably older individuals, again suggesting that little to no recruitment has occurred in recent years.

Pinto abalone have been observed in the Strait of Juan de Fuca, but no data are available regarding trends in abundance (WDFW 2014). We are also not aware of any documented observations of pinto abalone on the outer coast of Washington, south of Portage Head (located just south of Cape Flattery).

Oregon

Little information is available on pinto abalone presence along the Oregon coast. Recreational harvest of abalone is allowed in Oregon (limits: One abalone per day and five abalone per year), but the minimum size limit of 8 inches (203.2 mm) essentially excludes pinto abalone from this fishery (Oregon Department of Fish and Wildlife (ODFW) recreational shellfish regulations at *http://www.dfw.state.or.us/mrp/shellfish/regulations.asp,* accessed: 27 August 2014). Pinto abalone are believed to be naturally rare in Oregon, with only occasional shells being found (Reimers and Snow 1975). The first confirmed live pinto abalone in Oregon was observed in 2009 at Orford Reef by an urchin diver (pers. comm. with Scott Groth, ODFW, cited in NMFS 2009). The animal was about 100 mm in size, found at a depth of 20 m with no other abalone observed nearby (pers. comm. with Scott Groth, ODFW, on 26 June 2014). Since 2009, the same urchin diver has spotted about four more live pinto abalone on Orford Reef and another urchin diver found one live pinto abalone in Nellies Cove, near Port Orford (pers. comm. with Scott Groth, ODFW, on 26 June 2014). No directed surveys for pinto abalone have been conducted in Oregon, and we are not aware of any other information on pinto abalone presence or abundance in Oregon waters.

California

In California, estimates of baseline (*i.e.,* abundance prior to overfishing) and modern pinto abalone abundances have been made using both fishery-dependent and fishery-independent data. Both indicate a decline in population abundance from the 1970s to 2000s. As noted below, however, there is some uncertainty associated with these estimates. Data from surveys focused on pinto abalone are limited, but recent efforts are providing preliminary data on population abundances and densities along the California coast.

Harvest of abalone in California has occurred for thousands of years, with modern commercial and recreational fisheries beginning in the late 1890s and early 1900s, respectively. CDFW (formerly CDFG) landings records indicate that pinto abalone were landed at the Farallon Islands, Point Montara, Point Buchon, Point Conception, the Northern and Southern Channel Islands, Santa Barbara, San Diego, and the offshore banks from 1950–1997 (CDFG 2005). Pinto abalone is not considered a major component of the commercial or recreational abalone catch (CDFW 2005); however, fishing pressure led to decreased landings from a peak of approximately 10,000 pounds (4.5 mt) in 1974 to less than 500 pounds (0.2 mt) by the 1980s. If a dozen pinto abalone weighed about 15 pounds (Pinkas 1974, cited in Rogers-Bennett et al. 2002), then 10,000 pounds would equal about 8,000 pinto abalone and 500 pounds would equal about 400 pinto abalone. CDFW closed all commercial and recreational abalone fisheries south of San Francisco

in 1997. In 1999, CDFW effectively excluded pinto abalone from the red abalone recreational fishery north of San Francisco by increasing the minimum legal size limit to 178 mm for all species (Rogers-Bennett *et al.* 2002). CDFW has since revised their regulations to specifically prohibit harvest of pinto abalone in this fishery.

Rogers-Bennett *et al.* (2002) estimated baseline abundance for *H. k. assimilis* using landings data from the peak of the commercial and recreational fisheries (1971–1980). The baseline minimum estimate of abundance for *H. k. assimilis* prior to overexploitation was 21,000 animals. After 1980, only 66 pinto abalone were landed, suggesting a decline of 99.6 percent over a 10-year period. This baseline abundance estimate of 21,000 animals provides a historical perspective on patterns in abundance. However, it is important to note that this estimate was based on data from a time period when pinto abalone abundances may have been higher than usual due to the decline of sea otters along the California coast. Thus, this estimate may overestimate the true baseline abundances that existed prior to the abalone fishery and the exploitation of sea otters.

Using estimated densities and suitable rocky habitat derived from data collected in 1971 and 1975, Rogers-Bennett *et al.* (2002) also estimated baseline abundance for *H. k. kamtschatkana* in northern California as 153,000 animals. This estimate had large 95 percent confidence intervals (CIs; upper = 341,000; lower = 29,000) because of the patchy nature of the abundance data and limited sampling. A modern estimate of 18,000 abalone (95 percent CI: 13,000–22,000) was derived from data collected in 1999–2000 at five sites in Mendocino County and indicates an estimated 10-fold decline in abundance between the 1970s and 1999–2000 (Rogers-Bennett *et al.* 2002).

CDFW conducted dive surveys at multiple sites in Mendocino County from 2007–2013 and in Sonoma County from 2007–2012 (L. Rogers-Bennett, CDFW, unpublished data, 24 April 2014). At sites deeper than 10 m, the mean densities exceeded the critical density thresholds for successful reproduction that have been estimated for other abalone species (Babcock and Keesing 1999, Neuman *et al.* 2010). Smaller size classes were observed, indicating that recent recruitment has occurred, despite limited observations of juveniles in abalone recruitment modules deployed from 2001–2014 in northern California.

In Southern California, there have been few reports of pinto abalone from 1970–2000. In 1974, CDFW conducted timed SCUBA surveys at the Northern Channel Islands (focusing on all abalone species) and found 53 individuals at San Miguel Island, 10 at Santa Rosa Island, and 18 off Santa Cruz Island (Ian Taniguchi, CDFW, unpublished data, 24 April 2014). The National Park Service, which has been conducting surveys at the Channel Islands since 1982, observed pinto abalone for the first time in 2001 (pers. comm. with David Kushner, NPS, cited in Rogers-Bennett *et al.* 2002). From 2006–2012, a number of entities observed pinto abalone during surveys that did not necessarily focus on pinto abalone but occurred in habitats suitable for them. These observations indicate that densities are low (ranging from 0.0002 to 0.0286 pinto abalone per sq m), but that recent recruitment has occurred in at least two locations (Santa Cruz Island and Point Loma) (Ian Taniguchi, CDFW, unpublished data, 24 April 2014).

Recently, reports of pinto abalone off San Diego have been more common. In most areas that are surveyed, reports range from a few individuals to up to several dozen abalone, including a wide size range (see status review report). Preliminary data from surveys conducted off San Diego in summer 2014 indicate densities of 0 to 0.015 pinto abalone per sq m, including animals ranging in size from 13 to 151 mm SL (Amanda Bird, CSUF, unpublished data). Densities are well below the estimated threshold values needed for successful recruitment (Babcock and Keesing 1999, Neuman *et al.* 2010). However, the presence of small animals and observations of most (> 50 percent) of animals in pairs within four meters of one another indicate that the species is extremely patchy, and that densities recorded on a per sq m basis may not be the best metric for evaluating population viability.

Mexico

Little information is available on pinto abalone distribution and abundance in Mexico. Because pinto abalone and white abalone overlap in range and are difficult to distinguish morphologically, the two species are often grouped and reported on together. In Mexico, the abalone fishery has been operating since the 1860s (Croker 1931) and is still operating, but modern commercial harvests did not develop until the 1940s. Historically, the fishery primarily harvested *H. fulgens* and *H. corrugata,* but *H. kamtschatkana/sorenseni* were also considered relatively abundant and harvested.

A recent collaborative study was conducted in August 2012 as a preliminary assessment of abalone species in the nearshore at El Rosario, Baja California, and provided density data on pinto and white abalone in five survey areas (Boch *et al.* 2014). Pinto and white abalone were grouped and referred to as a two species complex in the study, due to similarities in shell morphology and possibly misidentification by observers. However, the authors estimated that 75 percent of the abalone in this group were pinto abalone (*H. k. assimilis*) (pers. comm. with C. Boch, Stanford University). The survey included twenty-four transects, each covering a 400 sq sq m area within depths of 11–25 m. A total of 178 *H. k. assimilis/sorenseni* were found, ranging in size from 40 to 240 mm SL, with the majority ranging in size from 40 to 180 mm. Assuming that 75 percent of these were likely *H. k. assimilis,* the estimated density of *H. k. assimilis* for the study area would be 0.0139 per sq m. Recent recruitment was evident in at least one area where the population consisted primarily of animals ranging from 40 to 80 mm in size.

The ''Species'' Question

The ESA defines a species as ''any species or subspecies of wildlife or plants, or any distinct population segment of any species of vertebrate fish or wildlife which interbreeds when mature.'' The pinto abalone is a marine invertebrate species that has been taxonomically subdivided into two subspecies: *Haliotis kamtschatkana kamtschatkana* (*i.e.,* the northern form that is described as ranging from Sitka Island, Alaska to Point Conception, California), and *Haliotis kamtschatkana assimilis* (*i.e.,* the southern form that is described as ranging from Monterey, California to Turtle Bay, Baja California, Mexico) (McLean 1966). The two subspecies were initially described as separate species by Jonas (*Haliotis kamtschatkana*) in 1845 and Dall (*Haliotis assimilis*) in 1878. McLean (1966) argued that the two previously described species were unique forms, or subspecies, representing geographic extremes of a single species, with differences in shell morphology likely related to varying environmental conditions along a latitudinal gradient within the species' range. Geiger (1999) upheld the subspecies classification scheme based on the morphological descriptions of shells provided by McLean (1966) and also maintained the subspecies range descriptions as described above.

More recently, two lines of evidence have raised uncertainty regarding the taxonomic structure of pinto abalone as

consisting of two subspecies. First, none of the genetic tools and analyses conducted to date have been able to confirm a discernible difference between *H. k. kamtschatkana* and *H. k. assimilis.* Studies conducted thus far tend to indicate high intraspecific (within species) variability in pinto abalone, depending on the gene sequenced, but no genetic differentiation between subspecies. One highly conserved portion of the genome that has been investigated and that geneticists would have expected to be different between subspecies, is the area that controls the production of the reproductive proteins lysin and VERL (vitelline envelope receptor for lysin). Supernault *et al.* (2010) examined this portion of the genome for forensic analyses of northeastern Pacific abalone species. Results indicated that all species recognized on the basis of morphological differences have been confirmed to be distinct on the basis of genetic sequences, with only the two subspecies, *H. k. kamtschatkana* and *H. k. assimilis,* indistinguishable through molecular analysis. Gruenthal and Burton (2005) had similar results, concluding *H. k. kamtschatkana* and *H. k. assimilis* were statistically indistinguishable at sequenced portions of the mitochondrial genes cytochrome oxidase subunit one (COI) and cytochrome b (CytB), as well as VERL, although the sample sizes were small. Straus (2010) also found no statistically significant differences in either COI or lysin, stating that the two subspecies share identical sequences at both mitochondrial and nuclear loci and cannot be differentiated. Most recently, Schwenke and Park (unpublished data, cited in the status review report) constructed bootstrapped neighbor-joining trees of new and archived mitochondrial COI and VERL sequences, finding that VERL is currently the best marker available to resolve the most closely related abalone species group found along the Northeastern Pacific coast (white, pinto, flat, and red), whereas COI separates this group from the remaining species (*i.e.* black, pink, and green; pers. comm. with P. Schwenke, NMFS Northwest Fisheries Science Center, cited in status review report). Again, however, neither marker provided subspecies level resolution. Thus, to date, the subspecies remain indistinguishable at the molecular level, although future analyses using newer methods that search the entire genome (such as single nucleotide polymorphisms or SNPs) may be able to find genetic support for the delineation of the two putative subspecies.

Second, collections from several shell collectors contain multiple examples of the southern form (*H. k. assimilis*) in British Columbia and Washington and of the northern form (*H. k. kamtschatkana*) in Baja California, Mexico, as well as multiple specimens collected from both the northern and southern portion of the species' range that exhibit morphologies representative of both subspecies (pers. comm. with B. Owen and A. Rafferty, cited in status review report). We recognize that shell collections may not represent a random sample of shells from the population and that these shells may constitute a relatively small population of outliers in the wild. Despite this, these examples suggest that the range overlap between the two putative subspecies is much more extensive than was previously thought (Canada to Mexico, rather than just along the central California coast) and that this degree of overlap (approximately 80 percent of the species' range) does not meet the definition of subspecies as allopatric populations (Futuyma 1986).

The SRT concluded, and NMFS agrees, that the pinto abalone should be considered as one species throughout its range for the purposes of the status review. This conclusion was based on the lack of evidence for species divergence at the molecular level, the degree of overlap between the subspecies, and the fact that there are other examples of marine invertebrate species with broad geographic ranges (*e.g.,* ochre and bat stars) and/or pronounced morphological plasticity (*e.g.,* periwinkle snails) extending on the order of 1,000s of kilometers. We do not reject the possible existence of pinto abalone subspecies. However, the lack of genetic, geographic, or ecological justification for treating the two subspecies as separate species led the SRT to consider the status of the species and its extinction risk throughout its range from Alaska to Mexico.

Assessment of Risk of Extinction

Approach to Extinction Risk Assessment

The ESA defines an endangered species as ''any species which is in danger of extinction throughout all or a significant portion of its range.'' A threatened species is ''any species which is likely to become an endangered species within the foreseeable future throughout all or a significant portion of its range.'' Thus, we interpret an ''endangered species'' to be one that is presently in danger of extinction. A ''threatened species,'' on the other hand, is not presently in danger of extinction, but is likely to become so in the foreseeable future (that is, at a later time). In other words, the primary statutory difference between a threatened and endangered species is the timing of when a species may be in danger of extinction, either presently (endangered) or in the foreseeable future (threatened).

To evaluate whether the pinto abalone meets the definition of threatened or endangered, we considered the best available information and applied professional judgment in evaluating the level of risk faced by the species. We evaluated both demographic risks, such as low abundance and productivity, and threats to the species including those related to the factors specified by the ESA section 4(a)(1)(A)–(E). In a separate evaluation (see the ''Efforts Being Made to Protect the Species'' section below), we also considered conservation efforts being made to protect the species.

As described above, we convened an SRT, comprised of nine fishery biologists and abalone experts from the NMFS West Coast and Alaska Regions, the NMFS Northwest and Southwest Fisheries Science Centers, NMFS Office of Science and Technology, the National Park Service, and the U.S. Geological Survey/University of Washington. The SRT was asked to review the best available information on the species and to evaluate the overall risk of extinction facing pinto abalone now and in the foreseeable future. The ability to measure or document risk factors for pinto abalone is limited and the available information is often not quantitative, or less than ideal. Therefore, in assessing risk, we included both qualitative and quantitative information and modeled the assessment on the approaches used in previous NMFS status reviews to organize and summarize the professional judgment of the SRT members.

The SRT first performed a threats assessment for pinto abalone by scoring the severity and scope of threats to the species, as well as the time frame over which the threats are affecting the species and the level of data that is available regarding the threats and their effects. The SRT considered past factors for decline, as well as present and future threats faced by the species. Detailed definitions of these risk scores can be found in the status review report. The results of this threats assessment are summarized below under ''Summary of Factors Affecting the Species.''

The SRT then assessed the demographic risks for pinto abalone. The SRT considered demographic

information reflecting the past and present condition of pinto abalone populations. This information is detailed in the status review report and summarized above under the ''Background'' section of this notice, and included the best available information on population abundance or density, population trends and growth rates, the number and distribution of populations, exchange rates of individuals among populations, and the ecological, life history, or genetic diversity among populations. In some cases, information was not available or severely limited.

As in previous NMFS status reviews, the SRT analyzed the collective condition of individual populations at the species level according to four demographic risk criteria: Abundance, growth rate/productivity, spatial structure/connectivity, and diversity. These four general viability criteria, reviewed in McElhany *et al.* (2000), reflect concepts that are well-founded in conservation biology, are generally applicable to a wide variety of species, and describe demographic risks that individually and collectively provide strong indicators of extinction risk. The SRT's methods and conclusions for the demographic risk assessment are described in more detail below in the ''Analysis of Demographic Risk'' section of this notice.

The SRT members were then asked to make an overall extinction risk determination for pinto abalone now and in the foreseeable future. For this analysis, the SRT considered the best available information regarding the status of the species along with the results of the threats assessment and demographic risk analysis. The SRT defined five levels of overall extinction risk: No/Very Low risk, Low risk, Moderate risk, High risk, and Very High risk. To allow individuals to express uncertainty in determining the overall level of extinction risk facing the species, the SRT adopted the ''likelihood point'' (Forest Ecosystem Management Assessment Team, or FEMAT, 1993) method, in which each SRT member distributed 10 'likelihood points' among the five levels of risks. The scores were then tallied and summarized. This approach has been used in previous NMFS status reviews (*e.g.,* for Pacific salmon, rockfish in Puget Sound, Pacific herring, black abalone, scalloped hammerhead) to structure the team's analysis and express levels of uncertainty when assigning risk categories.

The SRT did not make recommendations as to whether the species should be listed as threatened or endangered, or if it did not warrant listing. Rather, the SRT drew scientific conclusions about the overall risk of extinction faced by pinto abalone under present conditions and in the foreseeable future (defined as 30 years and 100 years) based on an evaluation of the species' demographic risks and assessment of threats. NMFS considered the SRT's assessment of overall extinction risk, along with the best available information regarding the species status and ongoing and future conservation efforts, in making a final determination regarding whether the species meets the definition of threatened or endangered.

Summary of Factors Affecting the Species

According to section 4 of the ESA, the Secretary of Commerce determines whether a species is threatened or endangered because of any (or a combination) of the following factors: The present or threatened destruction, modification, or curtailment of its habitat or range; overutilization for commercial, recreational, scientific or educational purposes; disease or predation; inadequacy of existing regulatory mechanisms; or other natural or man-made factors affecting its continued existence. We examined these factors for their historic, current, and/or potential impact on pinto abalone and considered them, along with current species distribution and abundance, to help determine the species' present vulnerability to extinction. When considering the effects of the threat into the foreseeable future, the time frame considered by the SRT varied based on the threat, but generally ranged from 30 to 100 years. A time frame of 30 years represents approximately 3 generation times for pinto abalone (McDougall *et al.* 2006, COSEWIC 2009) and was considered a reasonable period over which predictions regarding the threats and their effects on the species could be made. A time frame of 100 years was considered a reasonable period over which predictions regarding longer-term threats (*e.g.,* ocean acidification, effects of climate change) have been or could be made. The time frames for foreseeable future are discussed in more detail under the ''SRT Assessment of Overall Extinction Risk'' section of this notice.

For each of these factors, the SRT identified and evaluated several stressors that either have or may contribute to declines in pinto abalone. Overall, the SRT rated most of these stressors as low threats and several as moderate threats to pinto abalone, but did not identify any high or very high threats. Among the moderate threats, the SRT was most concerned about low densities that have resulted from past fisheries harvest of pinto abalone, the potential threat posed by ocean acidification, and illegal take due to poaching and inadequate law enforcement. The potential for reduced genetic diversity as a consequence of low population densities and the potential for predation (particularly by sea otters) to further reduce local densities were also identified as threats of greater concern. Finally, oil spills and disease outbreaks (through the spread of pathogens) were highlighted as highly uncertain risks that need to be addressed through careful planning, monitoring, and management. Below, we discuss the threats associated with each factor and our assessment of each factor's contribution to extinction risk to the species. Where relevant, we discuss the risks posed by a factor in combination with other factors (*e.g.,* risks posed by disease and inadequate regulatory mechanisms).

Present or Threatened Destruction, Modification, or Curtailment of Its Habitat or Range

Most of the threats that result in substrate destruction or modification, such as coastal development, recreational access, cable repairs, nearshore military operations, and benthic community shifts, occur infrequently, have a narrow geographic scope, or have uncertain or indirect effects on pinto abalone. Some exceptions may exist in the cases of water temperature increases and reduced food quantity and quality associated with the ENSOs, PDOs, IPOs, and long-term climate change, as well as sea level rise due to long-term climate change, in that these threats have the potential to produce more widespread impacts, but the certainty in how these factors will affect pinto abalone is low. For example, increased water temperatures associated with climate change may be widespread throughout the U.S. West Coast, though the latest climate report suggests that impacts will be least felt in the Pacific Northwest (Mote *et al.* 2014). Increased water temperatures could affect the health and range of pinto abalone, particularly at the northern and southern extreme of the species range. However, pinto abalone have a wide temperature tolerance and may be able to adapt to changing temperatures over time, such as by seeking depth refuges. It is also not clear how El Niño/Southern Oscillation (ENSO) events, Pacific Decadal Oscillation (PDO) events,

Interdecadal Pacific Oscillation (IPO) events, and climate change may affect food quantity and quality for pinto abalone. Sea level rise may result in loss of suitable habitat in a preferred depth range because of increased erosion, turbidity and siltation; however, the effects on pinto abalone are uncertain because pinto abalone typically occupy subtidal habitats throughout much of their range. We are not aware of any studies that have examined the potential effects of sea level rise on abalone, and therefore, we currently lack information to determine whether these habitat changes will be important factors for species decline.

Climate change impacts, such as ocean acidification, could affect settlement habitat by affecting the growth of crustose coralline algae, but the effects to pinto abalone are unclear. For example, McCoy (2013) and McCoy and Ragazzola (2014) found morphological changes (*e.g.,* reduced thickness or density) in crustose coralline algal species in response to ocean acidification, with responses varying by species. However, Johnson *et al.* (2014) found that crustose coralline algal species exposed to varying carbon dioxide levels may be acclimatized to ocean acidification, with species-specific variation in the responses. North Pacific waters, including the California Current Ecosystem, have relatively low seawater pH values due to a variety of natural oceanographic processes (Feely *et al.* 2004, Feely *et al.* 2008, Feely *et al.* 2009, Hauri *et al.* 2009), and this may make crustose coralline algal species within the pinto abalone's range better able to adapt to the effects of ocean acidification. In addition, it is unclear how ocean acidification may affect the chemical cues that are believed to attract pinto abalone to settle on crustose coralline algae. Overall, climate change impacts such as ocean acidification could affect settlement habitat, but the effects are highly uncertain at this time.

Oil spill and response activities were also identified as a concern for pinto abalone, for both the potential effects on habitat (substrate destruction or modification) and on the abalone themselves (environmental pollutant/toxins, under ''Other Natural or Man-made Factors''). These effects would be of particular concern where the species occurs in intertidal and shallower waters (*e.g.,* Alaska and British Columbia). The threat of an oil spill is greater in areas with higher ship traffic and human development. If a spill were to occur, acute effects could be very damaging in the localized area of the spill. However, there is little information available on the effects of oil spills on subtidal habitats where pinto abalone tend to occur throughout most of their range, as well as little information available on the effects of oil on abalone.

Overall, the best available information does not indicate that the threats discussed above have resulted in the destruction of or substantial adverse effects on pinto abalone habitat, or in curtailment of the species' range. Evaluations in British Columbia (COSEWIC 2009) and Washington (Vadopalas and Watson 2013) indicate that habitat does not appear to be a limiting factor for the species at this time. Future effects on the species' habitat and/or range may result from ENSOs/PDOs/IPOs or the impacts of long-term climate change; however, the magnitude, scope, and nature of these effects are highly uncertain at this time. We conclude that the habitat threats discussed above are not contributing substantially to the species' risk of extinction now. The future impacts of climate- and/or oil spill-related habitat changes are highly uncertain, but based on past impacts our best judgment leads us to conclude that impacts will not contribute substantially to the species' risk of extinction in the foreseeable future.

Overutilization for Commercial, Recreational, Scientific or Educational Purposes

Fisheries harvest of pinto abalone for commercial and recreational purposes (*i.e.,* prior to the fishery closures) has contributed to population declines and low densities throughout the species' range (see the ''Abundance'' section above). Harvest of pinto abalone is currently prohibited throughout the coast except in Alaska (*i.e.,* for personal use and subsistence harvest) and Mexico. Data on harvest levels and the impacts on pinto abalone are not available for Alaska and Mexico. In Mexico, green and pink abalone are the focus of the abalone fishery, with other abalone species (including pinto abalone) making up only one percent of the abalone fishery (Boch *et al.* 2014). In Alaska, the daily limits for personal use and subsistence harvest were reduced in 2012 from 50 to 5 abalone per day. We do not have data to assess how this harvest level would affect pinto abalone populations in Alaska. ADF&G believes that personal use and subsistence harvest of pinto abalone is currently low (ADF&G comments to NMFS on 17 January 2014). Bowers *et al.* (2011) found that the average subsistence harvest of pinto abalone ranged from 350–382 abalone per household in 1972 but decreased to 3–9 abalone per household in 1997. In recent interviews, local residents have indicated to ADF&G that they are not participating in the personal use fishery due to the lack of abalone (Bowers *et al.* 2011). Based on this information, it is likely that personal use and subsistence harvest of pinto abalone in Alaska is low. The SRT expressed concern regarding the continued harvest of pinto abalone in Alaska and Mexico, but rated fisheries harvest as a Moderate threat overall, due to prohibitions on harvest throughout most of the species' range and what appears to be low levels of harvest in Alaska and Mexico presently. However, monitoring of harvest levels and pinto abalone populations is needed to obtain a better understanding of the impacts of these fisheries in Alaska and Mexico.

The effects of past fisheries harvest on local densities still persist today throughout the species' range. Past harvest levels, particularly in commercial fisheries in Alaska and British Columbia, were not sustainable and reduced densities to very low or non-existent levels. Some populations (*e.g.,* at the San Juan Islands Archipelago in Washington) appear to be experiencing recruitment failure. There are also a few areas where pinto abalone have not been observed in recent surveys in Washington and British Columbia. However, pinto abalone populations continue to persist throughout most survey sites. In addition, evidence of recent recruitment events have been observed at several areas throughout the species' range. Since the closure of abalone fisheries in British Columbia in 1990, small size classes of pinto abalone have been observed regularly during index site surveys at Haida Gwaii and along the Central Coast (two areas that once supported a large proportion of fisheries harvest) (COSEWIC 2009). Small pinto abalone have also been observed in surveys conducted within the last 10 years off Alaska (pers. comm. with S. Walker, ADF&G, cited in status review report), California (pers. comm. and unpublished data from A. Bird, CSUF, and Ed Parnell, UCSD, cited in status review report), and Mexico (Boch *et al.* 2014), indicating recent recruitment events (see the ''Reproduction and Spawning Density'' section of this notice for more details). These observations show that densities at those locations remain high enough to support reproduction and recruitment, and also that we have much more to learn about the species' population dynamics and the factors influencing successful reproduction and

recruitment. For example, mean adult densities may not be an appropriate metric for predicting reproductive and recruitment success because it does not adequately represent the patchy distribution of abalone within an area. Fine-scale spatial distribution patterns (*e.g.,* aggregations) may be more important for reproductive and recruitment success than the overall density of adults in an area.

Reduced genetic diversity is a potential risk associated with low densities. Withler *et al.* (2001) provide the only published assessment of population structure in pinto abalone and found high levels of genetic variation in pinto abalone populations sampled at 18 sites throughout coastal British Columbia and at one site in Sitka Sound, Alaska. Unfortunately, research on populations throughout the remainder of the species' range has not been conducted, and thus the Wither *et al.* (2001) study represents the best available information. Based on this, the SRT expressed a moderate degree of concern, but most members felt that the species' genetic diversity likely remains high.

Overall we conclude that past fisheries harvest has reduced the abundance of pinto abalone populations throughout its range, but not to a point that contributes substantially to the species risk of extinction now or in the foreseeable future. The presence of small, newly-recruited animals in multiple areas spanning the species' range (except for the San Juan Islands) suggests that abundance levels are not low enough to lead to repeated recruitment failure. The threat of overutilization from fisheries harvest has largely been removed, because fisheries harvest of pinto abalone has been prohibited throughout most of the species range. Presently, harvest of pinto abalone is only allowed in Alaska's personal use and subsistence fisheries and in Mexico. The best available information indicates that these fisheries are not contributing substantially to the species' risk of extinction; however, data on harvest levels are needed to better assess how these fisheries may be affecting the status of the species in Alaska and Mexico.

Disease or Predation

Disease has been identified as a major threat to abalone species worldwide, with four significant abalone diseases emerging over the past several decades (withering syndrome, ganglioneuritis, vibriosis, and shell deformities). Pinto abalone are likely susceptible to all of these diseases, and have been confirmed to be highly susceptible to withering syndrome, a disease that has resulted in significant declines in black abalone populations throughout southern California. No infectious diseases affecting wild pinto abalone have been reported in Alaska, Washington, or California, but two abalone pathogens have been reported in British Columbia. To date, no outbreaks have been observed in wild populations and there is no evidence indicating that disease has been a major source of mortality in the recent past or currently. However, multiple sources and pathways exist for pathogens or invasive species to be introduced into wild pinto abalone populations, including aquaculture facilities and the movement of abalone (*e.g.,* import, transfer) for aquaculture, research, and food/hobby markets (identified under the ''Inadequacy of existing regulatory mechanisms'' factor below). Great care is needed to closely monitor and manage these sources and pathways, to protect wild populations from potentially devastating pathogens and invasives.

Abalone face non-anthropogenic predatory pressure from a number of consumer species such as gastropods, octopuses, lobsters, sea stars, fishes and sea otters (Ault 1985; Estes and VanBlaricom, 1985; Shepherd and Breen 1992). Pinto abalone have been exposed to varying predation pressure through time and this pressure is likely to continue. However, in the past, pinto abalone populations may have been better able to absorb losses due to predation without compromising viability. Specifically, predation by sea otters has been raised as a potentially significant factor in the continued decline and/or lack of recovery of pinto abalone populations in areas where the two species overlap.

Sea otters were hunted to near extinction in the mid-1700s to 1800s, but have begun to recover in recent decades with protection from the North Pacific Fur Seal Convention of 1911, the Marine Mammal Protection Act, and the help of reintroductions in Southeast Alaska, British Columbia, and Washington in the late 1960s. Within the geographic range of pinto abalone, contemporary sea otter populations are present in Southeast Alaska, in two discrete population segments off British Columbia, from Cape Flattery to Destruction Island off Washington, from Half Moon Bay to near Gaviota on the mainland California coast, and at San Nicolas Island off southern California. Sea otter populations in these areas have been expanding in both abundance and distribution in recent years and are likely to continue to expand as the populations grow. Sea otters remain regionally extinct in the marine waters of Oregon and Baja California, Mexico.

Available data on red abalone in California suggests that sea otter predation typically reduces red abalone density by about 90 percent (Ebert 1968, Lowry and Pearse 1973, Cooper *et al.* 1977, Hines and Pearse 1982, Ostfeld 1982, Wendell 1994, Fanshawe *et al.* 2003) and eliminates viable commercial and recreational harvests of red abalone (Wild and Ames 1974, Estes and VanBlaricom 1985). Relationships of sea otters with pinto, white, and black abalone are uncertain because of lesser overlap in habitat characteristics, especially water depth. Sea otters are known to feed on pinto abalone, but the level of predation pressure and effects on pinto abalone populations have not been directly investigated and remain poorly known. To our knowledge there are no published data documenting effects of predation by sea otters on pinto abalone at the population level.

Continued growth of the sea otter population will encompass an increasing proportion of pinto abalone habitat and will increase the risk of predation by sea otters on pinto abalone populations. However, the effects are not clear. Observations by divers for the ADF&G on the outer coast of Southeast Alaska suggest that sea otters preferentially select red sea urchins and pinto abalone as prey when foraging in rocky subtidal habitats (Rumble and Hebert 2011). The dramatic increase in sea otter numbers and range has thus caused significant concern about benthic invertebrate fisheries in Southeast Alaska. However, in British Columbia, in at least two index sites where sea otters have been present for several years, densities of pinto abalone are higher than in areas with no sea otters (pers. comm. with J. Lessard, DFO, 24 April 2014). At one of these sites, the density of mature abalone in 2011 exceeded DFO's long-term recovery target of one abalone per sq m (pers. comm. with Joanne Lessard, DFO, on 24 April 2014). As in other areas along the coast, however, data are not available to determine the natural population levels of pinto abalone prior to the local extirpation of sea otters in British Columbia in the early 1920s. Thus, we lack historical data with which to compare current density estimates.

Sea otter predation will likely affect pinto abalone populations, but in no case has local extinction of any abalone population or species in the northeastern Pacific been documented as a result of predation by sea otters. Sea otters have been present in significant

numbers in the coastal North Pacific Rim since the Pleistocene, and in northern hemisphere oceans of the earth for approximately seven million years. It seems certain that undisturbed populations of sea otters and abalones can sustainably co-exist as a consequence of co-evolved interactions.

Overall, the best available information indicates that threats associated with disease are not contributing substantially to the pinto abalone's risk of extinction now or in the foreseeable future. Disease could pose a risk to pinto abalone in the future if an outbreak of sufficient magnitude and scope occurs among wild populations, but the likelihood of such an outbreak is difficult to predict. The SRT emphasized the importance of closely monitoring and managing potential sources and pathways by which pathogens or invasive species could be introduced to wild populations (*e.g.,* import or transfer of abalone for aquaculture, research, and food/hobby markets). Such precautions are important for the protection of all abalone species throughout the coast.

In addition, the best available information indicates that predation is not contributing substantially to the pinto abalone's risk of extinction presently or in the foreseeable future. Sea otter predation has likely contributed to continued declines and/or lack of recovery of pinto abalone populations where the two species overlap. However, we agree with the SRT's conclusion that sea otters and abalone can sustainably co-exist and that our criteria for healthy, sustainable abalone populations must account for the presence of sea otters in the ecosystem.

Inadequate Regulatory Mechanisms

Poaching has been a source of mortality for pinto abalone throughout their range since the establishment of harvesting regulations by the States and Canada. The problem of poaching clearly persists in some regions along the coast, particularly in British Columbia. The continued declines in mature pinto abalone densities at Haida Gwaii and along the Central Coast, despite the fisheries closures and observed recruitment events, were mainly attributed to illegal harvest (COSEWIC 2009). However, recent index site surveys in 2011 and 2012 indicate a decline in annual mortality at both the Haida Gwaii and Central Coast sites and an increase in both immature and mature abalone densities (pers. comm. with J. Lessard, DFO, on 24 April 2014). This decrease in annual mortality and increase in densities is most likely due to a decrease in poaching pressure as a result of existing regulatory mechanisms and outreach and education programs; however, it may also be due to other factors such as improved oceanographic conditions to support juvenile survival or the benefits of the fisheries closures finally being manifested in population recovery (pers. comm. with Joanne Lessard, DFO, on 24 April 2014). We are not aware of any evidence indicating illegal harvest is currently occurring in Washington, although several cases of illegal harvest and laundering of pinto abalone product were investigated in the late 1980s and periodic cases of illegal sport harvest were reported after the 1994 fishery closure (WDFW 2014). It is generally believed that current populations in Washington no longer exist at commercially-viable quantities, and the effort vs. reward deters poaching. WDFW enforcement covers the entire coast and includes at-sea monitoring of commercial and recreational fisheries and periodic patrols of commercial buyers and markets. However, Vadopalas and Watson (2013) identify poaching as a major threat to abalone in Washington. In other regions along the coast, poaching is recognized as a historical and future risk, but specific information on current levels of poaching is lacking. We are not aware of any enforcement cases or evidence for poaching, but continued efforts to enforce the regulations and monitor their effectiveness are needed to protect the species from this threat.

As discussed above (under ''Disease and Predation''), the introduction of pathogens or invasive species was also a concern identified by the SRT, given the potentially high risks posed by disease to pinto abalone. Regulatory mechanisms are advisable to ensure adequate monitoring whenever animals are moved (*e.g.,* imports, transporting between facilities) for aquaculture, research, and/or food/hobby markets, to protect wild populations from pathogens and invasive species. In California, state regulations require abalone health monitoring at aquaculture facilities and control the importation/exportation of abalone between facilities. The State also monitors aquaculture facilities for introduced organisms and disease on a regular basis and restricts out-planting abalone from facilities that have not met certification standards. These measures will likely reduce the transmission of pathogens or invasive species from aquaculture facilities. In Washington and British Columbia, where abalone hatcheries are operated in support of restoration efforts, disease monitoring is also conducted and precautions are taken to avoid and minimize the transmission of pathogens and invasive species. Some improvements to existing regulations are needed to further protect the species. Although a permit is required to import non-native abalone species into California, a permit is not needed to import native abalone species, even if the source of those abalone is outside of the U.S. This presents a potential risk because live abalone imported into the State could carry pathogens. Information is not available regarding the amount of native abalone species that are imported into the U.S. from other countries each year.

Overall, based on the best available information, we conclude that existing regulatory mechanisms are adequate and that existing deficiencies in regulatory mechanisms are not contributing substantially to the pinto abalone's risk of extinction now or in the foreseeable future. Prohibitions on the harvest of pinto abalone throughout most of the coast provide a high level of protection for the species. Poaching continues to occur in British Columbia; however, recent increases in abalone densities at index sites were most likely due to reduced poaching pressure as a result of enforcement and outreach efforts, although favorable oceanographic conditions and reduced harvest pressure could have also contributed to these increases. In other areas, information on poaching is limited. Enforcement measures are in place throughout the coast, but monitoring is needed to ensure illegal take is not occurring. In addition, regulations and measures have been implemented to minimize the risk of transmitting pathogens or invasive species to wild populations. However, some improvements are advisable (*e.g.,* to regulations on live abalone imports) to further protect pinto abalone and other abalone species.

Other Natural or Man-Made Factors

Among the other natural or human factors affecting pinto abalone, the SRT identified ocean acidification as a threat of greater concern. Ocean acidification is a concern particularly for early life stages because of the potential for reduced larval survival and shell growth, as well as increased shell abnormalities. The impacts of ocean acidification can be patchy in space and time and may develop slowly. Effects of ocean acidification on early life stages of pinto abalone are beginning to be understood. Laboratory studies indicate that reduced larval survival and shell abnormalities or decreased shell size

occur at elevated levels of CO_2 (800 and 1800 ppm CO_2), compared to lower levels (400 ppm CO_2) (Crim *et al.* 2011). Friedman *et al.* (unpublished data) have also found reduced larval survival occurs at elevated pCO2 and are studying the synergistic effects of increased pCO2, varying temperature, and exposure to *Vibrio tubiashii* on early life stages of pinto abalone (results pending).

Other climate-change related effects that may impact pinto abalone include increased water temperatures and decreased salinity (due to freshwater intrusions). Bouma's (2007) studies with cultured pinto abalone indicated that laboratory rearing temperatures of 11, 16, and 21 °C did not affect post-larval survival. Larvae tolerated temperatures of 12–21 °C, with mortality at 24 °C. Captive adult pinto abalone in Alaska showed no behavioral abnormalities at 2–24 °C, but high mortality at 0.5 °C and 26.5 °C. Low salinity intrusions from freshwater inputs to Puget Sound and the San Juan Islands Archipelago may also have negative effects on pinto abalone recruitment. In laboratory experiments, early life stages of pinto abalone appear to be intolerant to low salinities below 26 psu (Bouma 2007). Bouma (2007) found that when introduced into a halocline microcosm (where salinity levels change with depth along the water column), larvae actively avoided areas of lower salinity. Later larval stages appear to be more tolerant of sub-optimal salinity levels (Bouma 2007).

In evaluating the threat of ocean acidification and other climate change impacts, the SRT recognized that some information is available regarding the potential effects of ocean acification, elevated water temperatures, and low salinity intrusions on pinto abalone. However, the SRT also recognized that our understanding of these effects includes a high degree of uncertainty, due to limited studies involving pinto abalone and the uncertainty and spatial variability in predictions regarding ocean acidification and climate change impacts into the future. The overall level of data available is low, especially regarding how ocean acidification may affect the species throughout its range, given variability in local conditions throughout the coast, natural variation in ocean pH, species adaptability, and projections of future carbon dioxide emissions.

Environmental pollutants and toxins are likely present in areas where pinto abalone have occurred and still do occur, but evidence suggesting causal and/or indirect negative effects on pinto abalone due to exposure to pollutants or toxins is lacking. In addition, very little is known regarding entrainment and/or impingement risks posed by coastal facilities. Direct effects would be focused on larval stages and be very localized in area. Despite uncertainties due to lack of data, the SRT felt that the risk posed by environmental pollutant/toxins and entrainment or impingement is likely low given their limited geographic scope.

Overall, the best available information regarding other natural or manmade factors affecting pinto abalone do not indicate that these factors are contributing substantially to the species' risk of extinction now or in the foreseeable future. Ocean acidification and climate change impacts could affect pinto abalone in the future; however, the magnitude, scope, and nature of these effects are highly uncertain at this time.

Analysis of Demographic Risk

The SRT first identified a series of questions related to the four demographic risk criteria (abundance, growth rate/productivity, spatial structure/connectivity, and diversity), in order to structure their evaluation of these four criteria. For example, one of the questions related to the abundance criterion was: Is the species' abundance so low, or variability in abundance so high, that it is at risk of extinction due to depensatory processes? The SRT then assessed these questions using a voting process that was first used in an ESA status review by Brainard *et al.* (2011) to assess extinction risk for 82 coral species.

For each question, each SRT member scored the likelihood that the answer to each question was true, by anonymously assigning 10 points across the following eight likelihood bins, developed by the IPCC (Intergovernmental Panel on Climate Change 2007): exceptionally unlikely (<1 percent), very unlikely (1–10 percent), unlikely (10–33 percent), less likely than not (33–50 percent), more likely than not (50–66 percent), likely (66–90 percent), very likely (90–99 percent), and virtually certain (>99 percent). The IPCC (2007) developed this approach as one method for assessing the uncertainty of specific outcomes using expert judgment and, where available, quantitative information. The IPCC (2007) used this approach to evaluate the probability of occurrence of different climate change model outcomes, whereas Brainard *et al.* (2011) used this approach to qualitatively evaluate the likelihood that different coral species would fall below a defined critical risk threshold. In this status review, the SRT applied this approach to qualitatively evaluate the likelihood that pinto abalone are at risk of extinction due to different demographic risks. For each question, the scores were tallied (mean and range for each SRT member and across all SRT members) and reviewed, and the range of perspectives was discussed by the SRT. Each SRT member then had the opportunity to change their scores before submitting their final scores. Below, we summarize the SRT's conclusions regarding demographic risks. Additional details are provided in the status review report.

The SRT concluded that the risks to the species associated with abundance and population growth are moderate. Team members agreed that depensatory processes due to low and/or highly variable abundance or low population growth were a concern for pinto abalone in a number of locations (*e.g.,* San Juan Island Archipelago, Alaska). Pinto abalone abundance and population growth have declined throughout the species' range, and, while there is some indication that recent recruitment has occurred in localized areas (*e.g.,* Mexico, Point Loma, Palos Verdes, Mendocino County, British Columbia, Alaska), the rate of population growth is unknown. The SRT expressed some concern that population growth may not be occurring at a pace or extent sufficient to buffer against possible further declines due to processes happening over longer (*e.g.,* PDO, IPO, climate change, and ocean acidification over decades; ENSO events over years) and/or uncertain time scales (*e.g.,* cumulative oil spill impacts, poaching events, or harvest impacts). However, the SRT also expressed a high degree of uncertainty regarding the species' abundance and productivity.

The majority of SRT members agreed that spatial structure and diversity pose a low risk to pinto abalone. The SRT expressed a low level of concern regarding loss of variation in life history traits, population demography, morphology, behavior, or genetic characteristics. Most SRT members agreed that it is very unlikely that the species is at risk due to the loss of or changes in diversity, or due to alterations in the natural processes of dispersal, migration, and/or gene flow, or those that cause ecological variation. The SRT acknowledged that the species has experienced population declines and currently has a patchy distribution, but noted that the species has historically existed with a highly patchy distribution. The SRT was concerned about the potential loss of source populations or subpopulations in some areas due to past fishing pressure;

however, they also expressed a high level of uncertainty regarding this risk, given the limited information on source-sink dynamics for pinto abalone. Recent evidence of localized recruitment in a few areas, spread over a wide geographic range (Alaska to Mexico) suggests that local populations are dense enough to support reproduction. The SRT's prevailing justification for concluding that spatial structure and diversity pose low risk to pinto abalone was that other related species of abalone that were overfished (*e.g.,* red, pink, and green abalone) and that may exhibit lower spatial connectivity and/or genetic diversity than is suspected for pinto abalone, made remarkable recoveries in many locations range-wide over a period of roughly two decades (see status review report).

Overall, despite their high degree of uncertainty, the SRT members expressed low to moderate levels of concern for the majority of the questions and demographic categories. The SRT expressed a higher degree of uncertainty regarding the species' abundance and productivity and the risks posed by these demographic factors. However, none of the SRT members placed any of their likelihood points in the highest risk category (>99 percent) and they placed very few points (<5 percent) in the next highest risk category (90–99 percent) across all questions and demographic categories, indicating that no SRT member thought the risk of extinction of pinto abalone was virtually certain, or even very likely, due to any of the demographic risks identified.

SRT Assessment of Overall Extinction Risk

In the overall risk assessment, the SRT considered the demographic risks together with the threats to evaluate the level of extinction risk faced by the species now and in the foreseeable future. Because data are not available to quantitatively assess the species' extinction risk (*e.g.,* through development of a population viability model), the SRT adopted an approach similar to what has been done in previous NMFS status reviews, using a voting process to organize and summarize the professional judgment of the SRT members regarding the overall level of extinction risk to the species. We summarize the SRT's assessment and conclusions regarding extinction risk below. In the ''Final Determinations'' section of this notice, we considered the SRT's conclusions, along with the best available information regarding the status of the species and ongoing/future conservation efforts (see section titled ''Efforts Being Made to Protect the Species'') to develop a final determination regarding overall extinction risk to the species.

For the purpose of this extinction risk analysis, the term ''foreseeable future'' was defined as the time frame over which threats can be predicted reliably and over which their impacts to the biological status of the species may be observed. The SRT considered the life history of pinto abalone and the availability of data regarding threats to the species, and recommended two time frames for the foreseeable future.

First, the SRT recommended a foreseeable future of 30 years, representing approximately three generation times for pinto abalone as defined in the IUCN (International Union for Conservation of Nature) Red List assessment (McDougall *et al.* 2006) and the COSEWIC (2009) assessment for pinto abalone. This time frame is consistent with what was used to define the foreseeable future in the black abalone status review (VanBlaricom *et al.* 2009) and represents a reasonable time frame over which threats can be predicted reliably and impacts to the species' status would be observable.

The SRT also recommended a foreseeable future of 100 years, because they felt that a time frame greater than 30 years may be needed to adequately consider the effects of longer-term threats, such as climate change, ocean acidification, ENSOs, and PDOs/IPOs. This time frame was used by Brainard *et al.* (2011) in their status review of multiple coral species that are affected by climate change and ocean acidification. A foreseeable future of 100 years represents a reasonable time frame over which we have some information on and predictions regarding longer-term threats and oceanographic regime shifts. However, the SRT also recognized that this longer time frame introduces more uncertainty into the assessment.

NMFS agreed that the 30 year and 100 year time frames for foreseeable future were appropriate and asked the SRT to assess the overall level of extinction risk over both time frames. As stated above, the SRT assessed the overall level of extinction risk to the species now and in the foreseeable future (30 years and 100 years) using the likelihood point method (*e.g.,* FEMAT method), in which each member distributed 10 likelihood points among the following five levels of extinction risk: No/Very Low, Low, Moderate, High, and Very High risk. We summarize the SRT's assessment below; further details can be found in the status review report.

Over both time frames, SRT members distributed likelihood points across all five extinction risk categories, with the majority of likelihood points placed in the Low risk and Moderate risk categories and very few (1–2) points placed in the Very High risk category. When considering a foreseeable future of 100 years, most of the SRT members shifted some likelihood points from the No/Very Low and Low risk categories to the Moderate and High risk categories, expressing greater concern, but also greater uncertainty, regarding demographic risks and threats over the 100 year time frame compared to the 30 year time frame.

For the overall risk now and in a foreseeable future of 30 years, the SRT distributed their likelihood points across the five extinction risk categories as follows (the first number represents the total points attributed by SRT members and the second number represents the total possible points, which was 80): No or Very Low Risk (11/80, or 14 percent), Low Risk (33/80, or 40 percent), Moderate Risk (32/80, or 41 percent), High Risk (3/80, or 4 percent), Very High Risk (1/80, or 1 percent). Only one SRT member placed a likelihood point in the Very High risk category. Based on the likelihood point distributions, the SRT was fairly certain that the species has a Low to Moderate risk of extinction currently and in a foreseeable future of 30 years. Of the 80 points distributed across categories, the SRT placed 76 points across the Very Low, Low, and Moderate risk categories. The categories with the greatest number of points were the Low risk (33 points) and Moderate risk (32 points) categories.

For the overall risk now and in a foreseeable future of 100 years, the SRT distributed their likelihood points across the five extinction risk categories as follows: No or Very Low Risk (6/80, or 8 percent), Low Risk (24/80, or 30 percent), Moderate Risk (36/80, or 45 percent), High Risk (12/80, or 15 percent), Very High Risk (2/80, or 3 percent). Only two SRT members placed likelihood points in the Very High risk category. All but one SRT member (who made no changes to their point distribution when considering 100 years vs. 30 years) shifted some of their likelihood points from the No/Very Low and Low risk categories to the Moderate and High risk categories when considering a foreseeable future of 100 years rather than 30 years. This shift indicated that the SRT was more certain that the species has a Moderate risk of extinction currently and in the foreseeable future when considering a foreseeable future of 100 years vs. 30 years. Again, the SRT distributed most of their points (66 out of 80 points)

across the Very Low, Low, and Moderate risk categories.

Overall, the SRT concluded that pinto abalone have a Low to Moderate level of extinction risk now and in the foreseeable future (over both the 30 year and 100 year time horizons). The SRT recognized that there is a high level of uncertainty regarding demographic factors, in particular regarding abundance and productivity levels. The main concerns highlighted by the SRT include declines in abundance and uncertainty regarding whether current abundance and productivity levels are sufficient to support the persistence and recovery of the species in the face of continuing and potential future threats. Long-term declines have been observed in surveyed areas throughout the species range. There is concern that these declines may be putting the populations at the San Juan Islands Archipelago at risk, because the populations appear to be experiencing recruitment failure. Throughout the rest of the species' range, densities remain low but recurring and/or recent recruitment events have been observed and have even resulted in increased densities (of mature and all sizes of pinto abalone) at several index sites in British Columbia. Observed recruitment events indicate that demographic characteristics are sufficient to support reproduction in locations throughout the species range, but productivity is variable and occurring at undetermined rates. Observations suggest that abalone recruitment and populations, in general, are both temporally and spatially episodic. One of the main data gaps is the lack of historical data on the status of the species prior to fisheries harvest and prior to the removal of sea otters throughout most of the coast. Lacking this baseline for comparison further increases the uncertainty regarding how to interpret the limited demographic data available for the species, and points to the need for improved monitoring of pinto abalone populations throughout its range in order to adequately assess the species' status.

The main reason for the increase in likelihood points for the Moderate risk category versus the Low risk category when considering a foreseeable future of 100 years was the general perception by most SRT members that the species is likely to face more challenging conditions over the longer time frame, given the currently available predictions regarding climate change impacts, ocean acidification, and increasing sea otter populations. However, the SRT also recognized that there is more uncertainty associated with our understanding of and predictions regarding these threats and their effects on the species over the longer time frame. Additional sources of uncertainty include: the lack of information regarding how naturally occurring events may affect the species into the future (*e.g.,* IPOs, predation); the unpredictability of some threats (*e.g.,* oil spills, climate change impacts); and the potential for pinto abalone to adapt to changing climate and conditions, as well as to recover from low abundances, which has been observed for other abalone species. We considered all of these factors when considering the SRT's assessment in our final determination of overall extinction risk for the species.

Consideration of ''Significant Portion of Its Range''

The ESA defines an ''endangered'' species as ''any species which is in danger of extinction throughout all or a significant portion of its range,'' and a ''threatened'' species as ''any species which is likely to become an endangered species within the foreseeable future throughout all or a significant portion of its range.'' On July 1, 2014, the USFWS and NMFS issued a final policy on the interpretation and application of the phrase ''significant portion of its range'' under the ESA (79 FR 37578; ''Final Policy''). Under this policy, the phrase ''significant portion of its range'' provides an independent basis for listing a species under the ESA. In other words, a species would qualify for listing if it is determined to be endangered or threatened throughout all of its range or if it is determined to be endangered or threatened throughout a significant portion of its range. This policy defines the term ''significant'' as follows: ''a portion of the range of a species is 'significant' if the species is not currently endangered or threatened throughout its range, but the portion's contribution to the viability of the species is so important that, without the members in that portion, the species would be in danger of extinction, or likely to become so in the foreseeable future, throughout all of its range.'' The range of the species is defined as ''the general geographical area within which that species can be found at the time FWS or NMFS makes any particular status determination.''

The Final Policy explains that it is necessary to fully evaluate a portion for potential listing under the ''significant portion of its range'' authority only if information indicates that the members of the species in a particular area are likely *both* to meet the test for biological significance *and* to be currently endangered or threatened in that area. Making this preliminary determination triggers a need for further review, but does not prejudge whether or not the portion actually meets these standards such that the species should be listed:

> To identify only those portions that warrant further consideration, we will determine whether there is substantial information indicating that (1) the portions may be significant and (2) the species may be in danger of extinction in those portions or likely to become so within the foreseeable future. We emphasize that answering these questions in the affirmative is not a determination that the species is endangered or threatened throughout a significant portion of its range—rather, it is a step in determining whether a more detailed analysis of the issue is required (79 FR 37586; July 1, 2014).

Thus, the preliminary determination that a portion may be both significant and endangered or threatened merely requires NMFS to engage in a more detailed analysis to determine whether the standards are *actually* met. *Id.* at 37587. Unless both are met, listing is not warranted. The Final Policy explains that, depending on the particular facts of each situation, NMFS may find it is more efficient to address the significance issue first, but in other cases it will make more sense to examine the status of the species in the potentially significant portions first. Whichever question is asked first, an affirmative answer is required to proceed to the second question. *Id.* (''[I]f we determine that a portion of the range is not ''significant,'' we will not need to determine whether the species is endangered or threatened there; if we determine that the species is not endangered or threatened in a portion of its range, we will not need to determine if that portion was ''significant.''). Thus, if the answer to the first question is negative—whether that regards the significance question or the status question—then the analysis concludes and listing is not warranted.

In keeping with the process described in the Final Policy, to inform NMFS' assessment of whether pinto abalone are endangered or threatened throughout all or a significant portion of its range, we asked the SRT to conduct a 3-step process. First, to help identify any potentially significant portions of the species' range, the SRT was asked to evaluate whether any portions of the range may be significant and whether the members of the species in those portions may be endangered or threatened. Second, if any potentially significant portions of the range were identified, we then asked the SRT to evaluate the level of extinction risk faced by the species within those

portions. Third, if the SRT's assessment of extinction risk indicated that the species is at risk of extinction now or likely to become so in the foreseeable future within any of the portions, we asked the SRT to evaluate whether under a hypothetical scenario, the portion's contribution to the viability of the species is so important that, without the members in that portion, the remainder of the species would be at risk of extinction now or in the foreseeable future. If the SRT's assessment does not indicate that the species is at risk of extinction now or likely to become so in the foreseeable future within any of the portions, then the SRT would not need to conduct this last step of examining the actual biological significance of the portion.

Thus, under the process contemplated in the Final Policy and followed by the SRT, the status question was evaluated first, and the significance question would only be reached if the evaluation of status yielded a conclusion that the species is endangered or threatened in a particular portion. In fact, as is explained below, no portions of the range were evaluated for ''significance'' because the analysis indicated that no portions contained members of the species that were actually at risk of extinction presently or likely to become so within the foreseeable future. We summarize the SRT's analysis below; the status review report provides further details. Final determinations were made by NMFS upon consideration of the SRT's evaluation (see ''Final Determinations'' section of this notice).

To identify potentially significant portions of the species' range (SPR), the SRT was presented the following portions and each member was asked to indicate (Yes/No) whether they thought the portion may be significant (based on the final SPR policy's definition of ''significant'') and whether members of the species within that portion may be considered threatened or endangered: Alaska (AK), British Columbia (BC), San Juan Islands Archipelago (SJA), Northern California (NorCal), Southern California (SoCal), and Mexico (MX). Only two of the eight voting members indicated that British Columbia may be significant and only one member indicated that Alaska may be significant. None of the SRT members indicated that the remaining portions (SJA, NorCal, SoCal, and MX) may be significant. Overall, the SRT agreed that none of these portions contribute substantially to the viability of the species such that the loss of that portion would put the species in danger of extinction presently or in the foreseeable future. Thus, none of these portions were considered as potential SPRs on their own. However, at least half of the SRT members indicated that the species may be threatened or endangered in AK, BC, SJA, SoCal, and MX. These portions were considered together as a potential SPR, according to the approach by Waples *et al.* (2007) for identifying SPRs.

The SRT also evaluated the following larger portions: (a) The Northern portion of the species range (AK/BC/SJA); and (b) the Southern portion of the species range (NorCal/SoCal/MX). The Northern and Southern portions were delineated based on the geographic proximity of the areas and what appears to be a natural gap in the species' range between Washington and California (based on the absence of pinto abalone observations along the outer coasts of Washington and Oregon, except for a handful of pinto abalone found off Oregon). More than half of the SRT members indicated that the Northern portion may be significant, because this portion encompasses a large part of the species' range, including areas that historically supported the greatest numbers of pinto abalone (British Columbia). More than half of the SRT members also indicated that the Northern portion may be threatened or endangered, based on the declines in pinto abalone abundance from historical levels, increasing sea otter populations in several areas, and what appears to be recruitment failure in the San Juan Islands Archipelago. More than half of the SRT members indicated that the Southern portion may be significant, based on the large area encompassed by this portion and evidence of recent recruitment throughout California and Mexico, which could benefit the species throughout its range. Half of the SRT members indicated that the Southern portion may be threatened or endangered based on the declines in pinto abalone abundance from historical levels, but expressed a high degree of uncertainty regarding this question. To be conservative, the SRT included both the Northern and Southern portions as potential SPRs for further consideration.

The SRT was then asked to evaluate the level of extinction risk to the species within these three potential SPRs, using the same methods that were used to evaluate the overall extinction risk to the species throughout its range. For each of the three potential SPRs, each SRT member distributed 10 likelihood points among the following five levels of extinction risk: No/Very Low, Low, Moderate, High, and Very High risk. The SRT assessed extinction risk to the species now and in the foreseeable future, considering both a 30-year and a 100-year time frame for foreseeable future.

For the Northern portion (AK/BC/SJA), the SRT concluded that pinto abalone have a low to moderate level of extinction risk now and in the foreseeable future over both the 30-year and 100-year time frame. Likelihood points attributed to the categories for the level of extinction risk now and in a foreseeable future of 30 years were as follows: No or Very Low Risk (14/80, or 18 percent), Low Risk (29/80, or 36 percent), Moderate Risk (30/80, or 38 percent), High Risk (7/80, or 9 percent), Very High Risk (0/80, or 0 percent). None of the SRT members placed likelihood points in the Very High risk category and few points were placed in the High risk category. The majority (54 percent) of likelihood points were placed in the No/Very Low and Low risk categories. The categories with the greatest number of points were the Low (29 points) and Moderate (30 points) risk categories. Likelihood points attributed to the categories for the level of extinction risk now and in a foreseeable future of 100 years were as follows: No or Very Low Risk (11/80, or 14 percent), Low Risk (19/80, or 24 percent), Moderate Risk (31/80, or 39 percent), High Risk (17/80, or 21 percent, Very High Risk (2/80, or 3 percent). When considering a foreseeable future of 100 years rather than 30 years, most of the SRT members shifted some of their points from the No/Very Low and Low risk categories to the Moderate and High risk categories. In general, more points were placed in the No/Very Low and Low risk categories (total: 30 points) than in the High and Very High risk categories (total: 19 points). The category with the greatest number of points was the Moderate risk category (31 points).

For the Southern portion, the SRT concluded that the species has a Low risk of extinction now and in a foreseeable future of 30 years and a Low to Moderate risk of extinction now and in a foreseeable future of 100 years. Likelihood points attributed to the categories for the level of extinction risk now and in a foreseeable future of 30 years were as follows: No or Very Low Risk (25/80, or 31 percent), Low Risk (37/80, or 46 percent), Moderate Risk (18/80, or 23 percent), High Risk (0/80, or 0 percent), Very High Risk (0/80, or 0 percent). None of the SRT members placed likelihood points in the High or Very High risk categories. The majority (77 percent) of likelihood points was placed in the No/Very Low and Low risk categories; these were also the categories with the greatest number of points (25 and 37 points, respectively).

Likelihood points attributed to the categories for the level of extinction risk now and in a foreseeable future of 100 years were as follows: No or Very Low Risk (17/80, or 21 percent), Low Risk (28/80, or 35 percent), Moderate Risk (30/80, or 38 percent), High Risk (5/80, or 6 percent), Very High Risk (0/80, or 0 percent). When considering a foreseeable future of 100 years rather than 30 years, most of the SRT members shifted some of their points from the No/Very Low and Low risk categories to the Moderate and/or High risk categories. However, the majority of points remained in the No/Very Low and Low risk categories (total: 45 points or 56 percent). The categories with the greatest number of points were the Low (28 points) and Moderate (30 points) risk categories.

For the AK/BC/SJA/SoCal/MX portion, the SRT concluded that the species has a Low risk of extinction now and in a foreseeable future of 30 years and a Low to Moderate risk of extinction now and in a foreseeable future of 100 years. Likelihood points attributed to the categories for the level of extinction risk now and in a foreseeable future of 30 years were as follows: No or Very Low Risk (22/80, or 28 percent), Low Risk (34/80, or 43 percent), Moderate Risk (23/80, or 29 percent), High Risk (1/80, or 1 percent), Very High Risk (0/80, or 0 percent). None of the SRT members placed likelihood points in the Very High risk category and only one member placed a likelihood point in the High risk category. The majority (71 percent) of likelihood points were placed in the No/Very Low and Low risk categories. The category with the greatest number of points was the Low risk category (34 points). Likelihood points attributed to the categories for the level of extinction risk now and in a foreseeable future of 100 years were as follows: No or Very Low Risk (15/80, or 19 percent), Low Risk (29/80, or 36 percent), Moderate Risk (30/80, or 38 percent), High Risk (6/80, or 8 percent), Very High Risk (0/80, or 0 percent). When considering a foreseeable future of 100 years rather than 30 years, most of the SRT members shifted some of their points from the No/Very Low and Low risk categories to the Moderate and/or High risk categories. None of the SRT members placed any likelihood points in the Very High risk category and few points were placed in the High risk category. The majority (55 percent) of points were placed in the No/Very Low and Low risk categories. The categories with the greatest number of points were the Low (29 points) and Moderate (30 points) risk categories.

Overall, the SRT expressed greater concern regarding extinction risk to the species within the Northern portion of its range (AK/BC/SJA) than in the Southern portion (NorCal/SoCal/MX) or the AK/BC/SJA/SoCal/MX portion (encompassing all areas excluding Northern California). The SRT focused on long-term declining trends throughout much of the Northern portion, and threats posed by continuing personal use and subsistence harvest in Alaska, the recovery of sea otter populations in several locations, and potential climate change and ocean acidification impacts. Evidence of recent and recurring recruitment in a number of areas throughout the Southern portion was a major factor in the SRT's assessment of lower risk for this portion and for the AK/BC/SJA/SoCal/MX portion. For the AK/BC/SJA/SoCal/MX portion, the majority of the SRT considered the inclusion of Southern California and Mexico as providing a buffer from threats that may be more pronounced in the Northern portion than in the Southern portion. The SRT also expressed greater concern, as well as greater uncertainty, regarding extinction risk to the species when considering a foreseeable future of 100 years compared to 30 years for all three portions.

The SRT concluded that Low to Moderate risks to the species within any of these portions and over either time frame were the most plausible. The SRT did not believe that the species is likely to be at High or Very High risk of extinction in any of the portions over either time frame. In the ''Final Determinations'' section of this notice, we discuss our consideration of the SRT's conclusions in determining whether the species is at risk of extinction now or likely to become so in the foreseeable future within any of these three potential SPRs.

Efforts Being Made To Protect the Species

Section 4(b)(1)(A) of the ESA requires the Secretary of Commerce to consider ''efforts, if any, being made by any State or foreign nation, or any political subdivision of a State or foreign nation, to protect such species, whether by predator control, protection of habitat and food supply, or other conservation practices, within any area under its jurisdiction or on the high seas.'' Therefore, in making a listing determination, we first assess a species' level of extinction risk and identify factors that have led to its decline. We then assess existing efforts being made to protect the species to determine if those measures ameliorate the risks.

In judging the efficacy of certain protective efforts, we rely on the joint NMFS-U.S. Fish and Wildlife Service (FWS) ''Policy for Evaluation of Conservation Efforts When Making Listing Decisions'' (''PECE'', 68 FR 15100; March 28, 2003). PECE provides direction for the consideration of formalized conservation efforts, such as those identified in conservation agreements, conservation plans, management plans, or similar documents (developed by Federal agencies, state and local governments, Tribal governments, businesses, organizations, and individuals), that have not yet been implemented, or have been implemented but have not yet demonstrated effectiveness.

In determining whether a formalized conservation effort contributes to a basis for not listing a species, or for listing a species as threatened rather than endangered, we must evaluate whether the conservation effort improves the status of the species under the ESA. Two factors are key in that evaluation: (1) For those efforts yet to be implemented, the certainty that the conservation effort will be implemented and (2) for those efforts that have not yet demonstrated effectiveness, the certainty that the conservation effort will be effective. Evaluations of the certainty an effort will be implemented include whether: The necessary resources (*e.g.,* funding and staffing) are available; the requisite agreements have been formalized such that the necessary authority and regulatory mechanisms are in place; there is a schedule for completion and evaluation of the stated objectives; and (for voluntary efforts) the necessary incentives are in place to ensure adequate participation. The evaluation of the certainty of an effort's effectiveness is made on the basis of whether the effort or plan: Establishes specific conservation objectives; identifies the necessary steps to reduce threats or factors for decline; includes quantifiable performance measures for the monitoring of compliance and effectiveness; incorporates the principles of adaptive management; and is likely to improve the species' viability at the time of the listing determination.

PECE also notes several important caveats. Satisfaction of the above mentioned criteria for implementation and effectiveness establishes a given protective effort as a candidate for consideration, but does not mean that an effort will ultimately change the risk assessment. The policy stresses that just as listing determinations must be based on the viability of the species at the time of review, so they must be based on the state of protective efforts at the time of

the listing determination. PECE does not provide explicit guidance on how protective efforts affecting only a portion of a species' range may affect a listing determination, other than to say that such efforts will be evaluated in the context of other efforts being made and the species' overall viability.

Conservation measures that may apply to listed species include conservation measures implemented by tribes, states, foreign nations, local governments, and private organizations. Also, Federal, tribal, state, and foreign nations' recovery actions (16 U.S.C. 1533(f)), Federal consultation requirements (16 U.S.C. 1536), and prohibitions on taking (16 U.S.C. 1538) constitute conservation measures. In addition, recognition through federal or state listing promotes public awareness and conservation actions by Federal, state, tribal governments, foreign nations, private organizations, and individuals.

The following is a review of the major conservation efforts and an evaluation of whether these efforts are reducing or eliminating threats by having a positive conservation benefit and thus improving the status of the pinto abalone.

Alaska: Pinto Abalone Monitoring Plan

In the past, ADF&G has not conducted fishery-independent monitoring of pinto abalone populations. Instead, opportunistic observations of pinto abalone were recorded while surveying other species. The SRT identified this as an important data gap contributing to the high degree of uncertainty regarding the status of the species in Alaska. Fishery-independent surveys focused on pinto abalone will be particularly informative for assessing population abundance and trends in response to harvest pressure (*e.g.,* from continuing personal use and subsistence harvest) and sea otter predation and, as needed, making sound management decisions.

ADF&G recently conducted monitoring surveys for pinto abalone in Alaska. At the American Academy of Underwater Sciences (AAUS) conference in September 2014, a pinto abalone dive workshop was held in which participants surveyed eight sites within Sitka Sound (pers. comm. with K. Hebert, ADF&G, on 25 September 2014). Workshop participants counted and measured pinto abalone along transects and recorded habitat observations. The surveys are a first step toward developing a pinto abalone monitoring program in Alaska. In a letter to NMFS on October 6, 2014 (Ingle 2014), ADF&G stated their commitment to developing a directed monitoring program for pinto abalone in Alaska. In partnership with the Sitka Sound Science Center, ADF&G was awarded a 2-year grant from Alaska Sea Grant to begin a monitoring program for pinto abalone and kelp forests in Sitka Sound. ADF&G plans to establish long-term monitoring at several index sites throughout southeast Alaska to estimate abalone density, population size structure, and abundance and to document habitat characteristics. The goal of such a monitoring program would be to monitor population trends over time. In addition, ADF&G plans to evaluate the impacts of sea otter predation on abalone through monitoring of index sites both within and outside of the current range of sea otters. ADF&G has already initiated efforts to seek funding for development and implementation of the monitoring program beyond the 2-year Alaska Sea Grant.

Based on our judgment, development and implementation of a long-term pinto abalone and kelp forest monitoring program will benefit the species in Alaska and inform our evaluation of the species status and ADF&G's future management decisions to address threats to the species. ADF&G has already conducted pilot surveys and begun establishing partnerships and seeking the funding needed to develop and implement the planned monitoring program. Thus, we believe that the level of certainty that this monitoring program will be implemented is fairly high, but the extent to which it is actually implemented will be dependent on funding. Implementation of this monitoring program would not reduce risks to the species, but it would provide data to inform our understanding of the species' status and provide the basis for future actions to reduce the species' extinction risk.

British Columbia: SARA Listing and Recovery Plan

Pinto abalone are currently listed as endangered (*i.e.,* facing imminent extirpation or extinction) in British Columbia under Canada's Species at Risk Act (SARA). This listing was based on continued low population numbers and declines despite the closure of abalone fisheries throughout British Columbia since 1990. The species was first assessed in 1999 by the Committee on the Status of Endangered Wildlife in Canada (COSEWIC) and designated as threatened by COSEWIC in 2000 and later under SARA in 2003. COSEWIC re-examined and up-listed pinto abalone to endangered in 2009, due to continued population declines primarily attributed to poaching (COSEWIC 2009). Up-listing to endangered status under SARA followed in 2011. Pinto abalone are also included on British Columbia's Red-list, with a global status of G3G4 (indicating uncertainty regarding the species' status as vulnerable or apparently secure) and a provincial status of S2 (*i.e.,* imperiled in the nation or state/province because of rarity due to very restricted range, very few populations, steep declines, or other factors making it very vulnerable to extirpation from the nation or state/province) (BC Conservation Data Centre 2014).

SARA prohibits killing, harming, harassing, possessing, and buying or selling an individual or its parts (including the shell); these prohibitions apply to both farm-raised and wild pinto abalone (COSEWIC 2009). Although fisheries harvest has been prohibited since 1990, poaching has continued to pose a major threat to pinto abalone in British Columbia (Lessard *et al.* 2007). To address this threat, protocols have been established to track abalone sold on the market, to deter the sale of wild abalone as cultured abalone (COSEWIC 2009). In addition, enforcement patrols, prosecution of poaching cases, and stewardship programs, such as the CoastWatch program, aim to reduce illegal harvest (DFO 2012). Preliminary data from the most recent index site surveys in 2012 and 2013 indicate a decrease in mortality associated with illegal harvest, likely due to these enforcement and stewardship efforts (pers. comm. with Joanne Lessard, DFO, on 24 April 2014).

In 2007, DFO finalized a Recovery Strategy (DFO 2007) for pinto abalone in Canada that sets goals and objectives for halting and reversing the decline of the species and identifies the main areas of activities to be undertaken. In 2012, the DFO finalized the Action Plan (DFO 2012) to guide implementation of the Recovery Strategy. The Recovery Strategy and Action Plan set specific population and distribution objectives as well as short-term (10-year) and long-term (30-year) recovery targets for pinto abalone. The Action Plan identifies recovery activities to address threats, monitor status, and support rebuilding of pinto abalone populations, and also identifies critical habitat for pinto abalone within four areas in British Columbia. Few activities were identified as likely to destroy critical habitat, and the overall estimated impact of works or developments in critical habitat areas was rated as low. An assessment protocol has been established that specifies criteria to avoid harmful alteration, disruption, or destruction of critical habitat (Lessard *et al.* 2007). This protocol applies to works or

development proposed to occur in, on, or under water within pinto abalone critical habitat. In addition to DFO's Recovery Strategy and Action Plan, several First Nations and coastal communities have developed area-based Community Action Plans with similar goals and objectives to support the long-term recovery of pinto abalone.

Many of the protections and conservation efforts identified in the Recovery Strategy and Action Plan have been ongoing for several years. DFO continues to conduct index site surveys every 4–5 years, providing valuable time series and size frequency data to monitor population status. Adult translocations have been conducted at various locations, and preliminary results from one site (Broken Group Islands) indicate success in increasing juvenile densities (Lessard *et al.* 2007, pers. comm. with Joanne Lessard, DFO, cited in COSEWIC 2009). Outplanting studies have also been conducted at various locations between 2000 and 2010, through partnerships between DFO, First Nations, and other coastal communities (DFO 2012). Results from Barkley Sound show that outplanted abalone experience high mortality and/or emigration rates, but that outplanted individuals made up to 26 percent of the observed abalone at the sites (Read *et al.* 2012). Education and outreach efforts continue to raise awareness regarding the status of pinto abalone and reduce poaching pressure. Under DFO's Recovery Strategy and Action Plan, these protections and conservation efforts will continue to be implemented, evaluated, improved, and added to as new information becomes available.

Based on the criteria in the PECE policy, in our judgment the DFO Recovery Strategy and Action Plan have a high certainty of implementation because many of the actions are ongoing and DFO has the management authority, resources, and partnerships to continue carrying out these actions. We also anticipate that implementation of the Recovery Strategy and Action Plan is highly likely to be effective at substantially reducing the overutilization of pinto abalone as well as the demographic risks facing the species. For example, preliminary results from the 2012 and 2013 index site surveys at Haida Gwaii and along the Central Coast indicate that the reduction in poaching has allowed populations to rebound, with densities at some sites exceeding the short-term recovery targets. We anticipate that ongoing and further protections and conservation efforts will benefit the status of the species in the foreseeable future, decreasing the species' extinction risk.

Washington: Ongoing Conservation Efforts and Draft Recovery Plan

Since the early 2000s, the WDFW, Puget Sound Restoration Fund (PSRF), University of Washington, Jamestown S'Klallam Tribe, NOAA, and other partners have worked together to advance the recovery of pinto abalone in Washington State, focusing on the area around the San Juan Island Archipelago (see Vadopalas and Watson 2013). With the establishment of a hatchery for pinto abalone rearing and restoration studies at NOAA's Mukilteo facility in 2003, much progress has been made in the development of successful captive propagation and grow-out methods, as well as in understanding the effects of rearing conditions, salinity, temperature, and ocean acidification on abalone survival and behavior. Field studies have been conducted to inform the prioritization and development of enhancement activities, including abalone recruitment studies, experimental out-plantings with larvae and juveniles, adult aggregations, and tagging trials. In addition, a public outreach campaign was initiated to inform the public about the status of pinto abalone in Washington.

A final recovery plan for pinto abalone in Washington (Vadopalas and Watson 2013) was developed in collaboration between WDFW, University of Washington (Friedman Lab), PSRF, NOAA NMFS Mukilteo Research Station, Baywater, Inc., Western Washington University's Shannon Point Marine Center, and the Jamestown S'Klallam Tribe. The plan summarizes the biology, life history, and status of pinto abalone in the San Juan Islands Archipelago, provides an overview of recovery efforts to date, and establishes a plan for recovering the species, including goals and objectives, recommended approaches, and an evaluation of potential recovery strategies. To achieve the long-term goal of halting the decline of pinto abalone and recovering populations to a self-sustainable level, the plan focuses on aggregation and supplementation activities, drawing upon what has been learned from collaborative restoration efforts thus far to guide future efforts.

The plan includes clear objectives, identification of threats to the species, and a diversity of specific strategies to address those threats, including monitoring and evaluation criteria and an adaptive management approach. Implementation of the plan would ensure continuation of current protections, raise awareness of pinto abalone, and contribute to recovery through active enhancement efforts, using a multi-faceted approach involving investigation of several strategies (*e.g.,* aggregation, out-planting) that have been shown to have the potential to enhance wild populations. We recognize that the plan is not a State Environmental Policy Act (SEPA) document that has been vetted through a public review process. In addition, the plan does not identify funding sources to support the captive propagation and enhancement activities. WDFW has the legal authority and responsibility to carry out management (*e.g.,* maintain harvest closures) and recovery of pinto abalone, and has already established partnerships that are needed to effectively carry out the plan. Based on the success of past and ongoing collaborative efforts, we are fairly certain that the protections and conservation efforts described in the plan will be implemented. However, funding will determine to what extent enhancement efforts are implemented, and we cannot be certain what amount of funding will be available at this time. Overall, we anticipate that implementation of the recovery actions under the recovery plan would be highly likely to be effective at substantially reducing the demographic risks currently facing pinto abalone populations at the San Juan Islands Archipelago and decrease the species' extinction risk.

California: Abalone Recovery and Management Plan

In 1997, passage of the Thompson bill (AB 663) in California created a moratorium on the taking, possessing, or landing of abalone for commercial or recreational purposes in ocean waters south of San Francisco (including at all offshore islands), and also mandated the creation of an Abalone Recovery and Management Plan (ARMP), with a requirement that the California Fish and Game Commission undertake abalone management in a manner consistent with this plan. The ARMP was finalized by the CDFW and adopted by the California Fish and Game Commission in December 2005. It includes all of California's abalone species, providing a cohesive framework for the recovery of depleted abalone populations in southern California and for the management of the northern California fishery and future abalone fisheries. The recovery portion of the plan addresses all abalone species that are subject to the fishing moratorium (including pinto abalone), with the ultimate goal of recovering species from a perilous condition to a sustainable one, with a

margin of abalone available for fishing. The management portion of the plan applies to populations considered sustainable and fishable (*e.g.,* the current red abalone fishery north of San Francisco), with the goal of maintaining sustainable fisheries under a long-term management plan that can be adapted quickly to respond to environmental or population changes. The ARMP identifies timelines, estimated costs, and funding sources for implementing the recovery and management actions.

The recovery portion of the ARMP specifies several actions to assess the status of the species and enhance populations. These include: Exploratory surveys to evaluate current population levels and the location of aggregations; detailed surveys of known abalone habitat; assessment surveys to evaluate achievement of recovery criteria and goals; disease and genetics research; the development or support of existing culture programs; and out-planting and aggregation/translocation feasibility studies and, if successful, large-scale efforts. Given limited resources, the plan primarily focuses on red, pink, green, white, and black abalone, because these species made up the majority of the commercial and recreational fishery and are more commonly encountered. The ARMP includes focused assessment surveys for pinto abalone, but other actions will be conducted in conjunction with those for the other species. For example, exploratory surveys for pinto abalone will be conducted as part of exploratory surveys for the five major species. Pinto abalone have been documented during surveys for other abalone species over the past 15 years, and will continue to be recorded during surveys for emergent abalone and monitoring of recruitment modules that have been deployed throughout southern California (4 sites) and in northern California (one site). Because the specific habitat and depth requirements of pinto abalone may differ from the other species, these surveys may or may not provide an accurate assessment of pinto abalone population levels in California. Enhancement activities (*e.g.,* culture programs, out-planting and aggregation/translocation studies) will focus on the other abalone species. Although the information gained from these studies will likely benefit future enhancement efforts for pinto abalone, the direct benefits to the species are limited at this time.

The ARMP also calls for the establishment of new marine protected areas or MPAs (in addition to those already established) to protect and preserve abalone populations. The State recently established new MPAs as part of the Marine Life Protection Act (MLPA; FGC § 2852) process in areas throughout the California coast. Depending on their location and specific regulations, some MPAs may provide increased protection for pinto abalone and their habitat. In addition, the ARMP discusses enhanced enforcement efforts that include routine patrols of tidal areas, boat patrols, undercover operations, spot-checks of fishing licenses and abalone permit report cards, abalone checkpoints, and community outreach and education regarding overfishing and ocean stewardship. These efforts are likely to reduce the risk of poaching to pinto abalone.

In our judgment, the recovery actions and increased enforcement efforts under the ARMP are not necessarily certain to occur due to funding limitations but would be beneficial to the persistence of pinto abalone. We anticipate enforcement efforts will help reduce extinction risk to the species by reducing the risk of overutilization and poaching, both of which were considered by the SRT to pose moderate risk to the species. In addition, assessment surveys for pinto abalone and opportunistic observations during surveys for other abalone will provide additional data to inform assessments of the species' status and trends. However, the lack of long-term monitoring and enhancement efforts focused on pinto abalone limits the effectiveness of the ARMP in addressing current demographic risks to the species. An important question is whether and how the habitat and depth distribution of pinto abalone may differ from other abalone species, to evaluate the degree of overlap between the species.

National Marine Sanctuary Regulations

Three coastal national marine sanctuaries in California contain habitat suitable for pinto abalone: Channel Islands National Marine Sanctuary (CINMS), Monterey Bay National Marine Sanctuary (MBNMS), and Gulf of the Farallones National Marine Sanctuary (GFNMS). At all three sanctuaries, the inshore boundary extends to the mean high water line, thus encompassing intertidal habitat.

Federal regulations (which are similar at all three sites) for these National Marine Sanctuaries provide protection against some of the threats to pinto abalone. For example, direct disturbance to or development of pinto abalone habitat is regulated at all three sanctuaries by way of a prohibition on the alteration of, construction upon, drilling into, or dredging of the seabed (including the intertidal zone), with exceptions for anchoring, installing navigation aids, special dredge disposal sites (MBNMS only), harbor-related maintenance, and bottom tending fishing gear in areas not otherwise restricted. Water quality impacts to pinto abalone habitat are regulated by strict discharge regulations prohibiting the discharge or deposit of pollutants, except for effluents required for normal boating operations (*e.g.,* vessel cooling waters, effluents from marine sanitation devices, fish wastes and bait). In addition, CDFW has established networks of marine reserves and marine conservation areas within the CINMS and along portions of the MBNMS, where multi-agency patrols provide elevated levels of enforcement presence and increased protection against poaching of pinto abalone.

We anticipate that enforcement of these management plans and regulations will be effective at reducing the risk of poaching and habitat destruction or alteration for pinto abalone populations within the sanctuaries. The level of benefits to the species' status is uncertain, however, because we lack data to understand what proportion of the populations reside within the sanctuaries. Each of the sanctuaries is currently undergoing management plan review processes, which may result in changes to the regulations. However, the level of protection provided to pinto abalone is not expected to decrease, and possibly may increase should stricter regulations regarding large vessel discharges and proposed prohibitions on the release of introduced species be adopted.

IUCN and NMFS Species of Concern Listings

The pinto abalone was added to the IUCN Red List in 2006 (McDougall *et al.* 2006). The IUCN listing raises public awareness of the species but does not provide any regulatory protections to address threats to the species. The pinto abalone was also added to the NMFS Species of Concern List in 2004 (69 FR 19975; 15 April 2004). Species of Concern are those species about which we have some concerns regarding status and threats, but for which insufficient information is available to indicate a need to list the species under the ESA. Although inclusion on the Species of Concern List does not carry any procedural or substantive protections under the ESA, it does draw proactive attention and conservation action to the species. In addition, funding under the Species of Concern grant program has been provided to support research and conservation efforts for pinto abalone in

the past, including components of Washington's pinto abalone recovery efforts, as described above, and studies on the effects of ocean acidification on pinto abalone. Funding for new grants, however, has not been available since 2011. In general, the listings under the IUCN Red List and NMFS Species of Concern List benefit the persistence of pinto abalone by promoting public awareness of the species. However, it is difficult to evaluate how effective this will be in reducing threats to pinto abalone.

Final Determination

Section 4(b)(1) of the ESA requires that the listing determination be based solely on the best scientific and commercial data available, after conducting a review of the status of the species and after taking into account those efforts, if any, being made by any state or foreign nation, or political subdivisions thereof, to protect and conserve the species. We have reviewed the petition, public comments submitted on the 90-day finding, the status review report, and other available published and unpublished information, and have consulted with species experts and other individuals familiar with pinto abalone. We considered each of the five ESA statutory factors to determine whether any presented an extinction risk to the species on its own or in combination with other factors. As required by the ESA section 4(b)(1)(a), we also took into account efforts to protect pinto abalone by the states, Tribes, foreign nations, or other entities and evaluated whether those efforts provide a conservation benefit to the species. On the basis of the best available scientific and commercial information, we conclude that the pinto abalone is not presently in danger of extinction, nor is it likely to become so in the foreseeable future, throughout all or a significant portion of its range. Below, we summarize the factors supporting this conclusion.

In our assessment of the five ESA statutory factors, we agree with the SRT's conclusion that the identified stressors represent low to moderate threats to the species. Among the moderate threats, the SRT identified the following as threats of greater concern: Low densities resulting from historical fisheries harvest; illegal take due to poaching and inadequate enforcement; sea otter predation; and ocean acidification impacts. Prohibitions on pinto abalone harvest throughout most of the species' range have largely removed the threat of over-utilization. Although populations continue to remain at low densities, recent/recurring recruitment events indicate that the densities are high enough to support successful reproduction and recruitment in Alaska, British Columbia, Northern and Southern California, and Mexico. Poaching was a major threat hindering the recovery of populations in British Columbia, but recent evidence indicates that enforcement and outreach efforts have been effective at reducing illegal take and allowing population numbers to increase. Regulations are in place, but continued enforcement and monitoring are needed throughout the range to evaluate their effectiveness. Sea otter predation has contributed to population declines and/or lack of recovery in pinto abalone populations where the two species overlap, but in no case has local extinction of any abalone population or species in the northeastern Pacific been documented as a result of predation by sea otters. Researchers in British Columbia have reported higher pinto abalone densities at survey sites where sea otters are present compared to sites where sea otters are absent (pers. comm. with J. Lessard, DFO, 24 April 2014), showing that the population level impacts of increasing sea otter presence may vary. Overall, the SRT concluded, and we agree, that the two species can sustainably co-exist. Finally, ocean acidification could affect pinto abalone populations and their habitat in the future, but there is a high level of uncertainty regarding the magnitude, scope, and nature of these effects. Overall, we did not identify any factors or combinations of factors that are contributing significantly to the species' extinction risk now or in the foreseeable future. Therefore, we conclude that pinto abalone are not endangered or threatened due to any of the five ESA statutory factors.

In evaluating the overall risk to the species throughout its range, we relied on the SRT's assessment of overall extinction risk and the best available information regarding the species' status and ongoing and future conservation efforts. We asked the SRT to assess the overall level of extinction risk to the species now and in the foreseeable future, considering two time frames: 30 years and 100 years. Thirty years represents about three generation times for pinto abalone and is a reasonable time frame over which threats can be predicted reliably and their impacts to the biological status of the species may be observed. This time frame for foreseeable future is also consistent with what was used in the status review for black abalone (VanBlaricom *et al.* 2009) and by the IUCN (McDougall *et al.* 2006) and COSEWIC (2009) in their assessments of the status of pinto abalone. The 100-year time frame was also used to consider the impacts of longer-term threats, such as climate change and changes in oceanographic conditions, but introduces additional uncertainty into the analysis. We decided to consider the SRT's assessment over both time frames; however, we put more weight on the SRT's assessment over a foreseeable future of 30 years, because there is greater certainty in this assessment (*i.e.,* we can more reliably predict the threats and their impacts over the 30-year time frame than the 100-year time frame). We note, however, that the SRT's assessment over both time frames led to the same conclusion regarding the species' extinction risk, as discussed below.

Over the 30 year time frame, the SRT was fairly certain that the species faces a Low to Moderate risk of extinction, but expressed some uncertainty as to the severity of threats and demographic risks. This uncertainty is expected, given the wide distribution of the species and varying levels of data available for different regions. The SRT placed the majority (55 percent) of their likelihood points in the No/Very Low and Low risk categories, indicating that Low risk may be more plausible over the 30 year time frame.

We also considered the SRT's assessment over a foreseeable future of 100 years. The SRT again concluded that the species has a Low to Moderate risk of extinction, but perceived slightly greater risk (*i.e.,* increased points in the Moderate risk category) to the species over a foreseeable future of 100 years compared to a foreseeable future of 30 years, citing increased concern regarding long-term threats such as ocean acidification, climate change impacts, and increasing sea otter predation. Again, the SRT noted increased uncertainty regarding these threats and their effects on the status of pinto abalone over the 100 year time frame. Although the perceived risk is slightly greater over the 100 year time-frame, the analysis ultimately indicated a Low to Moderate risk of extinction, consistent with the analysis over the 30 year time-frame.

In our evaluation of ongoing and future conservation efforts for pinto abalone, we found that conservation efforts throughout California, the San Juan Islands Archipelago, and British Columbia are highly likely to reduce threats to the species and its habitat. At the San Juan Islands Archipelago and British Columbia, enhancement activities directly focused on pinto

abalone are highly likely to benefit pinto abalone populations and reduce the demographic risks currently affecting the species. Thus, these ongoing and future conservation efforts will further reduce the species' extinction risk now and in the foreseeable future, particularly in British Columbia and at the San Juan Islands Archipelago where the SRT expressed the most concern. Based on our evaluation of the best available information regarding the species' status and threats, the SRT's assessment of extinction risk, and our assessment of conservation efforts, we conclude that the pinto abalone has a Low to Low/Moderate risk of extinction now and in the foreseeable future. Based on our judgment, a Low to Low/Moderate risk of extinction indicates that pinto abalone are not presently in danger of extinction or likely to become so in the foreseeable future throughout its range.

In evaluating the overall risk to the species within a significant portion of its range, we relied on the SRT's identification and assessment of potential SPRs. The SRT identified three potential SPRs: A Northern portion (AK/BC/SJA), a Southern portion (NorCal/SoCal/MX), and a portion encompassing the whole range excluding Northern California (AK/BC/SJA/SoCal/MX). The SRT concluded that the Southern portion and AK/BC/SJA/SoCal/MX portion of the species range have a Low risk of extinction now and in a foreseeable future of 30 years and Low to Moderate risk of extinction now and in a foreseeable future of 100 years. For the same reasons as stated above, we considered the SRT's assessment for both time frames, but put more weight on the SRT's assessment over a foreseeable future of 30 years. Over both time frames, the SRT indicated that extinction risk of No/Very Low to Low was most plausible for the Southern portion (76 percent of points over a foreseeable future of 30 years; 56 percent of points over a foreseeable future of 100 years) and for the AK/BC/SJA/SoCal/MX portion (71 percent of points over a foreseeable future of 30 years; 55 percent of points over a foreseeable future of 100 years). The SRT was more certain of a No/Very Low to Low risk to the species over a foreseeable future of 30 years, whereas there was some uncertainty regarding whether the species may have a Low to Moderate risk over a foreseeable future of 100 years. As stated above, there are ongoing and future conservation efforts throughout California, San Juan Islands Archipelago, and British Columbia that have a high likelihood of reducing threats and demographic risks to the species. Based on the best available information regarding the species' status, the SRT's assessment of extinction risk, and our analysis of conservation efforts, we conclude that pinto abalone has a Low risk of extinction throughout the Southern portion and AK/BC/SJA/SoCal/MX portion now and in the foreseeable future. Based on our judgment, a Low risk of extinction indicates that pinto abalone are not presently in danger of extinction or likely to become so in the foreseeable future throughout the Southern portion or AK/BC/SJA/SoCal/MX portion of its range. Therefore, we determined that the species is not endangered or threatened throughout the Southern portion or the AK/BC/SJA/SoCal/MX portion of its range and did not need to address the question of whether these two potential SPRs are indeed significant.

For the potential SPR in the Northern portion of the species' range (AK/BC/SJA), the SRT concluded that there is a Low to Moderate risk of extinction now and in the foreseeable future (30 years and 100 years). For the same reasons as stated above, we considered the SRT's assessment for both time frames, but put more weight on the SRT's assessment over a foreseeable future of 30 years. When considering a foreseeable future of 30 years, the SRT placed the majority (54 percent) of their likelihood points in the No/Very Low and Low risk categories, indicating that No/Very Low to Low risk was the most plausible. When considering a foreseeable future of 100 years, the SRT indicated that Low to Moderate risk is more plausible, but expressed greater uncertainty regarding their assessment of risk because of greater uncertainty regarding threats (*e.g.,* climate change, ocean acidification, sea otter predation) and how they might affect pinto abalone into the future. We note that even over the 100 year time frame, the number of points in the No/Very Low and Low risk categories (total: 30 points) were almost equal to the number of points in the Moderate risk categories (31 points). Most of the SRT members expressed concern regarding the lack of population data in Alaska and the declines in pinto abalone abundance in British Columbia and at the San Juan Islands Archipelago. However, SRT members also noted evidence for recent/recurring recruitment in both Alaska and British Columbia and recent signs of recovery in British Columbia under the SARA protections and decreased poaching pressure. We found that in both British Columbia and at the San Juan Islands Archipelago, protective regulations and conservation efforts have been implemented that have a high likelihood of substantially reducing the demographic risks and threats facing the species. In both regions, Federal, state, and local governmental entities, Tribes, and non-governmental organizations have established strong partnerships and are working together on ongoing conservation and enhancement activities for the recovery of pinto abalone. In addition, ADF&G has indicated that they will conduct monitoring surveys for pinto abalone to better assess the species' status in Alaska. Based on the best available information regarding the species' status, the SRT's assessment of extinction risk, and our assessment of conservation efforts, we concluded that pinto abalone have a Low to Low/Moderate risk of extinction now and in the foreseeable future throughout the Northern portion. Based on our judgment, a Low to Low/Moderate risk indicates that pinto abalone are not presently in danger of extinction or likely to become so in the foreseeable future throughout the Northern portion of its range. Therefore, we determined that the species is not endangered or threatened throughout the Northern portion of its range and did not need to address the question of whether this potential SPR is indeed significant.

Based on these findings, we conclude that the pinto abalone is not presently in danger of extinction throughout all or a significant portion of its range, nor is it likely to become so within the foreseeable future. Accordingly, the pinto abalone does not meet the definition of a threatened or endangered species and therefore the pinto abalone does not warrant listing as threatened or endangered at this time. However, the species will remain on our NMFS Species of Concern list, with one revision to apply the Species of Concern status to the species throughout its range (currently, the Species of Concern status applies only to the species range from Alaska to Point Conception). We will continue to encourage research, monitoring, and conservation efforts for the species throughout its range.

We recognize that the status of pinto abalone has been assessed by various groups at the State and international level. Pinto abalone are considered a Species of Greatest Conservation Need (*i.e.,* not State ESA listed, but needing conservation action or additional information) and a Candidate Species for State ESA listing in Washington; as Endangered in Canada under SARA (as of 2011; originally listed as Threatened in 2003); and as Endangered on the

IUCN Red List as of 2006. However, these assessments and their conclusions do not directly inform our analysis of extinction risk for the pinto abalone. First, the criteria used for assessing whether a species warrants listing under the State ESA, Canada's SARA, or the IUCN Red List are different than the standards for making a determination that a species warrants listing as threatened or endangered under the Federal ESA. Second, the geographic scope considered in these assessments differed from the scope of our analysis. Washington State's review focuses on the status of the species within state waters. Canada's SARA listing focused on the status of the species within British Columbia, and also did not incorporate more recent data that has become available since 2011, showing decreased poaching pressure and increasing abundances at index survey sites. The IUCN Red List assessment focused on the status of the northern form of pinto abalone (Point Conception to Alaska), and was largely based on population trends in Alaska and British Columbia (McDougall *et al.* 2006). McDougall *et al.* (2006) cited the lack of overlap in abundance and low presence of the southern form relative to other California abalone species as reasons for focusing on the northern form. However, as we have discussed above (see ''The Species Question'' section), more recent evidence indicates that the degree of overlap between the northern and southern form is greater than previously thought. We considered the pinto abalone as one species throughout its range due to the lack of genetic, geographic, or ecological justification for treating the northern and southern forms as separate species. In addition, the ESA does not allow the consideration of distinct population segments for invertebrate species. Thus, our analysis of the species' status under the Federal ESA considered different standards and a broader geographic scope than these previous assessments.

In this status review, we identified several important data gaps that need to be addressed to inform our understanding of the status of the species. These data gaps include: pinto abalone abundance and trends in Alaska, California, and Mexico; past and present fisheries harvest levels in Alaska and Mexico; and the presence, distribution, and abundance of pinto abalone along the outer coast of Washington and Oregon. We encourage the following research and monitoring efforts to address these data gaps.

- In Alaska: (a) Establishment of regular, long-term monitoring of pinto abalone population abundance, trends, and distribution; and (b) monitoring and management of personal use and subsistence harvest to minimize impacts to pinto abalone. As discussed under the ''Summary of factors affecting the species'' (see the section on ''Overutilization''), ADF&G believes that personal use and subsistence harvest is currently low, but regulations still allow harvest of up to five pinto abalone per person per day. Monitoring would provide the data needed to estimate current harvest levels and to evaluate the impacts of these harvest levels (allowed and actual) on the pinto abalone population in Alaska.
- In Washington: Surveys to evaluate the presence, abundance, and distribution of pinto abalone along the outer coast of Washington.
- In Oregon: Surveys to evaluate the presence, abundance, and distribution of pinto abalone along the outer coast of Oregon. Revision of the fisheries regulations may also be needed to clarify that harvest of pinto abalone is prohibited.
- In California: Establishment of regular, long-term monitoring of pinto abalone population abundance, trends, and distribution.
- In Mexico: (a) Establishment of regular, long-term monitoring of pinto abalone population abundance, trends, and distribution; and (b) monitoring of pinto abalone harvest and, as needed, management measures to minimize impacts of fisheries harvest on pinto abalone. As discussed under the ''Summary of factors affecting the species'' (see the section on ''Overutilization''), current harvest levels of pinto abalone in Mexico are thought to be low. Monitoring would provide the data needed to estimate current harvest levels and their impacts on the pinto abalone population in Mexico.

Given the data gaps and uncertainties associated with our current understanding of the status of the species, we plan to retain pinto abalone on the NMFS Species of Concern list with one revision to apply the Species of Concern status throughout the species' range (Alaska to Mexico).

References

A complete list of all references cited herein is available on the NMFS West Coast Region Web site (*http://www.westcoast.fisheries.noaa.gov/*) and upon request (see **FOR FURTHER INFORMATION CONTACT**).

Authority: The authority for this action is the Endangered Species Act of 1973, as amended (16 U.S.C. 1531 *et seq.*).

Dated: December 22, 2014.

Eileen Sobeck,

Assistant Administrator, National Marine Fisheries Service.

[FR Doc. 2014–30345 Filed 12–22–14; 4:15 pm]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 648

[Docket No. 141103917–4917–01]

RIN 0648–BE60

Magnuson-Stevens Fishery Conservation and Management Act Provisions; Fisheries of the Northeastern United States; Black Sea Bass Fishery; Framework Adjustment 8

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

ACTION: Proposed rule; request for comments.

SUMMARY: NMFS proposes regulations to implement Framework Adjustment 8 to the Summer Flounder, Scup, and Black Sea Bass Fishery Management Plan. This action would allow the black sea bass recreational fishery to begin on May 15 of each year, instead of May 19, to provide additional fishing opportunities earlier in the year.

DATES: Comments must be received by 5 p.m. local time, on January 28, 2015.

ADDRESSES: You may submit comments on this document, identified NOAA–NMFS–2014–BE60, by any of the following methods:

- *Electronic Submission:* Submit all electronic public comments via the Federal e-Rulemaking Portal. Go to *www.regulations.gov/#!docketDetail;D=NOAA-NMFS-2014-0155,* click the ''Comment Now!'' icon, complete the required fields, and enter or attach your comments.
- *Mail and Hand Delivery:* John K. Bullard, Regional Administrator, NMFS, Greater Atlantic Regional Fisheries Office, 55 Great Republic Drive, Gloucester, MA 01930. Mark the outside of the envelope: ''Comments on Black Sea Bass Framework 8.''

Instructions: Comments sent by any other method, to any other address or individual, or received after the end of the comment period, may not be considered by NMFS. All comments received are a part of the public record and will generally be posted for public

viewing on *www.regulations.gov* without change. All personal identifying information (*e.g.,* name, address, etc.), confidential business information, or otherwise sensitive information submitted voluntarily by the sender will be publicly accessible. NMFS will accept anonymous comments (enter ''N/A'' in the required fields if you wish to remain anonymous). Attachments to electronic comments will be accepted in Microsoft Word, Excel, or Adobe PDF file formats only.

Copies of the Supplemental Information Report and other supporting documents for this action are available from Dr. Christopher M. Moore, Executive Director, Mid-Atlantic Fishery Management Council, Suite 201, 800 N. State Street, Dover, DE 19901. These documents are also accessible via the Internet at: *http://www.greateratlantic.fisheries.noaa.gov.*

FOR FURTHER INFORMATION CONTACT: Moira Kelly, Fishery Policy Analyst, (978) 281–9218.

SUPPLEMENTARY INFORMATION:

General Background

The summer flounder, scup, and black sea bass fisheries are managed cooperatively under the provisions of the Summer Flounder, Scup, and Black Sea Bass Fishery Management Plan (FMP) developed by the Mid-Atlantic Fishery Management Council and the Atlantic States Marine Fisheries Commission, in consultation with the New England and South Atlantic Fishery Management Councils. The management unit specified in the FMP for black sea bass (*Centropristis striata*) is U.S. waters of the Atlantic Ocean from 35 E. 13.3' N. lat. (the latitude of Cape Hatteras Lighthouse, Buxton, North Carolina) northward to the U.S./Canada border.

The FMP is managed jointly by the Council and Commission, and states manage black sea bass within 3 nautical miles (4.83 km) of their coasts under the Commission's plan. The applicable Federal regulations govern vessels and individual anglers fishing in Federal waters of the exclusive economic zone (EEZ), as well as vessels possessing a Federal black sea bass charter/party vessel permit, regardless of where they fish. The recreational fishery is essentially managed with four parts: The recreational harvest limit; the open season; minimum fish size; and a bag limit. The recreational harvest limit is established based on the specifications formula in the FMP. The open season, minimum fish size, and bag limit are collectively referred to as the ''recreational management measures.''

Recreational Management Measures Background

The Black Sea Bass Monitoring Committee, consisting of representatives from the Commission, the Council, state marine fishery agency representatives from Massachusetts to North Carolina, and NMFS, typically meets in November of each year to make recommendations on recreational management measures necessary to constrain landings within the recreational harvest limit established for the upcoming fishing year. The Council's Demersal Species Committee and the Commission's Summer Flounder, Scup, and Black Sea Bass Management Board then consider the Monitoring Committee's recommendations and any public comment in making their recommendations to the Council and the Commission, respectively. The Council reviews the recommendations of the Demersal Species Committee, makes its own recommendations, and forwards them to NMFS for review. The Commission similarly adopts recommendations for the states. NMFS is required to review the Council's recommendations to ensure that they are consistent with the targets specified for each species in the FMP and all applicable laws and Executive Orders before ultimately implementing measures for Federal waters. A proposed rule is typically published in the spring of the next year, with a final rule typically published in late May or early June.

The recreational management measures recommendations are typically based on recreational landings of the current fishing year, through Wave 4 (July/August), with projections to estimate total annual landings. If the estimate of total annual landings is below the recreational harvest limit for the next year, recreational measures may be kept the same or possibly even relaxed. If the estimate of annual landings is above the recreational harvest limit for the next year, measures may need to be more restrictive. In order to maximize fishing opportunities for a given recreational harvest limit, the Monitoring Committee uses a set of tables that illustrate the expected change in landing per unit of change for each of the management measures tools (season, size, and bag limit). Modifications to the minimium size and bag limit typically result in less change per unit than changes to the season. The Monitoring Committee considers the predicted changes in landings per day per wave for each state and coastwide. The highest coastwide percent change per day occurs in Wave 5 (September/October), followed closely by Wave 3 (May/June).

In December 2013, the Council initiated a Framework Adjustment to consider two modifications to the black sea bass management measures for the 2015 fishing year: (1) Opening Wave 1 (January/February) with increased reporting requirements for federally permitted charter/party vessels only; and (2) move the start of the Wave 3 fishery to May 1. Because of issues surrounding data collection, both current and historical, and the impact that the Wave 1 fishery would have on the recreational harvest limit later in the year, the Council voted at its August 2014 meeting not to move forward with that measure at this time. The Council did, however, recommend opening the Wave 3 fishery on May 15, as opposed to the current start date of May 19. This framework adjustment is necessary because the timing of the normal rulemaking schedule, as described above, makes implementing management measure changes that would impact early May difficult, and they would likely not be effective until May 2016.

Proposed Action

This action proposes to revise the start date of the black sea bass recreational fishery by four days to begin on May 15 instead of May 19. The Council had originally considered moving the start date to May 1, but determined that an incremental change of only four days would allow for a wider distribution of opportunity. While some states would prefer that Wave 3 be open for more days than Wave 5, other states would prefer a shorter Wave 3 season compared to Wave 5. However, there are usually other fisheries (summer flounder, striped bass, etc.) open during Wave 5 that are not also open in Wave 3, which may result in more fishing opportunity overall.

In recent years, the black sea bass recreational harvest limit has been achieved or exceeded. Because of this, starting the season on May 15 would require the Council to shorten the Wave 5 season by approximately four days, in addition to other potential management changes, to ensure that the recreational harvest limit is not exceeded in 2015. The Council will make recommendations on the other management measures, including those to accommodate the earlier season opening, at its December 2014 meeting.

Classification

Pursuant to section 304(b)(1)(A) of the Magnuson-Stevens Act, the Assistant

Administrator has determined that this proposed rule is consistent with the Summer Flounder, Scup, and Black Sea Bass FMP, other provisions of the Magnuson-Stevens Act, and other applicable law, subject to further consideration after public comment.

The Office of Management and Budget has determined that this proposed rule is not significant for the purposes of Executive Order 12866.

The Chief Council for Regulation of the Department of Commerce certified to the Chief Council for Advocacy of the Small Business Administration that this proposed rule, if adopted, would not have a significant economic impact on a substantial number of small entities.

The Council conducted an evaluation of the potential socioeconomic impacts of the proposed measures in conjunction with a supplemental information report. These analyses identified 777 unique fishing entities (*i.e.,* federally permitted charter/party vessels) in the Greater Atlantic Region that could be affected by the proposed change. However, only 346 federally permitted charter/party vessels, all of which qualify as small entities under the Small Business Administration's small business standards, are expected to participate in the black sea bass recreational fishery next year. The proposed measure would shift four days of the black sea bass season from later in the season, when there are more species to target, to earlier in the season when there are fewer species to target. Because of seasonal availability, if charter/party vessels are not able to target black sea bass earlier in May, they will not be able to advertise and book trips, thereby losing revenue. However, even with reduced black sea bass fishing in Wave 5, they will be able to continue to book trips to target other revenue-generating species during that time, such as summer flounder. As a result, charter/party vessel operators will be able to take more trips over the course of the year and earn more revenue than is currently possible. Therefore, the economic impacts of this action are expected to be positive, if minimal. Although a substantial number of small entities will be affected, the effect will be neither negative nor significant.

Because this rule will not have a significant economic impact on a substantial number of small entities, an initial regulatory flexibility analysis is not required and none has been prepared.

There are no new reporting or recordkeeping requirements contained in any of the alternatives considered for this action.

List of Subjects in 50 CFR Part 648

Fisheries, Fishing, Reporting and recordkeeping requirements.

Dated: December 19, 2014.

Samuel D. Rauch III,

Deputy Assistant Administrator for Regulatory Programs, National Marine Fisheries Service.

For the reasons set out in the preamble, 50 CFR part 648 is proposed to be amended as follows:

PART 648—FISHERIES OF THE NORTHEASTERN UNITED STATES

■ 1. The authority citation for part 648 continues to read as follows:

Authority: 16 U.S.C. 1801 *et seq.*

■ 2. Section 648.146 is revised to read as follows:

§ 648.146 Black sea bass recreational fishing season.

Vessels that are not eligible for a moratorium permit under § 648.4(a)(7), and fishermen subject to the possession limit specified in § 648.145(a), may only possess black sea bass from May 15 through September 18, and October 18 through December 31, unless this time period is adjusted pursuant to the procedures in § 648.142.

[FR Doc. 2014–30266 Filed 12–24–14; 8:45 am]

BILLING CODE 3510–22–P

Notices

Federal Register

Vol. 79, No. 248

Monday, December 29, 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–NOP–14–0062; NOP–14–01]

National Organic Program: Notice of Draft Guidance for Accredited Certifying Agents, Certified Operations and Applicants for Organic Certification

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Notice of availability of draft guidance with request for comments.

SUMMARY: The National Organic Program (NOP) is announcing the availability of a draft guidance document intended for use by accredited certifying agents and certified operations. The draft guidance document is entitled as follows: Natural Resources and Biodiversity Conservation for Certified Organic Operations (NOP 5020). This draft guidance document is intended to inform the public of NOP's current thinking on this topic. The Agricultural Marketing Service (AMS) invites organic producers, handlers, certifying agents, material evaluation programs, consumers and other interested parties to submit comments about these guidance provisions.

A notice of availability of final guidance on this topic will be issued upon its final approval. Once finalized, this guidance document will be available from the NOP through, ''The Program Handbook: Guidance and Instructions for Accredited Certifying Agents (ACAs) and Certified Operations.'' This Handbook provides those who own, manage, or certify organic operations with guidance and instructions that can assist them in complying with the USDA organic regulations. The current addition of the Program Handbook is available online at: *http://www.ams.usda.gov/nop* or in print upon request.

DATES: Comments must be submitted on or before February 27, 2015.

ADDRESSES: Submit written requests for hard copies of this draft guidance document to Stacy Jones King, Agricultural Marketing Specialist, National Organic Program, USDA–AMS–NOP, 1400 Independence Ave. SW., Room 2646—So., Ag Stop 0268, Washington, DC 20250–0268. See the **SUPPLEMENTARY INFORMATION** section for electronic access to the draft guidance documents.

Interested persons may submit comments on this draft guidance document using the following procedures:

- *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the instructions for submitting comments.
- *Mail:* Stacy Jones King, Agricultural Marketing Specialist, National Organic Program, USDA–AMS–NOP, 1400 Independence Ave. SW., Room 2646—So., Ag Stop 0268, Washington, DC 20250–0268.

Written comments responding to this request should be identified with the document number AMS–NOP–14–0062; NOP–14–01. You should clearly indicate your position and the reasons supporting your position. If you are suggesting changes to the draft guidance document, you should include recommended language changes, as appropriate, along with any relevant supporting documentation.

USDA intends to make available all comments, including names and addresses when provided, regardless of submission procedure used, on *www.regulations.gov* and at USDA, AMS, NOP, Room 2646—South building, 1400 Independence Ave. SW., Washington, DC, from 9 a.m. to noon and from 1 to 4 p.m., Monday through Friday (except official Federal holidays). Persons wanting to visit the USDA South building to view comments from the public to this notice are requested to make an appointment by calling (202) 720–3252.

FOR FURTHER INFORMATION CONTACT: Shannon Nally Yanessa, Acting Director, Standards Division, National Organic Program (NOP), USDA–AMS–NOP, 1400 Independence Ave. SW., Room 2646—So., Ag Stop 0268, Washington, DC 20250–0268, Telephone: (202) 720–3252, Email: *NOP.Guidance@ams.usda.gov,* or visit the NOP Web site at: *www.ams.usda.gov/nop.*

SUPPLEMENTARY INFORMATION:

I. Background

The draft guidance document announced through this notice was developed in response to a May 2009 request from the National Organic Standards Board (NOSB) that AMS clarify the requirements and limitations of the general natural resources and biodiversity conservation requirement of the USDA organic regulations (7 CFR part 205). 7 CFR. 205.200 requires operations to ''maintain or improve the natural resources of the operation, including soil and water quality.'' Section 205.2 of the USDA organic regulations defines ''natural resources of the operation'' as the ''physical, hydrological, and biological features of a production operation, including soil, water, wetlands, woodlands, and wildlife.''

This draft guidance provides examples of production practices that support these conservation principles and demonstrate compliance with 7 CFR. 205.200. This guidance also clarifies: (1) The certified organic operator's responsibility to select, carry out, and record production practices that ''maintain or improve the natural resources of the operation;'' (2) the accredited certifying agent's responsibility to verify operator compliance with this requirement; and (3) how domestic organic operations that participate in a USDA Natural Resources Conservation Service (NRCS) program and the NOP can reduce their paperwork burdens.

II. Significance of Guidance

This draft guidance document is being issued in accordance with the Office of Management and Budget (OMB) Bulletin on Agency Good Guidance Practices (GGPs) (January 25, 2007, 72 FR 3432–3440).

The purpose of GGPs is to ensure that program guidance documents are developed with adequate public participation, are readily available to the public, and are not applied as binding requirements. The draft guidance, when finalized, will represent the NOP's current thinking on these topics. It does not create or confer any rights for, or on, any person and does not operate to bind the NOP or the public. Guidance

documents are intended to provide a uniform method for operations to comply that can reduce the burden of developing their own methods and simplify audits and inspections. Alternative approaches that can demonstrate compliance with the Organic Foods Production Act (OFPA), as amended (7 U.S.C. 6501–6522), and its implementing regulations are also acceptable. The NOP strongly encourages industry to discuss alternative approaches with the NOP before implementing them to avoid unnecessary or wasteful expenditures of resources and to ensure the proposed alternative approach complies with the Act and its implementing regulations.

III. Electronic Access

Persons with access to Internet may obtain the draft guidance at either NOP's Web site at *http://www.ams.usda.gov/nop* or *http://www.regulations.gov.*

Requests for hard copies of the draft guidance documents can be obtained by submitting a written request to the person listed in the **ADDRESSES** section of this Notice.

Authority: 7 U.S.C. 6501–6522.

Dated: December 22, 2014.

Rex A. Barnes,

Associate Administrator, Agricultural Marketing Service.

[FR Doc. 2014–30303 Filed 12–24–14; 8:45 am]

BILLING CODE 3410–02–P

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

[Document No. AMS–ST–14–0066]

Plant Variety Protection Board; Request for Nominations

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Notice.

SUMMARY: The Plant Variety Protection Office (PVPO) is seeking candidates for the Plant Variety Protection Board (PVP Board). The PVP Board consists of 14 members, each of whom is appointed for a 2-year period, with no member appointed for more than three 2-year periods. The term of the present Board will expire in May 2015. In order to provide the Secretary of Agriculture with a broad choice from a diverse group of applicants, the PVPO is asking for nominated members to serve on the Board for 2 years from the date of appointment. PVP Board members will serve without compensation, except for standard government reimbursable expenses.

DATES: Nomination packages (an Application for Committee Membership (AD–755) and resume) must be received on or before February 6, 2015.

ADDRESSES: Nominations should be sent to Paul Zankowski, Plant Variety Protection Office (PVPO), Science and Technology, AMS, USDA, 1400 Independence Avenue SW., Room 4512, Washington, DC 20250; Telephone: (202) 720–1128; Fax: (202) 260–8976; Email: *Paul.Zankowski@ams.usda.gov.*

SUPPLEMENTARY INFORMATION: The Plant Variety Protection Act (PVPA) (7 U.S.C. 2321 *et seq.*) provides legal protection in the form of intellectual property rights to developers of new varieties of plants, which are reproduced sexually by seed or are tuber-propagated. A Certificate of Plant Variety Protection is awarded to an owner of a crop variety after an examination shows that it is new, distinct from other varieties, and genetically uniform and stable through successive generations. The term of protection is 20 years for most crops and 25 years for trees, shrubs, and vines.

The PVPA also provides for a statutory Board to be appointed by the Secretary of Agriculture (7 U.S. C. 2327). The duties of the Board are to: (1) Advise the Secretary of Agriculture concerning the adoption of rules and regulations to facilitate the proper administration of the PVPA; (2) provide advisory counsel to the Secretary of Agriculture on all appeals from the Examiner; and (3) advise the Secretary of Agriculture on any other matters under the Regulations and Rules of Practice and on all questions under section 44 of the PVPA, ''Public Interest in Wide Usage'' (7 U.S.C. 2404). Reestablishing the PVP Board is necessary and in the public interest.

The PVPA provides that ''The Board shall consist of individuals who are experts in various areas of varietal development covered by this Act.'' (7 U.S.C. 2327(a)). The Board membership ''shall include farmer representation and shall be drawn approximately equally from the private or seed industry sector and from the sector of government or the public.'' (7 U.S.C. 2327(a)).

The PVP Board consists of 14 members, each of whom is appointed for a 2-year period, with no member appointed for more than three 2-year periods. The term of the present Board will expire in May 2015. The first meeting of the new Board will most likely be held in the summer of 2015. In order to provide the Secretary of Agriculture with a broad choice from a diverse group of applicants, the PVPO is asking for nominated members to serve on the Board for 2 years from the date of appointment. PVP Board members will serve without compensation, except for standard government reimbursable expenses.

To ensure that the recommendations of the PVP Board take into account the needs of the diverse groups served by the U.S. Department of Agriculture (USDA) (from research and production to trade, use, and consumption), the USDA will vet every candidate who applies for membership to the Federal Advisory Committee. Each applicant must clear all stages of the vetting process. Vetting is a comprehensive personal and professional background investigation that specifically includes, but is not limited to, an analysis of each candidate's criminal history, bankruptcy filings, liens and judgments, affiliations and associations, lobbyist status, and prior involvement with USDA. This process is used to ensure that the finest candidates are selected to represent the interests of the USDA.

Nomination packages with completed AD 755 background information forms and resumes should be submitted no later than February 6, 2015. Final selection of members will be made by the Secretary of Agriculture. All nomination materials should be mailed in a single, complete package to: Paul Zankowski, Commissioner; Plant Variety Protection Office; 1400 Independence Avenue SW., Room 4512; Washington DC 20250.

USDA has special interest in assuring that women, minority groups, and the physically disabled are adequately represented on these advisory committees. Nominations for female, minority, or disabled candidates are welcomed and encouraged.

Please see *http://www.ams.usda.gov/PVPO* and click on PVPO Board (under Resources on the right side) for information on the Charter, and AD 755 form. The AD–755 form can also be found on the USDA Advisory Committee Web site (*www.usda.gov/advisory_committees.xml*). The Charter for the PVP Board is available on the Web site at: *http://www.facadatabase.gov/download.aspx?fn=Charters/1309_2013.09.11_PVPBCharter2.7.13_(2013-09-11-05-03-31).pdf* or may be requested by contacting the individual identified in the **ADDRESSES** section of this notice.

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. Persons with disabilities who require alternative means for communication of program information

(Braille, large print, or audiotape.) 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.

Dated: December 22, 2014.

Rex A. Barnes,

Associate Administrator, Agricultural Marketing Service.

[FR Doc. 2014–30302 Filed 12–24–14; 8:45 am]

BILLING CODE 3410–02–P

DEPARTMENT OF AGRICULTURE

Food and Nutrition Service

Agency Information Collection Activities: Proposed Collection; Comment Request—Evaluation of Demonstration Projects To End Childhood Hunger

AGENCY: Food and Nutrition Service (FNS), USDA.

ACTION: Notice.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, this notice invites the general public and other public agencies to comment on this proposed information collection. This is a new collection for the contract Evaluation of Demonstration Projects to End Childhood Hunger.

DATES: Written comments must be received on or before February 27, 2015.

ADDRESSES: Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions that were used; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on those who are to respond, including use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology.

Written comments may be sent to: Danielle Berman, Office of Policy Support, Food and Nutrition Service, USDA, 3101 Park Center Drive, Room 1014, Alexandria, VA 22302.

Comments may also be submitted via fax to the attention of Danielle Berman at 703–305–2576 or via email to *Danielle.Berman@fns.usda.gov.*

Comments will also be accepted through the Federal eRulemaking Portal. Go to *http://www.regulations.gov,* and follow the online instructions for submitting comments electronically.

All responses to this notice will be summarized and included in the request for Office of Management and Budget approval. All comments will be a matter of public record.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of this information collection should be directed to Danielle Berman, Office of Policy Support, Food and Nutrition Service, USDA, 3101 Park Center Drive, Room 1014, Alexandria, VA 22302.

SUPPLEMENTARY INFORMATION:

Title: Evaluation of Demonstration Projects to End Childhood Hunger.

Form Number: N/A.

OMB Number: 0584–NEW.

Expiration Date: Not Yet Determined.

Type of Request: New Collection.

Abstract: The Healthy, Hunger-Free Kids Act (HHFKA) of 2010 (Public Law 111–296), under Section 141, added a new Section 23 on Childhood Hunger Research to the Richard B. Russell National School Lunch Act.

This section provides substantial new mandatory funding to research the causes and consequences of childhood hunger and to test innovative strategies to end child hunger and food insecurity. Congress called for the development and evaluation of innovative strategies to ''reduce the risk of childhood hunger or provide a significant improvement to the food security status of households with children,'' including alternative models of service delivery or benefit levels.

The purpose of the evaluation is to rigorously assess the impact of five demonstration projects on the prevalence of child food insecurity, and other relevant outcomes. The demonstration projects are intended to test innovative strategies to end childhood hunger, including alternative models for service delivery and benefit levels that promote the reduction or elimination of childhood hunger and food insecurity. Projects may include enhanced Supplemental Nutrition Assistance Program (SNAP) benefits for eligible households with children; enhanced benefits or innovative program delivery models in school meals programs, afterschool snacks programs, and the Child and Adult Care Food Program (CACFP); and other targeted Federal, State or local assistance, including refundable tax credits, emergency housing, employment and training, or family preservation services, for households with children who are experiencing food insecurity. At least one demonstration must be implemented in a rural Indian reservation where the prevalence of diabetes exceeds 15 percent. Demonstration projects will be selected and announced in early 2015.

The evaluation will collect data from all five demonstration projects in 2015 and 2016 (two rounds of data collection), and from one demonstration project in 2017 (three rounds of data collection). The data will be used for implementation, cost, and impact analyses for each demonstration project. Analyses include (1) which agencies and partner organizations delivered services, (2) whether the way the demonstration model was implemented has an effect on any observed impacts, (3) the resources used in planning, starting up, and operating each demonstration project, and how those resources compare to those for the control or comparison groups, and (4) how cost effective the demonstration was in reducing childhood food insecurity. The primary outcome measure for the demonstrations will be the change in the prevalence of food insecurity among children in households with children as measured by the U.S. Household Food Security Survey Module. The end products will provide scientifically valid evidence of demonstration project impacts.

Affected Public: Individuals/households; State, local and Tribal governments; Private sector (for-profit and not-for-profit).

Estimated Number of Respondents: The total estimated number of respondents is 27,297. This includes 27,107 individuals/households, 150 State, local, and Tribal government directors/managers and staff, and 40 private sector for-profit business and not-for-profit agency directors/managers. FNS will contact 27,107 individuals/households, out of which 22,589 parents/guardians in the treatment and comparison groups will complete telephone surveys and 4,518 parents/guardians will be survey nonrespondents. The survey sample sizes are large because they are needed to detect statistically significant differences in the key outcome of interest—child food insecurity—between treatment and comparison households within each demonstration site. Among the parents/guardians contacted for the telephone surveys, 456 will also be contacted for the focus

groups; 96 parents/guardians will participate in the focus groups and 360 will be considered nonrespondents. A total of 320 parents/guardians will also be contacted for an in-person interview; 80 parents/guardians will be interviewees and 240 will be considered nonrespondents. FNS will contact 50 State, local and Tribal agency directors/managers and 100 State, local and Tribal agency direct service staff for in-person interviews; 5 of the directors/managers will provide administrative data and 5 will provide cost data. FNS will contact 10 private sector for-profit business directors/managers for in person interviews; 5 will also provide administrative data. FNS will also contact 30 private sector not-for-profit agency directors/managers for in person interviews, and 5 will also provide cost data.

Estimated Frequency of Responses per Respondent: Average 2.09 responses for individuals/households, 3.20 responses for State, local or Tribal government representatives, and 5.90 responses for private sector representatives.

Estimated Total Annual Responses: 57,458.

Estimated Time per Response: About 0.51 hours (31 minutes). The estimated time of response varies from 0.50 to 2.33 hours depending on the respondent group, as shown in the table below. The total annual burden is 25,157.13 hours.

Affected public	Data collection activity	Respondents type	Sample size	Respondents					Non-respondents					GRAND total burden estimate
				Estimated number of respondents	Frequency of response	Total annual responses	Average burden hours per response	Total annual burden estimate (hours)	Estimated number of non-respondents	Frequency of response	Total annual responses	Average burden hours per response	Total annual burden estimate (hours)	
Individuals/households.	Telephone survey. (two rounds)	Parent/guardian	24,755	20,629	2	41,258	0.50	20,629.00	4,126	2	8,252	0.05	412.60	21,041.60
	Telephone survey. (three rounds)	Parent/guardian	2,352	1,960	3	5,880	0.50	2,940.00	392	3	1,176	0.05	58.80	2,998.80
	In-person focus group.	Parent/guardian	456	96	1	96	1.67	160.13	360	1	360	0.08	28.80	188.93
	In-person interview.	Parent/guardian	320	80	1	80	1.67	133.60	240	1	240	0.08	19.20	152.80
Subtotal individuals/households.	.....	.....	27,107	22,589	.....	47,314	.....	23,862.73	4,518	.....	9,428	.....	519.40	24,382.13
State, local, and Tribal government.	In-person interview (two rounds).	State, local, or Tribal agency director/manager.	40	40	2	80	1.00	80.00	0	2	0	0.08	0.00	80.00
	In-person interview (three rounds).	State, local, or Tribal agency director/manager.	10	10	3	30	1.00	30.00	0	3	0	0.08	0.00	30.00
	In-person interview (two rounds).	State, local, or Tribal agency direct service staff.	80	80	2	160	1.00	160.00	0	2	0	0.08	0.00	160.00
	In-person interview (three rounds).	State, local, or Tribal agency direct service staff.	20	20	3	60	1.00	60.00	0	3	0	0.08	0.00	60.00
	Provide administrative data.	State, local, or Tribal agency director/manager.	5	5	24	120	0.83	99.60	0	1	0	0.08	0.00	99.60
	Provide cost data.	State, local, or Tribal agency director/manager.	5	5	6	30	2.33	69.90	0	1	0	0.08	0.00	69.90
Subtotal State, local, and Tribal government.	.....	150	150	.....	480	.....	499.50	0	.....	0	.....	0.00	499.50	
Private sector	In-person interview.	Private sector for-profit business director/manager.	10	10	2	20	0.50	10.00	0	2	0	0.08	0.00	10.00
	Provide administrative data.	Private sector for-profit business director/manager.	5	5	24	120	0.83	99.60	0	1	0	0.08	0.00	99.60
	In-person interview (two rounds).	Private sector not-for-profit agency director/manager.	24	24	2	48	1.00	48.00	0	2	0	0.08	0.00	48.00
	In-person interview (three rounds).	Private sector not-for-profit agency director/manager.	6	6	3	18	1.00	48.00	0	3	0	0.08	0.00	48.00
	Provide cost data.	Private sector not-for-profit agency director/manager.	5	5	6	30	2.33	69.90	0	1	0	0.08	0.00	69.90
Subtotal private sector.	.....	.....	40	40	.....	236	.....	275.50	0	.....	0	.....	0.00	275.50
Grand total	.....	.....	27,297	22,779	2.11	48,030	0.51	24,637.73	4,518	2.09	9,428	0.06	519.40	25,157.13

Dated: December 16, 2014.

Audrey Rowe,

Administrator, Food and Nutrition Service.

[FR Doc. 2014–30373 Filed 12–24–14; 8:45 am]

BILLING CODE 3410–30–P

DEPARTMENT OF AGRICULTURE

Rural Business-Cooperative Service

Notice of Solicitation of Applications for the Rural Energy for America Program for Fiscal Year 2015

AGENCY: Rural Business-Cooperative Service, USDA.

ACTION: Notice.

SUMMARY: The Rural Business-Cooperative Service (Agency) announces the acceptance of applications under the Rural Energy for America Program (REAP) which is designed to help agricultural producers and rural small businesses reduce energy costs and consumption and help meet the Nation's critical energy needs. REAP has two types of funding assistance: Renewable Energy Systems and Energy Efficiency Improvements Assistance, and Energy Audit and Renewable Energy Development Assistance Grants.

The Renewable Energy Systems and Energy Efficiency Improvement Assistance provides grants and guaranteed loans to agricultural producers and rural small businesses to purchase and install renewable energy systems and make energy efficiency improvements to their operations. Eligible renewable energy systems for REAP provide energy from: Wind, solar, renewable biomass (including anaerobic digesters), small hydro-electric, ocean, geothermal, or hydrogen derived from these renewable resources.

The Energy Audit and Renewable Energy Development Assistance Grant is available to a unit of State, Tribal, or local government; instrumentality of a State, Tribal, or local government; institution of higher education; rural electric cooperative; a public power entity; or a council, as defined in 16 U.S.C. 3451. The recipient of grant funds, (grantee), will establish a program to assist agricultural producers and rural small businesses with evaluating the energy efficiency and the potential to incorporated renewable energy technologies into their operations.

DATES: Grant applications, guaranteed loan-only applications, and combined grant and guaranteed loan applications for financial assistance under this subpart may be submitted at any time on an ongoing basis. Section IV. E., of this Notice establishes the deadline dates for the applications to be received in order to be considered for funding provided by Public Law 113–79, commonly referred to as the 2014 Farm Bill Act, for fiscal year 2014 and fiscal year 2015. In summary:

(1) *Renewable energy system and energy efficiency improvement grant applications and combination grant and guaranteed loan applications.* There will be two application deadline dates to facilitate the use of fiscal years 2014 and 2015 grant funds. These dates apply to both fiscal year 2014 and 2015 grant funds.

(a) For applicants requesting $20,000 or less that wish to have their application compete for the ''Grants of $20,000 or less set aside,'' complete applications must be received no later than 4:30 p.m. local time on April 30, 2015.

(b) For applicants requesting grant funds of either $20,000 or less, or grant funds over $20,000 (unrestricted), complete applications must be received no later than:

(i) 4:30 p.m. local time on April 30, 2015, or

(ii) 4:30 p.m. local time on June 30, 2015.

(2) *Renewable energy system and energy efficiency improvement guaranteed loan-only applications.* Applications will be reviewed and processed when received with monthly competitions on the first business day of each month for those applications ready to be funded, however the first monthly competition will not take place until eight guaranteed loan only applications are received and ready to be competed.

(3) *Energy audits and renewable energy development assistance grant applications.* Complete applications must be received no later than 4:30 p.m. local time on February 12, 2015.

Application	Application window opening dates	Application window closing dates
Renewable Energy Systems and Energy Efficiency Improvement Grants (Over $20,000 and Combinations).	July 8, 2014	April 30, 2015.
Renewable Energy Systems and Energy Efficiency Improvement Grants ($20,000 or less not competing for set aside funds, Over $20,000 and Combinations).	May 1, 2015	June 30, 2015.*
Renewable Energy Systems and Energy Efficiency Improvement Grants ($20,000 or less competing for set aside funds).	July 8, 2014	April 30, 2015.
Renewable Energy Systems and Energy Efficiency Improvement Guaranteed Loans	August 1, 2014	Continuous application cycle.
Energy Audit and Renewable Energy Development Assistance Grants	December 29, 2014	February 12, 2015.*

* Applications received after this date will be considered for the next cycle.

ADDRESSES: This solicitation is for agricultural producers and rural small businesses, as well as units of State, Tribal, or local government; instrumentalities of a State, Tribal, or local government; institutions of higher education; rural electric cooperatives; a public power entities; and Councils, as defined in 16 U.S.C. 3451, who serve agricultural producers and rural small businesses.

FOR FURTHER INFORMATION CONTACT: The applicable USDA Rural Development Energy Coordinator for your respective State, as identified via the following link: *http://www.rurdev.usda.gov/BCP_Energy_CoordinatorList.html.*

For information about this Notice, please contact Mr. Kelley Oehler, Branch Chief, USDA Rural Development, Energy Division, 1400 Independence Avenue SW., Washington, DC 20250. Telephone: (202) 720–6819. Email: *kelley.oehler@wdc.usda.gov.*

SUPPLEMENTARY INFORMATION:

I. Program Description

The REAP is designed to help agricultural producers and rural small businesses reduce energy costs and consumption and help meet the Nation's critical energy needs. REAP has two types of funding assistance: (1) Renewable Energy Systems and Energy Efficiency Improvements Assistance, and (2) Energy Audit and Renewable Energy Development Assistance Grants.

A. *General.* Applications for REAP can be submitted on an ongoing basis.

This Notice announces the deadline dates to submit applications for the REAP funds provided by the Agricultural Act of 2014, Pub. L. 113–79, on February 7, 2014, (2014 Farm Bill) for fiscal year 2014, and fiscal year 2015, for: grants, guaranteed loans, and combined grants and guaranteed loans to purchase and install renewable energy systems, and make energy efficiency improvements; and for grants to conduct energy audits, and renewable energy development assistance.

The Renewable Energy Systems and Energy Efficiency Improvement Assistance provides grants and guaranteed loans to agricultural producers and rural small businesses to purchase and install renewable energy systems and make energy efficiency improvements to their operations. Eligible renewable energy systems for REAP provide energy from: wind, solar, renewable biomass (including anaerobic digesters), small hydro-electric, ocean, geothermal, or hydrogen derived from these renewable resources.

The Energy Audit and Renewable Energy Development Assistance Grant is available to a unit of State, Tribal, or local government; instrumentality of a State, Tribal, or local government; institution of higher education; rural electric cooperative; a public power entity; or a council, as define in 16 U.S.C. 3451. The recipient of grant funds, (grantee), will establish a program to assist agricultural producers and rural small businesses with evaluating the energy efficiency and the potential to incorporate renewable energy technologies into their operations.

The administrative requirements applicable to each type of funding available under REAP are described in 7 CFR, part 4280, subpart B. The provisions specified in 7 CFR 4280.101 through 4280.111 apply to each funding type described in this Notice.

B. *Renewable Energy System and Energy Efficiency Improvement Project Grants.* In addition to the other provisions of this Notice, the requirements specified in 7 CFR 4280.112 through 4280.124 apply to renewable energy system and energy efficiency improvement project grants.

C. *Renewable Energy System and Energy Efficiency Improvement Project Guaranteed Loans.* In addition to the other provisions of this Notice the requirements specified in 7 CFR 4280.125 through 4280.152, apply to guaranteed loans for renewable energy system and energy efficiency improvement projects. For fiscal year 2015, the guarantee fee amount is 1 percent of the guaranteed portion of the loan and the annual renewal fee is 0.250 percent (one-quarter of 1 percent) of the guaranteed portion of the loan.

D. *Renewable Energy System and Energy Efficiency Improvement Project Combined Grant and Guaranteed Loan Requests.* In addition to the other provisions of this Notice, the requirements specified in 7 CFR 4280.165 apply to a combined grant and guaranteed loan for renewable energy system and energy efficiency improvement projects.

E. *Energy Audit and Renewable Energy Development Assistance Grants.* In addition to the other provisions of this Notice, the requirements specified in 7 CFR 4280.186 through 4280.196 apply to energy audit and renewable energy development assistance grants.

II. Federal Award Information

A. *Statutory Authority.* This program is authorized under 7 U.S.C. 8107.

B. *Catalog of Federal Domestic Assistance (CFDA) Number.* 10.868.

C. *Funds Available.* This Notice is announcing deadline dates for applications to be submitted for the REAP funds provided by the 2014 Farm Bill for fiscal year 2014 and fiscal year 2015. This Notice is being published prior to the Congressional enactment of a full-year appropriation for fiscal year 2015. The Agency will continue to process applications received under this announcement and should REAP receive appropriated funds, these funds will be announced on the following Web site: *http://www.rurdev.usda.gov/BCP_Reap.html* and subject to the same provisions in this Notice.

(1) *Renewable energy system and energy efficiency improvement grant-only funds.* For renewable energy system and energy efficiency improvement projects only, there will be an allocation of grant funds to each Rural Development State Office. The state allocations will include an allocation for grants of $20,000 or less funds and an allocation of grant funds that can be used to fund renewable energy system and energy efficiency improvement grants of either $20,000 or less or grants of more than $20,000, as well as the grant portion of a combination grant and guaranteed loan. The funds for grants of $20,000 or less can only be used to fund grants requesting $20,000 or less.

(a) To ensure that small projects have a fair opportunity to compete for the funding and are consistent with the priorities set forth in the statute, the Agency will set-aside 20 percent of the fiscal year 2015 funds until June 30, 2015, to fund grants of $20,000 or less.

(b) Grant funds available for renewable energy system and energy efficiency improvement in fiscal year 2015, regardless of the amount of funding requested, will consist of both fiscal years 2014 and 2015 funds.

(2) *Renewable energy system and energy efficiency improvement loan guarantee funds.* Rural Development's National Office will maintain a reserve of grant and guaranteed loan funds. The amount of loan guarantee program level available will consist of both fiscal years 2014 and 2015 funds.

(3) *Renewable energy system and energy efficiency improvement guaranteed loan and grant combination funds.* The amount of funds available for guaranteed loan and grant combination applications are outlined in paragraphs II.C(1)(b) and C(2).

(4) *Energy audit and renewable energy development assistance grant funds.* The amount of funds available for energy audits and renewable energy development assistance in fiscal year 2015 will be 4 percent of fiscal year 2015 mandatory funds. Obligations of these funds will take place through March 31, 2015. Any unobligated balances will be moved to the renewable energy subsidy account as of April 1, 2015. These funds may be utilized in any of the renewable energy system and energy efficiency improvement national competitions.

D. *Approximate Number of Awards.* The estimated number of awards is 2,000, but will depend on amount of funds made available and on the number of eligible applicants participating in this program.

E. *Type of Instrument.* Grant, guaranteed loan, and grant/guaranteed loan combinations.

III. Eligibility Information

A. *Eligible Applicants.* To be eligible for the grant portion of the program, an applicant must meet the requirements specified in 7 CFR 4280.109, 7 CFR 4280.110, and 7 CFR 4280.112, or 7 CFR 4280.186, as applicable.

B. *Eligible Lenders and Borrowers.* To be eligible for the guaranteed portion of the program, lenders and borrowers must meet the eligibility requirements in 7 CFR 4280.125 and 7 CFR 4280.127, as applicable.

C. *Eligible Projects.* To be eligible for this program, a project must meet the eligibility requirements specified in 7 CFR 4280.113, 7 CFR 4280.128, and 7 CFR 4280.187, as applicable.

D. *Cost Sharing or Matching.* The 2014 Farm Bill, formally Public Law 113–79, mandates the maximum percentages of funding that REAP can

provide. Within the maximum funding amounts specified in this Notice:

(1) Renewable energy system and energy efficiency improvement funding approved for guaranteed loan-only requests and for combination guaranteed loan and grant requests will not exceed 75 percent of eligible project costs, with any grant portion not to exceed 25 percent of total eligible project costs, whether the grant is part of a combination request or is a grant-only.

(2) Under the energy audit and renewable energy development assistance grants, a grantee that conducts energy audits must require that, as a condition of providing the energy audit, the agricultural producer or rural small business pay at least 25 percent of the cost of the energy audit.

E. *Other.* The definitions applicable to this Notice are published at 7 CFR 4280.103. Ineligible project costs can be found in 7 CFR 4280.114(d), 7 CFR 4280.129(f), and 7 CFR 4280.188(c), as applicable.

IV. Application and Submission Information

A. *Address to Request Application.* Application materials may be obtained by contacting one of Rural Development's Energy Coordinators, as identified via the following link: *http://www.rurdev.usda.gov/BCP_Energy_CoordinatorList.html.*

In addition, for grant applications, applicants may obtain electronic grant applications for REAP from *http://www.Grants.gov.* When you enter the Grants.gov site, you will find information about submitting an application electronically through the site. To use Grants.gov, all applicants must have a DUNS number (unless the applicant is an individual), which can be obtained at no cost via a toll-free request line at 1 (866) 705–5711 or online at *http://fedgov.dnb.com/webform.* USDA Rural Development strongly recommends that applicants do not wait until the application deadline date to begin the application process through Grants.gov.

B. *Application Submittal.*

(1) *Grant applications.* All grant applications may be submitted either as hard copy to the appropriate Rural Development Energy Coordinator or electronically using the Government-wide Grants.gov Web site. When submitting an application as hard copy, applicants must submit one original.

(a) All renewable energy system and energy efficiency improvement applications are to be submitted to the USDA Rural Development Energy Coordinator in the State in which the applicant's proposed project is located.

(b) All energy audit and renewable energy development assistance applications are to be submitted to the USDA Rural Development Energy Coordinator in the State in which the applicant is headquartered. A list of USDA Rural Development Energy Coordinators is available via the following link: *http://www.rurdev.usda.gov/BCP_Energy_CoordinatorList.html.*

(c) For grant-only applicants submitting their electronic applications to the Agency via the Grants.gov Web site may download a copy of the application package to complete it off line and then upload and submit the application via the Grants.gov site, including all information typically included in the application, and all necessary assurances and certifications. After electronically submitting an application through the Web site, the applicant will receive an automated acknowledgement from Grants.gov that contains a Grants.gov tracking number.

(2) *Guaranteed loan applications.* Guaranteed loan-only applications (*i.e.,* those that are not part of a guaranteed loan/grant combination request) must be submitted as hard copy.

(3) *Guaranteed loan and grant combination applications.* Applications for guaranteed loans/grants (combination applications) must be submitted as hard copy.

C. *Content and Form of Application Submission.* Applicants seeking to participate in this program must submit applications in accordance with this Notice and 7 CFR part 4280, subpart B. Applicants must submit complete applications containing all parts necessary for the Agency to determine applicant and project eligibility, to score the application, and to conduct the technical evaluation, as applicable, in order to be considered.

(1) *Competition.* The application dates published in Section IV.E. of this Notice, establishes the dates by which complete applications must be received, in order to compete for the funds available.

(2) *Grant applications.* Information required for an application to be considered complete can be found in 7 CFR part 4280, subpart B.

(a) Grant applications for renewable energy systems and energy efficiency improvement projects with total project costs of $80,000 or less must provide information required by 7 CFR 4280.119.

(b) Grant applications for renewable energy systems and energy efficiency improvement projects with total projects costs of $200,000 or less, but more than $80,000, must provide information required by 7 CFR 4280.118.

(c) Grant applications for renewable energy systems and energy efficiency improvement projects with total projects costs of greater than $200,000 must provide information required by 7 CFR 4280.117.

(d) Guaranteed loan applications for renewable energy systems and energy efficiency improvement projects must provide information required by 7 CFR 4280.137.

(e) Combined grant and guaranteed loan applications for renewable energy systems and energy efficiency improvement projects must provide information required by 7 CFR 4280.165(c).

(f) Applications for energy audits or renewable energy development assistance grants must provide information required by 7 CFR 4280.190.

(3) *Race, ethnicity, and gender.* The Agency is requesting that each applicant provide race, ethnicity, and gender information about the applicant. The information will allow the Agency to evaluate its outreach efforts to under-served and under-represented populations. Applicants are encouraged to furnish this information with their application, but are not required to do so. An applicant's eligibility or the likelihood of receiving an award will not be impacted by furnishing or not furnishing this information.

(4) *Hybrid projects.* If the application is for a hybrid project, as defined in 7 CFR 4280.103, technical reports, as required under 7 CFR 4280.110(h)(1), must be prepared for each technology that comprises the hybrid project.

(5) *Multiple facilities.* Applicants may submit a single application that proposes to apply the same renewable energy system (including the same hybrid project) or energy efficiency improvement across multiple facilities. For example, a rural small business owner owns five retail stores and wishes to install solar panels on each store. The rural small business owner may submit a single application for installing the solar panels on the five stores. However, if this same owner wishes to install solar panels on three of the five stores and wind turbines for the other two stores, the owner can only submit an application for either the solar panels or for the wind turbines in the same fiscal year.

(6) *Fiscal year 2014 Renewable Energy System and Energy Efficiency Improvement Applications.* If an application for a project was submitted for the first time for fiscal year 2014

funding and that initial application was determined eligible, but was not funded, the Agency will consider that initial fiscal year 2014 application for funding in fiscal year 2015. The applicants that qualify under this paragraph will be allowed to provide additional information to document the environmental benefits scoring criterion without creating a new complete application date. If an applicant submitted the initial application on or prior to June 14, 2013, the applicant must submit a new application meeting the requirements of this Notice in order to be considered for fiscal year 2015 funds for that project and a new submission date of record will be established.

D. *System for Award Management (SAM) and Dun and Bradstreet Universal Number System (DUNS) Number.* Unless exempt under 2 CFR 25.110, all applicants must:

(1) Be registered in the SAM prior to submitting an application or plan;

(2) Maintain an active SAM registration with current information at all times during which it has an active Federal award or an application or plan under consideration by the Agency; and

(3) Provide its DUNS number in each application or plan it submits to the Agency.

(4) At the time the Agency is ready to make an award, if the applicant has not complied with paragraph IV.A(1) through A(3), the Agency may determine the applicant is not eligible to receive the award.

E. *Submission Dates and Times.* Grant applications, guaranteed loan-only applications, and combined grant and guaranteed loan applications for financial assistance under this subpart may be submitted at any time on an ongoing basis. When an application window closes, the next application window opens on the following day. This Notice establishes the deadline dates for the applications to be received in order to be considered for funding provided by the 2014 Farm Bill for fiscal year 2014 and fiscal year 2015. An application received after these dates will be considered with other applications received in the next application window. In order to be considered for funds under this Notice, complete applications must be received by the appropriate USDA Rural Development State Office or via grants.gov. The deadline for applications to be received to be considered for funding in fiscal year 2015 are outlined in the following paragraphs and also summarized in a table at the end of paragraph IV.E:

(1) *Renewable energy system and energy efficiency improvement grant applications and combination grant and guaranteed loan applications.* The Agency is establishing two application deadline dates to facilitate the use of fiscal years 2014 and 2015 grant funds. Combination grant and guaranteed loan applications will compete for grant funds based on their grant score. The two dates that complete applications must be received by the Agency in order to compete for available funds are:

(a) For applicants requesting $20,000 or less that wish to have their application compete for the ''Grants of $20,000 or less set aside,'' complete applications must be received no later than 4:30 p.m. local time on April 30, 2015.

(b) For applicants requesting grant funds of either $20,000 or less, or grant funds over $20,000 (unrestricted), complete applications must be received no later than:

(i) 4:30 p.m. local time on April 30, 2015, or

(ii) 4:30 p.m. local time on June 30, 2015.

(2) *Renewable energy system and energy efficiency improvement guaranteed loan-only applications.* Applications will be reviewed and processed when received with monthly competitions on the first business day of each month for those applications ready to be funded, however the first monthly competition will not take place until eight guaranteed loan only applications are received and ready to be competed.

(3) *Energy audits and renewable energy development assistance grant applications.* Complete applications must be received no later than 4:30 p.m. local time on February 12, 2015.

Application	Application window opening dates	Application window closing dates
Renewable Energy Systems and Energy Efficiency Improvement Grants ($20,000 or less not competing for set aside funds, Over $20,000 and Combinations).	July 8, 2014	April 30, 2015.
Renewable Energy Systems and Energy Efficiency Improvement Grants ($20,000 or less not competing for set aside funds, Over $20,000 and Combinations).	May 1, 2015	June 30, 2015.*
Renewable Energy Systems and Energy Efficiency Improvement Grants ($20,000 or less competing for set aside funds).	July 8, 2014	April 30, 2015.
Renewable Energy Systems and Energy Efficiency Improvement Guaranteed Loans	August 1, 2014	Continuous application cycle.
Energy Audit and Renewable Energy Development Assistance Grants	December 29, 2014	February 12, 2015.*

* Applications received after this date will be considered for the next cycle.

F. *Intergovernmental Review.* REAP is not subject to Executive Order 12372, Intergovernmental Review of Federal Programs.

G. *Funding Limitations.* The following funding limitations apply to applications submitted under this Notice.

(1) *Renewable energy system and energy efficiency improvement projects.*

(a) Applicants may apply for only one renewable energy system project and one energy efficiency improvement project in fiscal year 2015.

(b) For renewable energy system grants, the minimum grant is $2,500 and the maximum is $500,000. For energy efficiency improvement grants, the minimum grant is $1,500 and the maximum grant is $250,000.

(c) For renewable energy system and energy efficiency improvement loan guarantees, the minimum guaranteed loan amount is $5,000 and the maximum amount of a guaranteed loan to be provided to a borrower is $25 million.

(d) Renewable energy system and energy efficiency improvement guaranteed loan and grant combination applications. Paragraphs IV.G(1)(b) and (c) contain the applicable maximum amounts and minimum amounts for grants and guaranteed loans.

(2) *Energy audit and renewable energy development assistance grants.*

(a) Applicants may only submit one energy audit grant application and one renewable energy development assistance grant application for fiscal year 2015 funds.

(b) The maximum aggregate amount of energy audit and renewable energy development assistance grants awarded to any one recipient under this Notice cannot exceed $100,000 for fiscal year 2015.

(c) Public Law 113–79, commonly known as the 2014 Farm Bill, mandates that the recipient of a grant that conducts an energy audit for an agricultural producer or a rural small business must require the agricultural producer or rural small business to pay at least 25 percent of the cost of the energy audit, which shall be retained by the eligible entity for the cost of the audit.

(3) *Maximum grant assistance to an entity.* For the purposes of this Notice, the maximum amount of grant assistance to an entity will not exceed $750,000 for fiscal year 2015 based on the total amount of renewable energy system, energy efficiency improvement, energy audit, and renewable energy development assistance grants awarded to an entity under REAP.

H. *Other Submission Requirements and Information.*

(1) *Environmental information.* For the Agency to consider an application, the application must include all environmental review documents with supporting documentation in accordance with 7 CFR part 1940, subpart G. Applications for financial assistance for planning or management purposes are typically categorically excluded from the environmental review process by 7 CFR 1940.310(e)(1). Any required environmental review must be completed prior to obligation of funds or the approval of the application.

(2) *Original signatures.* USDA Rural Development may request that the applicant provide original signatures on forms submitted through Grants.gov at a later date.

(3) *Transparency Act Reporting.* All recipients of Federal financial assistance are required to report information about first-tier sub awards and executive compensation in accordance with 2 CFR part 170. So long as an entity applicant does not have an exception under 2 CFR 170.110(b), the applicant must have the necessary processes and systems in place to comply with the reporting requirements should the applicant receive funding. See 2 CFR 170.200(b).

V. Application Review Information

A. *Evaluation Criteria.* All complete applications will be scored in accordance with 7 CFR 4280.120, 4280.135, and 4280.192. Applications for projects in rural areas with the lowest incomes where, according to the American Community Survey data by census, tracts show that at least 20 percent of the population is living in poverty will qualify for administrative points applicable under 7 CFR 4280.120(g). This emphasis will support Rural Development's goal of providing 20 percent of its funding by 2016 to these areas of need.

(1) Combined grant and guaranteed loan applications will be scored in accordance with 7 CFR 4280.120.

(2) For hybrid applications, each technical report will be evaluated based on its own merit.

B. *Review and Selection Process.* Grant-only applications, guaranteed loan-only applications, and combined grant and guaranteed loan applications for financial assistance may be submitted at any time. In order to be considered for funds, complete applications must be received by the appropriate USDA Rural Development State Office or via grants.gov, as identified in Section IV. E., of this Notice.

(1) Renewable energy system and energy efficiency improvement grants. Due to the competitive nature of this program, applications are competed based on submittal date. The submittal date is the date the Agency receives a complete application. The complete application date is the date the Agency receives the last piece of information that allows the Agency to determine eligibility and to score, rank, and compete the application for funding.

(a) Renewable energy system and energy efficiency improvement grants of $20,000 or less State funds. Funds will be allocated to the States. Applications must be submitted by April 30, 2015 in order to be considered for these set aside funds. All State allocated unused funds for grants of $20,000 or less will be pooled to the National Office.

(b) Renewable energy system and energy efficiency improvement grants of $20,000 or less national funds. All unfunded eligible applications for grants of $20,000 or less received by April 30, 2015, will be competed against other applications for grants of $20,000 or less from other States at a final national competition. Obligations of these funds will take place prior to June 30, 2015.

(c) Renewable energy system and energy efficiency improvement grant funds that can be awarded to any renewable energy system or energy efficiency improvement application, regardless of the amount of the funding request, will be allocated to the States. The State will award 50 percent of these funds for those complete applications the Agency receives by April 30, 2015, and 50 percent of the funds for those complete applications the Agency receives by June 30, 2015. All unused funds for grant funds will be pooled to the National Office.

(d) Renewable energy system and energy efficiency improvement national grant funds. All unfunded eligible applications for grants, which include grants of $20,000 or less, received by April 30, 2015, that are not funded by State allocations can be submitted to the National Office to compete against grant applications from other States at a final national competition.

(2) Renewable energy system and energy efficiency improvement guaranteed loan funds. The National Office will maintain a reserve for renewable energy system and energy efficiency improvement guaranteed loan funds. Applications will be reviewed and processed when received. Those applications that meet the Agency's underwriting requirements, are credit worthy, and score a minimum of 50 points, will compete in national competitions for guaranteed loan funds on the first business day of each month. All unfunded eligible guaranteed loan-only applications received, that do not score at least 50 points will be competed against other guaranteed loan-only applications from other States at a final national competition, if the guaranteed loan reserves have not been completely depleted, on September 1, 2015. If funds remain after the final guaranteed loan-only national competition, the Agency may elect to utilize budget authority to fund additional grant-only.

(3) Renewable energy system and energy efficiency improvement combined grant and guaranteed loan applications will compete with grant-only applications for grant funds allocated to their State referenced in paragraph V.B(1)(c). If the application is ranked high enough to receive State allocated grant funds, the State will request guaranteed loan portion of any combined grant and guaranteed loan applications from the National Office guaranteed loan reserve, and no further competition will be required.

(4) Energy audit and renewable energy development assistance grant funds will be maintained in a reserve at the National Office. The two highest scoring applications from each State, based on the scoring criteria established under § 4280.192, will compete for funding at a national competition. If funds remain after the energy audit and renewable energy development assistance national competition, the Agency may elect to transfer budget authority. The budget authority will be utilized to fund additional renewable energy system and energy efficiency improvement grants from the National Office reserve after pooling.

(5) If a State allocation is not sufficient to fund the total amount of a grant or combination application, the applicant must be notified that they may

accept the remaining funds or submit the total request for National Office reserve funds available after pooling. If the applicant agrees to lower its grant request, the applicant must certify that the purposes of the project will be met and provide the remaining total funds needed to complete the project.

If one or more grant or combination applications have the same score and remaining funds in the State allocation are insufficient to fully award all, the remaining funds must be divided proportionally between the applications. The applicant must be notified they may accept the proportional amount of funds or submit their total request for National Office reserve. If the applicant agrees to lower its grant request, the applicant must certify that the purposes of the project will be met and provide the remaining total funds needed to complete the project.

At its discretion, the Agency may also elect to allow the remaining funds to be carried over to the next fiscal year rather than selecting a lower scoring application(s) or distributing funds on a pro-rata basis.

C. *Award Considerations.* All awards will be on a discretionary basis. In determining the amount of a renewable energy system or energy efficiency improvement grant or loan guarantee, the Agency will consider the six criteria specified in 7 CFR 4280.114(e) or 7 CFR 4280.129(g), as applicable.

D. *Anticipated Announcement and Federal Award Dates.* All awards should be completed by September 30, 2015.

VI. Federal Award Administration Information

A. *Federal Award Notices.* The Agency will award and administer renewable energy system and energy efficiency improvement grants, guaranteed loans in accordance with 7 CFR 4280.122, and 7 CFR 4280.139, as applicable. The Agency will award and administer the energy audit and renewable energy development assistance grants in accordance with 7 CFR 4280.195. Notification requirements of 7 CFR 4280.111, apply to this Notice.

B. *Administrative and National Policy Requirements.*

(1) Equal Opportunity and Nondiscrimination. The Agency will ensure that equal opportunity and nondiscrimination requirements are met in accordance with the Equal Credit Opportunity Act, 15 U.S.C. 1691 *et seq.* and 7 CFR part 15d, Nondiscrimination in Programs and Activities Conducted by the U.S. Department of Agriculture. The Agency will not discriminate against applicants on the basis of race, color, religion, national origin, sex, marital status, or age (provided that the applicant has the capacity to contract); because all or part of the applicant's income derives from any public assistance program; or because the applicant has in good faith exercised any right under the Consumer Credit Protection Act, 15 U.S.C. 1601 *et seq.*

(2) Civil Rights Compliance. Recipients of grants must comply with the Americans with Disabilities Act of 1990, 42 U.S.C. 12101 *et seq.,* Title VI of the Civil Rights Act of 1964, 42 U.S.C. 2000d *et seq.,* and Section 504 of the Rehabilitation Act of 1973, 29 U.S.C. 794. This may include collection and maintenance of data on the race, sex, and national origin of the recipient's membership/ownership and employees. These data must be available to conduct compliance reviews in accordance with 7 CFR 1901.204.

(3) Environmental Analysis. 7 CFR part 1940, subpart G or successor regulation outlines environmental procedures and requirements for this subpart. Prospective applicants are advised to contact the Agency to determine environmental requirements as soon as practicable after they decide to pursue any form of financial assistance directly or indirectly available through the Agency.

(4) Appeals. A person may seek a review of an Agency decision or appeal to the National Appeals Division in accordance with 7 CFR 4280.105.

C. *Reporting.* Reporting requirements will be in accordance with the Grant Agreement, 7 CFR 4280.123(j), 7 CFR 4280.143, 7 CFR 4280.196, as applicable.

VII. Other Information

A. Paperwork Reduction Act

In accordance with the Paperwork Reduction Act of 1995, the information collection requirements associated with renewable energy system and energy efficiency improvement grants and guaranteed loans, as covered in this Notice, has been approved by the Office of Management and Budget (OMB) under OMB Control Number 0570–0050. The information collection requirements associated with energy audit and renewable energy development assistance grants have also been approved by OMB under OMB Control Number 0570–0059.

B. 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, age, disability, and where applicable, sex, marital status, familial status, parental status, religion, sexual orientation, genetic information, political beliefs, reprisal, or because of all or part of an individual's income is derived from any public assistance program. (Not all prohibited bases apply to all programs.) Persons with disabilities who require alternative means for communication of program information (Braille, large print, audiotape, etc.) should contact USDA's TARGET Center at (202) 720–2600 (voice and TDD).

If you wish to file a Civil Rights program complaint of discrimination, complete the USDA Program Discrimination Complaint Form, found online at *http://www.ascr.usda.gov/complaint_filing_cust.html,* or at any USDA office, or call (866) 632–9992 to request the form. You may also write a letter containing all of the information requested in the form. Send your completed complaint form or letter to us by mail at U.S. Department of Agriculture, Director, Office of Adjudication, 1400 Independence Avenue SW., Washington, DC 20250–9410, by fax (202) 690–7442 or email at *program.intake@usda.gov.* Individuals who are deaf, hard of hearing, or have speech disabilities and you wish to file a program complaint please contact USDA through the Federal Relay Service at (800) 877–8339 or (800) 845–6136 (in Spanish). USDA is an equal opportunity provider and employer.'' The full ''Non-Discrimination Statement'' is found at: *http://www.usda.gov/wps/portal/usda/usdahome?navtype=FT&navid=Non_Discrimination.*

Dated: December 18, 2014.

Lillian E. Salerno,

Administrator, Rural Business-Cooperative Service.

[FR Doc. 2014–30184 Filed 12–24–14; 8:45 am]

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DEPARTMENT OF COMMERCE

International Trade Administration

[A–523–808]

Certain Steel Nails From the Sultanate of Oman: Affirmative Preliminary Determination of Sales at Less Than Fair Value and Postponement of Final Determination

AGENCY: Enforcement and Compliance, International Trade Administration, Department of Commerce.

SUMMARY: The Department of Commerce (''Department'') preliminarily determines that certain steel nails

(''nails'') from the Sultanate of Oman (''Oman'') are being, or are likely to be, sold in the United States at less than fair value (''LTFV''), as provided in section 733(b) of the Tariff Act of 1930, as amended (the ''Act''). The period of investigation is April 1, 2013 through March 31, 2014. The estimated weighted-average dumping margins are shown in the ''Preliminary Determination'' section of this notice. Interested parties are invited to comment on this preliminary determination.

DATES: *Effective Date:* December 29, 2014.

FOR FURTHER INFORMATION CONTACT: Lilit Astvatsatrian, 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) 482–6412.

SUPPLEMENTARY INFORMATION:

Background

The Department published the notice of initiation of this investigation on June 25, 2014.[1] Pursuant to section 773(c)(1)(A) of the Act, the Department postponed this preliminary LTFV determination by a period of 42 days.[2]

Scope of the Investigation

The product covered by this investigation is certain steel nails from Oman. For a full description of the scope of the investigation, *see* Appendix I to this notice.

Scope Comments

Several interested parties (*i.e.,* IKEA Supply AG and IKEA Distributions Services Inc. (collectively IKEA), Target Corporation, and The Home Depot) submitted comments to the Department on the scope of the investigation as it appeared in the *Initiation Notice,* and Mid Continent Steel & Wire, Inc. (Petitioner) submitted rebuttal comments. For discussion of those comments and rebuttal comments, *see* the Preliminary Decision Memorandum.[3]

Methodology

The Department has conducted this investigation in accordance with section 731 of the Act. Export price (''EP'') has been calculated in accordance with section 772 of the Act. Normal value (''NV'') has been calculated in accordance with section 773 of the Act. For a full description of the methodology underlying our conclusions, *see* the Preliminary Decision Memorandum. The Preliminary Decision Memorandum is a public document and is made available to the public via Enforcement and Compliance's Antidumping and Countervailing Duty Centralized Electronic Service System (''ACCESS'').[4] ACCESS is available to registered users at *https://access.trade.gov,* and is available to all parties in the Department's Central Records Unit, located at room 7046 of the main Department of Commerce building. In addition, a complete version of the Preliminary Decision Memorandum can be found at *http://enforcement.trade.gov/frn/.* The signed and the electronic versions of the Preliminary Decision Memorandum are identical in content.

All Others Rate

Section 735(c)(5)(A) of the Act provides that the estimated ''all others'' rate shall be an amount equal to the weighted average of the estimated weighted-average dumping margins established for exporters and producers individually investigated, excluding any zero or *de minimis* margins, and any margins determined entirely under section 776 of the Act. We based our calculation of the ''all others'' rate on the margin calculated for Oman Fasteners, LLC (''Oman Fasteners''), the only mandatory respondent in this investigation.

Preliminary Determination

The Department preliminarily determines that the following weighted-average dumping margins exist:

Producer or exporter	Weighted-average dumping margin (percent)
Oman Fasteners, LLC	9.07
All Others	9.07

Disclosure and Public Comment

We intend to disclose the calculations performed to parties in this proceeding within five days of the date of publication of this notice in accordance with 19 CFR 351.224(b).

Case briefs or other written comments may be submitted to the Assistant Secretary for Enforcement and Compliance no later than seven days after the date on which the final verification report is issued in this proceeding. Rebuttal briefs, limited to issues raised in case briefs, may be submitted no later than five days after the deadline date for case briefs.[5] Pursuant to 19 CFR 351.309(c)(2) and (d)(2), parties who submit case briefs or rebuttal briefs in this proceeding are encouraged to submit with each argument: (1) A statement of the issue; (2) a brief summary of the argument; and (3) a table of authorities.

Pursuant to 19 CFR 351.310(c), interested parties who wish to request a hearing, or to participate if one is requested, must submit a written request to the Assistant Secretary for Enforcement and Compliance, U.S. Department of Commerce. All documents must be filed electronically using ACCESS. An electronically filed request must be received successfully in its entirety by ACCESS, by 5:00 p.m. Eastern Standard Time, within 30 days after the date of publication of this notice.[6] Requests should contain the party's name, address, and telephone number, the number of participants, and a list of the issues to be discussed. If a request for a hearing is made, the Department intends to hold the hearing at the U.S. Department of Commerce, 14th Street and Constitution Avenue NW., Washington, DC 20230, at a time and date to be determined. Parties should confirm by telephone the date, time, and location of the hearing two days before the scheduled date.

Postponement of Final Determination and Extension of Provisional Measures

Pursuant to section 735(a)(2) of the Act, Oman Fasteners requested that the Department postpone the final determination and extend provisional measures from four months to six

[1] *See Certain Steel Nails From India, the Republic of Korea, Malaysia, the Sultanate of Oman, Taiwan, the Republic of Turkey, and the Socialist Republic of Vietnam: Initiation of Less-Than-Fair-Value Investigations,* 79 FR 36019 (June 25, 2014) (''*Initiation Notice*'').

[2] *See Certain Steel Nails from Republic of Korea, Malaysia, Taiwan, the Sultanate of Oman, Taiwan, and the Socialist Republic of Vietnam: Postponement of Preliminary Determination of Antidumping Duty Investigations,* 79 FR 63082 (October 22, 2014).

[3] *See* December 17, 2014 memorandum to Ronal K. Lorentzen, ''Decision Memorandum for the Preliminary Determination in the Antidumping Duty Investigation of Certain Steel Nails from the Sultanate of Oman,'' adopted concurrently with this notice. A list of the topics discussed in the Preliminary Decision Memorandum appears in Appendix II, below.

[4] On November 24, 2014, Enforcement and Compliance changed the name of the Import Administration AD and CVD Centralized Electronic Service System (''IA ACCESS'') to AD and CVD Centralized Electronic Service System (''ACCESS''). The Web site location was changed from *http://iaaccess.trade.gov* to *http://access.trade.gov.* The *Final Rule* changing the references to the Regulations can be found at: 79 FR 69046 (November 20, 2014).

[5] *See* 19 CFR 351.309.

[6] *See* 19 CFR 351.310(c).

months. Additionally, Oman Fasteners requested to extend the application of the provisional measures prescribed under section 733(d) of the Act and 19 CFR 351.210(e)(2), from a four-month period to a six-month period. Pursuant to a request from Oman Fasteners and in accordance with section 735(a)(2)(A) of the Act and 19 CFR 351.210(b)(2)(ii) and (e)(2), we will make our final determination no later than 135 days after the date of publication of this preliminary determination.[7] The suspension of liquidation described above will be extended accordingly.[8]

Suspension of Liquidation

In accordance with section 733(d)(2) of the Act, we are directing U.S. Customs and Border Protection (''CBP'') to suspend liquidation of all entries of nails from Oman as described in the scope of the investigation section entered, or withdrawn from warehouse, for consumption on or after the date of publication of this notice in the **Federal Register**.

Pursuant to 19 CFR 351.205(d), we will instruct CBP to require a cash deposit equal to the weighted-average amount by which the NV exceeds EP, as indicated in the chart above.[9] These suspension of liquidation instructions will remain in effect until further notice.

International Trade Commission (''ITC'') Notification

In accordance with section 733(f) of the Act, we have notified the ITC of our preliminary affirmative determination of sales at LTFV. Because the preliminary determination in this proceeding is affirmative, section 735(b)(2) of the Act requires that the ITC make its final determination as to whether the domestic industry in the United States is materially injured, or threatened with material injury, by reason of imports of certain steel nails from Oman before the later of 120 days after the date of this preliminary determination or 45 days after our final determination. Because we are postponing the deadline for our final determination to 135 days from the date of publication of this preliminary determination, as discussed above, the ITC will make its final determination no later than 45 days after our final determination.

This determination is issued and published in accordance with sections 733(f) and 777(i)(1) of the Act and 19 CFR 351.205(c).

Dated: December 17, 2014.

Ronald K. Lorentzen,

Acting Assistant Secretary for Enforcement and Compliance.

Appendix

List of Topics Discussed in the Preliminary Decision Memorandum

I. Summary
II. Background
III. Period of Investigation
IV. Postponement of Preliminary Determination
V. Postponement of Final Determination and Extension of Provisional Measures
VI. Scope of the Investigation
VII. Scope Comments
VIII. Respondent Selection
IX. Discussion of Methodology
A. Fair Value Comparisons
1. Determination of Comparison Method
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XI. Date of Sale
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XV. Currency Conversion
XVI. U.S, International Trade Commission Notification
XVII. Disclosure and Public Comment
XVIII. Verification
XIX. Conclusion

[FR Doc. 2014–30433 Filed 12–24–14; 8:45 am]

BILLING CODE 3510–DS–P

[7] *See also* 19 CFR 351.210(b)(2) and (e); *see also* Letter from Oman Fasteners to the Department, regarding ''Request to Postpone Final Determination'' (December 11, 2014); *see also* Letter from Petitioner to the Department, regarding ''Extension Request of Final Determination'' (December 10, 2014).

[8] *Id.*

[9] *See Modification of Regulations Regarding the Practice of Accepting Bonds During the Provisional Measures Period in Antidumping and Countervailing Duty Investigations,* 76 FR 61042 (October 3, 2011).

DEPARTMENT OF COMMERCE

International Trade Administration

[C–570–953]

Narrow Woven Ribbons With Woven Selvedge From the People's Republic of China: Final Results of Countervailing Duty Administrative Review; 2012

AGENCY: Enforcement and Compliance, International Trade Administration, Department of Commerce.

SUMMARY: The Department of Commerce (the Department) is conducting an administrative review of the countervailing duty order on narrow woven ribbons with woven selvedge (ribbons) from the People's Republic of China (PRC). The period of review (POR) is January 1, 2012, through December 31, 2012. We find that Yangzhou Bestpak Gifts & Crafts Co., Ltd. (Bestpak) received countervailable subsidies during the POR.

DATES: *Effective Date:* December 29, 2014.

FOR FURTHER INFORMATION CONTACT: Dana Mermelstein or Joshua Morris, AD/CVD Operations, Office I, Enforcement and Compliance, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue NW., Washington, DC 20230; telephone: (202) 482–1391 or (202) 482–1779.

Case History

No party submitted comments on the *Preliminary Results,* which were published by the Department on June 25, 2014.[1] The events that have occurred since we published the *Preliminary Results* are discussed in the Memorandum to Paul Piquado, Assistant Secretary for Enforcement and Compliance, ''Decision Memorandum for Final Results of Countervailing Duty Administrative Review: Narrow Woven Ribbons with Woven Selvedge from the People's Republic of China'' (Decision Memorandum), dated December 22, 2014, which is hereby adopted by this notice. A list of the topics included in the Decision Memorandum is attached as an Appendix to this notice.

The Decision Memorandum is a public document and is on file electronically *via* the Antidumping and Countervailing Duty Centralized Electronic Service System (ACCESS). ACCESS is available to registered users at *http://access.trade.gov* and in the Central Records Unit, room 7046 of the main Department building. In addition, a complete version of the Decision Memorandum can be accessed directly on the internet at *http://enforcement.trade.gov/frn/index.html/.* The signed Decision Memorandum and the electronic versions of the Decision Memorandum are identical in content.

Scope of the Order

The scope of the order consists of ribbons. The merchandise subject to this order is classifiable under the Harmonized Tariff Schedule of the United States (HTSUS) statistical categories 5806.32.1020; 5806.32.1030; 5806.32.1050 and 5806.32.1060. Subject merchandise also may enter under subheadings 5806.31.00; 5806.32.20; 5806.39.20; 5806.39.30; 5808.90.00; 5810.91.00; 5810.99.90; 5903.90.10; 5903.90.25; 5907.00.60; and 5907.00.80

[1] *See Narrow Woven Ribbons With Woven Selvedge From the People's Republic of China: Preliminary Results of Countervailing Duty Administrative Review; 2012,* 79 FR 36013 (June 25, 2014) (*Preliminary Results*).

and under statistical categories 5806.32.1080; 5810.92.9080; 5903.90.3090; and 6307.90.9889. Although the HTSUS subheadings are provided for convenience and customs purposes, the written description, available in *Narrow Woven Ribbons with Woven Selvedge from the People's Republic of China: Countervailing Duty Order,* 75 FR 53642 (September 1, 2010), remains dispositive.

A full description of the scope of the order is contained in the Decision Memorandum.

Methodology

We conducted this review in accordance with section 751(a)(1)(A) of the Tariff Act of 1930, as amended (the Act). For each of the subsidy programs found countervailable, we have determined that there is a subsidy, *i.e.,* a government-provided financial contribution by an ''authority'' that gives rise to a benefit to the recipient, and that the subsidy is specific.[2]

In making these findings, we relied on facts available and, because Bestpak and the Government of the PRC did not act to the best of their ability to respond to our requests for information, we have drawn adverse inferences in selecting from among the facts otherwise available.[3] For further information, *see* ''Use of Facts Otherwise Available and Adverse Inferences'' in the Decision Memorandum.

For a full description of the methodology underlying our conclusions, *see* the Decision Memorandum.

Changes from the Preliminary Results

No party submitted comments with respect to the *Preliminary Results.* Because we have identified more appropriate information for use as adverse facts available, we have revised the net subsidy rate for Bestpak accordingly. For a full description of that updated information and accompanying changes, *see* the Decision Memorandum.

Final Results of the Review

In accordance with 19 CFR 351.221(b)(4)(i), we calculated an individual subsidy rate for Bestpak for the period January 1, 2012, through December 31, 2012.

We find that the net subsidy rate for Bestpak is as follows:

Producer/exporter	Net subsidy rate %
Yangzhou Bestpak Gifts & Crafts Co., Ltd	88.49

Disclosure and Public Comment

All calculations for these final results are contained in the Decision Memorandum and have been thereby disclosed.[4]

Assessment Rates

Consistent with section 751(a)(1) of the Act and 19 CFR 351.212(b)(2), upon issuance of the final results, we shall determine, and the U.S. Customs and Border Protection (CBP) shall assess, countervailing duties on all appropriate entries covered by this review. We intend to issue instructions to CBP 15 days after publication of these final results of this review in the **Federal Register**.

Cash Deposit Requirements

We intend to instruct CBP to collect cash deposits of countervailing duties in the amount shown above for Bestpak. For all non-reviewed firms, we will instruct CBP to continue to collect cash deposits of estimated countervailing duties at the most recent company-specific or all-others rate applicable to the company. These cash deposit requirements, when imposed, shall remain in effect until further notice.

This administrative review and notice are in accordance with sections 751(a)(1) and 777(i) of the Act and 19 CFR 351.213.

Dated: December 19, 2014.

Paul Piquado,

Assistant Secretary for Enforcement and Compliance.

Appendix—List of Topics Discussed in the Decision Memorandum

I. Summary
II. Background
III. Scope of the Order
IV. Use of Facts Otherwise Available and Adverse Inferences
  A. Application of AFA to Bestpak
  B. Subsidy Rate Chart
V. Disclosure
VI. Recommendation

[FR Doc. 2014–30390 Filed 12–24–14; 8:45 am]

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[2] *See* sections 771(5)(B)and (D) of the Act regarding financial contribution; section 771(5)(E) of the Act regarding benefit; and section 771(5A) of the Act regarding specificity.

[3] *See* sections 776(a) and (b) of the Act.

[4] 19 CFR 351.224(b) calls for the Department to disclose calculations performed in connection with the final results of an administrative review within five days after the publication of the final results.

DEPARTMENT OF COMMERCE

International Trade Administration

[A–570–965; C–570–966]

Drill Pipe From the People's Republic of China: Notice of Court Decision Not in Harmony With International Trade Commission's Injury Determination, Revocation of Antidumping and Countervailing Duty Orders Pursuant to Court Decision, and Discontinuation of Countervailing Duty Administrative Review

AGENCY: Enforcement and Compliance, International Trade Administration, Department of Commerce.

SUMMARY: On November 10, 2014, the Court of International Trade (CIT) entered its final judgment sustaining the International Trade Commission's (ITC) remand redetermination that imports of drill pipe from the People's Republic of China (PRC) do not materially injure or threaten to materially injure the United States domestic industry. As a result, we are notifying the public that this court decision is not in harmony with the ITC's original affirmative determination that the domestic industry was threatened with material injury by reason of imports of drill pipe from the PRC, and pursuant to the ITC's publication of its negative remand redetermination in the **Federal Register**, we are hereby revoking these orders.

DATES: *Effective Date:* November 20, 2014.

FOR FURTHER INFORMATION CONTACT: Julia Hancock or Kristen Johnson, AD/CVD Operations, Enforcement and Compliance, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue NW., Washington, DC 20230; Telephone: (202) 482–1394 or (202) 482–4793, respectively.

SUPPLEMENTARY INFORMATION:

Background

On March 3, 2011, the Department of Commerce (the Department) published antidumping and countervailing duty orders on imports of drill pipe from the PRC, based, in part, on the final affirmative determination of the ITC that the domestic industry was threatened with material injury by reason of imports of drill pipe from the PRC.[1]

[1] *See Drill Pipe from the People's Republic of China: Antidumping Duty Order,* 76 FR 11757 (March 3, 2011); *Drill Pipe from the People's Republic of China: Countervailing Duty Order,* 76 FR 11758 (March 3, 2011); *Drill Pipe and Drill Collars from China,* Investigation Nos. 701–TA–474 and 731–TA–1176 (Final), USITC Publication 4213 (February 2011).

The respondent, Downhole Pipe, a Chinese producer of subject merchandise, subsequently challenged the ITC's final injury determination in *Downhole Pipe* v. *United States,* CIT No. 11–00080, and the ITC reversed its injury determination on remand, finding no material injury or threat thereof. On November 10, 2014, the CIT affirmed the ITC's remand and entered judgment in the case.[2] Therefore, there is now a final CIT decision in the case sustaining the ITC's negative injury determination concerning drill pipe from the PRC. The November 10, 2014, decision by the CIT in *Downhole Pipe* constitutes a final CIT decision that is not in harmony with the ITC's original affirmative injury determination.

Statutory Notice

In its decision in *Timken Co.* v. *United States,* 893 F.2d 337, 341 (Fed. Cir. 1990), the Court of Appeals for the Federal Circuit (CAFC) held that, pursuant to section 516A of the Tariff Act of 1930, as amended (the Act), the Department must publish a notice of a court decision that is not ''in harmony'' with an ITC determination and must suspend liquidation of entries pending a ''conclusive'' court decision.[3] The November 10, 2014, decision by the CIT in *Downhole Pipe* constitutes a final CIT decision that is not in harmony with the ITC's original affirmative injury determination on drill pipe from the PRC. Thus, this notice is published in fulfillment of the publication requirement in *Timken* and section 516A of the Act.

Accordingly, the Department intends to issue instructions to U.S. Customs and Border Protection (CBP) to suspend liquidation of all unliquidated entries of subject merchandise which are entered, or withdrawn from warehouse, for consumption after November 20, 2014, which is ten days after the court's decision in accordance with section 516A of the Act. Pursuant to *Timken,* all entries entered, or withdrawn from warehouse, for consumption after November 20, 2014, that remains unliquidated, will be suspended during the pendency of the appeals process so that they may be liquidated in accordance with the ''conclusive'' court decision.

Revocation of the Antidumping and Countervailing Duty Orders and Discontinuation of Countervailing Duty Administrative Review

The ITC published notice of its negative determination in the **Federal Register**, pursuant to sections 705(d) and 735(d) of the Tariff Act of 1930, as amended (the Act).[4] *See International Trade Commission, Investigation Nos. 701–TA–474 and 731–TA–1176 (Final Remand): Drill Pipe and Drill Collars from China,* 79 FR 75592 (December 18, 2014); sections 705(d) and 735(d) of the Act (''. . . the Commission . . . shall publish notice of its determination in the **Federal Register**.'').

Pursuant to sections 705(c)(2) and 735(c)(2) of the Act, ''the investigation shall be terminated upon publication of that negative determination'' and the Department shall ''terminate the suspension of liquidation'' and ''release any bond or other security, and refund any cash deposit.'' Sections 705(c)(2)(A) and (B) of the Act; sections 735(c)(2)(A) and (B) of the Act. As a result of the ITC's publication, the Department is hereby revoking the antidumping and countervailing duty orders and releasing any bonds or other security and refunding cash deposits.

While sections 705(c)(2)(A) and 735(c)(2)(A) of the Act instruct the Department to terminate suspension of liquidation, here, because suspension of liquidation must continue during the pendency of the appeals process (in accordance with *Timken* and as discussed above), we will instruct CBP at this time to (A) continue suspension at a cash deposit rate of 0.0 percent until instructed otherwise; and (B) release any bond or other security, and refund any cash deposit made pursuant to *Drill Pipe from the People's Republic of China: Antidumping Duty Order,* 76 FR 11757 (March 3, 2011); *Drill Pipe from the People's Republic of China: Countervailing Duty Order,* 76 FR 11758 (March 3, 2011). In the event the court's ruling in *Downhole Pipe* is not appealed, or if appealed and upheld by the CAFC, the Department will instruct CBP to terminate the suspension of liquidation and to liquidate those entries of subject merchandise without regard to antidumping or countervailing duties. Notwithstanding the continued suspension described above, the antidumping and countervailing duty orders on drill pipe from the PRC are hereby revoked. As a result of this revocation, the Department is discontinuing the ongoing administrative review of the countervailing duty order covering the period January 1, 2013, through December 31, 2013,[5] and will not initiate any new administrative reviews of the antidumping and countervailing duty orders.

This notice is published pursuant to section 516A of the Act. *See* sections 516A(c)(1) and (e).

Dated: December 18, 2014.

Ronald K. Lorentzen,

Acting Assistant Secretary for Enforcement and Compliance.

[FR Doc. 2014–30384 Filed 12–24–14; 8:45 am]

BILLING CODE 3510–DS–P

[2] *See Downhole Pipe* v. *United States,* CIT No. 11–00080, Slip Op. 14–130 (November 10, 2014).

[3] *See* sections 516A(c)(1) and (e) of the Act.

[4] *See Diamond Sawblades Mfrs. Coalition* v. *United States,* 626 F.3d 1374, 1381–82 (Fed. Cir. 2010).

[5] *See Initiation of Antidumping and Countervailing Duty Administrative Reviews and Request for Revocation in Part,* 79 FR 24398 (April 30, 2014). The Department received a request to conduct a countervailing duty administrative review from Shanxi Yida Special Steel Imp. & Exp. Co., Ltd., a Chinese exporter of drill pipe.

DEPARTMENT OF COMMERCE

International Trade Administration

[A–821–811]

Solid Fertilizer Grade Ammonium Nitrate From the Russian Federation: Rescission of Antidumping Duty Administrative Review; 2013–2014

AGENCY: Enforcement and Compliance, International Trade Administration, Department of Commerce.

DATES: *Effective Date:* December 29, 2014.

FOR FURTHER INFORMATION CONTACT: Elizabeth Eastwood or David Crespo, AD/CVD Operations, Office II, Enforcement and Compliance, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue NW., Washington, DC 20230; telephone: (202) 482–3874 and (202) 482–3693, respectively.

Background:

On April 1, 2014, the Department of Commerce (the Department) published in the **Federal Register** a notice of ''Opportunity to Request Administrative Review'' of the antidumping duty order on solid fertilizer grade ammonium nitrate (ammonium nitrate) from the Russian Federation (Russia) covering the period of review of April 1, 2013, through March 31, 2014.[1] During the anniversary month of April 2014, the Department received a timely request, in accordance with section 751(a) of the

[1] *See Antidumping or Countervailing Duty Order, Finding, or Suspended Investigation; Opportunity To Request Administrative Review,* 79 FR 18260 (April 1, 2014).

Tariff Act of 1930, as amended (the Act), for an administrative review from the petitioners, CF Industries, Inc. and El Dorado Chemical Company, for the following companies: (1) JSC Acron/JSC Dorogobuzh (collectively, ''Acron''); and (2) MCC EuroChem/OJSC NAK Azot/OJSC Nevinnomyssky (collectively, ''EuroChem''). On May 29, 2014, the Department published in the **Federal Register** a notice of initiation of administrative review with respect to these companies.[2]

On August 20, 2014, the petitioners withdrew their request for an administrative review for Acron and EuroChem.

Rescission of Review

Pursuant to 19 CFR 351.213(d)(1), the Department will rescind an administrative review, in whole or in part, if a party that requested the review withdraws the request within 90 days of the date of publication of notice of initiation of the requested review. The petitioners withdrew their request for review by the 90-day deadline. Therefore, we are rescinding the administrative review of the antidumping duty order on ammonium nitrate from Russia covering the period April 1, 2013, through March 31, 2014.

Assessment

The Department will instruct U.S. Customs and Border Protection (CBP) to assess antidumping duties on all appropriate entries. Antidumping duties shall be assessed at rates equal to the cash deposit of estimated antidumping duties required at the time of entry, or withdrawal from warehouse, for consumption, in accordance with 19 CFR 351.212(c)(1)(i). The Department intends to issue appropriate assessment instructions directly to CBP 15 days after the date of publication of this notice in the **Federal Register**.

Notification to Importers

This notice serves as the only 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 may result in the presumption that reimbursement of antidumping duties occurred and the subsequent assessment of double antidumping duties.

[2] *See Initiation of Antidumping and Countervailing Duty Administrative Review,* 79 FR 30809 (May 29, 2014).

Notification Regarding Administrative Protective Order

This notice serves as the only reminder to parties subject to administrative protective order (APO) of their responsibility concerning the disposition of proprietary information disclosed under APO in accordance with 19 CFR 351.305(a)(3). Timely written notification of return/destruction of APO materials or conversion to judicial protective order is hereby requested. Failure to comply with the regulations and the terms of an APO is a sanctionable violation.

This notice is issued and published in accordance with section 751 of the Act and 19 CFR 351.213(d)(4).

Dated: December 19, 2014.

Paul Piquado,

Assistant Secretary for Enforcement and Compliance.

[FR Doc. 2014–30391 Filed 12–24–14; 8:45 am]

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DEPARTMENT OF COMMERCE

International Trade Administration

[A–201–845]

Sugar From Mexico: Suspension of Antidumping Investigation

AGENCY: Enforcement and Compliance, International Trade Administration, Department of Commerce.

DATES: *Effective Date:* December 19, 2014.

SUMMARY: The Department of Commerce (''the Department'') has suspended the antidumping duty investigation on sugar from Mexico. The basis for this action is an agreement between the Department and signatory producers/exporters accounting for substantially all imports of sugar from Mexico, wherein each signatory producer/exporter has agreed to revise its prices to eliminate completely the injurious effects of exports of the subject merchandise to the United States.

FOR FURTHER INFORMATION CONTACT: Sally Craig Gannon or Judith Wey Rudman at (202) 482–0162 or (202) 482–0192, respectively; Bilateral Agreements Unit, Office of Policy, Enforcement and Compliance, International Trade Administration, U.S. Department of Commerce, 14th Street & Constitution Avenue NW., Washington, DC 20230.

SUPPLEMENTARY INFORMATION:

Background

On April 17, 2014, the Department initiated an antidumping duty investigation under section 732 of the Tariff Act of 1930, as amended (''the Act''), to determine whether imports of sugar from Mexico are being, or are likely to be, sold in the United States at less than fair value (''LTFV''). *See Sugar from Mexico: Initiation of Antidumping Duty Investigation,* 79 FR 22795 (April 24, 2014). On October 24, 2014, the Department preliminarily determined that sugar from Mexico is being, or is likely to be, sold in the United States at LTFV, as provided in section 733 of the Act, and postponed the final determination in this investigation until no later than 135 days after the date of publication of the preliminary determination in the **Federal Register.** *See Sugar from Mexico: Preliminary Determination of Sales at Less Than Fair Value and Postponement of Final Determination,* 79 FR 65189 (November 3, 2014) (''*Preliminary Determination''*).

On October 27, 2014, the Department and a representative of the signatory producers/exporters initialed a proposed agreement to suspend the antidumping investigation on sugar from Mexico. After initialing the proposed agreement, consistent with 734(e)(1) of the Act, the Department notified and consulted with the petitioners (*i.e.,* the American Sugar Coalition and its individual members: American Sugar Cane League, American Sugar Refining, Inc., American Sugarbeet Growers Association, Florida Sugar Cane League, Hawaiian Commercial and Sugar Company, Rio Grande Valley Sugar Growers, Inc., Sugar Cane Growers Cooperative of Florida, and United States Beet Sugar Association) concerning its intention to suspend the antidumping investigation on sugar from Mexico. The Department also notified the other parties to the investigation and the International Trade Commission (''ITC'') of the proposed agreement, consistent with 734(e)(1) of the Act. Also on October 27, 2014, we invited interested parties to provide written comments on the proposed suspension agreement by no later than the close of business on November 10, 2014. *See* ''Memorandum to All Interested Parties'' and ''Draft Agreement Suspending the Antidumping Duty Investigation on Sugar from Mexico,'' dated October 27, 2014. On October 30, 2014, the Department issued a memorandum titled ''Proposed Scope Clarification'' and requested comments from interested parties. On November 7, 2014, we extended the deadline to submit comments on the draft suspension agreement and the proposed scope clarification until November 18, 2014. *See* memorandum titled ''Sugar

from Mexico: Notice of Extension of Deadline to Submit Comments on Draft Suspension Agreements and Scope Clarification,'' dated November 7, 2014. We received comments from numerous parties by the November 18, 2014, deadline.

The Department and a representative of the signatory producers/exporters accounting for substantially all imports of sugar from Mexico signed the suspension agreement on December 19, 2014. *See Agreement Suspending the Antidumping Duty Investigation on Sugar from Mexico,* signed on December 19, 2014 (''Suspension Agreement''), attached hereto. Based on the scope comments received in this investigation, the Department has revised the scope of this investigation, as provided in the scope of the Suspension Agreement.

Scope of Agreement

See Section I, Product Coverage, of the Suspension Agreement.

Suspension of Investigation

The Department consulted with the Mexican sugar producers/exporters and the petitioners and has considered the comments submitted by interested parties with respect to the proposal to suspend the antidumping investigation. In accordance with section 734(c) of the Act, we have determined that extraordinary circumstances are present in this case, as defined by section 734(c)(2)(A) of the Act. *See* the memorandum titled ''Agreement Suspending the Antidumping Duty Investigation on Mexican Sugar from Mexico: U.S. Import Coverage, Existence of Extraordinary Circumstances, Public Interest, and Effective Monitoring Assessments'' from Lynn Fischer Fox, Deputy Assistant Secretary for Policy and Negotiations, to Paul Piquado, Assistant Secretary for Enforcement and Compliance, dated December 19, 2014 (''statutory requirements memorandum'').

The Suspension Agreement provides, in accordance with 734(c)(1) of the Act, that the subject merchandise will be sold at or above the established reference price and, for each entry of each exporter, the amount by which the estimated normal value exceeds the export price (or constructed export price) will not exceed 15 percent of the weighted-average amount by which the estimated normal value exceeded the export price (or constructed export price) for all less-than-fair-value entries of the producer/exporter examined during the course of the investigation. We have determined that the Suspension Agreement will eliminate completely the injurious effect of exports to the United States of the subject merchandise and prevent the suppression or undercutting of price levels of domestic sugar by imports of that merchandise from Mexico, as required by section 734(c)(1) of the Act. *See* the memorandum titled ''The Prevention of Price Suppression or Undercutting of Price Levels by the Agreement Suspending the Antidumping Duty Investigation on Sugar from Mexico'' from Lynn Fischer Fox, Deputy Assistant Secretary for Policy and Negotiations, to Paul Piquado, Assistant Secretary for Enforcement and Compliance.

We have also determined that the Suspension Agreement is in the public interest and can be monitored effectively, as required under section 734(d) of the Act. *See* statutory requirements memorandum.

For the reasons outlined above, we find that the Suspension Agreement meets the criteria of section 734(c) and (d) of the Act.

The terms and conditions of this Suspension Agreement, signed December 19, 2014, are set forth in the Suspension Agreement, which is attached to this notice.

International Trade Commission

In accordance with section 734(f) of the Act, the Department has notified the ITC of the Suspension Agreement.

Suspension of Liquidation

The suspension of liquidation ordered in the *Preliminary Determination,* shall continue to be in effect, subject to section 734(h)(3) of the Act. Section 734(f)(2)(B) of the Act provides that the Department may adjust the security required to reflect the effect of the Suspension Agreement. The Department has found that the Suspension Agreement eliminates completely the injurious effects of imports and, thus, the Department is adjusting the security required from signatories to zero. The security rates in effect for imports from any non-signatory producers/exporters remain as published in the Preliminary Determination. If there is no request for review of suspension under section 734(h) of the Act, or if the ITC conducts a review and finds that the injurious effect of imports of the subject merchandise is eliminated completely by the Suspension Agreement, the Department will terminate the suspension of liquidation of all entries of sugar from Mexico, and refund any cash deposits collected on entries of sugar from Mexico consistent with section 734(h)(3) of the Act.

Notwithstanding the Suspension Agreement, the Department will continue the investigation if it receives such a request within 20 days after the date of publication of this notice in the **Federal Register,** in accordance with section 734(g) of the Act. Pursuant to Section X of the Suspension Agreement, the Department will terminate the Suspension Agreement in the event that signatories accounting for a significant proportion of exports of sugar from Mexico request continuation of this investigation, or the Government of Mexico requests continuation of the countervailing duty investigation of sugar from Mexico, and will resume the investigation.

Administrative Protective Order Access

The Administrative Protective Order (''APO'') the Department granted in the investigation segment of this proceeding remains in place. While the investigation is suspended, parties subject to the APO may retain, but may not use, information received under that APO. All parties wishing access to business proprietary information submitted during the administration of the Suspension Agreement must submit new APO applications in accordance with the Department's regulations currently in effect. *See* section 777(c)(1) of the Act; 19 CFR 351.103, 351.304, 351.305, and 351.306. An APO for the administration of the Suspension Agreement will be placed on the record within five days of the date of publication of this notice in the **Federal Register.**

We are issuing and publishing this notice in accordance with section 734(f)(1)(A) of the Act and 19 CFR 351.208(g)(2).

Dated: December 19, 2014.

Paul Piquado,

Assistant Secretary for Enforcement and Compliance.

Agreement Suspending the Antidumping Duty Investigation on Sugar From Mexico

Pursuant to the requirements of section 734(c) of the Tariff Act of 1930, as amended (the Act) (19 U.S.C. 1673c(c)) and 19 CFR 351.208, and in satisfaction of the requirements of those provisions, the U.S. Department of Commerce (the Department) and the signatory producers and exporters of Sugar from Mexico (the Signatories) enter into this agreement suspending the antidumping duty investigation of Sugar from Mexico (Agreement), as follows:

I. Product Coverage

The product covered by this Agreement is raw and refined sugar of all polarimeter readings derived from

sugar cane or sugar beets. The chemical sucrose gives sugar its essential character. Sucrose is a nonreducing disaccharide composed of glucose and fructose linked by a glycosidic bond via their anomeric carbons. The molecular formula for sucrose is $C_{12}H_{22}O_{11}$; the International Union of Pure and Applied Chemistry (IUPAC) International Chemical Identifier (InChl) for sucrose is 1S/C12H22O11/c13-l-4-6(16)8(18)9(19)11(21-4)23-12(3-15)10(20)7(17)5(2-14)22-12/h4-11,13-20H,1-3H2/t4-,5-,6-,7-,8+,9-,10+,11-,12+/m1/s1; the InChl Key for sucrose is CZMRCDWAGMRECN-UGDNZRGBSA-N; the U.S. National Institutes of Health PubChem Compound Identifier (CID) for sucrose is 5988; and the Chemical Abstracts Service (CAS) Number of sucrose is 57-50-1.

Sugar described in the previous paragraph includes products of all polarimeter readings described in various forms, such as raw sugar, estandar or standard sugar, high polarity or semi-refined sugar, special white sugar, refined sugar, brown sugar, edible molasses, desugaring molasses, organic raw sugar, and organic refined sugar. Other sugar products, such as powdered sugar, colored sugar, flavored sugar, and liquids and syrups that contain 95 percent or more sugar by dry weight are also within the scope of this Agreement.

The scope of the Agreement does not include (1) sugar imported under the Refined Sugar Re-Export Programs of the U.S. Department of Agriculture; [1] (2) sugar products produced in Mexico that contain 95 percent or more sugar by dry weight that originated outside of Mexico; (3) inedible molasses (other than inedible desugaring molasses noted above); (4) beverages; (5) candy; (6) certain specialty sugars; and (7) processed food products that contain sugar (*e.g.,* cereals). Specialty sugars excluded from the scope of this Agreement are limited to the following: Caramelized slab sugar candy, pearl sugar, rock candy, dragees for cooking and baking, fondant, golden syrup, and sugar decorations.

Merchandise covered by this Agreement is typically imported under the following headings of the HTSUS: 1701.12.1000, 1701.12.5000, 1701.13.1000, 1701.13.5000, 1701.14.1000, 1701.14.5000, 1701.91.1000, 1701.91.3000, 1701.99.1010, 1701.99.1025, 1701.99.1050, 1701.99.5010, 1701.99.5025, 1701.99.5050, and 1702.90.4000. The tariff classification is provided for convenience and customs purposes; however, the written description of the scope of this Agreement is dispositive.

[1] This exclusion applies to sugar imported under the Refined Sugar Re-Export Program, the Sugar-Containing Products Re-Export Program, and the Polyhydric Alcohol Program administered by the U.S. Department of Agriculture.

II. Definitions

For purposes of the Agreement, the following definitions apply:

A. ''Anniversary Month'' means the month in which the Agreement becomes effective.

B. ''Date of Export'' means the date on which the product is exported from Mexico to the United States.

C. ''Effective Date'' means the date on which the Department and the signatory producers/exporters sign the Agreement.

D. ''Interested Party'' means any person or entity that meets the definitions provided in section 771(9) of the Act.

E. ''Mexico'' means the customs territory of the United Mexican States and foreign trade zones located within the territory of Mexico.

F. ''Other Sugar'' means Sugar that does not meet the definition of Refined Sugar under this Agreement.

G. ''Reference Price'' means the minimum price at which merchandise subject to this Agreement can be sold in the United States.

H. ''Refined Sugar'' means Sugar with a polarity of 99.5 and above.

I. ''Sugar'' means the product described under Section I, ''Product Coverage,'' of the Agreement.

J. ''Substantially all'' of the subject merchandise means exporters and producers that have accounted for not less than 85 percent by value or volume of the subject merchandise.

K. ''United States'' means the customs territory of the United States of America (the 50 States, the District of Columbia and Puerto Rico) and foreign trade zones located within the territory of the United States.

L. ''USDA'' means the United States Department of Agriculture.

M. ''Violation'' means noncompliance with the terms of the Agreement, whether through an act or omission, except for noncompliance that is inconsequential or inadvertent, and does not materially frustrate the purposes of the Agreement.

Any term or phrase not defined by this section shall be defined using either a definition provided in the Act for that term or phrase, or the plain meaning of that term, as appropriate.

III. Suspension of Investigation

As of the Effective Date, in accordance with section 734(c) of the Act and 19 CFR 351.208, the Department will suspend its antidumping duty investigation on Sugar from Mexico initiated on April 17, 2014. *See Sugar from Mexico: Initiation of Antidumping Duty Investigation,* 79 FR 22795 (April 24, 2014).

IV. U.S. Import Coverage

In accordance with section 734(c)(1) of the Act, the Signatories are the producers and exporters in Mexico which account for substantially all of the subject merchandise imported into the United States. The Department may at any time during the period of the Agreement require additional producers/exporters in Mexico to accede to the Agreement to ensure that not less than substantially all imports into the United States are subject to this Agreement.

V. Statutory Conditions for the Agreement

In accordance with section 734(c)(2) of the Act, the Department has determined that extraordinary circumstances are present in this investigation because the suspension of the investigation will be more beneficial to the domestic industry than the continuation of the investigation and that the investigation is complex.

In accordance with section 734(d) of the Act, the Department determines that the suspension of the investigation is in the public interest and that effective monitoring of the Agreement by the United States is practicable. Section 734(a)(2)(B) of the Act provides that the public interest includes the availability of supplies of the merchandise and the relative impact on the competitiveness of the domestic industry producing the like merchandise, including any such impact on employment and investment in that industry. Accordingly, if a domestic producer requests an administrative review of the status of, and compliance with, the Agreement, the Department will take these factors into account in conducting that review. If the Department finds that the Agreement is not working as intended in this regard, the Department will explore all appropriate measures, including renegotiation of the terms of the Agreement to resolve the problem or measures under section 751(d)(1) of the Act.

VI. Price Undertaking

Each Signatory individually agrees that, to prevent price suppression or undercutting, it will not sell in the United States, on or after the Effective Date, Sugar at prices that are less than the Reference Prices, established in Appendix I to the Agreement.

Each Signatory individually agrees that for each entry the amount by which the estimated normal value exceeds the export price (or the constructed export price) will not exceed 15 percent of the weighted average amount by which the estimated normal value exceeded the export price (or constructed export price) for all less-than-fair-value entries of the producer/exporter examined during the course of the investigation, in accordance with the Act and the Department's regulations and procedures, including but not limited to the calculation methodologies described in Appendix II of this Agreement.

VII. Monitoring of the Agreement

A. Import Monitoring

1. The Department will monitor entries of Sugar from Mexico to ensure compliance with section VI of this Agreement.

2. The Department will review publicly available data and other official import data, including, as appropriate, records maintained by U.S. Customs and Border Protection (CBP), to determine whether there have been imports that are inconsistent with the provisions of this Agreement. The Department also intends to consult with the USDA regarding monthly information submitted by processors, refiners, and importers of Sugar from Mexico.

3. The parties to this Agreement acknowledge that the Signatories intend to establish a joint industry-Government-of-Mexico working group (''Working Group'') that will regularly monitor and reconcile Mexican export data and identify and address any inconsistencies or irregularities. The Working Group will refer any alleged violations (either those discovered during its monitoring exercises or those reported by the Department) to the Government of Mexico (''GOM'') for appropriate action. For further information, please see information provided in the links provided at the Department's Web page, *http://enforcement.trade.gov/agreements/index.html.*

4. The Department will review, as appropriate, data it receives from the Working Group and through any data exchange program between U.S. and GOM agencies to determine whether there have been imports that are inconsistent with the provisions of this Agreement.

B. Compliance Monitoring

1. The Department may require, and each Signatory agrees to provide confirmation through documentation provided to the Department, that the price received on any sale subject to this Agreement was not less than the established Reference Prices. The Department may require that such documentation be provided and be subject to verification.

2. The Department may require, and each Signatory agrees to report in the prescribed format and using the prescribed method of data compilation, each sale of Sugar, either directly or indirectly to unrelated purchasers in the United States, including each adjustment applicable to each sale, as specified by the Department. The information to be reported may include, for example, F.O.B. sales value, unit price, date of sale, sales order number(s), importer of record, trading company, customer, customer relationship, destination, as well as any other information deemed by the Department to be relevant. Each Signatory agrees to permit review and on-site inspection of all information deemed necessary by the Department to verify the reported information.

3. The Department may initiate administrative reviews under section 751(a) of the Act in the month immediately following the Anniversary Month, upon request or upon its own initiative, to ensure that exports of Sugar from Mexico satisfy the requirements of sections 734(c)(1)(A) and (B) of the Act. The Department may conduct administrative reviews under sections 751(b) and (c), and 781 of the Act, as appropriate. The Department may perform verifications pursuant to administrative reviews conducted under section 751 of the Act.

4. At any time it deems appropriate, and without prior notice, the Department will conduct verifications of persons or entities handling Signatory merchandise to determine whether they are selling Signatory merchandise in accordance with the terms of this Agreement. The Department will also conduct verifications at locations and times it deems appropriate to ensure compliance with the terms of this Agreement.

C. Shipping and Other Arrangements

1. All Reference Prices will be expressed in U.S. Dollars ($) per pound (lb.) by dry weight commercial value, in accordance with Appendix I of this Agreement.

2. The parties to this Agreement acknowledge that under Mexican regulations, Mexican Sugar producers and exporters exporting to the United States will need to become Signatories to the Agreement. Signatories will fully comply with all requirements of Mexican regulations issued by the relevant Mexican authorities.

For further information please see information in the links provided at the Department's Web page, *http://enforcement.trade.gov/agreements/index.html.*

3. Signatories agree not to take any action that would circumvent or otherwise evade, or defeat the purpose of, this Agreement. Signatories agree to undertake any measures that will help to prevent circumvention.

4. Not later than 30 days after the end of each quarter, each Signatory will submit a written statement to the Department certifying that all sales during the most recently completed quarter were at net prices, after rebates, discounts, or other adjustments, at or above the Reference Prices in effect and were not part of or related to any act or practice which would have the effect of hiding the real price of the Sugar being sold. Further, each Signatory will certify in this same statement that all sales made during the relevant quarter were not part of or related to any bundling arrangement, discounts/free goods/financing package, swap or other exchange where such arrangement is designed to circumvent the basis of the Agreement. Each Signatory that did not export Sugar to the United States during any given quarter will submit a written statement to the Department certifying that it made no sales to the United States during the most recently completed quarter. Each Signatory agrees to permit full verification of its certification as the Department deems necessary. Failure to provide a quarterly certification may be considered a violation of the Agreement.

D. Rejection of Submissions

The Department may reject: (1) Any information submitted after the deadlines set forth in this Agreement; (2) any submission that does not comply with the filing, format, translation, service, and certification of documents requirements under 19 CFR 351.303; (3) submissions that do not comply with the procedures for establishing business proprietary treatment under 19 CFR 351.304; and (4) submissions that do not comply with any other applicable regulations, as appropriate. If information is not submitted in a complete and timely fashion or is not fully verifiable, the Department may use facts otherwise available for the basis of its decision, as it determines appropriate, consistent with section 776 of the Act.

E. Consultations

1. Compliance Consultations

a. When the Department identifies, through import or compliance monitoring or otherwise, that sales may have been made at prices inconsistent with section VI of this Agreement, or that the sales are otherwise in circumvention of this Agreement, the Department will notify each Signatory which it believes is responsible or, if applicable, notify the Signatory's representative. The Department will consult with each such party for a period of up to 60 days to establish a factual basis regarding sales that may be inconsistent with section VI of this Agreement.

b. During the consultation period, the Department will examine any information that it develops or which is submitted, including information requested by the Department under any provision of this Agreement.

c. If the Department is not satisfied at the conclusion of the consultation period that sales by such Signatory are being made in compliance with section VI of this Agreement, or that the sales are not circumventing this Agreement, the Department may evaluate under section 351.209 of its regulations, or section 751 of the Act whether this Agreement is being violated, as defined in section VIII of this Agreement, by such Signatory.

If the Department concludes that sales by a Signatory have been made at prices inconsistent with section VI of this Agreement, or that sales are circumventing the Agreement, the Department shall take action, as warranted. The provisions of this section do not supersede the provisions of paragraphs VIII.A–VIII.C if the Department determines that the entries were made at prices inconsistent with section VI of this Agreement.

2. Operations Consultations

a. The Department will consult with the Signatories regarding the operation of this Agreement. A party to the Agreement may request such consultations, as necessary.

b. Notwithstanding the previous paragraph, the parties may agree to revise the Reference Prices subject to consultations.

VIII. Violations of the Agreement

A. If the Department determines that there has been a violation of the Agreement or that the Agreement no longer meets the requirements of section 734(c) or (d) of the Act, the Department shall take action it determines appropriate under section 734(i) of the Act and the Department's regulations.

B. Pursuant to section 734(i) of the Act, the Department will refer to CBP any violations of the Agreement that appear to be intentional. Any person who intentionally commits a violation of the Agreement shall be subject to a civil penalty assessed in the same amount, in the same manner, and under the same procedures as the penalty imposed for a fraudulent violation of section 592(a) of the Act. A fraudulent violation of section 592(a) of the Act is punishable by a civil penalty in an amount not to exceed the domestic value of the merchandise. For purposes of the Agreement, the domestic value of the merchandise will be deemed to be not less than the Reference Prices, as the Signatories agree to not sell the subject merchandise at prices that are less than the Reference Price and to ensure that sales of the subject merchandise are made consistent with the terms of the Agreement.

C. In addition, the Department will examine the activities of Signatories and any other party to a sale subject to the Agreement to determine whether any activities conducted by any party aided or abetted another party's violation of the Agreement. If any such parties are found to have aided or abetted another party's violation of the Agreement, they shall be subject to the same civil penalties described in section VIII.B above. Signatories to this Agreement consent to release of all information presented to or obtained by the Department during the conduct of verifications with CBP and/or the USDA.

D. The following activities shall be considered violations of the Agreement:

1. Sales that are at net prices (after rebates, back-billing, discounts, and other claims) that are below the Reference Prices.

2. Any act or practice which would have the effect of hiding the real price of the Sugar being sold.

3. Any other material violation or breach, as determined by the Department.

IX. Disclosure and Comment

This section provides the terms for disclosure and comment following consultations or during segments of the proceeding not involving a review under section 751 of the Act.

A. The Department may make available to representatives of each Interested Party, pursuant to and consistent with 19 CFR 351.304–351.306, any business proprietary information submitted to and/or collected by the Department pursuant to section VII of this Agreement, as well as the results of the Department's analysis of that information.

B. If the Department proposes to revise the Reference Price(s) as a result of consultations under this Agreement, the Department will disclose the preliminary Reference Price(s), including any calculation methodology, not less than 30 days before the date on which the price(s) would become final and effective.

C. Interested Parties shall file all communications and other submissions made pursuant to section VII of the Agreement via the Department's Antidumping and Countervailing Duty Centralized Electronic Service System (ACCESS), which is available to registered users at *https://access.trade.gov* and to all parties at the following address:

U.S. Department of Commerce,
Central Records Unit, Room 7046,
1401 Constitution Ave. NW.,
Washington, DC 20230

Such communications and submissions shall be filed consistent with the requirements provided in 19 CFR 351.303.

X. Duration of the Agreement

A. This Agreement has no scheduled termination date. Termination of the suspended investigation shall be considered in accordance with the five-year review provisions of section 751(c) of the Act, and section 351.218 of the Department's regulations.

B. The Signatories or the Department may terminate this Agreement at any time. Termination of the Agreement shall be effective no later than 60 days after the date written notice of termination is provided to the Department or the Signatories, respectively.

C. Upon termination, the Department shall follow the procedures outlined in section 734(i)(1) of the Act.

D. The Department will terminate this Agreement in the event that Signatories accounting for a significant proportion of exports of Sugar from Mexico request continuation of the antidumping investigation of Sugar from Mexico, or the GOM requests continuation of the countervailing duty investigation of Sugar from Mexico.

XI. Other Provisions

A. Upon request, the Department will advise any Signatory of the Department's methodology for calculating its export price (or constructed export price) and normal value in accordance with the Act and the Department's regulations and

procedures, including but not limited to, the calculation methodologies described in Appendix II of this Agreement.

B. By entering into the Agreement, the Signatories do not admit that exports of Sugar from Mexico are having or have had an injurious effect on Sugar producers in the United States, have caused the suppression or undercutting of prices, or have been sold at less than fair value.

C. As of the Effective Date, the Department shall instruct CBP to refund any cash deposits collected as a result of the antidumping duty investigation on sugar from Mexico. The Department shall instruct CBP to terminate the suspension of liquidation consistent with section 734(f)(2)(B) of the Act.

Paul Piquado,

Assistant Secretary for Enforcement and Compliance,

U.S. Department of Commerce.

Date

The following parties hereby certify that the producers and exporters of Sugar from Mexico that are members of their organization, and which have authorized the undersigned to sign this Agreement on their behalf, agree to abide by all terms of the Agreement:

Juan Cortina Gallardo,

President,

Cámara Nacional de Las Industrias Azucarera y Alcoholera.

Date

Humberto Jasso Torres,

Director General,

Cámara Nacional de Las Industrias Azucarera y Alcoholera.

Date

Appendix I—Suspension of Antidumping Investigation—Sugar From Mexico—Reference Prices

Consistent with the requirements of section 734(c) of the Act, to eliminate completely the injurious effect of exports to the United States and to prevent the suppression or undercutting of price levels of domestic sugar, the Reference Prices are as follows:

The FOB plant Reference Price for Refined Sugar is $0.2600 per pound by dry weight commercial value.

The FOB plant Reference Price for all Other Sugar is $0.2225 per pound by dry weight commercial value.

Appendix II—Suspension of Antidumping Investigation—Sugar From Mexico—Analysis of Prices at Less Than Fair Value

A. Normal Value

The cost or price information reported to the Department that will form the basis of the normal value (NV) calculations for purposes of the Agreement must be comprehensive in nature and based on a reliable accounting system (*e.g.,* a system based on well-established standards and can be tied either to the audited financial statements or to the tax return filed with the Mexican government).

1. Based on Sales Prices in the Comparison Market

When the Department bases normal value on sales prices, such prices will be the prices at which the foreign like product is first sold for consumption in the comparison market in the usual commercial quantities and in the ordinary course of trade. Also, to the extent practicable, the comparison shall be made at the same level of trade as the export price (EP) or constructed export price (CEP).

Calculation of NV:

Gross Unit Price
− Billing Adjustments
− Movement Expenses
− Discounts and Rebates
− Direct Selling Expenses
− Commissions
− H ome Market Packing Expenses
= Normal Value (NV)

2. Constructed Value

When normal value is based on constructed value, the Department will compute constructed values (CVs), as appropriate, based on the sum of each respondent's costs, plus amounts for selling, general and administrative expenses (SG&A), U.S. packing costs, and profit. The Department will collect this cost data in order to determine the accurate per-unit CV. Calculation of CV:

+ Direct Materials
+ Direct Labor
+ Factory overhead
= Cost of Manufacturing
+ Home Market SG&A*
= Cost of Production
+ U.S. Packing
+ Profit*
= Constructed Value (CV)

* SG&A and profit are based on home-market sales of the foreign like product made in the ordinary course of trade. SG&A includes financing but not movement expenses.

B. Export Price and Constructed Export Price

EP and CEP refer to the two types of calculated prices for merchandise imported into the United States. Both EP and CEP are based on the price at which the subject merchandise is first sold to a person not affiliated with the foreign producer or exporter.

Calculation of EP:

Gross Unit Price
− Movement Expenses
− Discounts and Rebates
+/− Billing Adjustments
+ Packing Expenses
+ Rebated Import Duties
= Export Price (EP)

Calculation of CEP:

Gross Unit Price
− Movement Expenses
− Discounts and Rebates
+/− Billing Adjustments
− Direct Selling Expenses
− Indirect Selling Expenses that relate to commercial activity in the United States
− The cost of any further manufacture or assembly incurred in the United States
− CEP Profit
+ Rebated Import Duties
− Commissions
= Constructed Export Price (CEP)

C. Fair Comparisons

To ensure that a fair comparison with EP or CEP is made, the Department will make adjustments to normal value. The Department will adjust for physical differences between the merchandise sold in the United States and the merchandise sold in the home market. For EP sales, the Department will add in U.S. direct selling expenses, U.S. commissions [2] and packing expenses. For CEP sales, the Department will subtract the amount of the CEP offset, if warranted, and add in U.S. packing expenses.

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DEPARTMENT OF COMMERCE

International Trade Administration

[C–201–846]

Sugar From Mexico: Suspension of Countervailing Duty Investigation

AGENCY: Enforcement and Compliance, International Trade Administration, Department of Commerce.

DATES: *Effective Date:* December 19, 2014.

SUMMARY: The Department of Commerce (''the Department'') has suspended the countervailing duty investigation on sugar from Mexico. The basis for this action is an agreement between the Department and the Government of Mexico (''GOM''), wherein the GOM has agreed not to provide any new or additional export or import substitution subsidies on the subject merchandise and has agreed to restrict the volume of direct or indirect exports to the United States of sugar from all Mexican producers/exporters in order to eliminate completely the injurious effects of exports of this merchandise to the United States.

[2] If there are not commissions in both markets, then the Department will apply a commission offset.

FOR FURTHER INFORMATION CONTACT: Judith Wey Rudman or Sally Craig Gannon at (202) 482–0192 or (202) 482–0162, respectively; Bilateral Agreements Unit, Office of Policy, Enforcement and Compliance, International Trade Administration, U.S. Department of Commerce, 14th Street & Constitution Avenue NW., Washington, DC, 20230.

SUPPLEMENTARY INFORMATION:

Background

On April 17, 2014, the Department initiated a countervailing duty investigation under section 702 of the Tariff Act of 1930, as amended (''the Act''), to determine whether manufacturers, producers, or exporters of sugar from Mexico receive subsidies. *See Sugar from Mexico: Initiation of Countervailing Duty Investigation,* 79 FR 22790 (April 24, 2014). On August 25, 2014, the Department preliminarily determined that countervailable subsidies are being provided to producers and exporters of sugar from Mexico and aligned the final countervailing duty determination with the final antidumping duty determination. *See Sugar from Mexico: Preliminary Affirmative Countervailing Determination and Alignment of Final Countervailing Duty Determination With Final Antidumping Duty Determination,* 79 FR 51956 (September 2, 2014) (''*Preliminary Determination*'').

On October 27, 2014, the Department and the GOM initialed a proposed agreement to suspend the countervailing duty investigation on sugar from Mexico. After initialing the proposed agreement, consistent with 704(e)(1) of the Act, the Department notified and consulted with the petitioners (*i.e.,* the American Sugar Coalition and its individual members: American Sugar Cane League, American Sugar Refining, Inc., American Sugarbeet Growers Association, Florida Sugar Cane League, Hawaiian Commercial and Sugar Company, Rio Grande Valley Sugar Growers, Inc., Sugar Cane Growers Cooperative of Florida, and United States Beet Sugar Association) concerning its intention to suspend the antidumping investigation on sugar from Mexico. The Department also notified the other parties to the investigation and the International Trade Commission (''ITC'') of the proposed agreement, consistent with 704(e)(1) of the Act. Also on October 27, 2014, we invited interested parties to provide written comments on the proposed suspension agreement by no later than the close of business on November 10, 2014. *See* ''Memorandum to All Interested Parties'' and ''Draft Agreement Suspending the Countervailing Duty Investigation on Sugar from Mexico,'' dated October 27, 2014. On October 30, 2104, the Department issued a memorandum titled ''Proposed Scope Clarification'' and requested comments from interested parties. On November 7, 2014, we extended the deadline to submit comments on the draft suspension agreement and the proposed scope clarification until November 18, 2014. *See* memorandum titled ''Sugar from Mexico: Notice of Extension of Deadline to Submit Comments on Draft Suspension Agreements and Scope Clarification,'' dated November 7, 2014. We received comments from numerous parties by the November 18, 2014, deadline.

The Department and the GOM signed the suspension agreement on December 19, 2014. *See Agreement Suspending the Countervailing Duty Investigation on Sugar from Mexico,* signed on December 19, 2014 (''Suspension Agreement''), attached hereto. Based on the scope comments received in this investigation, the Department has revised the scope of this investigation, as provided in the scope of the Suspension Agreement.

Scope of Agreement

See Section I, Product Coverage, of the Suspension Agreement.

Suspension of Investigation

The Department consulted with the parties to the proceeding and has considered the comments submitted by interested parties with respect to the proposal to suspend the countervailing duty investigation. In accordance with section 704(c) of the Act, we have determined that extraordinary circumstances are present in this case, as defined by section 704(c)(4) of the Act. *See* the memorandum titled ''Agreement Suspending the Countervailing Duty Investigation on Sugar from Mexico: Existence of Extraordinary Circumstances, Public Interest, and Effective Monitoring Assessments'' from Lynn Fischer Fox, Deputy Assistant Secretary for Policy and Negotiations, to Paul Piquado, Assistant Secretary for Enforcement and Compliance, dated December 19, 2014 (''statutory requirements memorandum'').

The Suspension Agreement provides that: (1) The GOM will not provide any new or additional export or import substitution subsidies on the subject merchandise; and (2) the GOM will restrict the volume of direct or indirect exports to the United States of subject merchandise from all Mexican producers/exporters.

Following consultations under section 704(a)(2)(C) of the Act, we have also determined that the Suspension Agreement is in the public interest and can be monitored effectively, as required under section 704(d) of the Act. *See* statutory requirements memorandum.

For the reasons outlined above, we find that the Suspension Agreement meets the criteria of section 704(c) and (d) of the Act.

The terms and conditions of this Suspension Agreement, signed December 19, 2014, are set forth in the Suspension Agreement, which is attached to this notice.

International Trade Commission

In accordance with section 704(f) of the Act, the Department has notified the ITC of the Suspension Agreement.

Suspension of Liquidation

The suspension of liquidation ordered in the *Preliminary Determination,* shall continue to be in effect, subject to section 704(h)(3) of the Act. Section 704(f)(2)(B) of the Act provides that the Department may adjust the security required to reflect the effect of the Suspension Agreement. The Department has found that the Suspension Agreement eliminates completely the injurious effects of imports and, thus, the Department is adjusting the security required to zero. If there is no request for review of suspension under section 704(h) of the Act, or if the ITC conducts a review and finds that the injurious effect of imports of the subject merchandise is eliminated completely by the Suspension Agreement, the Department will terminate the suspension of liquidation of all entries of sugar from Mexico and refund any cash deposits collected on entries of sugar from Mexico consistent with section 704(h)(3) of the Act.

Notwithstanding the Suspension Agreement, the Department will continue the investigation if it receives such a request within 20 days after the date of publication of this notice in the **Federal Register**, in accordance with section 704(g) of the Act. Pursuant to Section XI of the Suspension Agreement, the Department will terminate the Suspension Agreement in the event that the GOM requests continuation of this investigation, or signatories accounting for a significant proportion of exports of sugar from Mexico request continuation of the antidumping investigation of sugar from Mexico, and will resume the investigation.

Administrative Protective Order Access

The Administrative Protective Order (''APO'') the Department granted in the investigation segment of this proceeding remains in place. While the investigation is suspended, parties subject to the APO may retain, but may not use, information received under that APO. All parties wishing access to business proprietary information submitted during the administration of the Suspension Agreement must submit new APO applications in accordance with the Department's regulations currently in effect. *See* section 777(c)(1) of the Act; 19 CFR 351.103, 351.304, 351.305, and 351.306. An APO for the administration of the Suspension Agreement will be placed on the record within five days of the date of publication of this notice in the **Federal Register**.

We are issuing and publishing this notice in accordance with section 704(f)(1)(A) of the Act and 19 CFR 351.208(g)(2).

Dated: December 19, 2014.

Paul Piquado,

Assistant Secretary for Enforcement and Compliance.

Attachment

AGREEMENT SUSPENDING THE COUNTERVAILING DUTY INVESTIGATION ON SUGAR FROM MEXICO

Pursuant to the requirements of section 704(c) of the Tariff Act of 1930, as amended (the Act) (19 U.S.C. 1671c(c)) and 19 CFR 351.208, and in satisfaction of the requirements of those provisions, the U.S. Department of Commerce (the Department) and the Government of Mexico (GOM), through the Secretaria de Economia, enter into this agreement suspending the countervailing duty investigation of Sugar from Mexico (Agreement), as follows:

I. Product Coverage

The product covered by this Agreement is raw and refined sugar of all polarimeter readings derived from sugar cane or sugar beets. The chemical sucrose gives sugar its essential character. Sucrose is a nonreducing disaccharide composed of glucose and fructose linked by a glycosidic bond via their anomeric carbons. The molecular formula for sucrose is $C_{12}H_{22}O_{11}$; the International Union of Pure and Applied Chemistry (IUPAC) International Chemical Identifier (InChl) for sucrose is 1S/C12H22O11/c13-l-4–6(16)8(18)9(19)11(21–4)23–12(3–15)10(20)7(17)5(2–14)22–12/h4–11,13–20H,1–3H2/t4-,5-,6-,7-,8+,9-,10+,11-,12+/m1/s1; the InChl Key for sucrose is CZMRCDWAGMRECN–UGDNZRGBSA–N; the U.S. National Institutes of Health PubChem Compound Identifier (CID) for sucrose is 5988; and the Chemical Abstracts Service (CAS) Number of sucrose is 57–50–1.

Sugar described in the previous paragraph includes products of all polarimeter readings described in various forms, such as raw sugar, estandar or standard sugar, high polarity or semi-refined sugar, special white sugar, refined sugar, brown sugar, edible molasses, desugaring molasses, organic raw sugar, and organic refined sugar. Other sugar products, such as powdered sugar, colored sugar, flavored sugar, and liquids and syrups that contain 95 percent or more sugar by dry weight are also within the scope of this Agreement.

The scope of the Agreement does not include (1) sugar imported under the Refined Sugar Re-Export Programs of the U.S. Department of Agriculture; [1] (2) sugar products produced in Mexico that contain 95 percent or more sugar by dry weight that originated outside of Mexico; (3) inedible molasses (other than inedible desugaring molasses noted above); (4) beverages; (5) candy; (6) certain specialty sugars; and (7) processed food products that contain sugar (*e.g.,* cereals). Specialty sugars excluded from the scope of this Agreement are limited to the following: caramelized slab sugar candy, pearl sugar, rock candy, dragees for cooking and baking, fondant, golden syrup, and sugar decorations.

Merchandise covered by this Agreement is typically imported under the following headings of the HTSUS: 1701.12.1000, 1701.12.5000, 1701.13.1000, 1701.13.5000, 1701.14.1000, 1701.14.5000, 1701.91.1000, 1701.91.3000, 1701.99.1010, 1701.99.1025, 1701.99.1050, 1701.99.5010, 1701.99.5025, 1701.99.5050, and 1702.90.4000. The tariff classification is provided for convenience and customs purposes; however, the written description of the scope of this Agreement is dispositive.

II. Definitions

For purposes of the Agreement, the following definitions apply:

A. ''Anniversary Month'' means the month in which the Agreement becomes effective.

B. ''Base Export Limit'' means the amount of Sugar allocated to producers and exporters of Sugar in Mexico at the beginning of each Export Limit Period.

C. ''Date of Export'' means the date on which the product is exported from Mexico to the United States.

D. ''Effective Date'' means the date on which the Department and the GOM sign the Agreement.

E. ''Export License'' means the document issued by the GOM's export license issuing authority, pursuant to Section VI of the Agreement.

F. ''Export Limit'' means the quantity of Mexican Sugar permitted to be exported, based on the Date of Export, during a given Export Limit Period.

G. ''Export Limit Period'' means one of the following periods:

1. ''Initial Export Limit Period'' covers entries of Sugar entered, or withdrawn from warehouse for consumption, between the Effective Date and September 30, 2015.

2. ''Subsequent Export Limit Period'' covers entries of Sugar entered, or withdrawn from warehouse for consumption, in each subsequent period from October 1 through September 30.

H. ''Interested Party'' means any person or entity that meets the definitions in section 771(9) of the Act.

I. ''Indirect Exports'' means exports of Sugar from Mexico to the United States through one or more Third Countries, whether or not such exports are further processed, provided that the further processing does not result in a substantial transformation or a change in the country of origin, as determined by the Department.

J. ''Mexico'' means the customs territory of the United Mexican States and foreign trade zones located within the territory of Mexico.

K. ''Other Sugar'' means Sugar that does not meet the definition of Refined Sugar under this Agreement.

L. ''Refined Sugar'' means Sugar with a polarity of 99.5 and above.

M. ''Sugar'' means the product described under Section I, ''Product Coverage,'' of the Agreement.

N. ''Target Quantity of U.S. Needs'' means 100 percent of U.S. Needs, as defined below.

O. ''Third Country'' or ''Third Countries'' mean any country other than the United States or Mexico, including any customs territory or free trade zone administered, governed, or controlled by such country.

P. ''United States'' means the customs territory of the United States of America (the 50 States, the District of Columbia and Puerto Rico) and foreign trade zones located within the territory of the United States.

[1] This exclusion applies to sugar imported under the Refined Sugar Re-Export Program, the Sugar-Containing Products Re-Export Program, and the Polyhydric Alcohol Program administered by the U.S. Department of Agriculture.

Q. ''USDA'' means the United States Department of Agriculture.

R. ''U.S. Needs'' is calculated based on information in the WASDE published by USDA and means:

(Total Use * 1.135) − Beginning Stocks − Production − TRQ Imports − Other Program Imports − (Footnote 5 for ''other high tier'' + ''other'')

S. ''Violation'' means noncompliance with the terms of the Agreement, whether through an act or omission, except for noncompliance that is inconsequential or inadvertent, and does not materially frustrate the purposes of the Agreement.

T. ''WASDE'' means the ''World Agriculture Supply and Demand Estimates'' published by the USDA.

Any term or phrase not defined by this section shall be defined using either a definition provided in the Act for that term or phrase, or the plain meaning of that term, as appropriate.

III. Suspension of Investigation

As of the Effective Date, in accordance with section 704(c)(1) and (3) of the Act and 19 CFR 351.208, the Department will suspend its countervailing duty investigation on Sugar from Mexico initiated on April 17, 2014. *See Sugar from Mexico: Initiation of Countervailing Duty Investigation,* 79 FR 22,790 (Apr. 24, 2014).

IV. Statutory Conditions for the Agreement

In accordance with section 704(c)(1) and (4) of the Act, the Department has determined that extraordinary circumstances are present in this investigation because the suspension of the investigation will be more beneficial to the domestic industry than the continuation of the investigation and the investigation is complex.

In accordance with section 704(d)(1) of the Act, the Department has determined that the suspension of the investigation is in the public interest and that effective monitoring of the Agreement by the United States is practicable. Section 704(a)(2)(B) of the Act provides that the public interest includes the availability of supplies of the merchandise and the relative impact on the competitiveness of the domestic industry producing the like merchandise, including any such impact on employment and investment in that industry. Accordingly, if a domestic producer requests an administrative review of the status of, and compliance with, the Agreement, the Department will take these factors into account in conducting that review. If the Department finds that the Agreement is not working as intended in this regard, the Department will explore all appropriate measures, including renegotiation of the terms of the Agreement to resolve the problem or measures under Section 751(d)(1) of the Act.

V. Export Limits

No Sugar covered by the Agreement, whether exported directly or indirectly from Mexico, shall be entered into the United States unless, when cumulated with all prior entries of Sugar exported from Mexico during the Export Limit Period in which the Sugar was exported, it does not exceed the applicable Export Limit set forth below. All exports of Sugar from Mexico that enter the United States will be counted against the Export Limit established for the applicable Export Limit Period.

A. The Export Limit for the Initial Export Limit Period shall be calculated using the formula provided in Section V.B, beginning with the December allocation in Section V.B.2. The restriction in Section V.C.2 below shall apply, and the March allocation in Section V.B.3 applies.

B. The Export Limit for each Subsequent Export Limit Period will be seventy (70) percent of the Target Quantity of U.S. Needs as calculated based on the July WASDE preceding the beginning of the Export Limit Period. The Export Limit will be effective October 1. The Export Limit may be increased in the following manner:

1. In September of each Subsequent Export Limit Period, the Department will determine if there is a need for additional Sugar in the U.S. market beyond the Export Limit calculated in July. The Department will calculate the Target Quantity of U.S. Needs based on information in the September WASDE. Effective October 1, the Export Limit shall be revised to equal seventy (70) percent of the Target Quantity of U.S. Needs, unless that amount is less than or equal to the Export Limit announced in July, in which case the Export Limit shall not change.

2. In December of each Subsequent Export Limit Period, the Department will determine if there is a need for additional Sugar in the U.S. market beyond the Export Limit calculated in September. The Department will calculate the Target Quantity of U.S. Needs based on information in the December WASDE. Effective January 1, the Export Limit shall be revised to equal eighty (80) percent of the Target Quantity of U.S. Needs, unless that amount is less than or equal to the Export Limit announced in September, in which case the Export Limit shall not change.

3. In March of each Subsequent Export Limit Period, the Department will determine if there is a need for additional Sugar in the U.S. market beyond the Export Limit calculated in December. The Department will calculate the Target Quantity of U.S. Needs based on information in the March WASDE. Effective April 1, the Export Limit shall be revised to equal 100 percent of the Target Quantity of U.S. Needs, unless the amount is less than or equal to the Export Limit announced in December, in which case the Export Limit shall not change.

4. Prior to April 1 of any Export Limit Period, the Department may increase the Export Limit to address potential shortages in the U.S. market that are identified by USDA, in writing. After April 1, if USDA informs the Department, in writing, of any additional need for Sugar from Mexico, the Department may increase the Export Limit based upon USDA's request.

C. The following restrictions on shipping patterns for exports of Sugar from Mexico to the United States shall also apply.

1. No more than 30 percent of U.S. Needs calculated in each July and effective October 1 may be exported to the United States during the period October 1 through December 31.

2. No more than 55 percent of U.S. Needs calculated in each December and effective January 1 may be exported to the United States during the period October 1 through March 31.

3. Refined Sugar may account for no more than 53 percent of the exports during any given Export Limit Period.

D. If any Sugar from Mexico is entered into the United States in excess of the Export Limit established for the relevant Export Limit Period or without a valid Export License, the Department shall consult with the GOM and request that the GOM reduce the export allocation for the producer/exporter involved by twice the volume of the entry. If the export allocation has been reached for the producer/exporter for the relevant Export Limit Period, twice the volume of the entry will be subtracted from the producer/exporter's allocation in the next Export Limit Period. If the entry cannot be tied to a specific producer/exporter, the Department may reduce the Export Limit that is effective April 1 by twice the volume of the entry.

E. Subsequent to the publication of the March WASDE but prior to March 31 of each Export Limit Period, the GOM will inform the Department if there is any amount of U.S. Needs that exporters of Sugar from Mexico will be

unable to supply during the second half of the Export Limit Period. The Department will adjust the Export Limit downward by any amount that Mexico cannot supply. Mexico agrees that, if it cannot satisfy Mexico's needs using Mexican production, it will not supply those needs with imports from a Third Country or Countries for the purpose of filling the Export Limit with Sugar from Mexico. If the Department receives information that Mexico may have imported Sugar from a Third Country or Countries for this purpose during any Export Limit Period, the Department will hold consultations with the GOM in determining appropriate action, as warranted.

F. The GOM and the Department shall hold consultations regarding the GOM's compliance with the provisions of this section consistent with Section VIII.D.2 of the Agreement.

VI. Implementation

A. On and after 60 days from the Effective Date, presentation of a shipment-specific Export License is required as a condition for entry of Sugar from Mexico into the United States. Pursuant to 19 CFR 351.208(i), the Department will instruct U.S. Customs and Border Protection (CBP) to prohibit the entry of any Sugar from Mexico not accompanied by an Export License.

B. Export Licenses will be shipment-specific and must contain the information identified in Appendix I. Additional information may be included on the Export License or, if necessary, a separate page attached to the Export License. If the bills of lading for each shipment establish that the actual imports into the United States under that license were less than the total volume listed on the license, the GOM shall notify the Department in writing that the GOM intends to issue a new Export License in the same Export Limit Period authorizing additional exports equal in volume to the volume of the undershipment.

C. The GOM will ensure compliance with all of the provisions of the Agreement. To ensure such compliance, the GOM will take the following measures:

1. Ensure that no Sugar is exported from Mexico for entry into the United States during any Export Limit Period that exceeds the Export Limit for that Export Limit Period.

2. Establish an Export Limit licensing and enforcement program for all direct and indirect exports of Sugar from Mexico to the United States no later than 60 days after the Effective Date. Export Licenses shall contain all information described in Appendix I of the Agreement.

3. Require that applications for Export Licenses contain all of the information listed in Appendix I of the Agreement.

4. Refuse to issue an Export License to any applicant that does not permit full verification and reporting under the Agreement of all of the information in the application.

5. Issue Export Licenses sequentially, charged against the Export Limit for the relevant Export Limit Period, and reference any notice of the Export Limit allocation for the relevant Export Limit Period. Export Licenses shall remain valid for entry into the United States for 90 days. The Department and the GOM may agree to an extension of the validity of the Export License in extraordinary circumstances.

6. Permit full verification of all information related to the administration of the Agreement on an annual basis or more frequently, as deemed necessary.

7. Ensure compliance with all procedures established to effectuate the Agreement by any official Mexican institution, chamber, or other authorized Mexican company, and any Mexican producer, exporter, broker, and trader of Sugar.

8. Impose strict measures, such as prohibition from participation in the Export Limit allocation allowed by the Agreement, in the event that any Mexican company does not comply in full with the requirements established by the GOM pursuant to the Agreement.

D. The GOM and the Department shall hold consultations regarding the GOM's compliance with the provisions of this section consistent with Section VIII.D.1 of the Agreement.

VII. Anti-Circumvention

A. The GOM will take all necessary measures to prevent circumvention of the Agreement. These measures shall include requiring that all Mexican exporters of Sugar agree, as a condition of receiving any Export License under the Agreement, not to export directly or indirectly to the United States Sugar that is not accompanied by an Export License issued pursuant to the Agreement and that each such Mexican exporter provide the GOM with a certification that it has required all of its customers to agree, as part of the terms of sale, not to engage in any circumvention activities specified by this Agreement. Circumvention activities may include exporting Sugar from Mexico: (1) in excess of the Export Limit in any given Export Limit Period; (2) without an Export License; and (3) in a manner that requires Mexico to satisfy its needs with imports of sugar from a Third Country or Countries. Circumvention activities may also include, but are not limited to, any bundling arrangement, swap or other exchange where such arrangement is designed to circumvent the basis of the Agreement.

1. If the GOM receives an allegation that circumvention has occurred, including an allegation from the Department, the GOM shall promptly initiate an inquiry, normally complete the inquiry within 45 days and notify the Department of the results of the inquiry within 15 days after the conclusion of the inquiry.

2. If the GOM determines that a Mexican company has participated in a transaction circumventing the Agreement, the GOM shall impose penalties upon such company including, but not limited to, denial of access to an Export License for Sugar under the Agreement.

3. If the GOM determines that a Mexican company has participated in the circumvention of the Agreement, the GOM shall count against the Export Limit for the Export Limit Period in which the circumvention took place an amount of Sugar equivalent to the amount involved in such circumvention and shall immediately notify the Department of the amount deducted. If a sufficient amount is not available in the current Export Limit Period, then the remaining amount shall be deducted from the subsequent Export Limit Period or Periods.

B. The Department will investigate any allegations of circumvention which are brought to its attention both by asking the GOM to investigate such allegations and by itself gathering relevant information. The GOM will respond to requests from the Department for information relating to such allegations. In distinguishing normal arrangements from those which would result in the circumvention of a given Export Limit established by the Agreement, the Department will take the following factors into account, as deemed appropriate:

1. Existence of any verbal or written agreement leading to circumvention of the Agreement;

2. Existence and function of any subsidiaries or affiliates of the parties involved;

3. Existence and function of any historical and traditional patterns of production and trade among the parties involved, and any deviation from such patterns;

4. Existence of any payments unaccounted for by previous or subsequent deliveries, or any payments

to one party for Sugar delivered or swapped by another party;

5. Sequence and timing of the arrangements; and

6. Any other information relevant to the transaction or circumstances.

C. The GOM and the Department shall hold consultations regarding anti-circumvention consistent with Section VIII.D.3 of the Agreement.

VIII. Monitoring of the Agreement

A. Import Monitoring

1. The Department will monitor entries of Sugar from Mexico to ensure compliance with Section V of the Agreement.

2. The Department will review publicly available data and other official import data, including, as appropriate, records maintained by CBP, to determine whether there have been imports that are inconsistent with the provisions of the Agreement. The Department also intends to consult with USDA regarding monthly information submitted by processors, refiners, and importers of Sugar from Mexico.

3. The Department will review, as appropriate, data it receives through any data exchange program between U.S. and Mexican government agencies, to determine whether there have been imports that are inconsistent with the provisions of the Agreement.

4. The Department agrees to discuss with CBP additional mechanisms that may be established and administered by CBP to monitor entries of Sugar.

B. Compliance Monitoring

1. The GOM will collect and provide to the Department such information as is necessary and appropriate to monitor the implementation of, and compliance with, the Agreement, including the following:

a. Within 30 days following the date that the GOM allocates the Export Limit for any Export Limit Period, the GOM shall notify the Department of each allocation recipient and the volume granted to each recipient. The GOM also shall inform the Department of any changes in the volume allocated to individual recipients within 30 days of the date on which such changes become effective.

b. The GOM shall collect and provide to the Department information on exports to the United States in the format in Appendix II to the Agreement and, if requested, on the aggregate quantity and value of exports of Sugar to Third Countries. This information will be provided on a monthly basis as specified in Appendix II, and will be provided no later than 60 days following the end of each month, beginning on February 1, 2015 (for the period from the Effective Date through December 31, 2015). If the Department has concerns with the shipments of a particular exporter, upon request, the GOM will provide information related to that exporter on an expedited basis.

c. The GOM and the Department recognize that the effective monitoring of the Agreement may require the GOM to provide information in addition to that identified in the Agreement. Accordingly, after consulting with the GOM, the Department may request additional reporting requirements consistent with U.S. law and regulations during the course of the Agreement. The GOM shall also collect and provide to the Department, generally within 60 days of the request, any such additional information requested by the Department.

2. The Department has the authority to verify all information related to the administration of the Agreement, including all information relating to potential circumvention of the Agreement, annually or more frequently as deemed necessary. The Department will conduct verifications at locations and times it deems appropriate to ensure compliance with the terms of the Agreement.

3. The Department may initiate administrative reviews under section 751(a) of the Act in the month immediately following the Anniversary Month, upon request, or upon its own initiative, to ensure that exports of Sugar from Mexico satisfy the requirements of section 704(c)(1) and (3) of the Act. The Department may conduct administrative reviews under sections 751(b) and (c), and 781 of the Act, as appropriate. The Department may perform verifications pursuant to administrative reviews conducted under section 751 of the Act.

C. Rejection of Submissions

The Department may reject: (1) any information submitted after the deadlines set forth in the Agreement; (2) any submission that does not comply with the filing, format, translation, service, and certification of documents requirements under 19 CFR 351.303; (3) submissions that do not comply with the procedures for establishing business proprietary treatment under 19 CFR 351.304; and (4) submissions that do not comply with any other applicable regulations, as appropriate. If information is not submitted in a complete and timely fashion or is not fully verifiable, the Department may use facts otherwise available for the basis of its decision, as it determines appropriate, consistent with section 776 of the Act.

D. Consultations

1. Implementation Consultations

a. If the GOM notifies the Department in writing, or the Department otherwise determines, that the GOM for any reason has not satisfied the implementation obligations in Section VI of the Agreement, the Department will consult with the GOM for a period of up to 60 days to ensure that the GOM complies with those obligations within those 60 days.

b. If the Department is not satisfied at the conclusion of the consultation period that exports of Sugar from Mexico are entering the United States in amounts consistent with the Agreement, or entered with a valid Export License, the Department may evaluate under section 351.209 of its regulations, or section 751 of the Act, whether the Agreement is being violated, as defined in Section IX of the Agreement.

2. Compliance Consultations

a. When the Department identifies, through import or compliance monitoring or otherwise, that exports of Sugar from Mexico may have entered the United States in volumes inconsistent with Section V of the Agreement, or without an Export License, the Department will notify the GOM. The Department will consult with the GOM for a period of up to 60 days to establish a factual basis regarding exports that may be inconsistent with Section V of the Agreement.

b. During the consultation period, the Department will examine any information that it develops or which is submitted, including information requested by the Department, under any provision of the Agreement.

c. If the Department is not satisfied at the conclusion of the consultation period that exports of Sugar from Mexico are entering the United States in amounts consistent with the Agreement, or entered with a valid Export License, the Department may evaluate under section 351.209 of its regulations, or section 751 of the Act whether the Agreement is being violated, as defined in Section IX of the Agreement.

3. Anti-Circumvention Consultations

a. If the GOM determines that a company from a Third Country has circumvented the Agreement and the Department and the GOM agree that no Mexican company participated in or had knowledge of such activities, then the Department and the GOM shall hold consultations for the purpose of sharing information regarding such

circumvention and reaching mutual agreement on the appropriate measures to be taken to eliminate such circumvention. If the Department and the GOM are unable to reach mutual agreement within 45 days, then the Department may take appropriate measures, such as deducting the amount of Sugar involved in such circumvention from the Export Limit for the current Export Limit Period or a subsequent Export Limit Period. Before taking such measures, the Department will notify the GOM of the facts and reasons constituting the basis for the Department's intended action and will afford the GOM 15 days in which to comment. Alternatively, the Department may evaluate under section 351.209 of its regulations, or section 751 of the Act whether the Agreement is being violated, as defined in Section IX of the Agreement.

b. In the event that the Department determines that a Mexican company has participated in a transaction circumventing the Agreement, the Department and the GOM shall hold consultations for the purpose of sharing evidence regarding such circumvention and reaching mutual agreement on an appropriate resolution of the problem. If the Department and the GOM are unable to reach mutual agreement within 60 days, the Department may take appropriate measures, such as deducting the amount of Sugar involved in such circumvention from the Export Limit for the current Export Limit Period (or, if necessary, the subsequent Export Limit Period) or instructing U.S. Customs and Border Protection to deny entry to any Mexican Sugar sold by the company found to be circumventing the Agreement. Before taking such measures, the Department will notify the GOM of the basis for the Department's intended action and the GOM will comment within 30 days. The Department will enter its determinations regarding circumvention into the record of the Agreement. Alternatively, the Department may evaluate under section 351.209 of its regulations or section 751 of the Act whether the Agreement is being violated, as defined in Section IX of the Agreement.

4. Operations Consultations

The Department will consult with the GOM regarding the operation of the Agreement. The Department or the GOM may request such consultations at any time, including consultations to revise the formula to establish the Export Limit.

IX. Violations of the Agreement

A. If the Department determines that there has been a violation of the Agreement or that the Agreement no longer meets the requirements of section 704(c) or (d) of the Act, the Department shall take action it determines appropriate under section 704(i) of the Act and the Department's regulations.

B. The following activities shall be considered violations of the Agreement:

1. Exports of Sugar from Mexico in amounts greater than the Export Limit established in the relevant Export Limit Period.

2. A significant amount (*i.e.,* 5 percent or more of the Export Limit for the relevant Export Limit Period) of Sugar from Mexico exported to the United States without an Export License that is not reported by the GOM to the Department.

3. Any other material violation or breach, as determined by the Department.

X. Disclosure and Comment

This section provides the terms for disclosure and comment following consultations or during segments of the proceeding not involving a review under section 751 of the Act.

A. The Department may make available to representatives of each Interested Party, pursuant to and consistent with 19 CFR 351.304–351.306, business proprietary information submitted to and/or collected by the Department pursuant to the Agreement, as well as the results of the Department's analysis of that information.

B. Under this section, the GOM and any other Interested Party shall file all communications and other submissions via the Department's Antidumping and Countervailing Duty Centralized Electronic Service System (ACCESS), which is available to registered users at *http://access.trade.gov* and to all parties at the following address:

U.S. Department of Commerce
Central Records Unit, Room 7046
1401 Constitution Ave., NW
Washington, DC 20230

Such communications and submissions shall be filed consistent with the requirements provided in 19 CFR 351.303.

XI. Duration of the Agreement

A. The Agreement has no scheduled termination date. Termination of the suspended investigation shall be considered in accordance with the five-year review provisions of section 751(c) of the Act, and section 351.218 of the Department's regulations.

B. The GOM or the Department may terminate the Agreement at any time. Termination of the Agreement shall be effective no later than 60 days after the date written notice of termination is provided to the Department or the GOM, respectively.

C. Upon termination, the Department shall follow the procedures outlined in section 704(i)(1) of the Act.

D. The Department will terminate the Agreement in the event that the GOM requests continuation of the countervailing duty investigation of Sugar from Mexico, or Signatories accounting for a significant proportion of exports of Sugar from Mexico request continuation of the antidumping investigation of Sugar from Mexico.

XII. Other Provisions

A. By entering into the Agreement, the GOM does not admit that exports of Sugar from Mexico are having or have had an injurious effect on Sugar producers in the United States or that the GOM has provided countervailable subsidies to sugar producers and exporters in Mexico. The GOM agrees that it will not provide any new or additional export or import substitution subsidies on Sugar.

B. As of the Effective Date, the Department shall instruct U.S. Customs and Border Protection to refund any cash deposits collected as a result of the countervailing duty investigation on Sugar from Mexico. The Department shall instruct CBP to terminate the suspension of liquidation consistent with section 704(f)(2)(B) of the Act.

Paul Piquado, Assistant Secretary for Enforcement and Compliance, U.S. Department of Commerce

Date

Francisco de Rosenzweig Mendialdua, Undersecretary for Foreign Trade, Ministry of Economy, Government of Mexico

Date

Appendix I—Information To Be Contained in Export Licenses

The GOM will issue shipment-specific Export Licenses to Mexican entities that shall contain the following fields:

1. Export License Number: Indicate the Export License number for the shipment.

2. Name of the Licensee: Indicate the name of the Licensee, and the name of the mill, if different from the Licensee.

3. Name of the Exporter: Indicate the name of the broker/trader or mill, as applicable.

4. Complete Description of Merchandise: Include the applicable Harmonized Tariff

Schedule category and the polarity of the product.

5. Processing: Indicate ''YES'' if the Sugar is being imported for further processing in the United States by a USDA-recognized cane refiner and ''NO'' if it is not.

6. Quantity: Indicate in metric tons raw value and short tons raw value.

7. Date of Export License: Date that the Export License is issued.

8. Date of Expiration of the Export License: Indicate the date that the Export License expires.

9. Port of Export: Indicate the port of export.

10. Allocation to Mill: Indicate the total amount of the Export Limit allocated to the individual mill during the relevant Export Limit Period.

11. Allocation Remaining: Indicate the remaining amount available under the allocation to the individual mill during the relevant Export Limit Period.

Appendix II—Information on Exports of Sugar From Mexico

In accordance with the established format, the GOM's license issuing authority shall collect and provide to the Department all information necessary to ensure compliance with the Agreement. This information will be provided to the Department on monthly basis. The GOM's license issuing authority will collect and maintain data on exports to the United States on a continuous basis. Data for exports to countries other than the United States will be reported upon request. The GOM's license issuing authority may provide a narrative explanation to substantiate all data collected in accordance with the following formats.

The GOM's license issuing authority will provide a report or summary regarding all Export Licenses issued to entities, which shall contain the following information unless the information is unknown to the licensing authority and the licensee. Upon request, the GOM will provide copies of any Export License to the Department.

1. Export License Number: Indicate the Export License number for the shipment.

2. Name of the Licensee: Indicate the name of the Licensee, and the name of the mill, if different from the Licensee.

3. Name of the Exporter: Indicate the name of the broker/trader or mill, as applicable.

4. Complete Description of Merchandise: Include the applicable Harmonized Tariff Schedule category and the polarity of the product.

5. Processing: Indicate ''YES'' if the Sugar is being imported for further processing in the United States by a USDA-recognized cane refiner and ''NO'' if it is not.

6. Quantity: Indicate in metric tons raw value and short tons raw value.

7. Date of Export License: Date that the Export License is issued.

8. Date of Expiration of the Export License: Indicate the date that the Export License expires.

9. Port of Export: Indicate the port of export.

10. Allocation to Mill: Indicate the total amount of the Export Limit allocated to the individual mill during the relevant Export Limit Period.

11. Allocation Remaining: Indicate the remaining amount available under the allocation to the individual mill during the relevant Export Limit Period.

[FR Doc. 2014–30392 Filed 12–24–14; 8:45 am]

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DEPARTMENT OF COMMERCE

International Trade Administration

[A–580–874]

Certain Steel Nails From the Republic of Korea: Affirmative Preliminary Determination of Sales at Less Than Fair Value and Postponement of Final Determination

AGENCY: Enforcement and Compliance, International Trade Administration, Department of Commerce.

SUMMARY: The Department of Commerce (''Department'') preliminarily determines that certain steel nails (''nails'') from the Republic of Korea (''Korea'') are being, or are likely to be, sold in the United States at less than fair value (''LTFV''), as provided in section 733(b) of the Tariff Act of 1930, as amended (the ''Act''). The period of investigation is April 1, 2013, through March 31, 2014. The estimated weighted-average dumping margins are shown in the ''Preliminary Determination'' section of this notice. Interested parties are invited to comment on this preliminary determination. We intend to issue the final determination 135 days after publication of this preliminary determination in the **Federal Register**.

DATES: *Effective Date:* December 29, 2014.

FOR FURTHER INFORMATION CONTACT: Jamie Blair-Walker or Drew Jackson, 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) 482–2615 or (202) 482–4406, respectively.

SUPPLEMENTARY INFORMATION:

Background

The Department published the notice of initiation of this investigation on June 25, 2014.[1] Pursuant to section 733(c)(1)(A) of the Act, the Department postponed this preliminary LTFV determination by 42 days until December 17, 2014.[2]

Scope of the Investigation

The product covered by this investigation is certain steel nails from Korea. For a full description of the scope of the investigation, *see* Appendix I to this notice.[3]

Scope Comments

Several interested parties (*i.e.,* IKEA Supply AG and IKEA Distributions Services Inc. (collectively ''IKEA''), Target Corporation, and The Home Depot) submitted comments to the Department on the scope of the investigation as it appeared in the *Initiation Notice,* and Mid Continent Steel & Wire, Inc. (''Petitioner'') submitted rebuttal comments. For discussion of those comments and rebuttal comments, *see* the Preliminary Decision Memorandum.[4]

Methodology

The Department conducted this investigation in accordance with section 731 of the Act. Export price (''EP'') and constructed export price (''CEP'') have been calculated in accordance with section 772 of the Act. Normal value (''NV'') has been calculated in accordance with section 773 of the Act. For a full description of the methodology underlying our conclusions, *see* the Preliminary Decision Memorandum. The Preliminary Decision Memorandum is a public document and is made available to the public via Enforcement and Compliance's Antidumping and Countervailing Duty Centralized Electronic Service System (ACCESS).[5] ACCESS is available to registered users at *https://access.trade.gov,* and is

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[1] *See Certain Steel Nails From India, the Republic of Korea, Malaysia, the Sultanate of Oman, Taiwan, the Republic of Turkey, and the Socialist Republic of Vietnam: Initiation of Less-Than-Fair-Value Investigations,* 79 FR 36019 (June 25, 2014) (''*Initiation Notice*'').

[2] *See Certain Steel Nails from the Republic of Korea, Malaysia, Taiwan, the Sultanate of Oman, Taiwan, and the Socialist Republic of Vietnam: Postponement of Preliminary Determination of Antidumping Duty Investigations,* 79 FR 63082 (October 22, 2014).

[3] The scope language has not changed from that in the *Initiation Notice.*

[4] *See* memorandum to Ronald K. Lorentzen, ''Decision Memorandum for the Preliminary Determination in the Antidumping Duty Investigation of Certain Steel Nails from the Republic of Korea,'' (''Preliminary Decision Memorandum'') dated concurrently with and hereby adopted by this notice. A list of the topics discussed in the Preliminary Decision Memorandum appears in Appendix II, below.

[5] On November 24, 2014, Enforcement and Compliance changed the name of the Import Administration AD and CVD Centralized Electronic Service System (''IA ACCESS'') to AD and CVD Centralized Electronic Service System (''ACCESS''). The Web site location was changed from *http://iaaccess.trade.gov* to *http://access.trade.gov. See Enforcement and Compliance; Change of Electronic Filing System Name,* 79 FR 69046 (November 20, 2014).

available to all parties in the Department's Central Records Unit, located at room 7046 of the main Department of Commerce building. In addition, a complete version of the Preliminary Decision Memorandum can be found at *http://enforcement.trade.gov/frn/*. The signed and the electronic versions of the Preliminary Decision Memorandum are identical in content.

All Others Rate

Section 735(c)(5)(A) of the Act provides that the estimated ''all others'' rate shall be an amount equal to the weighted average of the estimated weighted-average dumping margins established for exporters and producers individually investigated, excluding any zero or *de minimis* margins, and any margins determined entirely under section 776 of the Act. Pursuant to section 735(c)(5)(B) of the Act, if the estimated weighted-average dumping margins established for all exporters and producers individually examined are zero, *de minimis* or determined based entirely under section 776 of the Act, the Department may use any reasonable method to establish the estimated dumping margin for all other producers or exporters.

Because we individually examined two companies in this investigation, basing the estimated dumping margin for the companies not individually examined on a weighted-average of the dumping margins for the two individually examined companies risks disclosure of business proprietary information (''BPI''). Therefore, we calculated both a weighted-average of the dumping margins calculated for the two mandatory respondents using public values for their sales of subject merchandise and a simple average of these two dumping margins, and selected, as the separate rate, the average that provides a more accurate proxy for the weighted-average margin of both companies calculated using BPI. For further discussion of this calculation, *see* memorandum entitled ''Calculation of the All Others Rate for the Preliminary Determination of the Antidumping Duty Investigation of Certain Steel Nails from the Republic of Korea,'' dated concurrently with this notice.

Preliminary Determination

In accordance with section 733(d)(1)(A)(i) of the Act, the Department calculated weighted-average dumping margins for the following individually investigated exporters or producers of subject merchandise: Daejin Steel [6] and Jinheung Steel. The Department preliminarily determines that the following weighted-average dumping margins exist during the period April 1, 2013, through March 31, 2014:

Producer or exporter	Weighted-average dumping margin (percent)
Daejin Steel	12.38
Jinheung Steel Corporation	2.13
All Others	7.26

Disclosure and Public Comment

We intend to disclose the calculations performed to parties in this proceeding within five days after the date of publication of this notice in accordance with 19 CFR 351.224(b).

Case briefs or other written comments may be submitted to the Assistant Secretary for Enforcement and Compliance no later than seven days after the date on which the final verification report is issued in this proceeding. Rebuttal briefs, limited to issues raised in case briefs, may be submitted no later than five days after the deadline date for submitting case briefs.[7] Pursuant to 19 CFR 351.309(c)(2) and (d)(2), parties who submit case briefs or rebuttal briefs in this proceeding are encouraged to submit with each argument: (1) A statement of the issue; (2) a brief summary of the argument; and (3) a table of authorities.

Pursuant to 19 CFR 351.310(c), interested parties who wish to request a hearing, or to participate if one is requested, must submit a written request to the Assistant Secretary for Enforcement and Compliance, U.S. Department of Commerce. All documents must be filed electronically using ACCESS. An electronically filed request must be received successfully in its entirety by ACCESS, by 5:00 p.m. Eastern Standard Time, within 30 days after the date of publication of this notice.[8] Requests should contain the party's name, address, and telephone number, the number of participants, and a list of the issues to be discussed. If a request for a hearing is made, the Department intends to hold the hearing at the U.S. Department of Commerce, 14th Street and Constitution Avenue NW., Washington, DC 20230, at a time and date to be determined. Parties should confirm by telephone the date, time, and location of the hearing two days before the scheduled date.

Verification

As provided in section 782(i)(1) of the Act, the Department intends to verify the information submitted by Daejin Steel and Jinheung Steel and its affiliates prior to making a final determination in this investigation.

Postponement of Final Determination and Extension of Provisional Measures

Pursuant to section 735(a)(2) of the Act, Petitioner, Daejin Steel, and Jinheung Steel requested that the Department postpone the final determination. Additionally, Daejin Steel and Jinheung Steel requested to extend the application of the provisional measures prescribed under section 733(d) of the Act and 19 CFR 351.210(e)(2), from a four-month period to a six-month period. Pursuant to requests from Petitioner, Daejin Steel, and Jinheung Steel and in accordance with section 735(a)(2)(A) of the Act and 19 CFR 351.210(b)(2)(ii) and (e)(2), we will make our final determination no later than 135 days after the date of publication of this preliminary determination. [9] The suspension of liquidation described below will be extended accordingly.[10]

Suspension of Liquidation

In accordance with section 733(d)(2) of the Act, we are directing U.S. Customs and Border Protection (''CBP'') to suspend liquidation of all entries of nails from Korea as described in the scope of the investigation section entered, or withdrawn from warehouse, for consumption on or after the date of publication of this notice in the **Federal Register**.

Pursuant to section 733(d)(1)(B) of the Act and 19 CFR 351.205(d), we will instruct CBP to require a cash deposit equal to the weighted-average amount by which the NV exceeds EP, or CEP as indicated in the chart above.[11] These

[6] On July 28, 2014, the Department selected Daejin Steel Co. Ltd. as a mandatory respondent. On August 4, 2014, Daejin Steel informed the Department that the correct name of the company is simply Daejin Steel.

[7] *See* 19 CFR 351.309(c); *see also* 19 CFR 351.303 (for general filing requirements).

[8] *See* 19 CFR 351.310(c).

[9] *See also* 19 CFR 351.210(b)(2) and (e); *see also* Letter from Daejin Steel to the Department, regarding ''Certain Steel Nails from the Republic of Korea; Extension Request for Final Results,'' dated December 9, 2014; Letter from Jinheung Steel to the Department, regarding ''Antidumping Investigation of Certain Steel Nails from Korea—Extension Request,'' dated December 9, 2014; *see also* Letter from Petitioner to the Department, regarding ''Certain Steel Nails from the Republic of Korea: Extension Request of Final Determination,'' dated December 10, 2014.

[10] *Id.*

[11] *See Modification of Regulations Regarding the Practice of Accepting Bonds During the Provisional Measures Period in Antidumping and*

suspension of liquidation instructions will remain in effect until further notice.

U.S. International Trade Commission ("ITC") Notification

In accordance with section 733(f) of the Act, we will notify the ITC of our preliminary affirmative determination of sales at LTFV. Because the preliminary determination in this proceeding is affirmative, section 735(b)(2) of the Act requires that the ITC make its final determination as to whether the domestic industry in the United States is materially injured, or threatened with material injury, by reason of imports of nails from Korea before the later of 120 days after the date of this preliminary determination or 45 days after our final determination. Because we are postponing the deadline for our final determination to 135 days from the date of publication of this preliminary determination, as discussed above, the ITC will make its final determination no later than 45 days after our final determination.

This determination is issued and published in accordance with sections 733(f) and 777(i)(1) of the Act and 19 CFR 351.205(c).

Dated: December 17, 2014.

Ronald K. Lorentzen,

Acting Assistant Secretary for Enforcement and Compliance.

Appendix I

Scope of Investigation

The merchandise covered by this investigation is certain steel nails having a nominal shaft length not exceeding 12 inches.[12] Certain steel nails include, but are not limited to, nails made from round wire and nails that are cut from flat-rolled steel. Certain steel nails may be of one piece construction or constructed of two or more pieces. Certain steel nails may be produced from any type of steel, and may have any type of surface finish, head type, shank, point type and shaft diameter. Finishes include, but are not limited to, coating in vinyl, zinc (galvanized, including but not limited to electroplating or hot dipping one or more times), phosphate, cement, and paint. Certain steel nails may have one or more surface finishes. Head styles include, but are not limited to, flat, projection, cupped, oval, brad, headless, double, countersunk, and sinker. Shank styles include, but are not limited to, smooth, barbed, screw threaded, ring shank and fluted. Screw-threaded nails subject to this proceeding are driven using direct force and not by turning the nail using a tool that engages with the head. Point styles include, but are not limited to, diamond, needle, chisel and blunt or no point. Certain steel nails may be sold in bulk, or they may be collated in any manner using any material. If packaged in combination with one or more non-subject articles, certain steel nails remain subject merchandise if the total number of nails of all types, in aggregate regardless of size, is equal to or greater than 25.

Excluded from the scope of this investigation are certain steel nails packaged in combination with one or more non-subject articles, if the total number of nails of all types, in aggregate regardless of size, is less than 25.

Also excluded from the scope of this investigation are steel nails that meet the specifications of Type I, Style 20 nails as identified in Tables 29 through 33 of ASTM Standard F1667 (2013 revision). Also excluded from the scope of this investigation are nails suitable for use in powder-actuated hand tools, whether or not threaded, which are currently classified under Harmonized Tariff Schedule of the United States (HTSUS) subheadings 7317.00.20.00 and 7317.00.30.00.

Also excluded from the scope of this investigation are nails having a case hardness greater than or equal to 50 on the Rockwell Hardness C scale (HRC), a carbon content greater than or equal to 0.5 percent, a round head, a secondary reduced-diameter raised head section, a centered shank, and a smooth symmetrical point, suitable for use in gas-actuated hand tools.

Also excluded from the scope of this investigation are corrugated nails. A corrugated nail is made up of a small strip of corrugated steel with sharp points on one side.

Also excluded from the scope of this investigation are thumb tacks, which are currently classified under HTSUS 7317.00.10.00.

Certain steel nails subject to this investigation are currently classified under HTSUS subheadings 7317.00.55.02, 7317.00.55.03, 7317.00.55.05, 7317.00.55.07, 7317.00.55.08, 7317.00.55.11, 7317.00.55.18, 7317.00.55.19, 7317.00.55.20, 7317.00.55.30, 7317.00.55.40, 7317.00.55.50, 7317.00.55.60, 7317.00.55.70, 7317.00.55.80, 7317.00.55.90, 7317.00.65.30, 7317.00.65.60 and 7317.00.75.00. Certain steel nails subject to this investigation also may be classified under HTSUS subheading 8206.00.00.00.

While the HTSUS subheadings are provided for convenience and customs purposes, the written description of the scope of this investigation is dispositive.

Appendix II

List of Topics Discussed in the Preliminary Decision Memorandum

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[FR Doc. 2014–30432 Filed 12–24–14; 8:45 am]

BILLING CODE 3510–DS–P

Countervailing Duty Investigations, 76 FR 61042 (October 3, 2011).

[12] The shaft length of certain steel nails with flat heads or parallel shoulders under the head shall be measured from under the head or shoulder to the tip of the point. The shaft length of all other certain steel nails shall be measured overall.

DEPARTMENT OF COMMERCE

International Trade Administration

[A–583–854]

Certain Steel Nails From Taiwan: Negative Preliminary Determination of Sales at Less Than Fair Value and Postponement of Final Determination

AGENCY: Enforcement and Compliance, International Trade Administration, Department of Commerce.

ACTION: Notice.

SUMMARY: The Department of Commerce (Department) preliminarily determines that certain steel nails from Taiwan are not being, or are not likely to be, sold in the United States at less than fair value (LTFV), as provided in section 733(b) of the Tariff Act of 1930, as amended (the Act). The period of investigation is April 1, 2013, through March 31, 2014. The estimated weighted-average dumping margins are shown in the "Preliminary Determination" section of this notice. In response to a request from Mid Continent Steel & Wire, Inc. (petitioner) we are postponing the final determination. The final determination will be issued 135 days after the publication of this preliminary determination in the **Federal Register**. We invite interested parties to comment on the preliminary determination.

DATES: *Effective Date:* December 29, 2014.

FOR FURTHER INFORMATION CONTACT: Victoria Cho, Scott Hoefke or Robert James, 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) 482–5075, (202) 482–4947 or (202) 482–0649, respectively.

SUPPLEMENTARY INFORMATION:

Scope of the Investigation

The product covered by this investigation is certain steel nails from Taiwan. For a full description of the scope of the investigation, *see* Appendix I to this notice.[1]

Scope Comments

Several interested parties (*i.e.,* IKEA Supply AG and IKEA Distributions Services Inc. (collectively IKEA), Target Corporation, and The Home Depot) submitted comments to the Department on the scope of the investigation as it appeared in the *Initiation Notice,* and petitioner submitted rebuttal comments. For discussion of those comments and rebuttal comments, *see* the Preliminary Decision Memorandum.[2]

Methodology

The Department conducted this investigation in accordance with section 731 of the Act. There were two mandatory respondents, PT Enterprise Inc. (and its affiliated producer, Pro-Team Coil Nail Enterprise Inc.) and Quick Advance, Inc. (and its affiliated producer, Ko's Nails Inc.). Export prices have been calculated in accordance with section 772 of the Act. Normal value (NV) has been calculated in accordance with section 773 of the Act.

For a full description of the methodology underlying our conclusions, *see* the Preliminary Decision Memorandum.[3] The Preliminary Decision Memorandum is a public document and is made available to the public via Enforcement and Compliance's Antidumping and Countervailing Duty Centralized Electronic Service System (ACCESS).[4] ACCESS is available to registered users at *https://access.trade.gov,* and is available to all parties in the Department's Central Records Unit, located at room 7046 of the main Department of Commerce building. In addition, a complete version of the Preliminary Decision Memorandum can be found at *http://enforcement.trade.gov/frn/.* The signed and the electronic versions of the Preliminary Decision Memorandum are identical in content.

Preliminary Determination

The Department preliminarily determines that the following weighted-average dumping margins exist:

Exporter/manufacturer	Weighted-average dumping margin (percent)
PT Enterprise Inc.	0.00
Quick Advance, Inc.	0.00

Consistent with sections 733(d)(1)(A) of the Act, the Department has not calculated a weighted-average dumping margin for all other producers or exporters because it has not made an affirmative preliminary determination of sales at less than fair value.

Disclosure and Public Comment

We will disclose the calculations performed to parties in this proceeding within five days of the date of publication of this notice in accordance with 19 CFR 351.224(b).

Case briefs or other written comments may be submitted to the Assistant Secretary for Enforcement and Compliance no later than seven days after the date on which the final verification report is issued in this proceeding, and rebuttal briefs, limited to issues raised in case briefs, may be submitted no later than five days after the deadline date for case briefs.[5] Pursuant to 19 CFR 351.309(c)(2) and (d)(2), parties who submit case briefs or rebuttal briefs in this proceeding are encouraged to submit with each argument: (1) a statement of the issue; (2) a brief summary of the argument; and (3) a table of authorities.

Pursuant to 19 CFR 351.310(c), interested parties who wish to request a hearing, or to participate if one is requested, must submit a written request to the Assistant Secretary for Enforcement and Compliance, U.S. Department of Commerce. All documents must be filed electronically using ACCESS. An electronically filed request must be received successfully in its entirety by ACCESS, by 5:00 p.m. Eastern Standard Time, within 30 days after the date of publication of this notice.[6] Requests should contain the party's name, address, and telephone number, the number of participants, and a list of the issues to be discussed. If a request for a hearing is made, the Department intends to hold the hearing at the U.S. Department of Commerce, 14th Street and Constitution Avenue NW, Washington, DC 20230, at a time and date to be determined. Parties should confirm by telephone the date, time, and location of the hearing two days before the scheduled date.

Suspension of Liquidation

Because the Department has not made an affirmative preliminary determination of sales at less than fair value, we are not directing U.S. Customs and Border Protection to suspend liquidation of any entries of certain steel nails from Taiwan.

Postponement of Final Determination

Pursuant to petitioner's request, we are postponing the final determination. Accordingly, we will issue our final determination no later than 135 days after the date of publication of this preliminary determination, pursuant to section 735(a)(2) of the Act.[7]

[1] *See Certain Steel Nails From India, the Republic of Korea, Malaysia, the Sultanate of Oman, Taiwan, the Republic of Turkey, and the Socialist Republic of Vietnam: Initiation of Less-Than-Fair-Value Investigations,* 79 FR 36019, 36025–26 (June 25, 2014) (*Initiation Notice*).

[2] *See* December 17, 2014 memorandum to Paul Piquado, ''Decision Memorandum for the Preliminary Determination in the Antidumping Duty Investigation of Certain Steel Nails fromTaiwan,'' adopoted concurrently with this notice. A list of the topics discussed in the Preliminary Decision Memorandum appears in Appendix II, below.

[3] *Id.*

[4] On November 24, 2014, Enforcement and Compliance changed the name of Enforcement and Compliance's AD and CVD Centralized Electronic Service System (''IA ACCESS'') to AD and CVD Centralized Electronic Service System (''ACCESS''). The Web site location was changed from *http://iaaccess.trade.gov* to *http://access.trade.gov.* The Final Rule changing the references to the Regulations can be found at 79 FR 69046 (November 20, 2014).

[5] *See* 19 CFR 351.309.

[6] *See* 19 CFR 351.310(c).

[7] *See* 19 CFR 351.210(b)(2) and (e).

International Trade Commission (ITC) Notification

In accordance with section 733(f) of the Act, we have notified the ITC of our preliminary negative determination of sales at LTFV. If our final determination is affirmative, the ITC will determine before the later of 120 days after the date of this preliminary determination or 45 days after our final determination whether these imports are materially injuring, or threaten material injury to, the U.S. industry.

This determination is issued and published in accordance with sections 733(f) and 777(i)(1) of the Act and 19 CFR 351.205(c).

Dated: December 17, 2014.

Ronald K. Lorentzen,

Acting Assistant Secretary for Enforcement and Compliance.

Appendix I

Scope of the Investigation

The merchandise covered by this investigation is certain steel nails having a nominal shaft length not exceeding 12 inches.[8] Certain steel nails include, but are not limited to, nails made from round wire and nails that are cut from flat-rolled steel. Certain steel nails may be of one piece construction or constructed of two or more pieces. Certain steel nails may be produced from any type of steel, and may have any type of surface finish, head type, shank, point type and shaft diameter. Finishes include, but are not limited to, coating in vinyl, zinc (galvanized, including but not limited to electroplating or hot dipping one or more times), phosphate, cement, and paint. Certain steel nails may have one or more surface finishes. Head styles include, but are not limited to, flat, projection, cupped, oval, brad, headless, double, countersunk, and sinker. Shank styles include, but are not limited to, smooth, barbed, screw threaded, ring shank and fluted. Screw-threaded nails subject to this proceeding are driven using direct force and not by turning the nail using a tool that engages with the head. Point styles include, but are not limited to, diamond, needle, chisel and blunt or no point. Certain steel nails may be sold in bulk, or they may be collated in any manner using any material. If packaged in combination with one or more non-subject articles, certain steel nails remain subject merchandise if the total number of nails of all types, in aggregate regardless of size, is equal to or greater than 25.

Excluded from the scope of this investigation are certain steel nails packaged in combination with one or more non-subject articles, if the total number of nails of all types, in aggregate regardless of size, is less than 25.

Also excluded from the scope of this investigation are steel nails that meet the specifications of Type I, Style 20 nails as identified in Tables 29 through 33 of ASTM Standard F1667 (2013 revision).

Also excluded from the scope of this investigation are nails suitable for use in powder-actuated hand tools, whether or not threaded, which are currently classified under Harmonized Tariff Schedule of the United States (HTSUS) subheadings 7317.00.20.00 and 7317.00.30.00.

Also excluded from the scope of this investigation are nails having a case hardness greater than or equal to 50 on the Rockwell Hardness C scale (HRC), a carbon content greater than or equal to 0.5 percent, a round head, a secondary reduced-diameter raised head section, a centered shank, and a smooth symmetrical point, suitable for use in gas-actuated hand tools.

Also excluded from the scope of this investigation are corrugated nails. A corrugated nail is made up of a small strip of corrugated steel with sharp points on one side.

Also excluded from the scope of this investigation are thumb tacks, which are currently classified under HTSUS 7317.00.10.00.

Certain steel nails subject to this investigation are currently classified under HTSUS subheadings 7317.00.55.02, 7317.00.55.03, 7317.00.55.05, 7317.00.55.07, 7317.00.55.08, 7317.00.55.11, 7317.00.55.18, 7317.00.55.19, 7317.00.55.20, 7317.00.55.30, 7317.00.55.40, 7317.00.55.50, 7317.00.55.60, 7317.00.55.70, 7317.00.55.80, 7317.00.55.90, 7317.00.65.30, 7317.00.65.60 and 7317.00.75.00. Certain steel nails subject to this investigation also may be classified under HTSUS subheading 8206.00.00.00.

While the HTSUS subheadings are provided for convenience and customs purposes, the written description of the scope of this investigation is dispositive.

Appendix II

List of Topics Discussed in the Preliminary Decision Memorandum

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  G. Currency Conversion
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XI. Disclosure and Public Comment
XII. Verification
XIII. Conclusion

[FR Doc. 2014–30430 Filed 12–24–14; 8:45 am]

BILLING CODE 3510–DS–P

[8] The shaft length of certain steel nails with flat heads or parallel shoulders under the head shall be measured from under the head or shoulder to the tip of the point. The shaft length of all other certain steel nails shall be measured overall.

DEPARTMENT OF COMMERCE

International Trade Administration

[A–557–816]

Certain Steel Nails From Malaysia: Preliminary Determination of Sales at Less Than Fair Value and Postponement of Final Determination and Extension of Provisional Measures

AGENCY: Enforcement and Compliance, International Trade Administration, Department of Commerce.

SUMMARY: The Department of Commerce (Department) preliminarily determines that certain steel nails from Malaysia are being, or are likely to be, sold in the United States at less than fair value (LTFV), as provided in section 733(b) of the Tariff Act of 1930, as amended (the Act). The period of investigation is April 1, 2013, through March 31, 2014. The estimated weighted-average dumping margins are shown in the ''Preliminary Determination'' section of this notice. Interested parties are invited to comment on this preliminary determination. The Department intends to issue the final determination 135 days after publication of this preliminary determination in the **Federal Register**.

DATES: *Effective Date:* December 29, 2014.

FOR FURTHER INFORMATION CONTACT: Ericka Ukrow 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) 482–0405 or (202) 482–1131, respectively.

SUPPLEMENTARY INFORMATION:

Background

The Department published the notice of initiation of this investigation on June 25, 2014.[1] Pursuant to section 733(c)(1)(A) of the Act, the Department postponed this preliminary determination 42 days until December 17, 2014.[2]

Scope of the Investigation

The product covered by this investigation is certain steel nails from

[1] *See Certain Steel Nails From India, the Republic of Korea, Malaysia, the Sultanate of Oman, Taiwan, the Republic of Turkey, and the Socialist Republic of Vietnam: Initiation of Less-Than-Fair-Value Investigations,* 79 FR 36019, (June 25, 2014) (*Initiation Notice*).

[2] *See Certain Steel Nails From the Republic of Korea, Malaysia, the Sultanate of Oman, Taiwan, and the Socialist Republic of Vietnam: Postponement of Preliminary Determination of Antidumping Duty Investigations,* 79 FR 63082 (October 22, 2014).

Malaysia. For a full description of the scope of the investigation, *see* Appendix I to this notice.

Scope Comments

Several interested parties (*i.e.,* IKEA Supply AG and IKEA Distributions Services Inc. (collectively IKEA), Target Corporation, and The Home Depot) submitted comments to the Department on the scope of the investigation as it appeared in the *Initiation Notice,* and Mid Continent Steel & Wire, Inc. (Petitioner) submitted rebuttal comments. For further discussion of these comments, *see* the Preliminary Decision Memorandum.[3]

Methodology

The Department conducted this investigation in accordance with section 731 of the Act. Because one of the mandatory respondents, Tag Fasteners Sdn. Bhd. (Tag), failed to respond to the Department's questionnaire, we preliminarily determined to apply facts otherwise available with an adverse inference to this respondent pursuant to sections 776(a) and (b) of the Act. In applying adverse facts available, we are assigning Tag a dumping margin of 39.35 percent. For the other two mandatory respondents, Inmax Sdn. Bhd. (Inmax) and Region International Co., Ltd. and its collapsed affiliate, Region System Sdn. Bhd. (collectively, Region), export prices have been calculated in accordance with section 772 of the Act. Normal value has been calculated in accordance with section 773 of the Act. For a full description of the methodology underlying our conclusions, *see* the Preliminary Decision Memorandum.[4] The Preliminary Decision Memorandum is a public document and is made available to the public *via* Enforcement and Compliance's Antidumping and Countervailing Duty Centralized Electronic Service System (ACCESS). ACCESS is available to registered users at *http://access.trade.gov,* and is available to all parties in the Department's Central Records Unit, located at room 7046 of the main Department of Commerce building.[5] In addition, a complete version of the Preliminary Decision Memorandum can be found at *http://enforcement.trade.gov/frn/.* The signed and the electronic versions of the Preliminary Decision Memorandum are identical in content.

All Others Rate

Consistent with sections 733(d)(1)(A)(ii) and 735(c)(5) of the Act, the Department also calculated an estimated ''all others'' rate for all exporters or producers not individually investigated. Section 735(c)(5)(A) of the Act provides that the estimated ''all others'' rate shall be an amount equal to the weighted average of the estimated weighted-average dumping margins established for exporters and producers individually investigated, excluding any zero or *de minimis* margins, and any margins determined entirely under section 776 of the Act. Therefore, because the estimated weighted-average dumping margins for Inmax Sdn. Bhd. and Region are not zero, *de minimis,* or determined entirely under section 776 of the Act, the Department has estimated the ''all-others'' rate in this preliminary determination by weight-averaging the estimated weighted-average dumping margins calculated for those two respondents, based on publicly-ranged data.[6]

Preliminary Determination

In accordance with section 733(d)(1)(A)(i) of the Act, the Department calculated estimated weighted-average dumping margins for the individually investigated exporters and producers of subject merchandise, listed below. The Department preliminarily determines that the following estimated weighted-average dumping margins exist for these individually investigated exporters and producers:

Exporter/ producer	Weighted-average dumping margin (percent)
Inmax Sdn. Bhd	2.14
Region International Co. Ltd. and Region System Sdn. Bhd	2.56
Tag Fasteners Sdn. Bhd	39.35
All Others	2.20

Verification

As provided in section 782(i)(1) of the Act, the Department intends to verify the information submitted by Inmax Sdn. Bhd. and Region prior to making a final determination in this investigation.

Disclosure and Public Comment

We will disclose the calculations performed to parties in this proceeding within five days of the date of publication of this notice in accordance with 19 CFR 351.224(b).

Case briefs or other written comments may be submitted to the Assistant Secretary for Enforcement and Compliance no later than seven days after the date on which the final verification report is issued in this proceeding and rebuttal briefs, limited to issues raised in case briefs, may be submitted no later than five days after the deadline date for case briefs.[7] Pursuant to 19 CFR 351.309(c)(2) and (d)(2), parties who submit case briefs or rebuttal briefs in this proceeding are encouraged to submit with each argument: (1) A statement of the issue; (2) a brief summary of the argument; and (3) a table of authorities.

Pursuant to 19 CFR 351.310(c), interested parties who wish to request a hearing, or to participate if one is requested, must submit a written request to the Assistant Secretary for Enforcement and Compliance, U.S. Department of Commerce. All documents must be filed electronically using ACCESS. An electronically filed request must be received successfully in its entirety by ACCESS, by 5:00 p.m. Eastern Standard Time, within 30 days after the date of publication of this notice.[8] Requests should contain the party's name, address, and telephone number, the number of participants, and a list of the issues to be discussed. If a request for a hearing is made, the Department intends to hold the hearing at the U.S. Department of Commerce, 14th Street and Constitution Avenue NW., Washington, DC 20230, at a time and date to be determined. Parties should confirm by telephone the date,

[3] *See* Memorandum to Ronald K. Lorentzen, Acting Assistant Secretary for Enforcement and Compliance, from Christian Marsh, Deputy Assistant Secretary for Antidumping and Countervailing Duty Operations, ''Decision Memorandum for the Preliminary Determination in the Antidumping Duty Investigation of Certain Steel Nails from Malaysia,'' dated concurrently with this determination and hereby adopted by this notice. A list of the topics discussed in the Preliminary Decision Memorandum appears in Appendix II, below.

[4] *Id.*

[5] Effective November 24, 2014, Enforcement and Compliance changed the name of the Import Administration AD and CVD Centralized Electronic Service System (IA ACCESS) to AD and CVD Centralized Electronic Service System (ACCESS). The Web site location was changed from *http://iaacess.trade.gov* to *http://access.trade.gov.* The Final Rule changing the references to the Regulations can be found at: 79 FR 69046 (November 20, 2014).

[6] *See* ''Antidumping Duty Investigation of Certain Steel Nails from Malaysia; Preliminary Determination Calculation for the All-Others Rate,'' dated concurrently with this determination.

[7] *See* 19 CFR 351.309.

[8] *See* 19 CFR 351.310(c).

time, and location of the hearing two days before the scheduled date.

Postponement of Final Determination and Extension of Provisional Measures

Pursuant to section 735(a)(2) of the Act, Inmax and Region requested that the Department postpone the final determination and extend provisional measures from four months to six months. Additionally, Inmax and Region requested to extend the application of the provisional measures prescribed under section 733(d) of the Act and 19 CFR 351.210(e)(2), from a four-month period to a six-month period. Pursuant to a request from Inmax and Region and in accordance with section 735(a)(2)(A) of the Act and 19 CFR 351.210(b)(2)(ii) and (e)(2), we will make our final determination no later than 135 days after the date of publication of this preliminary determination.[9] The suspension of liquidation described below will be extended accordingly.

Suspension of Liquidation

In accordance with section 733(d)(2) of the Act, we are directing U.S. Customs and Border Protection (CBP) to suspend liquidation of all entries of certain steel nails from Malaysia as described in the scope of the investigation section entered, or withdrawn from warehouse, for consumption on or after the date of publication of this notice in the **Federal Register**.

Pursuant to 19 CFR 351.205(d), we will instruct CBP to require a cash deposit equal to the weighted-average amount by which the normal value exceeds export price, as indicated in the chart above.[10] [11] These suspension of liquidation instructions will remain in effect until further notice.

International Trade Commission (ITC) Notification

In accordance with section 733(f) of the Act, we have notified the ITC of our preliminary affirmative determination of sales at LTFV. Because the preliminary determination in this proceeding is affirmative, section 735(b)(2) of the Act requires that the ITC make its final determination as to whether the domestic industry in the United States is materially injured, or threatened with material injury, by reason of imports of certain steel nails from Malaysia before the later of 120 days after the date of this preliminary determination or 45 days after our final determination. Because we are postponing the deadline for our final determination to 135 days from the date of publication of this preliminary determination, as discussed above, the ITC will make its final determination no later than 45 days after our final determination.

This determination is issued and published in accordance with sections 733(f) and 777(i)(1) of the Act and 19 CFR 351.205(c).

Dated: December 17, 2014.

Ronald K. Lorentzen,

Acting Assistant Secretary for Enforcement and Compliance.

Appendix I

Scope of the Investigation

The merchandise covered by this investigation is certain steel nails having a nominal shaft length not exceeding 12 inches.[12] Certain steel nails include, but are not limited to, nails made from round wire and nails that are cut from flat-rolled steel. Certain steel nails may be of one piece construction or constructed of two or more pieces. Certain steel nails may be produced from any type of steel, and may have any type of surface finish, head type, shank, point type and shaft diameter. Finishes include, but are not limited to, coating in vinyl, zinc (galvanized, including but not limited to electroplating or hot dipping one or more times), phosphate, cement, and paint. Certain steel nails may have one or more surface finishes. Head styles include, but are not limited to, flat, projection, cupped, oval, brad, headless, double, countersunk, and sinker. Shank styles include, but are not limited to, smooth, barbed, screw threaded, ring shank and fluted. Screw-threaded nails subject to this proceeding are driven using direct force and not by turning the nail using a tool that engages with the head. Point styles include, but are not limited to, diamond, needle, chisel and blunt or no point. Certain steel nails may be sold in bulk, or they may be collated in any manner using any material. If packaged in combination with one or more non-subject articles, certain steel nails remain subject merchandise if the total number of nails of all types, in aggregate regardless of size, is equal to or greater than 25.

Excluded from the scope of this investigation are certain steel nails packaged in combination with one or more non-subject articles, if the total number of nails of all types, in aggregate regardless of size, is less than 25.

Also excluded from the scope of this investigation are steel nails that meet the specifications of Type I, Style 20 nails as identified in Tables 29 through 33 of ASTM Standard F1667 (2013 revision).

Also excluded from the scope of this investigation are nails suitable for use in powder-actuated hand tools, whether or not threaded, which are currently classified under Harmonized Tariff Schedule of the United States (HTSUS) subheadings 7317.00.20.00 and 7317.00.30.00.

Also excluded from the scope of this investigation are nails having a case hardness greater than or equal to 50 on the Rockwell Hardness C scale (HRC), a carbon content greater than or equal to 0.5 percent, a round head, a secondary reduced-diameter raised head section, a centered shank, and a smooth symmetrical point, suitable for use in gas-actuated hand tools.

Also excluded from the scope of this investigation are corrugated nails. A corrugated nail is made up of a small strip of corrugated steel with sharp points on one side.

Also excluded from the scope of this investigation are thumb tacks, which are currently classified under HTSUS 7317.00.10.00.

Certain steel nails subject to this investigation are currently classified under HTSUS subheadings 7317.00.55.02, 7317.00.55.03, 7317.00.55.05, 7317.00.55.07, 7317.00.55.08, 7317.00.55.11, 7317.00.55.18, 7317.00.55.19, 7317.00.55.20, 7317.00.55.30, 7317.00.55.40, 7317.00.55.50, 7317.00.55.60, 7317.00.55.70, 7317.00.55.80, 7317.00.55.90, 7317.00.65.30, 7317.00.65.60 and 7317.00.75.00. Certain steel nails subject to this investigation also may be classified under HTSUS subheading 8206.00.00.00.

While the HTSUS subheadings are provided for convenience and customs purposes, the written description of the scope of this investigation is dispositive.

Appendix II

List of Topics Discussed in the Preliminary Decision Memorandum

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A. Application of Facts Available and Use of Adverse Inference
B. Adverse Facts Available (AFA) Rate and Corroboration of Secondary Information
IX. All Others Rate
X. Affiliation and Collapsing

[9] *See also* 19 CFR 351.210(b)(2) and (e); *see also* Letter from Inmax and Region International Co., Ltd. to the Department, regarding ''Certain Steel Nails from Malaysia; Extension Request for Final Results'' (December 9, 2014).

[10] *See Modification of Regulations Regarding the Practice of Accepting Bonds During the Provisional Measures Period in Antidumping and Countervailing Duty Investigations,* 76 FR 61042 (October 3, 2011).

[11] Because the preliminary calculated countervailing duty rates in the companion countervailing duty investigation attributable to export subsidies were *de minimis* for both respondents, we did not adjust these cash deposit rates to account for export subsidies. *See Certain Steel Nails from Malaysia: Preliminary Negative Countervailing Duty Determination and Alignment of Final Countervailing Duty Determination with Final Antidumping Duty Determination,* 79 FR 65179, 65180 (November 3, 2014).

[12] The shaft length of certain steel nails with flat heads or parallel shoulders under the head shall be measured from under the head or shoulder to the tip of the point. The shaft length of all other certain steel nails shall be measured overall.

A. Legal Standard
B. Inmax
C. Region International
XI. Discussion of Methodology
A. Fair Value Comparisons
B. Product Comparisons
C. Determination of Comparison Method
D. Export Price
E. Normal Value
F. Date of Sale
G. Currency Conversion
XII. Disclosure and Public Comment
XIII. Verification
XIV. Conclusion

[FR Doc. 2014–30434 Filed 12–24–14; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–552–818]

Certain Steel Nails From the Socialist Republic of Vietnam: Preliminary Determination of Sales at Less Than Fair Value and Postponement of Final Determination and Extension of Provisional Measures

AGENCY: Enforcement and Compliance, International Trade Administration, Department of Commerce.

DATES: *Effective Date:* December 29, 2014.

SUMMARY: The Department of Commerce (the Department) preliminarily determines that certain steel nails from the Socialist Republic of Vietnam (Vietnam) are being, or are likely to be, sold in the United States at less than fair value, as provided in section 733(b) of the Tariff Act of 1930, as amended (the Act). The period of investigation is October 1, 2013, through March 31, 2014. The estimated weighted-average dumping margins are shown in the ''Preliminary Determination'' section of this notice. Interested parties are invited to comment on this preliminary determination. The Department intends to issue the final determination 135 days after publication of this preliminary determination in the **Federal Register**.

FOR FURTHER INFORMATION CONTACT: Edythe Artman or Dena Crossland, AD/CVD Operations, Enforcement and Compliance, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue NW., Washington, DC 20230; telephone: (202) 482–3931 and (202) 482–3362, respectively.

SUPPLEMENTARY INFORMATION:

Background

The Department published the notice of initiation of this investigation on June 25, 2014.[1] Pursuant to section 733(c)(1)(A) of the Act, the Department postponed this preliminary LTFV determination 42 days until December 17, 2014.[2]

Scope of the Investigation

The products covered by this investigation are certain steel nails from Vietnam. For a complete description of the scope of the investigation, *see* Appendix I to this notice.

Scope Comments

Several interested parties (*i.e.,* IKEA Supply AG and IKEA Distributions Services Inc. (collectively IKEA), Target Corporation, and The Home Depot) submitted comments to the Department on the scope of the investigation as it appeared in the *Initiation Notice,* and Mid Continent Steel & Wire, Inc. (Petitioner) submitted rebuttal comments. For discussion of those comments and rebuttal comments, *see* the Preliminary Decision Memorandum.[3]

Methodology

The Department conducted this investigation in accordance with section 731 of the Act. We calculated export prices in accordance with section 772 of the Act. Because Vietnam is a non-market economy within the meaning of section 771(18) of the Act, we calculated normal value in accordance with section 773(c) of the Act.

For a full description of the methodology underlying our conclusions, see the Preliminary Decision Memorandum.[4] 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 (ACCESS).[5] ACCESS is available to guest and registered users at *http://access.trade.gov* and to all parties in the Central Records Unit, room 7046 of the main Department of Commerce building. In addition, parties can obtain a complete version of the Preliminary Decision Memorandum at *http://trade.gov/enforcement/frn/index.html.* The signed and electronic versions of the Preliminary Decision Memorandum are identical in content.

Use of Facts Available

For the Vietnam-wide entity, we applied facts otherwise available with an adverse inference, pursuant to section 776(a)(1) and (b) of the Act. For a detailed discussion of this finding, *see* the Preliminary Decision Memorandum at section ''The Vietnam-wide Entity.''

For Region Industries Co., Ltd., we applied facts otherwise available, pursuant to section 776(a)(1) of the Act, for factor input information for a toller who performed electroplating on subject merchandise but did not respond to Region Industries' request for input information. For a detailed discussion of this finding, *see* the Preliminary Decision Memorandum at section ''Facts Available for Region Industries.''

Combination Rates

In the *Initiation Notice,* the Department stated that it would calculate combination rates for the respondents that are eligible for a separate rate in this investigation. Policy Bulletin 05.1 describes this practice.[6]

Preliminary Determination

In accordance with section 733(d)(1)(A)(i) of the Act, the Department calculated estimated weighted-average dumping margins for the individually investigated exporters

[1] *See Certain Steel Nails From India, the Republic of Korea, Malaysia, the Sultanate of Oman, Taiwan, the Republic of Turkey, and the Socialist Republic of Vietnam: Initiation of Less-Than-Fair-Value Investigations,* 79 FR 36019 (June 25, 2014) (*Initation Notice*). On the same day, the Department initiated a countervailing duty investigation of certain steel nails from Vietnam. *See Certain Steel Nails From India, the Republic of Korea, Malaysia, the Sultanate of Oman, Taiwan, the Republic of Turkey, and the Socialist Republic of Vietnam: Initiation of Countervailing Duty Investigations,* 79 FR 36014 (June 25, 2014).

[2] *See Certain Steel Nails From the Republic of Korea, Malaysia, the Sultanate of Oman, Taiwan, and the Socialist Republic of Vietnam: Postponement of Preliminary Determination of Antidumping Duty Investigations,* 79 FR 63082 (October 22, 2014).

[3] *See* Memorandum to Ronald K. Lorentzen, Acting Assistant Secretary for Enforcement and Compliance, from Christian Marsh, Deputy Assistant Secretary for Antidumping and Countervailing Duty Operations, ''Decision Memorandum for the Preliminary Determination of the Less-Than-Fair-Value Investigation of Certain Steel Nails from the Socialist Republic of Vietnam,'' dated concurrently with this determination and hereby adopted by this notice. A list of the topics discussed in the Preliminary Decision Memorandum appears in Appendix II, below.

[4] *Id.*

[5] On November 24, 2014, Enforcement and Compliance changed the name of the Import Administration Antidumping and Countervailing Duty Centralized Electronic Service System (IA ACCESS) Antidumping and Countervailing Duty Centralized Electronic Service System (ACCESS). The Web site location was changed from *http://iaaccess.trade.gov* to *http://access.trade.gov.* The Final Rule changing the references to the Regulations can be found at: 79 FR 69046 (November 20, 2014).

[6] *See* Enforcement and Compliance's Policy Bulletin No. 05.1, regarding, ''Separate-Rates Practice and Application of Combination Rates in Antidumping Investigations involving Non-Market Economy Countries,'' (April 5, 2005) (Policy Bulletin 05.1), available on the Department's Web site at *http://enforcement.trade.gov/policy/bull05-1.pdf.*

and producers of subject merchandise, listed below. The Department preliminarily determines that the following estimated weighted-average dumping margins exist for these individually investigated exporters and producers exist for the period October 1, 2013, through March 31, 2014:

Exporter	Producer	Weighted-average dumping margin (percentage)
Region International Co., Ltd	Region Industries Co., Ltd	103.88
United Nail Products Co., Ltd	United Nail Products Co., Ltd	93.42
Kosteel Vina Limited Company	Kosteel Vina Limited Company	98.65
Vietnam-Wide Entity *		323.99

* As detailed in the Preliminary Decision Memorandum, the Vietnam-wide entity includes the following exporters/producers: Cong Ty Tnhh Cong Nghe Nhua A Chau, Kim Tin Group, Megastar Co., Ltd. and Simone Accessories Collection.

Verification

As provided in section 782(i)(1) of the Act, the Department intends to verify the information submitted by Region International Co., Ltd., and its affiliated producer, Region Industries Co., Ltd. and United Nail Products Co., Ltd. prior to making a final determination in this investigation.

Disclosure and Public Comment

The Department intends to disclose the calculations performed for this preliminary determination to parties within five days of the date of publication of this notice, in accordance with 19 CFR 351.224(b).

Case briefs or other written comments may be submitted to the Assistant Secretary for Enforcement and Compliance *via* ACCESS no later than no later than seven days after the date on which the final verification report is issued in this proceeding [7] and rebuttal briefs, limited to issues raised in the case briefs, must be submitted *via* ACCESS no later than five days after the deadline for filing case briefs.[8] Pursuant to 19 CFR 351.309(c)(2) and (d)(2), parties who submit case briefs or rebuttal briefs in this proceeding are encouraged to submit with each argument: (1) A statement of the issue; (2) a brief summary of the argument; and (3) a table of authorities.

Pursuant to 19 CFR 351.310(c), interested parties who wish to request a hearing, or to participate in a hearing if one is requested, must submit a written request to the Assistant Secretary for Enforcement and Compliance. An electronically filed request must be submitted *via* ACCESS within 30 days after the date of publication of this notice. Electronically filed case briefs/written comments and hearing requests must be received successfully in their entirety by the Department's electronic records system, ACCESS, by 5:00 p.m. Eastern Standard Time. Hearing requests should contain: (1) The party's name, address, and telephone number; (2) the number of participants in the hearing; and (3) a list of the issues to be discussed at the hearing. If a request for a hearing is made, the Department intends to hold the hearing at the U.S. Department of Commerce, 14th Street and Constitution Avenue NW, Washington, DC 20230, at a time and date to be determined. Parties should confirm by telephone the date, time, and location of the hearing, two days before the scheduled date.

All documents submitted to ACCESS must be received successfully in their entirety by no later than 5:00 p.m. Eastern Time on the day in which the document is due.

Postponement of Final Determination and Extension of Provisional Measures

Pursuant to section 735(a)(2) of the Act, Region Industries Co., Ltd. and United Nail Products Co., Ltd. requested that, in the event of an affirmative preliminary determination in this investigation, the Department postpone its final determination and extend provisional measures from four months to six months.[9] Additionally, Region Industries Co., Ltd. and United Nail Products Co., Ltd. agreed to extend the application of the provisional measures prescribed under section 733(d) of the Act and 19 CFR 351.210(e)(2), from a four-month period to a six-month period. Pursuant to requests from Region Industries Co., Ltd. and United Nail Products Co., Ltd. and in accordance with section 735(a)(2)(A) of the Act and 19 CFR 351.210(b)(2)(ii) and (e)(2),we will make our final determination no later than 135 days after the publication of this preliminary determination. The suspension of liquidation described below will be extended accordingly.

Suspension of Liquidation

In accordance with section 733(d)(2) of the Act, the Department will instruct U.S. Customs and Border Protection (CBP) to suspend liquidation of all entries of certain steel nails from Vietnam, as described in the scope of the investigation in Attachment 1 of this notice, which are entered or withdrawn from warehouse for consumption on or after the date of publication of this notice in the **Federal Register**.

Pursuant to section 733(d) of the Act and 19 CFR 351.205(d), we will instruct CBP to require a cash deposit [10] equal to the estimated weighted-average amount by which normal value exceeds U.S. price, adjusted where appropriate for export subsidies [11] and estimated domestic subsidy pass-through,[12] as follows: (1) The cash deposit rates for the exporter/producer combinations listed in the table above will be the rate identified for that combination in the table; (2) for all combinations of Vietnamese exporters/producers of merchandise under consideration that have not received their own separate rate above, the cash-deposit rate will be the cash deposit rate established for the Vietnam-wide entity, 323.99 percent; and (3) for all non-Vietnamese exporters

[7] *See* 19 CFR 351.309(c).

[8] *See* 19 CFR 351.309(d).

[9] *See* Letter from Region Industries Co., Ltd. and United Nail Products Co., Ltd., ''Certain Steel Nails from Vietnam; Extension Request for Final Results,'' dated December 9, 2014.

[10] *See Modification of Regulations Regarding the Practice of Accepting Bonds During the Provisional Measures Period in Antidumping and Countervailing Duty Investigations,* 76 FR 61042 (October 3, 2011).

[11] *See* section 772(c)(1)(C) of the Act. Unlike in administrative reviews, the Department calculates the adjustment for export subsidies in investigations not in the margin calculation program, but in the cash deposit instructions issued to CBP. *See Notice of Final Determination of Sales at Less Than Fair Value, and Negative Determination of Critical Circumstances: Certain Lined Paper Products from India,* 71 FR 45012 (August 8, 2006), and accompanying Issues and Decision Memorandum at Comment 1.

[12] *See* section 777A(f) of the Act. For further discussion, *see* the Preliminary Decision Memorandum at the section, ''Section 777A(f) of the Act.''

of merchandise under consideration which have not received their own separate rate above, the cash-deposit rate will be the cash deposit rate applicable to the Vietnamese exporter/producer combination that supplied that non-Vietnamese exporter. These suspension of liquidation and cash deposit instructions will remain in effect until further notice.

Furthermore, as stated above and consistent with our practice, we will instruct CBP to require a cash deposit equal to the amount by which normal value exceeds the export price or constructed export price, less the amount of the countervailing duty rate determined to be attributable to an export subsidy. With regard to Region Industries Co., Ltd., export subsidies constitute 8.34 percent [13] of Region Industries Co., Ltd.'s preliminarily calculated countervailing duty rate in the companion countervailing duty investigation. Therefore, we will offset Region Industries Co., Ltd.'s antidumping duty cash deposit rate by the countervailing duty rate attributable to export subsidies (*i.e.,* 8.34 percent) to calculate its preliminary cash deposit rate for this LTFV investigation. We have not adjusted the preliminary cash deposit rate for United Nail Products Co., Ltd. for export subsidies because the amount of its preliminary calculated countervailing duty rate in the companion countervailing duty investigation attributable to export subsidies is *de minimis.*[14] With respect to the separate rate company which was not individually investigated, we have adjusted its antidumping duty cash deposit rate to account for export subsidies because this company is currently subject to the countervailing duty rate calculated for ''All Others'' in the preliminary determination of the companion countervailing duty investigation, and we did include export subsidies (*i.e.,* 8.34 percent) in the calculation of that countervailing duty rate.[15] Accordingly, we have adjusted the antidumping duty cash deposit rate for the separate rate company. With respect to the Vietnam-wide entity, we find that an export-subsidy adjustment is warranted because an export subsidy amount (*i.e.,* 8.34 percent) was included in a countervailing duty rate to which Vietnam-wide entries are currently subject. Accordingly, we have also adjusted the antidumping duty cash deposit rate for the Vietnam-wide entity.

We are not adjusting the preliminary determination rates for estimated domestic subsidy pass-through because we have no basis upon which to make such an adjustment.[16]

International Trade Commission Notification

In accordance with section 733(f) of the Act, we will notify the International Trade Commission (ITC) of our preliminary affirmative determination of sales at less than fair value. Because the preliminary determination in this proceeding is affirmative, section 735(b)(2) of the Act requires that the ITC make its final determination as to whether the domestic industry in the United States is materially injured, or threatened with material injury, by reason of imports of certain steel nails from Vietnam before the later of 120 days after the date of this preliminary determination or 45 days after our final determination. Because we are postponing the deadline for our final determination to 135 days from the date of the publication of this determination, as described immediately above, the ITC will make its final determination no later than 45 days after our final determination.

This determination is issued and published in accordance with sections 733(f) and 777(i)(1) of the Act and 19 CFR 351.205(c).

Dated: December 17, 2014.

Ronald K. Lorentzen,

Acting Assistant Secretary for Enforcement and Compliance.

Appendix I

Scope of the Investigation

The merchandise covered by this investigation is certain steel nails having a nominal shaft length not exceeding 12 inches.[17] Certain steel nails include, but are not limited to, nails made from round wire and nails that are cut from flat-rolled steel. Certain steel nails may be of one piece construction or constructed of two or more pieces. Certain steel nails may be produced from any type of steel, and may have any type of surface finish, head type, shank, point type and shaft diameter. Finishes include, but are not limited to, coating in vinyl, zinc (galvanized, including but not limited to electroplating or hot dipping one or more times), phosphate, cement, and paint. Certain steel nails may have one or more surface finishes. Head styles include, but are not limited to, flat, projection, cupped, oval, brad, headless, double, countersunk, and sinker. Shank styles include, but are not limited to, smooth, barbed, screw threaded, ring shank and fluted. Screw-threaded nails subject to this proceeding are driven using direct force and not by turning the nail using a tool that engages with the head. Point styles include, but are not limited to, diamond, needle, chisel and blunt or no point. Certain steel nails may be sold in bulk, or they may be collated in any manner using any material. If packaged in combination with one or more non-subject articles, certain steel nails remain subject merchandise if the total number of nails of all types, in aggregate regardless of size, is equal to or greater than 25.

Excluded from the scope of this investigation are certain steel nails packaged in combination with one or more non-subject articles, if the total number of nails of all types, in aggregate regardless of size, is less than 25.

Also excluded from the scope of this investigation are steel nails that meet the specifications of Type I, Style 20 nails as identified in Tables 29 through 33 of ASTM Standard F1667 (2013 revision).

Also excluded from the scope of this investigation are nails suitable for use in powder-actuated hand tools, whether or not threaded, which are currently classified under Harmonized Tariff Schedule of the United States (HTSUS) subheadings 7317.00.20.00 and 7317.00.30.00.

Also excluded from the scope of this investigation are nails having a case hardness greater than or equal to 50 on the Rockwell Hardness C scale (HRC), a carbon content greater than or equal to 0.5 percent, a round head, a secondary reduced-diameter raised head section, a centered shank, and a smooth symmetrical point, suitable for use in gas-actuated hand tools.

Also excluded from the scope of this investigation are corrugated nails. A corrugated nail is made up of a small strip of corrugated steel with sharp points on one side.

Also excluded from the scope of this investigation are thumb tacks, which are currently classified under HTSUS 7317.00.10.00.

Certain steel nails subject to this investigation are currently classified under HTSUS subheadings 7317.00.55.02, 7317.00.55.03, 7317.00.55.05, 7317.00.55.07, 7317.00.55.08, 7317.00.55.11, 7317.00.55.18, 7317.00.55.19, 7317.00.55.20, 7317.00.55.30, 7317.00.55.40, 7317.00.55.50, 7317.00.55.60, 7317.00.55.70, 7317.00.55.80, 7317.00.55.90, 7317.00.65.30, 7317.00.65.60 and 7317.00.75.00. Certain steel nails subject to this investigation also may be classified under HTSUS subheading 8206.00.00.00.

While the HTSUS subheadings are provided for convenience and customs purposes, the written description of the scope of this investigation is dispositive.

Appendix II

List of Topics Discussed in the Preliminary Decision Memorandum

1. Background

[13] *See Certain Steel Nails From the Socialist Republic of Vietnam: Preliminary Affirmative Countervailing Duty Determination and Alignment of Final Countervailing Duty Determination With Final Antidumping Duty Determination,* 79 FR 65184 (November 3, 2014), and accompanying Preliminary Decision Memorandum at 20.

[14] *See id.*

[15] *See id. at 65185.*

[16] *See* Preliminary Decision Memorandum at the section, ''Section 777A(f) of the Act.''

[17] The shaft length of certain steel nails with flat heads or parallel shoulders under the head shall be measured from under the head or shoulder to the tip of the point. The shaft length of all other certain steel nails shall be measured overall.

2. Period of Investigation
3. Scope of Investigation
4. Scope Comments
5. Respondent Selection
6. Discussion of the Methodology
a. Non-Market Economy Country
b. Separate Rates Determination
c. The Vietnam-Wide Entity
d. Single-Entity Treatment
e. Facts Available
f. Surrogate Country
g. Surrogate Value Comments
h. Combination Rates
i. Date of Sale
j. Normal Value
k. Factor Valuation Methodology
l. Comparisons to Normal Value
m. Currency Conversion
7. Verification
8. Section 777A(f) of the Act
9. U.S. International Trade Commission Notification
10. Disclosure and Public Comment
11. Conclusion

[FR Doc. 2014–30431 Filed 12–24–14; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

RIN 0648–XD643

Notice of Availability of a Draft Programmatic Environmental Assessment for Fisheries Research Conducted and Funded by the National Marine Fisheries Service, Northeast Fisheries Science Center

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

ACTION: Notice of availability of a Draft Programmatic Environmental Assessment; Request for comments.

SUMMARY: NMFS announces the availability of the ''Draft Programmatic Environmental Assessment (DPEA) for Fisheries Research Conducted and Funded by the Northeast Fisheries Science Center (NEFSC).'' Publication of this notice begins the official public comment period for this DPEA. The purpose of the DPEA is to evaluate, in compliance with the National Environmental Policy Act (NEPA), the potential direct, indirect, and cumulative impacts of conducting and funding fisheries and ecosystem research along the U.S. East Coast, including of the Northeast Continental Shelf Large Marine Ecosystem (LME) and the Southeast Continental Shelf Large Marine Ecosystem (LME).

DATES: Comments and information must be received no later than January 28, 2015.

ADDRESSES: Comments on the DPEA should be addressed to Nathan Keith, NMFS NEFSC Woods Hole Laboratory, 166 Water Street, Woods Hole, MA 02543. The mailbox address for providing email comments is *NEFSC.DPEA@noaa.gov.* NMFS is not responsible for email comments sent to addresses other than the one provided here. Comments sent via email, including all attachments, must not exceed a 10-megabyte file size.

A copy of the DPEA may be obtained by writing to the address specified above, telephoning the contact listed below (see **FOR FURTHER INFORMATION CONTACT**), or visiting the Internet at: *http://nefsc.noaa.gov/dpea.aspx.* Documents cited in this notice may also be viewed, by appointment, during regular business hours, at the aforementioned address.

FOR FURTHER INFORMATION CONTACT: Nathan Keith, NEFSC, NMFS, (508) 495–2224.

SUPPLEMENTARY INFORMATION: The NEFSC is the research arm of NMFS in the Northeast Region. The NEFSC conducts research and provides scientific advice to manage fisheries and conserve protected species in the Atlantic Ocean from the U.S.-Canada border to Florida. Most NEFSC-conducted and funded fisheries research occurs in the Northeast U.S. Continental Shelf LME but also occurs in the Southeast U.S. Continental Shelf LME and adjacent offshore areas. Research is aimed at monitoring fish stock recruitment, survival and biological rates, abundance and geographic distribution of species and stocks, and providing other scientific information needed to improve our understanding of complex marine ecological processes. Primary research activities include: Bottom trawl surveys to support assessments of multiple groundfish and shrimp species as well as the status of benthic habitats, pelagic trawl surveys to assess Atlantic herring and Atlantic salmon stocks, dredge and video camera surveys to assess scallop stocks and habitat recovery, longline and gillnet surveys to research life history parameters and abundance of numerous shark species, and extensive cooperative research projects designed to address current or emerging information needs of the commercial fishing industry such as bycatch reduction efforts and development of new fisheries. Many research activities also include active acoustic systems, plankton nets, and other oceanographic equipment that provide important data on the status and trends of marine ecosystems important for various fisheries and natural resource management processes.

NMFS has prepared the DPEA under NEPA to evaluate several alternatives for conducting and funding fisheries and ecosystem research activities as the primary federal action. Additionally in the DPEA, NMFS evaluates a secondary federal action—also called a ''connected action'' under 40 CFR 1508.25 of the Council on Environmental Quality's regulations for implementing the procedural provisions of NEPA (42 U.S.C. 4321 *et seq.*)—which is the proposed promulgation of regulations and authorization of the take of marine mammals incidental to the fisheries research under the Marine Mammal Protection Act (MMPA). Additionally, because the proposed research activities occur in areas inhabited by species of marine mammals, birds, sea turtles, and fish listed under the Endangered Species Act (ESA) as threatened or endangered, this DPEA evaluates activities that could result in unintentional takes of ESA-listed marine species.

The following four alternatives are evaluated in the DPEA:

- No-Action/Status Quo Alternative—Conduct Federal Fisheries and Ecosystem Research with Scope and Protocols Similar to Past Effort.
- Preferred Alternative—Conduct Federal Fisheries and Ecosystem Research (New Suite of Research) with Mitigation for MMPA and ESA Compliance.
- Modified Research Alternative—Conduct Federal Fisheries and Ecosystem Research (New Suite of Research) with Additional Mitigation.
- No Research Alternative—No Fieldwork for Federal Fisheries and Ecosystem Research Conducted or Funded by NEFSC.

The first three alternatives include a program of fisheries and ecosystem research projects conducted or funded by the NEFSC as the primary federal action. Because this primary action is connected to a secondary federal action to consider authorizing incidental take of marine mammals under the MMPA, NMFS must identify as part of this evaluation ''(t)he means of effecting the least practicable adverse impact on the species or stock and its habitat.'' (Section 101(a)(5)(A) of the MMPA [16 U.S.C. 1361 *et seq.*]). NMFS must therefore identify and evaluate a reasonable range of mitigation measures to minimize impacts to marine mammals that occur in NEFSC research areas. These mitigation measures are considered as part of the identified alternatives in order to evaluate their effectiveness to minimize potential

adverse environmental impacts. The three action alternatives also include mitigation measures intended to minimize potentially adverse interactions with other protected species that occur within the action area. Protected species include all marine mammals, which are covered under the MMPA, all species listed under the ESA, and bird species protected under the Migratory Bird Treaty Act.

NMFS is also evaluating a second type of no-action alternative that considers no federal funding for fieldwork on fisheries and ecosystem research activities. This is called the No Research Alternative to distinguish it from the No-Action/Status Quo Alternative. The No-Action/Status Quo Alternative will be used as the baseline to compare all of the other alternatives.

Potential direct and indirect effects on the environment are evaluated under each alternative in the DPEA. The environmental effects on the following resources are considered: Physical environment, special resource areas, fish, marine mammals, birds, sea turtles, invertebrates, and the social and economic environment. Cumulative effects of external actions and the contribution of fisheries research activities to the overall cumulative impact on the aforementioned resources is also evaluated in the DPEA for the geographic regions in which NEFSC surveys are conducted.

NMFS requests comments on the DPEA for Fisheries Research Conducted and Funded by the National Marine Fisheries Service, Northeast Fisheries Science Center. Please include, with your comments, any supporting data or literature citations that may be informative in substantiating your comment.

Dated: December 22, 2014.

William Karp,

Director, Northeast Fisheries Science Center, National Marine Fisheries Service.

[FR Doc. 2014–30346 Filed 12–22–14; 4:15 pm]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

RIN 0648–XD684

North Pacific Fishery Management Council; Public Meeting

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

ACTION: Notice of public meetings.

SUMMARY: The North Pacific Fishery Management Council (Council) Fixed Gear Electronic Monitoring (EM) workgroup will meet in Anchorage, AK.

DATES: The meetings will be held January 12–13, 2015, from 1 p.m. to 5 p.m. and 8 a.m. to 12 p.m., respectively.

ADDRESSES: The meetings will be held at the Hilton Hotel, Aspen/Spruce Room, 500 W 3rd Avenue, Anchorage, AK.

Council address: North Pacific Fishery Management Council, 605 W. 4th Ave., Suite 306, Anchorage, AK 99501–2252.

FOR FURTHER INFORMATION CONTACT: Diana Evans, Council staff; telephone: (907) 271–2809.

SUPPLEMENTARY INFORMATION: The agenda is to finalize the 2015 EM Cooperative Research Plan and discuss funding and timelines for the research plan, pre-implementation, and the Council analysis to integrate EM into the observer program.

The Agenda is subject to change, and the latest version will be posted at *http://www.npfmc.org/.*

Although non-emergency issues not contained in this agenda may come before this group for discussion, in accordance with the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act), those issues may not be the subject of formal action during these meetings. Actions will be restricted to those issues specifically identified in this notice and any issues arising after publication of this notice that require emergency action under section 305(c) of the Magnuson-Stevens Act, provided the public has been notified of the Council's intent to take final action to address the emergency.

Special Accommodations

These meetings are physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to Gail Bendixen at (907) 271–2809 at least 7 working days prior to the meeting date.

Dated: December 22, 2014.

Tracey L. Thompson,

Acting Deputy Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. 2014–30315 Filed 12–24–14; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

RIN 0648–XD678

New England Fishery Management Council; Public Meeting

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

ACTION: Notice; public meeting.

SUMMARY: The New England Fishery Management Council (Council) is scheduling a public meeting of its Herring Committee to consider actions affecting New England fisheries in the exclusive economic zone (EEZ). Recommendations from this group will be brought to the full Council for formal consideration and action, if appropriate.

DATES: This meeting will be held on Friday, January 16, 2015 at 9:30 a.m.

ADDRESSES:

Meeting address: The meeting will be held at the Sheraton Harborside, 250 Market Street, Portsmouth, NH 03801; telephone: (603) 431–2300; fax: (603) 431–7805.

Council address: New England Fishery Management Council, 50 Water Street, Mill 2, Newburyport, MA 01950.

FOR FURTHER INFORMATION CONTACT: Thomas A. Nies, Executive Director, New England Fishery Management Council; telephone: (978) 465–0492.

SUPPLEMENTARY INFORMATION: The items of discussion on the agenda are:

The committee will receive a report from the January 15, 2015 Herring Advisory Panel (AP) meeting and consider the AP recommendations. The committee will also review Action Plans for the 2016–2018 Atlantic herring fishery specifications and an amendment to the Atlantic Herring FMP to consider control rules for the Atlantic herring fishery that account for herring's role as forage in the ecosystem (Amendment 8). They plan to discuss possible cooperative research priorities for any research set-aside that may be allocated in 2016–18 during the Atlantic herring fishery specifications process and develop Committee recommendations. They will also review/approve a draft scoping document for an amendment to the Herring FMP to consider control rules for the Atlantic herring fishery that account for herring's role as forage in the ecosystem. The committee will review/discuss options under consideration in the NMFS-led omnibus Industry-Funded Monitoring

Amendment to address observer coverage on Atlantic herring vessels and develop Committee recommendations. The committee will discuss other business as necessary.

Although non-emergency issues not contained in this agenda may come before this group for discussion, those issues may not be the subject of formal action during this meeting. Action will be restricted to those issues specifically listed in this notice and any issues arising after publication of this notice that require emergency action under section 305(c) of the Magnuson-Stevens Act, provided the public has been notified of the Council's intent to take final action to address the emergency.

Special Accommodations

The meeting is physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to Thomas A. Nies, Executive Director, at (978) 465–0492, at least 5 days prior to the meeting date.

Authority: 16 U.S.C. 1801 *et seq.*

Dated: December 22, 2014.

Tracey L. Thompson,

Acting Deputy Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. 2014–30306 Filed 12–24–14; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

RIN 0648–XD685

Mid-Atlantic Fishery Management Council (MAFMC); Public Hearings

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

ACTION: Notice of public hearings, request for comments.

SUMMARY: The Mid-Atlantic Fishery Management Council (Council) is developing an Amendment to the Atlantic Mackerel, Squid, and Butterfish Fishery Management Plan (FMP) (called ''Measures to Protect Deep Sea Corals from Impacts of Fishing Gear'') that will address minimizing the impacts of fishing gear on deep sea corals in the Mid-Atlantic.

DATES: Written comments will be accepted until Wednesday, January 28, 2015. Five public hearings will be held during this comment period. See **SUPPLEMENTARY INFORMATION** for dates, times, and locations.

ADDRESSES: Written comments may be sent by any of the following methods:

- Email to the following address: *kdancy@mafmc.org;* Include ''Deep Sea Corals Amendment Comments'' in the subject line;
- Mail or hand deliver to Dr. Christopher M. Moore, Executive Director, Mid-Atlantic Fishery Management Council, 800 North State Street, Suite 201, Dover, Delaware 19901. Mark the outside of the envelope ''Deep Sea Corals Amendment Comments''; or
- Fax to (302) 674–5399.
- A web form for submitting comments is available on the Council's Web site: *http://www.mafmc.org/comments/deep-sea-corals.* The draft Amendment document may be obtained from the Council office at the previously provided address, or by request to the Council by telephone (302) 674–2331, or via the Internet at *http://www.mafmc.org.*
- Comments may also be provided verbally at any of the five public hearings. See **SUPPLEMENTARY INFORMATION** for dates, times, and locations.

FOR FURTHER INFORMATION CONTACT: Dr. Christopher M. Moore, Mid-Atlantic Fishery Management Council, 800 North State Street, Suite 201, Dover, DE 19901; telephone: (302) 674–2331. The Council's Web site, *www.mafmc.org* also has details on the meeting location, webinar listen-in access, and public hearing materials.

SUPPLEMENTARY INFORMATION:

Background

The Council has initiated an amendment to the Atlantic Mackerel, Squid, and Butterfish FMP in order to minimize the impacts of fishing gear on deep sea corals in the mid-Atlantic. The Council has approved a range of alternatives proposing designation of deep sea coral protection zones, under the discretionary authority described in section 303(b)(2)(b) of the reauthorized Magnuson-Stevens Act (MSA). These zones would consist of areas where use of certain gear types (all bottom-tending gear or all mobile bottom-tending gear) would be restricted in order to protect deep sea corals from physical damage caused by fishing gear. Although this action is being taken through the Atlantic Mackerel, Squid, and Butterfish FMP, these measures could apply to any federally regulated fishing activity occurring within the proposed areas in the Mid-Atlantic Council region. Additionally, this amendment proposes to modify the framework provisions of the FMP and require Vessel Monitoring Systems (VMS) for all Illex squid vessels. For more information and to access the public hearing document, visit: *http://www.mafmc.org/actions/msb/am16.*

Public Hearings

The dates and locations of the public hearings are as follows.

- *Monday, January 12, 2015, 7 p.m.,* Hyatt Place Long Island/East End, 451 East Main Street, Riverhead, NY 11901, telephone: (631) 208–0002;
- *Tuesday, January 13, 2015, 7 p.m.,* The Grand Hotel, 1045 Beach Avenue, Cape May, NJ 08204, telephone: (609) 884–5611;
- *Wednesday, January 14, 2015, 7 p.m.,* Washington Marriott at Metro Center, 775 12th Street NW., Washington, DC 20005, telephone: (202) 737–2200;
- *Thursday, January 15, 2015, 7 p.m.,* Hilton Virginia Beach Oceanfront, 3001 Atlantic Ave., Virginia Beach, VA 23451, telephone: (866) 460–7456;
- *Friday, January 16, 2015, 7 p.m.,* Ocean Pines Library, 11107 Cathell Rd., Berlin, MD 21811, telephone: (410) 208–4014;
- *Tuesday, January 20, 2015, 7 p.m.,* Internet webinar, Connection information to be available at *http://www.mafmc.org* or by contacting the Council (see **ADDRESSES** above).

Special Accommodations

These public hearings are accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aid should be directed to Jan Saunders, (302) 526–5251, at least 5 days prior to the meeting date.

Dated: December 22, 2014.

Tracey L. Thompson,

Acting Deputy Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. 2014–30316 Filed 12–24–14; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

RIN 0648–XD658

North Pacific Fishery Management Council; Public Meeting; Correction

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

ACTION: Notice of correction of a public meeting.

SUMMARY: The North Pacific Fishery Management Council's Pacific

Northwest Crab Industry Advisory Committee (PNCIAC) will meet in Seattle, WA. The meeting is open to the public.

DATES: The meeting will be held on January 12, 2015, from 9 a.m. until 12 noon.

ADDRESSES: The meeting will be held at the Fishermen's Terminal, Norby conference room, 3919 18th Avenue W., Seattle, WA 98199.

Council address: North Pacific Fishery Management Council, 605 W. 4th Avenue, Suite 306, Anchorage, AK 99501–2252.

FOR FURTHER INFORMATION CONTACT: Dr. Diana Stram, Council Staff; telephone: (907) 271–2809 or Lance Farr, (206) 669–7163.

SUPPLEMENTARY INFORMATION: The original notice published in the **Federal Register** on December 12, 2014 (79 FR 73884). This notice serves a correction to that notice and is being re-published in its entirety due to a date change and an addition to the agenda.

The Committee will discuss issues to recommend for the 10-year review of the Crab Rationalization Program and discuss extending the Western Baridi fishing season.

Special Accommodations

This meeting is physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to Gail Bendixen at (907) 271–2809 at least 7 working days prior to the meeting date.

Dated: December 22, 2014.

Tracey L. Thompson,

Acting Deputy Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. 2014–30304 Filed 12–24–14; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

RIN 0648–XD679

Gulf of Mexico Fishery Management Council; Public Meeting

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

ACTION: Notice of a public meeting.

SUMMARY: The Gulf of Mexico Fishery Management Council (Council) will hold a meeting of the King Mackerel Gillnet Working Group.

DATES: The meeting will convene at 9 a.m. until 5 p.m. on Monday, January 12, 2015.

ADDRESSES: *Meeting address:* The meeting will be held at the Marriott Beachside Hotel located at 3841 N. Roosevelt Boulevard, Key West, FL 33040.

Council address: Gulf of Mexico Fishery Management Council, 2203 North Lois Avenue, Suite 1100, Tampa, FL 33607.

FOR FURTHER INFORMATION CONTACT: Ryan Rindone, Fishery Biologist, Gulf of Mexico Fishery Management Council; telephone: (813) 348–1630; fax: (813) 348–1711; email: *ryan.rindone@gulfcouncil.org.*

SUPPLEMENTARY INFORMATION: The items of discussion on the agenda are as follows:

King Mackerel Gillnet Working Group Agenda, Monday, January 12, 2015, 9 a.m. Until 5 p.m.

I. Adoption of Agenda
II. Action Guide
III. Overview of King Mackerel Gillnet Issues
  (a) Gulf Council Mackerel Committee Summary
IV. Suggested Gillnet Management Options
  (a) Trip Limit Increases
  (b) Gear Modifications
  (c) Catch Shares
  (d) Other
V. Wrap Up

This agenda may be modified as necessary to facilitate the discussion of pertinent materials up to and during the scheduled meeting.

For meeting materials see folder ''King Mackerel Gillnet Working Group meeting—2015—01'' on Gulf Council file server. To access the file server, the URL is *https://public.gulfcouncil.org:5001/webman/index.cgi,* or go to the Council's Web site and click on the FTP link in the lower left of the Council Web site (*http://www.gulfcouncil.org*). The username and password are both ''gulfguest''.

Although non-emergency issues not contained in this agenda may come before this group for discussion, those issues may not be the subject of formal action during this meeting. Action will be restricted to those issues specifically identified in this notice and any issues arising after publication of this notice that require emergency action under section 305(c) of the Magnuson-Stevens Fishery Conservation and Management Act, provided the public has been notified of the Council's intent to take final action to address the emergency.

Special Accommodations

The meeting is physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to Kathy Pereira at the Council Office (see **ADDRESSES**), at least 5 working days prior to the meeting.

Note: The times and sequence specified in this agenda are subject to change.

Authority: 16 U.S.C. 1801 *et seq.*

Dated: December 22, 2014.

Tracey L. Thompson,

Acting Deputy Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. 2014–30314 Filed 12–24–14; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

RIN 0648–XD677

New England Fishery Management Council; Public Meeting

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

ACTION: Notice; public meeting.

SUMMARY: The New England Fishery Management Council (Council) is scheduling a public meeting of its Herring Advisory Panel to consider actions affecting New England fisheries in the exclusive economic zone (EEZ). Recommendations from this group will be brought to the full Council for formal consideration and action, if appropriate.

DATES: This meeting will be held on Thursday, January 15, 2015 at 9:30 a.m.

ADDRESSES:

Meeting address: The meeting will be held at the Sheraton Harborside, 250 Market Street, Portsmouth, NH 03801; telephone: (603) 431–2300; fax: (603) 431–7805.

Council address: New England Fishery Management Council, 50 Water Street, Mill 2, Newburyport, MA 01950.

FOR FURTHER INFORMATION CONTACT: Thomas A. Nies, Executive Director, New England Fishery Management Council; telephone: (978) 465–0492.

SUPPLEMENTARY INFORMATION:

The items of discussion on the agenda are:

The panel will review Action Plans for the 2016–18 Atlantic herring fishery specifications and an amendment to the Atlantic Herring FMP to consider control rules for the Atlantic herring

fishery that account for herring's role as forage in the ecosystem (Amendment 8). They will also discuss possible cooperative research priorities for any research set-aside that may be allocated in 2016–18 during the Atlantic herring fishery specifications process and develop recommendations. The Panel plans to review/discuss a draft scoping document for an amendment to the Herring FMP to consider control rules for the Atlantic herring fishery that account for herring's role as forage in the ecosystem and develop recommendations; They will also review/discuss options under consideration in the NMFS-led omnibus Industry-Funded Monitoring Amendment to address observer coverage on Atlantic herring vessels and develop recommendations. The panel will discuss other business as necessary.

Although non-emergency issues not contained in this agenda may come before this group for discussion, those issues may not be the subject of formal action during this meeting. Action will be restricted to those issues specifically listed in this notice and any issues arising after publication of this notice that require emergency action under section 305(c) of the Magnuson-Stevens Act, provided the public has been notified of the Council's intent to take final action to address the emergency.

Special Accommodations

The meeting is physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to Thomas A. Nies, Executive Director, at (978) 465–0492, at least 5 days prior to the meeting date.

Authority: 16 U.S.C. 1801 *et seq.*

Dated: December 22, 2014.

Tracey L. Thompson,

Acting Deputy Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. 2014–30305 Filed 12–24–14; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

RIN 0648–XD663

Taking and Importing Marine Mammals; Taking Marine Mammals Incidental to Fisheries Research

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

ACTION: Notice; receipt of application for letter of authorization; request for comments and information.

SUMMARY: NMFS' Office of Protected Resources has received a request from the NMFS Northeast Fisheries Science Center (NEFSC) for authorization to take small numbers of marine mammals incidental to conducting fisheries research, over the course of five years from the date of issuance. Pursuant to regulations implementing the Marine Mammal Protection Act (MMPA), NMFS is announcing receipt of the NEFSC's request under section 101(a)(5)(A) of the MMPA for the development and implementation of regulations governing the incidental taking of marine mammals. NMFS invites the public to provide information, suggestions, and comments on the NEFSC's application and request.

DATES: Comments and information must be received no later than January 28, 2015.

ADDRESSES: Comments on the application should be addressed to Jolie Harrison, Chief, Permits and Conservation Division, Office of Protected Resources, National Marine Fisheries Service, 1315 East-West Highway, Silver Spring, MD 20910–3225. The mailbox address for providing email comments is *ITP.Cody@noaa.gov.* You must include 0648–XD663 in the subject line. NMFS is not responsible for email comments sent to addresses other than the one provided here. Comments sent via email, including all attachments, must not exceed a 25-megabyte file size.

Instructions: All submitted comments are a part of the public record and NMFS will post them to *http://www.nmfs.noaa.gov/pr/permits/incidental/research.htm* without change. All Personal Identifying Information (for example, name, address, etc.) voluntarily submitted by the commenter may be publicly accessible. Do not submit confidential business information or otherwise sensitive or protected information.

FOR FURTHER INFORMATION CONTACT: Jeannine Cody, Office of Protected Resources, NMFS, (301) 427–8401.

SUPPLEMENTARY INFORMATION:

Availability

An electronic copy of the NEFSC's application may be obtained by visiting the Internet at: *http://www.nmfs.noaa.gov/pr/permits/incidental/research.htm.* The NEFSC is concurrently releasing a draft Environmental Assessment, prepared pursuant to requirements of the National Environmental Policy Act, for the conduct of their fisheries research. A copy of the draft EA, which would also support our proposed rulemaking under the MMPA, is also available at: *http://nefsc.noaa.gov/rcb/dpea/.*

Background

Section 101(a)(5)(A) of the MMPA (16 U.S.C. 1361 *et seq.*) directs the Secretary of Commerce (Secretary) to allow, upon request, the incidental, but not intentional, taking of small numbers of marine mammals by U.S. citizens who engage in a specified activity (other than commercial fishing) if certain findings are made and regulations are issued.

Incidental taking shall be allowed if NMFS finds that the taking will have a negligible impact on the species or stock(s) affected and will not have an unmitigable adverse impact on the availability of the species or stock(s) for taking for subsistence uses, and if the permissible methods of taking and requirements pertaining to the mitigation, monitoring and reporting of such taking are set forth.

NMFS has defined ''negligible impact'' in 50 CFR 216.103 as ''an impact resulting from the specified activity that cannot be reasonably expected to, and is not reasonably likely to, adversely affect the species or stock through effects on annual rates of recruitment or survival.'' Except with respect to certain activities not pertinent here, the MMPA defines ''harassment'' as: ''Any act of pursuit, torment, or annoyance which (i) has the potential to injure a marine mammal or marine mammal stock in the wild [Level A harassment]; or (ii) has the potential to disturb a marine mammal or marine mammal stock in the wild by causing disruption of behavioral patterns, including, but not limited to, migration, breathing, nursing, breeding, feeding, or sheltering [Level B harassment].''

Summary of Request

On December 17, 2014, NMFS received an application from the NEFSC requesting authorization for take of marine mammals incidental to fisheries research conducted by the NEFSC. The requested regulations would be valid for five years from the date of issuance. The NEFSC plans to conduct fisheries research surveys in the Atlantic Ocean from the U.S.-Canada border to Florida. It is possible that marine mammals may interact with fishing gear (*e.g.,* bottom and pelagic trawls, dredges, video cameras, long lines, and gillnets) used in NEFSC's fisheries research and cooperative research projects, resulting in injury, serious injury, or mortality. In addition, the NEFSC operates active

acoustic devices that have the potential to disturb marine mammals. Because the specified activities have the potential to take marine mammals present within these action areas, the NEFSC requests authorization to take multiple species of marine mammal that may occur in these areas.

Specified Activities

The Federal Government has a responsibility to conserve and protect living marine resources in U.S. federal waters and has also entered into a number of international agreements and treaties related to the management of living marine resources in international waters outside the United States. NOAA has the primary responsibility for managing marine fin and shellfish species and their habitats, with that responsibility delegated within NOAA to NMFS.

In order to direct and coordinate the collection of scientific information needed to make informed management decisions, Congress created six Regional Fisheries Science Centers, each a distinct organizational entity and the scientific focal point within NMFS for region-based federal fisheries-related research. This research is aimed at monitoring fish stock recruitment, abundance, survival and biological rates, geographic distribution of species and stocks, ecosystem process changes, and marine ecological research. The NEFSC is the research arm of NMFS in the Greater Atlantic Region. The NEFSC conducts research and provides scientific advice to manage fisheries and conserve protected species in two geographic research areas: Occurs in the Northeast U.S. Continental Shelf LME but also occurs in the Southeast U.S.

Continental Shelf LME and Adjacent Offshore Areas

Research is aimed at monitoring fish stock recruitment, survival and biological rates, abundance and geographic distribution of species and stocks, and providing other scientific information needed to improve our understanding of complex marine ecological processes. Primary research activities include: Bottom trawl surveys to support assessments of multiple groundfish and shrimp species as well as the status of benthic habitats, pelagic trawl surveys to assess Atlantic herring and Atlantic salmon stocks, dredge and video camera surveys to assess scallop stocks and habitat recovery, longline and gillnet surveys to research life history parameters and abundance of numerous shark species, and extensive cooperative research projects designed to address current or emerging information needs of the commercial fishing industry such as bycatch reduction efforts and development of new fisheries. Many research activities also include active acoustic systems, plankton nets, and other oceanographic equipment that provide important data on the status and trends of marine ecosystems important for various fisheries and natural resource management processes. The NEFSC proposes to administer and conduct these survey programs over the five-year period. Several of these surveys also use active acoustic devices.

A more detailed description of the fisheries research conducted by the NEFSC may be found in their application, which is available at: *http://www.nmfs.noaa.gov/pr/permits/incidental/research.htm.*

Information Solicited

Interested persons may submit information, suggestions, and comments concerning the NEFSC's request (see **ADDRESSES**). NMFS will consider all information, suggestions, and comments related to the request during the development of proposed regulations governing the incidental taking of marine mammals by the NEFSC, if appropriate.

Dated: December 22, 2014.

Donna S. Wieting,

Director, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. 2014–30349 Filed 12–22–14; 4:15 pm]

BILLING CODE 3510–22–P

COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

Determination Under the Textile and Apparel Commercial Availability Provision of the Dominican Republic-Central America-United States Free Trade Agreement (''CAFTA–DR Agreement'')

AGENCY: The Committee for the Implementation of Textile Agreements.

ACTION: Determination to add a product in unrestricted quantities to Annex 3.25 of the CAFTA–DR Agreement.

DATES: *Effective Date:* December 29, 2014.

SUMMARY: The Committee for the Implementation of Textile Agreements (''CITA'') has determined that certain 100% polyester composite laminated fabric, as specified below, is not available in commercial quantities in a timely manner in the CAFTA–DR countries. The product will be added to the list in Annex 3.25 of the CAFTA–DR Agreement in unrestricted quantities.

FOR FURTHER INFORMATION CONTACT: Laurie Mease, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 482–2043.

For Further Information On-Line: *http://web.ita.doc.gov/tacgi/CaftaReqTrack.nsf.* under ''Approved Requests,'' Reference number: 194.2014.11.18.Fabric.ST&RforVFCorp

SUPPLEMENTARY INFORMATION:

Authority: The CAFTA–DR Agreement; Section 203(o)(4) of the Dominican Republic-Central America-United States Free Trade Agreement Implementation Act (''CAFTA–DR Implementation Act''), Public Law 109–53; the Statement of Administrative Action, accompanying the CAFTA–DR Implementation Act; and Presidential Proclamations 7987 (February 28, 2006) and 7996 (March 31, 2006).

Background

The CAFTA–DR Agreement provides a list in Annex 3.25 for fabrics, yarns, and fibers that the Parties to the CAFTA–DR Agreement have determined are not available in commercial quantities in a timely manner in the territory of any Party. The CAFTA–DR Agreement provides that this list may be modified pursuant to Article 3.25(4)-(5), when the President of the United States determines that a fabric, yarn, or fiber is not available in commercial quantities in a timely manner in the territory of any Party. *See* Annex 3.25 of the CAFTA–DR Agreement; *see also* section 203(o)(4)(C) of the CAFTA–DR Implementation Act.

The CAFTA–DR Implementation Act requires the President to establish procedures governing the submission of a request and providing opportunity for interested entities to submit comments and supporting evidence before a commercial availability determination is made. In Presidential Proclamations 7987 and 7996, the President delegated to CITA the authority under section 203(o)(4) of CAFTA–DR Implementation Act for modifying the Annex 3.25 list. Pursuant to this authority, on September 15, 2008, CITA published modified procedures it would follow in considering requests to modify the Annex 3.25 list of products determined to be not commercially available in the territory of any Party to CAFTA–DR (*Modifications to Procedures for Considering Requests Under the Commercial Availability Provision of the Dominican Republic-Central America-United States Free Trade Agreement,* 73 FR 53200) (''CITA's procedures'').

On November 18, 2014, the Chairman of CITA received a request for a Commercial Availability determination (''Request'') from Sandler, Travis and Rosenberg, P.A. on behalf of VF Corp. for certain 100% polyester composite laminated fabric, as specified below. On November 20, 2014, in accordance with CITA's procedures, CITA notified interested parties of the Request, which was posted on the dedicated Web site for CAFTA–DR Commercial Availability proceedings. In its notification, CITA advised that any Response with an Offer to Supply (''Response'') must be submitted by December 3, 2014, and any Rebuttal Comments to a Response must be submitted by December 9, 2014, in accordance with sections 6 and 7 of CITA's procedures. No interested entity submitted a Response to the Request advising CITA of its objection to the Request and its ability to supply the subject product.

In accordance with section 203(o)(4)(C) of the CAFTA–DR Implementation Act, and section 8(c)(2) of CITA's procedures, as no interested entity submitted a Response to object to the Request with an offer to supply the subject product, CITA has determined to add the specified fabric to the list in Annex 3.25 of the CAFTA–DR Agreement.

The subject product has been added to the list in Annex 3.25 of the CAFTA–DR Agreement in unrestricted quantities. A revised list has been posted on the dedicated Web site for CAFTA–DR Commercial Availability proceedings.

Specifications: Certain 100% Polyester Composite Laminated Fabric

Fabric Type: Composite fabric consisting of a 3-layered fleece/shell construction, woven outer layer and brushed inner layer, bonded with a PU membrane
HTS: 6001.22
Woven Face Fabric:
Fiber Content: 100% Polyester
Yarn Size (single ply, warp and filling):
Textured polyester: 323.0 to 343.0 decitex/144 F (31.0 to 29.0 Nm/144 F) (291 to 309 denier/144 F)
Thread Count: 57–61 warp ends per inch by 55–59 filling picks per inch; 22–24 warp ends per centimeter by 21–23 filling picks per centimeter
Weave type: Plain weave
Weight: 156.8 g/m^2 to 204.8 g/m^2 (4.6 to 6.0 oz./yd^2)
Finish: Woven face—piece dyed and/or printed; Woven back—piece dyed
Circular Double Knit Fleece Back Pile Fabric:
Fiber content: 100% polyester
Yarn Size (single ply): 81.0 to 86.0 decitex (73.0 to 78.0 Denier) (124.0 to 116.0 Nm)
Weave type: circular double knit looped pile
Weight: 157.1 to 173.2 g/m^2 (4.6 to 5.1 oz./yd^2)
Finish: Knit face—piece dyed; Knit back—piece dyed
Composite fabric:
Weight: 355.3 to 405.4 g/m^2 (10.5 to 12.0 oz./yd^2)
Width: 130 cm wide (51.18 inches)
Finish: Full contact bonding
Properties:
Windproof: ASTM D737—Initial ≤ 1.0 cfm—3× Wash ≤ 1.0 cfm
Durable Water Resistant: AATCC 22—Initial ≥ 90 Points—10× Wash ≥ 70 Points
High Light Fastness: AATCC 16 Opt 3—Class 3.0 @ 40 Hours AFU
Low Range Hydrostatic: JIS1092-Initial 20,000 mm—3× Wash 20,000 mm; AATCC127-Initial 20,000 mm–3× Wash 20,000 mm
Water Vapour Permeability: JIS 1099—Initial 20,000 g/m^2/24hr–3× Wash 20,000 g/m^2/24hr
Water Vapour Transmission: ASTM E96 B—Initial 500 g/m^2/24hr–3× Wash 500 g/m^2/24hr
Remarks: Ranges above allow for a variance of up to five percent for fabric weight, thread count and three percent for yarn size.

Note: The yarn size designations describe a range of yarn specifications for yarn before knitting, dyeing and finishing of the fabric. They are intended as specifications to be followed by the mill in sourcing yarn used to produce the fabric.

Dyeing, finishing and knitting can alter the characteristic of the yarn as it appears in the finished fabric. This specification therefore includes yarns appearing in the finished fabric as finer or coarser than the designated yarn sizes provided that the variation occurs after processing of the greige yarn and production of the fabric. The specifications for the fabric apply to the fabric itself prior to cutting and sewing of the finished garment. Such processing may alter the measurements.

Joshua Teitelbaum,

Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 2014–30399 Filed 12–24–14; 8:45 am]

BILLING CODE 3510–DR–P

BUREAU OF CONSUMER FINANCIAL PROTECTION

[Docket No: CFPB–2014–0036]

Agency Information Collection Activities: Submission for OMB Review; Comment Request

AGENCY: Bureau of Consumer Financial Protection.

ACTION: Notice and request for comment.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995 (PRA), the Consumer Financial Protection Bureau (Bureau) is proposing a new information collection titled, ''Financial Coaching Program for Veterans and Low-income Consumers.''

DATES: Written comments are encouraged and must be received on or before January 28, 2015 to be assured of consideration.

ADDRESSES: You may submit comments, identified by the title of the information collection, OMB Control Number (see below), and docket number (see above), by any of the following methods:

- Electronic: *http://www.regulations.gov.* Follow the instructions for submitting comments.
- OMB: Office of Management and Budget, New Executive Office Building, Room 10235, Washington, DC 20503 or fax to (202) 395–5806. Mailed or faxed comments to OMB should be to the attention of the OMB Desk Officer for the Bureau of Consumer Financial Protection.

Please note that comments submitted after the comment period will not be accepted. In general, all comments received will become public records, including any personal information provided. Sensitive personal information, such as account numbers or social security numbers, should not be included.

FOR FURTHER INFORMATION CONTACT: Documentation prepared in support of this information collection request is available at *www.reginfo.gov* (this link active on the day following publication of this notice). Select ''information Collection Review,'' under ''Currently under review, use the dropdown menu ''Select Agency'' and select ''Consumer Financial Protection Bureau'' (recent submissions to OMB will be at the top of the list). The same documentation is also available at *http://www.regulations.gov.* Requests for additional information should be directed to the Consumer Financial Protection Bureau, (Attention: PRA Office), 1700 G Street NW., Washington, DC 20552, (202) 435–9575, or email: *PRA@cfpb.gov. Please do not submit comments to this email box.*

SUPPLEMENTARY INFORMATION:

Title of Collection: Financial Coaching Program for Veterans and Low-income Consumers.

OMB Control Number: 3170–XXXX.

Type of Review: New collection (Request for a new OMB control number).

Affected Public: Individuals.

Estimated Number of Respondents: 10,000.

Estimated Total Annual Burden Hours: 5,000.

Abstract: Beginning in early 2015, the Consumer Financial Protection Bureau (''CFPB'' or the ''Bureau'') will launch a Financial Coaching project to provide direct financial coaching services to

transitioning veterans and economically vulnerable consumers nationwide. Over three years, it is estimated that tens of thousands of consumers will be served. In order for CFPB to understand whether the program is effective and for the financial coaches to be able to deliver efficient services and track clients over time, CFPB will need to take steps to monitor program performance and to evaluate the program. This will ultimately include a process evaluation to examine program implementation and an outcomes evaluation to examine program effects on clients. Performance monitoring and the process and outcome evaluations will involve three key data collection efforts: administrative data collected about clients by financial coaches for programmatic purposes; interview data collected by evaluators from key informants such as coaching clients, financial coaches and program administrators; and self-reported survey data from coaches and coaching clients. The information to be collected from clients will include a combination of personal information (basic contact and demographic information), performance metrics (outputs), client-level outcomes (progress towards financial goals or other relevant outcomes) and programmatic and organizational outcomes. The current information collection request is specifically for the administrative data that will be collected by coaches from financial coaching clients for programmatic and performance monitoring purposes. Additional requests will be submitted at a later date for the process and outcomes components of the evaluation.

Request for Comments: The Bureau issued a 60-day **Federal Register** notice on September 4, 2014 (79 FR 52638). Comments were solicited and continue to be invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the Bureau, including whether the information will have practical utility; (b) The accuracy of the Bureau's estimate of the burden of the collection of information, including the validity of the methods and the assumptions used; (c) Ways to enhance the quality, utility, and clarity of the information to be collected; and (d) Ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology. Comments submitted in response to this notice will be summarized and/or included in the request for Office of Management and Budget (OMB) approval. All comments will become a matter of public record.

Dated: December 18, 2014.

Ashwin Vasan,

Chief Information Officer, Bureau of Consumer Financial Protection.

[FR Doc. 2014–30407 Filed 12–24–14; 8:45 am]

BILLING CODE 4810–AM–P

BUREAU OF CONSUMER FINANCIAL PROTECTION

[Docket No: CFPB–2014–0035]

Agency Information Collection Activities: Comment Request

AGENCY: Bureau of Consumer Financial Protection.

ACTION: Notice and request for comment.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995 (PRA), the Consumer Financial Protection Bureau (CFPB) is proposing to renew the approval for an existing information collection titled, ''CFPB's Consumer Response Intake Form.''

DATES: Written comments are encouraged and must be received on or before February 27, 2015 to be assured of consideration.

ADDRESSES: You may submit comments, identified by the title of the information collection, OMB Control Number (see below), and docket number (see above), by any of the following methods:

- Electronic: *http://www.regulations.gov.* Follow the instructions for submitting comments.
- Mail: Consumer Financial Protection Bureau (Attention: PRA Office), 1700 G Street NW., Washington, DC 20552.
- Hand Delivery/Courier: Consumer Financial Protection Bureau (Attention: PRA Office), 1275 First Street NE., Washington, DC 20002.

Please note that comments submitted after the comment period will not be accepted. In general, all comments received will become public records, including any personal information provided. Sensitive personal information, such as account numbers or social security numbers, should not be included.

FOR FURTHER INFORMATION CONTACT: Documentation prepared in support of this information collection request is available at *www.regulations.gov.* Requests for additional information should be directed to the Consumer Financial Protection Bureau, (Attention: PRA Office), 1700 G Street NW., Washington, DC 20552, (202) 435–9575, or email: *PRA@cfpb.gov. Please do not submit comments to this mailbox.*

SUPPLEMENTARY INFORMATION:

Title of Collection: CFPB's Consumer Response Intake Form.

OMB Control Number: 3170–0011.

Type of Review: Extension with change of a currently approved collection.

Affected Public: Individuals or households.

Estimated Number of Respondents: 3,000,000.

Estimated Total Annual Burden Hours: 387,500.

Abstract: The Intake Form is designed to aid consumers in the submission of complaints, questions, and comments and to help the CFPB fulfill the CFPB's statutory requirements. Consumers (hereinafter ''respondents'') will be able to complete and submit information through the Intake Form electronically on the CFPB's Web site. Alternatively, respondents may request that the CFPB email a fillable PDF version or, by telephone, request a ''paper'' copy of the Intake Form, and then email, mail, or fax it to the CFPB. The questions within the Intake Form prompt respondents for a description of, and key facts about, the complaint at issue, the desired resolution, contact and account information, information about the institution they are filing a complaint against, and any previous action taken to attempt to resolve the complaint.

Request for Comments: Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of CFPB including whether the information will have practical utility; (b) The accuracy of CFPB's estimate of the burden of the collection of information, including the validity of the methods and the assumptions used; (c) Ways to enhance the quality, utility, and clarity of the information to be collected; and (d) Ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology. Comments submitted in response to this notice will be summarized and/or included in the request for Office of Management and Budget (OMB) approval. All comments will become a matter of public record.

Dated: December 17, 2014.

Ashwin Vasan,

Chief Information Officer, Bureau of Consumer Financial Protection.

[FR Doc. 2014–30411 Filed 12–24–14; 8:45 am]

BILLING CODE 4810–AM–P

BUREAU OF CONSUMER FINANCIAL PROTECTION

[Docket No: CFPB–2014–0034]

Agency Information Collection Activities: Comment Request

AGENCY: Bureau of Consumer Financial Protection.

ACTION: Notice and request for comment.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995 (PRA), the Consumer Financial Protection Bureau (CFPB) is proposing to renew the approval for an existing information collection titled, ''Generic Information Collection Plan for Consumer Complaint and Information Collection System (Testing and Feedback).''

DATES: Written comments are encouraged and must be received on or before February 27, 2015 to be assured of consideration.

ADDRESSES: You may submit comments, identified by the title of the information collection, OMB Control Number (see below), and docket number (see above), by any of the following methods:

- Electronic: *http://www.regulations.gov.* Follow the instructions for submitting comments.
- Mail: Consumer Financial Protection Bureau (Attention: PRA Office), 1700 G Street NW., Washington, DC 20552.
- Hand Delivery/Courier: Consumer Financial Protection Bureau (Attention: PRA Office), 1275 First Street NE., Washington, DC 20002.

Please note that comments submitted after the comment period will not be accepted. In general, all comments received will become public records, including any personal information provided. Sensitive personal information, such as account numbers or social security numbers, should not be included.

FOR FURTHER INFORMATION CONTACT: Documentation prepared in support of this information collection request is available at *www.regulations.gov.* Requests for additional information should be directed to the Consumer Financial Protection Bureau, (Attention: PRA Office), 1700 G Street NW., Washington, DC 20552, (202) 435–9575, or email: *PRA@cfpb.gov. Please do not submit comments to this mailbox.*

SUPPLEMENTARY INFORMATION:

Title of Collection: Generic Information Collection Plan for Consumer Complaint and Information Collection System (Testing and Feedback).

OMB Control Number: 3170–0042.

Type of Review: Extension without change of a currently approved collection.

Affected Public: Individuals or households.

Estimated Number of Respondents: 710,000.

Estimated Total Annual Burden Hours: 118,334.

Abstract: Over the past several years, the CFPB has undertaken a variety of service delivery-focused activities contemplated by the Dodd-Frank and Wall Street Reform and Consumer Protection Act, Public Law 111–2013. These activities, which include consumer complaint and inquiry processing, referral, and monitoring, involve several interrelated systems. The streamlined process of the generic clearance will continue to allow the CFPB to implement these systems efficiently, in line with the CFPB's commitment to continuous improvement of its delivery of services through iterative testing and feedback collection.

Request for Comments: Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the CFPB, including whether the information will have practical utility; (b) The accuracy of the CFPB's estimate of the burden of the collection of information, including the validity of the methods and the assumptions used; (c) Ways to enhance the quality, utility, and clarity of the information to be collected; and (d) Ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology. Comments submitted in response to this notice will be summarized and/or included in the request for Office of Management and Budget (OMB) approval. All comments will become a matter of public record.

Dated: December 17, 2014.

Ashwin Vasan,

Chief Information Officer, Bureau of Consumer Financial Protection.

[FR Doc. 2014–30410 Filed 12–24–14; 8:45 am]

BILLING CODE 4810–AM–P

DEPARTMENT OF EDUCATION

Application for New Awards; High School Equivalency Program

AGENCY: Office of Elementary and Secondary Education, Department of Education

ACTION: Notice.

Overview Information

High School Equivalency Program (HEP)

Notice inviting applications for new awards for fiscal year (FY) 2015.

Catalog of Federal Domestic Assistance (CFDA) Number: 84.141A.

DATES:

Applications Available: December 29, 2014.

Deadline for Transmittal of Applications: February 12, 2015.

Deadline for Intergovernmental Review: April 13, 2015.

Full Text of Announcement

I. Funding Opportunity Description

Purpose of Program: The purposes of HEP are to help migrant and seasonal farmworkers and members of their immediate family: (1) Obtain a general education diploma that meets the guidelines for high school equivalency (HSE) established by the State in which the HEP project is conducted; and (2) gain employment or be placed in an institution of higher education (IHE) or other postsecondary education or training.

Priorities: This competition includes one competitive preference priority and three invitational priorities. In accordance with 34 CFR 75.105(b)(2)(iv), the Competitive Preference Priority is from section 418A(e) of the Higher Education Act of 1965, as amended by section 408 of the Higher Education Opportunity Act of 2008 (20 U.S.C. 1070d–2(e)). The first invitational priority is for applications that promote science, technology, engineering, and mathematics (STEM) education. The second invitational priority is for applications that propose to engage faith-based and community organizations in the delivery of services under this program. The third invitational priority is for applications that submit a plan supported by evidence of strong theory (*e.g.,* a fully developed logic model (as defined in this notice) of the proposed project).

Competitive Preference Priority: For FY 2015 and any subsequent year in which we make awards from the list of unfunded applicants from this competition, this priority is a competitive preference priority. Under 34 CFR 75.105(c)(2)(i), we award up to 15 additional points to an application, depending on how well the applicant meets the competitive preference priority. The maximum amount of competitive preference points an application can receive under this priority is 15 points.

This priority is:

Prior Experience of Service Delivery (Up to 15 Points)

For applicants with an expiring HEP project, the Secretary will consider the applicant's prior experience in implementing its expiring HEP project, based on information contained in documents previously provided to the Department, such as annual performance reports, project evaluation reports, site visit reports, and the previously approved HEP application.

Under this competition, we also are particularly interested in applications that address the following invitational priorities.

Invitational Priorities: For FY 2015, and any subsequent year in which we make awards from the list of unfunded applicants from this competition, these priorities are invitational priorities. Under 34 CFR 75.105(c)(1) we do not give an application that meets these invitational priorities a competitive or absolute preference over other applications.

These priorities are:

Invitational Priority 1—Science, Technology, Engineering, and Mathematics Education (STEM)

Projects that are designed to address one or more of the following priority areas:

(a) Providing students with increased access to rigorous and engaging coursework in STEM.

(b) Increasing the opportunities for high-quality preparation of, or professional development for, teachers or other educators of STEM subjects.

Note: Applicants could consider activities to better prepare program participants to transition into postsecondary education, such as preparing students to pass the sections of college entrance examinations in STEM-related subjects or mentoring, counseling, and tutoring services designed to motivate participants to pursue postsecondary education in STEM-related fields. Similarly, for the professional development priority area, applicants could propose activities to increase the opportunities for high-quality professional development for HSE instructors of STEM-related that include, for example, training in intensive science teaching techniques presented by a professionally credentialed expert in science education.

Invitational Priority 2—Faith-Based and Community Organizations

Applications that propose to engage faith-based and community organizations in the delivery of services under this program.

Invitational Priority 3—Evidence of Strong Theory

Applications that include a well-developed plan that is supported by evidence of strong theory (as defined in 34 CFR 77.1(c)), which includes a rationale for the proposed process, product, strategy, or practice and a corresponding logic model. Under 34 CFR 77.1(c), ''logic model'' (also referred to as theory of action) means a well-specified conceptual framework that identifies key components of the proposed process, product, strategy, or practice (*i.e.,* the active ''ingredients'' that are hypothesized to be critical to achieving the relevant outcomes) and describes the relationships among the key components and outcomes, theoretically and operationally.

Note: In order to address this priority, applicants must develop logic models to demonstrate their project's theory of action. Applicants should connect available evidence of past history of successful outcomes to their logic models. Applicants may use resources such as the Pacific Education Laboratory's Education Logic Model Application (*www.relpacific.mcrel.org/PERR.html*) or the Northeast and Island's REL Skill Builder Workshops (*www.relnei.org/events/skillbuilder-archive.html*) to help design their logic models. In addressing this priority, applicants are also encouraged to connect the project design to the intended impact of the project, including an explanation of how the project will affect students' attainment of the equivalent of a secondary school diploma and their eventual placement in an IHE or other postsecondary education or training. Finally, applicants are encouraged to discuss the role and commitment of any partner and how they plan to sustain their partnership beyond the life of the grant.

Program Authority: 20 U.S.C. 1070d–2.

Applicable Regulations: This application notice (also referred to as a notice inviting applications (NIA)) is being published before the Department adopts the Uniform Administrative Requirements, Cost Principles, and Audit Requirements in 2 CFR part 200. We expect to publish interim final regulations that would adopt those requirements before December 26, 2014, and make those regulations effective on that date. Because grants awarded under this NIA will likely be made after the Department adopts the requirements in 2 CFR part 200, we list as applicable regulations both those that are currently effective and those that will be effective at the time the Department makes grants.

The current regulations follow: (a) The Education Department General Administrative Regulations (EDGAR) in 34 CFR parts 74, 75, 77, 79, 81, 82, 84, 86, 97, 98, and 99. (b) The OMB Guidelines to Agencies on Governmentwide Debarment and Suspension (Nonprocurement) in 2 CFR part 180, as adopted and amended as regulations of the Department in 2 CFR part 3485.

At the time we award grants under this NIA, the following regulations will apply: (a) EDGAR in 34 CFR parts 75, 77, 79, 81, 82, 84, 86, 97, 98, and 99. (b) The OMB Guidelines to Agencies on Governmentwide Debarment and Suspension (Nonprocurement) in 2 CFR part 180, as adopted and amended as regulations of the Department in 2 CFR part 3485, and the Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards in 2 CFR part 200, as adopted and amended in 2 CFR part 3474.

Regardless of the timing of publication, the following also apply to this NIA: (a) The regulations for this program in 34 CFR part 206. (b) The definitions of ''migratory agricultural worker'' in 34 CFR 200.81(d), ''migratory child'' in 34 CFR 200.81(e), and ''migratory fisher'' in 34 CFR 200.81(f). (c) The regulations in 20 CFR 669.110 and 669.320.

Note: The regulations in 34 CFR part 86 apply to IHEs only.

II. Award Information

Type of Award: Discretionary grants.

Estimated Available Funds: The Administration has requested $5,201,687 for new awards for this program for FY 2015. The actual level of funding, if any, depends on final congressional action. However, we are inviting applications at this time to allow enough time to complete the grant process if Congress appropriates funds for this program.

Contingent upon the availability of funds and the quality of applications, we may make additional awards in FY 2016 from the list of unfunded applicants from this competition.

Estimated Range of Awards: $180,000–$475,000.

Estimated Average Size of Awards: $446,485.

Maximum Award: We will reject any application that proposes a HEP award exceeding $475,000 for any of the five single budget periods of 12 months. The Assistant Secretary for Elementary and Secondary Education may change the maximum amount through a notice published in the **Federal Register**.

Minimum Award: We will reject any application that proposes a HEP award that is less than $180,000 for any of the five single budget periods of 12 months.

Estimated Number of Awards: 10.

Note: The Department is not bound by any estimates in this notice.

Project Period: Applicants must propose a project of 60 months (*i.e.,* five years) in duration, and we will reject any application that does not do so. However, if an applicant receives a grant award, annual continuation funding is contingent upon availability of funds and grantees meeting minimum performance standards.

III. Eligibility Information

1. *Eligible Applicants:* IHEs or private non-profit organizations (including faith-based organizations) that plan their projects in cooperation with an IHE and propose to operate some aspects of the project with the facilities of the IHE.

2. *Cost Sharing or Matching:* This program does not require cost sharing or matching. However, consistent with 34 CFR 75.700, which requires an applicant to comply with its approved application, an applicant that proposes non-Federal matching funds and is awarded a grant must provide those funds for each year that the funds are proposed.

3. *Other:* Projects funded under this competition must budget for a two-day Office of Migrant Education annual meeting for HEP Directors in the Washington, DC area during each year of the project period.

IV. Application and Submission Information

1. *Address To Request Application Package:* Michael Holloman, U.S. Department of Education, Office of Migrant Education, 400 Maryland Avenue SW., Room 3E311, Washington, DC 20202–6135. Telephone: (202) 260–2067 or by email: *michael.holloman@ed.gov.*

The application package content also can be viewed electronically at the following address: *www.ed.gov/programs/hep/applicant.html.*

If you use a telecommunications device for the deaf (TDD) or text telephone (TTY), call the Federal Relay Service (FRS), toll free, at 1–800–877–8339.

Individuals with disabilities can obtain a copy of the application package in an accessible format (*e.g.,* braille, large print, audiotape, or compact disc) by contacting the program contact person listed in this section.

2. *Content and Form of Application Submission:* Requirements concerning the content of an application, together with the forms you must submit, are in the application package for this competition.

Page Limit: The project narrative (Part IV of the application) is where you, the applicant, address the selection criteria that reviewers use to evaluate your application. Panel readers will award points only for an applicant's response to a given selection criterion that is contained within the section of the application designated to address that particular selection criterion. Readers will not review, or award points for, a response to the selection criterion that is located in any other section of the application or the appendices. We will reject any project narrative that exceeds 25 pages or does not adhere to the following standards:

- A ''page'' is 8.5″ x 11″, on one side only, with 1 inch margins at the top, bottom, and both sides.
- Double space (no more than three lines per vertical inch) all text in the application narrative, including titles, headings, footnotes, quotations, references, and captions. However, you may single space all text in charts, tables, figures, and graphs. Charts, tables, figures, and graphs presented in the application narrative count toward the page limit.
- Use a font that is either 12 point or larger or no smaller than 10 pitch (characters per inch) throughout the entire application package.
- Use one of the following fonts: Times New Roman, Courier, Courier New, or Arial. An application submitted in any other font (including Times Roman or Arial Narrow) will not be accepted. The 25-page limit for the project narrative does not apply to the cover sheet; the budget section, including the narrative budget justification; the assurances and certifications; or the one-page abstract. However, the page limit does apply to all of the project narrative section.

Appendices must be limited to 20 pages and must include the following: resumes, if applicable, and job descriptions of key personnel. Job descriptions must include duties and minimum qualifications. Items in the appendices will only be used by the program office.

3. *Submission Dates and Times:*

Applications Available: December 29, 2014.

Deadline for Transmittal of Applications: February 12, 2015.

Applications for grants under this competition must be submitted electronically using the Grants.gov Apply site (Grants.gov). For information (including dates and times) about how to submit your application electronically, or in paper format by mail or hand delivery if you qualify for an exception to the electronic submission requirement, please refer to section IV. 7. *Other Submission Requirements* of this notice.

We will not consider an application that does not comply with the deadline requirements.

Individuals with disabilities who need an accommodation or auxiliary aid in connection with the application process should contact the person listed under **FOR FURTHER INFORMATION CONTACT** in section VII of this notice. If the Department provides an accommodation or auxiliary aid to an individual with a disability in connection with the application process, the individual's application remains subject to all other requirements and limitations in this notice.

Deadline for Intergovernmental Review: April 13, 2015.

4. *Intergovernmental Review:* This competition is subject to Executive Order 12372 and the regulations in 34 CFR part 79. Information about Intergovernmental Review of Federal Programs under Executive Order 12372 is in the application package for this competition.

5. *Funding Restrictions:* We reference regulations outlining funding restrictions in the *Applicable Regulations* section of this notice.

6. *Data Universal Numbering System Number, Taxpayer Identification Number, and System for Award Management:* To do business with the Department of Education, you must—

a. Have a Data Universal Numbering System (DUNS) number and a Taxpayer Identification Number (TIN);

b. Register both your DUNS number and TIN with the System for Award Management (SAM) (formerly the Central Contractor Registry (CCR)), the Government's primary registrant database;

c. Provide your DUNS number and TIN on your application; and

d. Maintain an active SAM registration with current information while your application is under review by the Department and, if you are awarded a grant, during the project period.

You can obtain a DUNS number from Dun and Bradstreet. A DUNS number can be created within one to two business days.

If you are a corporate entity, agency, institution, or organization, you can obtain a TIN from the Internal Revenue Service. If you are an individual, you can obtain a TIN from the Internal Revenue Service or the Social Security Administration. If you need a new TIN, please allow 2–5 weeks for your TIN to become active.

The SAM registration process can take approximately seven business days, but may take upwards of several weeks,

depending on the completeness and accuracy of the data entered into the SAM database by an entity. Thus, if you think you might want to apply for Federal financial assistance under a program administered by the Department, please allow sufficient time to obtain and register your DUNS number and TIN. We strongly recommend that you register early.

Note: Once your SAM registration is active, you will need to allow 24 to 48 hours for the information to be available in Grants.gov and before you can submit an application through Grants.gov.

If you are currently registered with SAM, you may not need to make any changes. However, please make certain that the TIN associated with your DUNS number is correct. Also note that you will need to update your registration annually. This may take three or more business days.

Information about SAM is available at *www.SAM.gov.* To further assist you with obtaining and registering your DUNS number and TIN in SAM or updating your existing SAM account, we have prepared a SAM.gov Tip Sheet, which you can find at: *http://www2.ed.gov/fund/grant/apply/sam-faqs.html.*

In addition, if you are submitting your application via Grants.gov, you must (1) be designated by your organization as an Authorized Organization Representative (AOR); and (2) register yourself with Grants.gov as an AOR. Details on these steps are outlined at the following Grants.gov Web page: *www.grants.gov/web/grants/register.html.*

7. *Other Submission Requirements:* Applications for grants under this competition must be submitted electronically unless you qualify for an exception to this requirement in accordance with the instructions in this section.

a. Electronic Submission of Applications

Applications for grants under HEP, CFDA number 84.141A, must be submitted electronically using the Governmentwide Grants.gov Apply site at *www.Grants.gov.* Through this site, you will be able to download a copy of the application package, complete it offline, and then upload and submit your application. You may not email an electronic copy of a grant application to us.

We will reject your application if you submit it in paper format unless, as described elsewhere in this section, you qualify for one of the exceptions to the electronic submission requirement and submit, no later than two weeks before the application deadline date, a written statement to the Department that you qualify for one of these exceptions. Further information regarding calculation of the date that is two weeks before the application deadline date is provided later in this section under *Exception to Electronic Submission Requirement.*

You may access the electronic grant application for the HEP at *www.Grants.gov.* You must search for the downloadable application package for this competition by the CFDA number. Do not include the CFDA number's alpha suffix in your search (*e.g.,* search for 84.141, not 84.141A).

Please note the following:

- When you enter the Grants.gov site, you will find information about submitting an application electronically through the site, as well as the hours of operation.
- Applications received by Grants.gov are date and time stamped. Your application must be fully uploaded and submitted and must be date and time stamped by the Grants.gov system no later than 4:30:00 p.m., Washington, DC time, on the application deadline date. Except as otherwise noted in this section, we will not accept your application if it is received—that is, date and time stamped by the Grants.gov system—after 4:30:00 p.m., Washington, DC time, on the application deadline date. We do not consider an application that does not comply with the deadline requirements. When we retrieve your application from Grants.gov, we will notify you if we are rejecting your application because it was date and time stamped by the Grants.gov system after 4:30:00 p.m., Washington, DC time, on the application deadline date.
- The amount of time it can take to upload an application will vary depending on a variety of factors, including the size of the application and the speed of your Internet connection. Therefore, we strongly recommend that you do not wait until the application deadline date to begin the submission process through Grants.gov.
- You should review and follow the Education Submission Procedures for submitting an application through Grants.gov that are included in the application package for this competition to ensure that you submit your application in a timely manner to the Grants.gov system. You can also find the Education Submission Procedures pertaining to Grants.gov under News and Events on the Department's G5 system home page at *www.G5.gov.*
- You will not receive additional point value because you submit your application in electronic format, nor will we penalize you if you qualify for an exception to the electronic submission requirement, as described elsewhere in this section, and submit your application in paper format.
- You must submit all documents electronically, including all information you typically provide on the following forms: The Application for Federal Assistance (SF 424), the Department of Education Supplemental Information for SF 424, Budget Information—Non-Construction Programs (ED 524), and all necessary assurances and certifications.
- You must upload any narrative sections and all other attachments to your application as files in a PDF (Portable Document) read-only, non-modifiable format. Do not upload an interactive or fillable PDF file. If you upload a file type other than a read-only, non-modifiable PDF or submit a password-protected file, we will not review that material.
- Your electronic application must comply with any page-limit requirements described in this notice.
- After you electronically submit your application, you will receive from Grants.gov an automatic notification of receipt that contains a Grants.gov tracking number. (This notification indicates receipt by Grants.gov only, not receipt by the Department.) The Department then will retrieve your application from Grants.gov and send a second notification to you by email. This second notification indicates that the Department has received your application and has assigned your application a PR/Award number (an ED-specified identifying number unique to your application).
- We may request that you provide us original signatures on forms at a later date.

Application Deadline Date Extension in Case of Technical Issues with the Grants.gov System: If you are experiencing problems submitting your application through Grants.gov, please contact the Grants.gov Support Desk, toll free, at 1–800–518–4726. You must obtain a Grants.gov Support Desk Case Number and must keep a record of it.

If you are prevented from electronically submitting your application on the application deadline date because of technical problems with the Grants.gov system, we will grant you an extension until 4:30:00 p.m., Washington, DC time, the following business day to enable you to transmit your application electronically or by hand delivery. You also may mail your application by following the mailing instructions described elsewhere in this notice.

If you submit an application after 4:30:00 p.m., Washington, DC time, on the application deadline date, please contact the person listed under **FOR FURTHER INFORMATION CONTACT** in section VII of this notice and provide an explanation of the technical problem you experienced with Grants.gov, along with the Grants.gov Support Desk Case Number. We will accept your application if we can confirm that a technical problem occurred with the Grants.gov system and that that problem affected your ability to submit your application by 4:30:00 p.m., Washington, DC time, on the application deadline date. The Department will contact you after a determination is made on whether your application will be accepted.

Note: The extensions to which we refer in this section apply only to the unavailability of, or technical problems with, the Grants.gov system. We will not grant you an extension if you failed to fully register to submit your application to Grants.gov before the application deadline date and time or if the technical problem you experienced is unrelated to the Grants.gov system.

Exception to Electronic Submission Requirement: You qualify for an exception to the electronic submission requirement, and may submit your application in paper format, if you are unable to submit an application through the Grants.gov system because—

- You do not have access to the Internet; or
- You do not have the capacity to upload large documents to the Grants.gov system; and
- No later than two weeks before the application deadline date (14 calendar days or, if the fourteenth calendar day before the application deadline date falls on a Federal holiday, the next business day following the Federal holiday), you mail or fax a written statement to the Department, explaining which of the two grounds for an exception prevents you from using the Internet to submit your application.

If you mail your written statement to the Department, it must be postmarked no later than two weeks before the application deadline date. If you fax your written statement to the Department, we must receive the faxed statement no later than two weeks before the application deadline date.

Address and mail or fax your statement to: Michael Holloman, U.S. Department of Education, 400 Maryland Avenue SW., Room 3E311, Washington, DC 20202–6135. FAX: (202) 205–0089.

Your paper application must be submitted in accordance with the mail or hand delivery instructions described in this notice.

b. Submission of Paper Applications by Mail

If you qualify for an exception to the electronic submission requirement, you may mail (through the U.S. Postal Service or a commercial carrier) your application to the Department. You must mail the original and two copies of your application, on or before the application deadline date, to the Department at the following address: U.S. Department of Education, Application Control Center, Attention: CFDA Number 84.141A, LBJ Basement Level 1, 400 Maryland Avenue SW., Washington, DC 20202–4260.

You must show proof of mailing consisting of one of the following:

(1) A legibly dated U.S. Postal Service postmark.

(2) A legible mail receipt with the date of mailing stamped by the U.S. Postal Service.

(3) A dated shipping label, invoice, or receipt from a commercial carrier.

(4) Any other proof of mailing acceptable to the Secretary of the U.S. Department of Education.

If you mail your application through the U.S. Postal Service, we do not accept either of the following as proof of mailing:

(1) A private metered postmark.

(2) A mail receipt that is not dated by the U.S. Postal Service.

If your application is postmarked after the application deadline date, we will not consider your application.

Note: The U.S. Postal Service does not uniformly provide a dated postmark. Before relying on this method, you should check with your local post office.

c. Submission of Paper Applications by Hand Delivery

If you qualify for an exception to the electronic submission requirement, you (or a courier service) may deliver your paper application to the Department by hand. You must deliver the original and two copies of your application by hand, on or before the application deadline date, to the Department at the following address: U.S. Department of Education, Application Control Center, Attention: CFDA Number 84.141A, 550 12th Street SW., Room 7039, Potomac Center Plaza, Washington, DC 20202–4260.

The Application Control Center accepts hand deliveries daily between 8:00 a.m. and 4:30:00 p.m., Washington, DC time, except Saturdays, Sundays, and Federal holidays.

Note for Mail or Hand Delivery of Paper Applications: If you mail or hand deliver your application to the Department—

(1) You must indicate on the envelope and—if not provided by the Department—in Item 11 of the SF 424 the CFDA number, including suffix letter, if any, of the competition under which you are submitting your application; and

(2) The Application Control Center will mail to you a notification of receipt of your grant application. If you do not receive this notification within 15 business days from the application deadline date, you should call the U.S. Department of Education Application Control Center at (202) 245–6288.

V. Application Review Information

1. *Selection Criteria:* The selection criteria for this competition are from 34 CFR 75.210 of EDGAR and are listed in the application package.

2. *Review and Selection Process:* We remind potential applicants that in reviewing applications in any discretionary grant competition, the Secretary may consider, under 34 CFR 75.217(d)(3), the past performance of the applicant in carrying out a previous award, such as the applicant's use of funds, and compliance with grant conditions. The Secretary may also consider whether the applicant failed to submit a timely performance report or submitted a report of unacceptable quality.

In addition, in making a competitive grant award, the Secretary also requires various assurances including those applicable to Federal civil rights laws that prohibit discrimination in programs or activities receiving Federal financial assistance from the Department of Education (34 CFR 100.4, 104.5, 106.4, 108.8, and 110.23).

3. *Special Conditions:* Under current 34 CFR 74.14, and when grants are made under this NIA, 2 CFR 3474.10, the Secretary may impose special conditions and, in appropriate circumstances, high-risk conditions on a grant if the applicant or grantee is not financially stable; has a history of unsatisfactory performance; has a financial or other management system that does not meet the standards in 34 CFR part 74, as applicable or, when the grants are awarded, the standards in 2 CFR part 200, subpart D; has not fulfilled the conditions of a prior grant; or is otherwise not responsible.

VI. Award Administration Information

1. *Award Notices:* If your application is successful, we notify your U.S. Representative and U.S. Senators and send you a Grant Award Notification (GAN); or we may send you an email containing a link to access an electronic version of your GAN. We may notify you informally, also.

If your application is not evaluated or not selected for funding, we notify you.

2. *Administrative and National Policy Requirements:* We identify administrative and national policy requirements in the application package and reference these and other requirements in the *Applicable Regulations* section of this notice.

We reference the regulations outlining the terms and conditions of an award in the *Applicable Regulations* section of this notice and include these and other specific conditions in the GAN. The GAN also incorporates your approved application as part of your binding commitments under the grant.

3. *Reporting:* (a) If you apply for a grant under this competition, you must ensure that you have in place the necessary processes and systems to comply with the reporting requirements in 2 CFR part 170 should you receive funding under the competition. This does not apply if you have an exception under 2 CFR 170.110(b).

(b) At the end of your project period, you must submit a final performance report, including financial information, as directed by the Secretary. If you receive a multi-year award, you must submit an annual performance report that provides the most current performance and financial expenditure information as directed by the Secretary under 34 CFR 75.118. The Secretary may also require more frequent performance reports under 34 CFR 75.720(c). For specific requirements on reporting, please go to *www.ed.gov/fund/grant/apply/appforms/appforms.html.*

4. *Performance Measures:* Under the Government Performance and Results Act of 1993 (GPRA), the Department developed the following performance measures to evaluate the overall effectiveness of HEP: (1) the percentage of HEP program participants exiting the program having received an HSE diploma (GPRA 1), and (2) the percentage of HSE diploma recipients who enter postsecondary education or training programs, upgraded employment, or the military (GPRA 2).

Applicants must propose annual targets for these measures in their applications. The national target for GPRA measure 1 for FY 2015 is that 69 percent of HEP program participants exit the program having received an HSE credential. The national target for GPRA measure 2 for FY 2015 is that 80 percent of HEP HSE diploma recipients enter postsecondary education or training programs, upgraded employment, or the military. The national targets for subsequent years may be adjusted based on additional baseline data. The panel readers will score related selection criteria on the basis of how well an applicant addresses these GPRA measures. Therefore, applicants will want to consider how to demonstrate a sound capacity to provide reliable data on the GPRA measures, including the project's annual performance targets for addressing the GPRA performance measures, as is required by the Office of Management and Budget approved annual performance report that is included in the application package. All grantees will be required to submit, as part of their annual performance report, information with respect to these GPRA performance measures.

5. *Continuation Awards:* In making a continuation award under 34 CFR 75.253, the Secretary considers, among other things: whether a grantee has made substantial progress in achieving the goals and objectives of the project; whether the grantee has expended funds in a manner that is consistent with its approved application and budget; and, if the Secretary has established performance measurement requirements, the performance targets in the grantee's approved application. In making a continuation grant, the Secretary also considers whether the grantee is operating in compliance with the assurances in its approved application, including those applicable to Federal civil rights laws that prohibit discrimination in programs or activities receiving Federal financial assistance from the Department (34 CFR 100.4, 104.5, 106.4, 108.8, and 110.23).

VII. Agency Contact

For Further Information Contact: Michael Holloman, U.S. Department of Education, 400 Maryland Avenue SW., Room 3E311, Washington, DC 20202–6135. Telephone: (202) 260–2067 or by email: *michael.holloman@ed.gov.*

If you use a TDD or TYY, call the FRS, toll free, at 1–800–877–8339.

VIII. Other Information

Accessible Format: Individuals with disabilities can obtain this document and a copy of the application package in an accessible format (*e.g.,* braille, large print, audiotape, or compact disc) on request to the program contact person listed under *For Further Information Contact* in section VII of this notice.

Electronic Access to This Document: The official version of this document is the document published in the **Federal Register**. Free Internet access to the official edition of the **Federal Register** and the Code of Federal Regulations is available via the Federal Digital System at: *www.gpo.gov/fdsys.* At this site you can view this document, as well as all other documents of this Department published in the **Federal Register**, in text or Adobe Portable Document Format (PDF). To use PDF you must have Adobe Acrobat Reader, which is available free at the site.

You may also access documents of the Department published in the **Federal Register** by using the article search feature at: *www.federalregister.gov.* Specifically, through the advanced search feature at this site, you can limit your search to documents published by the Department.

Dated: December 22, 2014.

Deborah S. Delisle,

Assistant Secretary for Elementary and Secondary Education.

[FR Doc. 2014–30380 Filed 12–24–14; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF EDUCATION

Application for New Awards; College Assistance Migrant Program

AGENCY: Office of Elementary and Secondary Education, Department of Education.

ACTION: Notice.

Overview Information

College Assistance Migrant Program (CAMP)

Notice inviting applications for new awards for fiscal year (FY) 2015.

Catalog of Federal Domestic Assistance (CFDA) Number: 84.149A.

DATES: *Applications Available:* December 29, 2014.

Deadline for Transmittal of Applications: February 12, 2015.

Deadline for Intergovernmental Review: April 13, 2015.

Full Text of Announcement

I. Funding Opportunity Description

Purpose of Program: The purpose of CAMP is to provide academic and financial support to help migrant and seasonal farmworkers and members of their immediate family complete their first year of college and continue in postsecondary education.

Priorities: This competition includes one competitive preference priority and three invitational priorities. In accordance with 34 CFR 75.105(b)(2)(iv), the competitive preference priority is from section 418A(e) of the Higher Education Act of 1965, as amended by section 408 of the Higher Education Opportunity Act of 2008 (20 U.S.C. 1070d–2(e)). The first invitational priority is for applications that promote science, technology, engineering, and mathematics (STEM)

education. The second invitational priority is for applications that propose to engage faith-based and community organizations in the delivery of services under this program. The third invitational priority is for applications that submit a plan supported by evidence of strong theory (*e.g.,* a fully developed logic model (as defined in this notice) of the proposed project).

Competitive Preference Priority: For FY 2015 and any subsequent year in which we make awards from the list of unfunded applicants from this competition, this priority is a competitive preference priority. Under 34 CFR 75.105(c)(2)(i), we award up to 15 additional points to an application, depending on how well the applicant meets the competitive preference priority. The maximum amount of competitive preference points an application can receive under this priority is 15 points.

This priority is:

Prior Experience of Service Delivery (Up to 15 Points).

For applicants with an expiring CAMP project, the Secretary will consider the applicant's prior experience in implementing its expiring CAMP project, based on information contained in documents previously provided to the Department, such as annual performance reports, project evaluation reports, site visit reports, and the previously approved CAMP application.

Under this competition, we also are particularly interested in applications that address the following invitational priorities.

Invitational Priorities: For FY 2015, and any subsequent year in which we make awards from the list of unfunded applicants from this competition, these priorities are invitational priorities. Under 34 CFR 75.105(c)(1), we do not give an application that meets these invitational priorities a competitive or absolute preference over other applications.

These priorities are:

Invitational Priority 1—Science, Technology, Engineering, and Mathematics Education (STEM)

Projects that are designed to address one or more of the following priority areas:

(a) Providing students with increased access to rigorous and engaging coursework in STEM.

(b) Increasing the number and proportion of students prepared for postsecondary or graduate study and careers in STEM, with a specific focus on an increase in the number and proportion of students so prepared who are from groups traditionally underrepresented in STEM careers, including minorities, individuals with disabilities, and women.

Note: Applicants could propose providing students with increased access to coursework in STEM through such activities as mentoring, counseling, and tutoring in ways that motivate participants to pursue postsecondary education in the areas of STEM. Similarly, applicants could propose increasing the number and proportion of students prepared for postsecondary or graduate study and careers in STEM through activities such as referrals to STEM-oriented work-based learning experiences, exposure to academic programs and careers in STEM-related fields, and providing support services. These could include services to improve participants' academic skills and knowledge so that they may pursue studies and careers in STEM-related fields.

Invitational Priority 2—Faith-Based and Community Organizations

Applications that propose to engage faith-based and community organizations in the delivery of services under this program.

Invitational Priority 3—Evidence of Strong Theory

Applications that include a well-developed plan supported by evidence of strong theory (as defined in 34 CFR part 77.1(c)), which includes a rationale for the proposed process, product, strategy, or practice and a corresponding logic model. Under 34 CFR part 77.1(c), ''logic model'' (also referred to as theory of action) means a well-specified conceptual framework that identifies key components of the proposed process, product, strategy or practice (*i.e.,* the active ''ingredients'' that are hypothesized to be critical to achieving the relevant outcomes) and describes the relationships among the key components and outcomes, theoretically and operationally.

Note: In order to address this priority, applicants must develop logic models to demonstrate their project's theory of action. Applicants should connect available evidence of past history of successful outcomes to their logic models. Applicants may use resources such as the Pacific Education Laboratory's Education Logic Model Application (*www.relpacific.mcrel.org/PERR.html*) or the Northeast and Island's REL Skill Builder Workshops (*www.relnei.org/events/skillbuilder-archive.html*) to help design their logic models. In addressing this priority, applicants are also encouraged to connect the project design to the intended impact of the project, including an explanation of how the project will affect students' completion of the first-year of college and their continuation in postsecondary studies and careers in STEM. Finally, applicants are encouraged to discuss the role and commitment of any partner and how they plan to sustain their partnership beyond the life of the grant.

PROGRAM AUTHORITY: 20 U.S.C. 1070d–2.

Applicable Regulations: This application notice (also referred to as a notice inviting applications (NIA)) is being published before the Department adopts the Uniform Administrative Requirements, Cost Principles, and Audit Requirements in 2 CFR part 200. We expect to publish interim final regulations that would adopt those requirements before December 26, 2014, and make those regulations effective on that date. Because grants awarded under this NIA will likely be made after the Department adopts the requirements in 2 CFR part 200, we list as applicable regulations both those that are currently effective and those that will be effective at the time the Department makes grants.

The current regulations follow: (a) The Education Department General Administrative Regulations (EDGAR) in 34 CFR parts 74, 75, 77, 79, 81, 82, 84, 86, 97, 98, and 99. (b) The OMB Guidelines to Agencies on Governmentwide Debarment and Suspension (Nonprocurement) in 2 CFR part 180, as adopted and amended as regulations of the Department in 2 CFR part 3485.

At the time we award grants under this NIA, the following regulations will apply: (a) EDGAR in 34 CFR parts 75, 77, 79, 81, 82, 84, 86, 97, 98, and 99. (b) The OMB Guidelines to Agencies on Governmentwide Debarment and Suspension (Nonprocurement) in 2 CFR part 180, as adopted and amended as regulations of the Department in 2 CFR part 3485, and the Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards in 2 CFR part 200, as adopted and amended in 2 CFR part 3474.

Regardless of the timing of publication, the following also apply to this NIA: (a) The regulations for this program in 34 CFR part 206. (b) The definitions of ''migratory agricultural worker'' in 34 CFR 200.81(d), ''migratory child'' in 34 CFR 200.81(e), and ''migratory fisher'' in 34 CFR 200.81(f). (c) The regulations in 20 CFR 669.110 and 669.320.

Note: The regulations in 34 CFR part 86 apply to institutions of higher education (IHEs) only.

II. Award Information

Type of Award: Discretionary grants.

Estimated Available Funds: The Administration has requested

$3,745,403 for new awards for this program for FY 2015. The actual level of funding, if any, depends on final congressional action. However, we are inviting applications at this time to allow enough time to complete the grant competition process if Congress appropriates funds for this program.

Contingent upon the availability of funds and the quality of applications, we may make additional awards in FY 2016 and future years from the list of unfunded applicants from this competition.

Estimated Range of Awards: $180,000–$425,000.

Estimated Average Size of Awards: $424,251.

Maximum Award: We will reject any application that proposes a CAMP award exceeding $425,000 for any of the five single budget periods of 12 months. The Assistant Secretary for Elementary and Secondary Education may change the maximum amount through a notice published in the **Federal Register.**

Minimum Award: We will reject any application that proposes a CAMP award that is less than $180,000 for any of the five single budget periods of 12 months.

Estimated Number of Awards: 8.

Note: The Department is not bound by any estimates in this notice.

Project Period: Applicants must propose a project of 60 months (*i.e.,* five years) in duration, and we will reject any application that does not do so. However, if an applicant receives a grant award, annual continuation funding is contingent upon availability of funds and grantees meeting minimum performance standards.

III. Eligibility Information

1. *Eligible Applicants:* IHEs or private non-profit organizations (including faith-based organizations) that plan their projects in cooperation with an IHE and propose to operate the project with the facilities of the IHE.

2. *Cost Sharing or Matching:* This program does not require cost sharing or matching. However, consistent with 34 CFR 75.700, which requires an applicant to comply with its approved application, an applicant that proposes non-Federal matching funds and is awarded a grant must provide those funds for each year that the funds are proposed.

3. *Other:* Projects funded under this competition must budget for a two-day Office of Migrant Education annual meeting for CAMP directors in the Washington, DC area during each year of the project period.

IV. Application and Submission Information

1. *Address to Request Application Package:* Nathan Weiss, U.S. Department of Education, Office of Migrant Education, 400 Maryland Avenue SW., room 3E321, Washington, DC 20202–6135. Telephone: (202) 260–7496 or by email: *nathan.weiss@ed.gov.*

The application package content also can be viewed electronically at the following address: *www.ed.gov/programs/camp/applicant.html.*

If you use a telecommunications device for the deaf (TDD) or text telephone (TTY), call the Federal Relay Service (FRS), toll free, at 1–800–877–8339.

Individuals with disabilities can obtain a copy of the application package in an accessible format (*e.g.,* braille, large print, audiotape, or compact disc) by contacting the program contact person listed in this section.

2. *Content and Form of Application Submission:* Requirements concerning the content of an application, together with the forms you must submit, are in the application package for this competition.

Page Limit: The project narrative (Part IV of the application) is where you, the applicant, address the selection criteria that reviewers use to evaluate your application. Panel readers will award points only for an applicant's response to a given selection criterion that is contained within the section of the application designated to address that particular selection criterion. Readers will not review, or award points for, a response to the selection criterion that is located in any other section of the application or the appendices. We will reject any project narrative that exceeds 25 pages or does not adhere to the following standards:

- A ''page'' is 8.5'' x 11'', on one side only, with 1'' margins at the top, bottom, and both sides.
- Double space (no more than three lines per vertical inch) all text in the application narrative, including titles, headings, footnotes, quotations, references, and captions. However, you may single space all text in charts, tables, figures, and graphs. Charts, tables, figures, and graphs presented in the application narrative count toward the page limit.
- Use a font that is either 12 point or larger or no smaller than 10 pitch (characters per inch) throughout the entire application package.
- Use one of the following fonts: Times New Roman, Courier, Courier New, or Arial. An application submitted in any other font (including Times Roman or Arial Narrow) will not be accepted. The 25-page limit for the project narrative does not apply to the cover sheet; the budget section, including the narrative budget justification; the assurances and certifications; or the one-page abstract. However, the page limit does apply to all of the project narrative section.

Appendices must be limited to 20 pages and must include the following: resumes, if applicable, and job descriptions of key personnel. Job descriptions must include duties and minimum qualifications. Items in the appendices will only be used by the program office.

3. *Submission Dates and Times:*

Applications Available: December 29, 2014.

Deadline for Transmittal of Applications: February 12, 2015.

Applications for grants under this competition must be submitted electronically using the Grants.gov Apply site (*Grants.gov*). For information (including dates and times) about how to submit your application electronically, or in paper format by mail or hand delivery if you qualify for an exception to the electronic submission requirement, please refer to section IV. 7. *Other Submission Requirements* of this notice.

We will not consider an application that does not comply with the deadline requirements.

Individuals with disabilities who need an accommodation or auxiliary aid in connection with the application process should contact the person listed under **FOR FURTHER INFORMATION CONTACT** in section VII of this notice. If the Department provides an accommodation or auxiliary aid to an individual with a disability in connection with the application process, the individual's application remains subject to all other requirements and limitations in this notice.

Deadline for Intergovernmental Review: April 13, 2015.

4. *Intergovernmental Review:* This competition is subject to Executive Order 12372 and the regulations in 34 CFR part 79. Information about Intergovernmental Review of Federal Programs under Executive Order 12372 is in the application package for this competition.

5. *Funding Restrictions:* We reference regulations outlining funding restrictions in the *Applicable Regulations* section of this notice.

6. *Data Universal Numbering System Number, Taxpayer Identification Number, and System for Award*

Management: To do business with the Department of Education, you must—

a. Have a Data Universal Numbering System (DUNS) number and a Taxpayer Identification Number (TIN);

b. Register both your DUNS number and TIN with the System for Award Management (SAM) (formerly the Central Contractor Registry (CCR)), the Government's primary registrant database;

c. Provide your DUNS number and TIN on your application; and

d. Maintain an active SAM registration with current information while your application is under review by the Department and, if you are awarded a grant, during the project period.

You can obtain a DUNS number from Dun and Bradstreet. A DUNS number can be created within one to two business days.

If you are a corporate entity, agency, institution, or organization, you can obtain a TIN from the Internal Revenue Service. If you are an individual, you can obtain a TIN from the Internal Revenue Service or the Social Security Administration. If you need a new TIN, please allow 2–5 weeks for your TIN to become active.

The SAM registration process can take approximately seven business days, but may take upwards of several weeks, depending on the completeness and accuracy of the data entered into the SAM database by an entity. Thus, if you think you might want to apply for Federal financial assistance under a program administered by the Department, please allow sufficient time to obtain and register your DUNS number and TIN. We strongly recommend that you register early.

Note: Once your SAM registration is active, you will need to allow 24 to 48 hours for the information to be available in Grants.gov and before you can submit an application through Grants.gov.

If you are currently registered with SAM, you may not need to make any changes. However, please make certain that the TIN associated with your DUNS number is correct. Also note that you will need to update your registration annually. This may take three or more business days.

Information about SAM is available at *www.SAM.gov.* To further assist you with obtaining and registering your DUNS number and TIN in SAM or updating your existing SAM account, we have prepared a SAM.gov Tip Sheet, which you can find at: *http://www2.ed.gov/fund/grant/apply/sam-faqs.html.*

In addition, if you are submitting your application via Grants.gov, you must (1) be designated by your organization as an Authorized Organization Representative (AOR); and (2) register yourself with Grants.gov as an AOR. Details on these steps are outlined at the following Grants.gov Web page: *www.grants.gov/web/grants/register.html.*

7. *Other Submission Requirements:* Applications for grants under this competition must be submitted electronically unless you qualify for an exception to this requirement in accordance with the instructions in this section.

a. Electronic Submission of Applications

Applications for grants under CAMP, CFDA number 84.149A, must be submitted electronically using the Governmentwide Grants.gov Apply site at www.Grants.gov. Through this site, you will be able to download a copy of the application package, complete it offline, and then upload and submit your application. You may not email an electronic copy of a grant application to us.

We will reject your application if you submit it in paper format unless, as described elsewhere in this section, you qualify for one of the exceptions to the electronic submission requirement *and* submit, no later than two weeks before the application deadline date, a written statement to the Department that you qualify for one of these exceptions. Further information regarding calculation of the date that is two weeks before the application deadline date is provided later in this section under *Exception to Electronic Submission Requirement.*

You may access the electronic grant application for CAMP at *www.Grants.gov.* You must search for the downloadable application package for this competition by the CFDA number. Do not include the CFDA number's alpha suffix in your search (*e.g.,* search for 84.149, not 84.149A).

Please note the following:

- When you enter the Grants.gov site, you will find information about submitting an application electronically through the site, as well as the hours of operation.
- Applications received by Grants.gov are date and time stamped. Your application must be fully uploaded and submitted and must be date and time stamped by the Grants.gov system no later than 4:30:00 p.m., Washington, DC time, on the application deadline date. Except as otherwise noted in this section, we will not accept your application if it is received—that is, date and time stamped by the Grants.gov system—after 4:30:00 p.m., Washington, DC time, on the application deadline date. We will not consider an application that does not comply with the deadline requirements. When we retrieve your application from Grants.gov, we will notify you if we are rejecting your application because it was date and time stamped by the Grants.gov system after 4:30:00 p.m., Washington, DC time, on the application deadline date.
- The amount of time it can take to upload an application will vary depending on a variety of factors, including the size of the application and the speed of your Internet connection. Therefore, we strongly recommend that you do not wait until the application deadline date to begin the submission process through Grants.gov.
- You should review and follow the Education Submission Procedures for submitting an application through Grants.gov that are included in the application package for this competition to ensure that you submit your application in a timely manner to the Grants.gov system. You can also find the Education Submission Procedures pertaining to Grants.gov under News and Events on the Department's G5 system home page at *www.G5.gov.*
- You will not receive additional point value because you submit your application in electronic format, nor will we penalize you if you qualify for an exception to the electronic submission requirement, as described elsewhere in this section, and submit your application in paper format.
- You must submit all documents electronically, including all information you typically provide on the following forms: the Application for Federal Assistance (SF 424), the Department of Education Supplemental Information for SF 424, Budget Information—Non-Construction Programs (ED 524), and all necessary assurances and certifications.
- You must upload any narrative sections and all other attachments to your application as files in a PDF (Portable Document) read-only, non-modifiable format. Do not upload an interactive or fillable PDF file. If you upload a file type other than a read-only, non-modifiable PDF or submit a password-protected file, we will not review that material.
- Your electronic application must comply with any page-limit requirements described in this notice.
- After you electronically submit your application, you will receive from Grants.gov an automatic notification of receipt that contains a Grants.gov tracking number. (This notification indicates receipt by Grants.gov only, not receipt by the Department.) The

Department then will retrieve your application from Grants.gov and send a second notification to you by email. This second notification indicates that the Department has received your application and has assigned your application a PR/Award number (an ED-specified identifying number unique to your application).

• We may request that you provide us original signatures on forms at a later date.

Application Deadline Date Extension in Case of Technical Issues with the Grants.gov System: If you are experiencing problems submitting your application through Grants.gov, please contact the Grants.gov Support Desk, toll free, at 1–800–518–4726. You must obtain a Grants.gov Support Desk Case Number and must keep a record of it.

If you are prevented from electronically submitting your application on the application deadline date because of technical problems with the Grants.gov system, we will grant you an extension until 4:30:00 p.m., Washington, DC time, the following business day to enable you to transmit your application electronically or by hand delivery. You also may mail your application by following the mailing instructions described elsewhere in this notice.

If you submit an application after 4:30:00 p.m., Washington, DC time, on the application deadline date, please contact the person listed under **FOR FURTHER INFORMATION CONTACT** in section VII of this notice and provide an explanation of the technical problem you experienced with Grants.gov, along with the Grants.gov Support Desk Case Number. We will accept your application if we can confirm that a technical problem occurred with the Grants.gov system and that that problem affected your ability to submit your application by 4:30:00 p.m., Washington, DC time, on the application deadline date. The Department will contact you after a determination is made on whether your application will be accepted.

Note: The extensions to which we refer in this section apply only to the unavailability of, or technical problems with, the Grants.gov system. We will not grant you an extension if you failed to fully register to submit your application to Grants.gov before the application deadline date and time or if the technical problem you experienced is unrelated to the Grants.gov system.

Exception to Electronic Submission Requirement: You qualify for an exception to the electronic submission requirement, and may submit your application in paper format, if you are unable to submit an application through the Grants.gov system because—

• You do not have access to the Internet; or

• You do not have the capacity to upload large documents to the Grants.gov system;

and

• No later than two weeks before the application deadline date (14 calendar days or, if the fourteenth calendar day before the application deadline date falls on a Federal holiday, the next business day following the Federal holiday), you mail or fax a written statement to the Department, explaining which of the two grounds for an exception prevents you from using the Internet to submit your application.

If you mail your written statement to the Department, it must be postmarked no later than two weeks before the application deadline date. If you fax your written statement to the Department, we must receive the faxed statement no later than two weeks before the application deadline date.

Address and mail or fax your statement to: Nathan Weiss, U.S. Department of Education, 400 Maryland Avenue SW., room 3E321, Washington, DC 20202–6135. FAX: (202) 205–0089.

Your paper application must be submitted in accordance with the mail or hand delivery instructions described in this notice.

b. Submission of Paper Applications by Mail

If you qualify for an exception to the electronic submission requirement, you may mail (through the U.S. Postal Service or a commercial carrier) your application to the Department. You must mail the original and two copies of your application, on or before the application deadline date, to the Department at the following address: U.S. Department of Education, Application Control Center, Attention: CFDA Number 84.149A, LBJ Basement Level 1, 400 Maryland Avenue SW., Washington, DC 20202–4260.

You must show proof of mailing consisting of one of the following:

(1) A legibly dated U.S. Postal Service postmark.

(2) A legible mail receipt with the date of mailing stamped by the U.S. Postal Service.

(3) A dated shipping label, invoice, or receipt from a commercial carrier.

(4) Any other proof of mailing acceptable to the Secretary of the U.S. Department of Education.

If you mail your application through the U.S. Postal Service, we do not accept either of the following as proof of mailing:

(1) A private metered postmark.

(2) A mail receipt that is not dated by the U.S. Postal Service.

If your application is postmarked after the application deadline date, we will not consider your application.

Note: The U.S. Postal Service does not uniformly provide a dated postmark. Before relying on this method, you should check with your local post office.

c. Submission of Paper Applications by Hand Delivery

If you qualify for an exception to the electronic submission requirement, you (or a courier service) may deliver your paper application to the Department by hand. You must deliver the original and two copies of your application by hand, on or before the application deadline date, to the Department at the following address: U.S. Department of Education, Application Control Center, Attention: CFDA Number 84.149A, 550 12th Street SW., Room 7039, Potomac Center Plaza, Washington, DC 20202–4260.

The Application Control Center accepts hand deliveries daily between 8:00 a.m. and 4:30:00 p.m., Washington, DC time, except Saturdays, Sundays, and Federal holidays.

Note for Mail or Hand Delivery of Paper Applications: If you mail or hand deliver your application to the Department—

(1) You must indicate on the envelope and—if not provided by the Department—in Item 11 of the SF 424 the CFDA number, including suffix letter, if any, of the competition under which you are submitting your application; and

(2) The Application Control Center will mail to you a notification of receipt of your grant application. If you do not receive this notification within 15 business days from the application deadline date, you should call the U.S. Department of Education Application Control Center at (202) 245–6288.

V. Application Review Information

1. *Selection Criteria:* The selection criteria for this competition are from 34 CFR 75.210 of EDGAR and are listed in the application package.

2. *Review and Selection Process:* We remind potential applicants that in reviewing applications in any discretionary grant competition, the Secretary may consider, under 34 CFR 75.217(d)(3), the past performance of the applicant in carrying out a previous award, such as the applicant's use of funds, achievement of project objectives, and compliance with grant conditions. The Secretary may also consider whether the applicant failed to submit a timely performance report or submitted a report of unacceptable quality.

In addition, in making a competitive grant award, the Secretary also requires various assurances including those applicable to Federal civil rights laws that prohibit discrimination in programs or activities receiving Federal financial assistance from the Department of Education (34 CFR 100.4, 104.5, 106.4, 108.8, and 110.23).

3. *Special Conditions:* Under current 34 CFR 74.14 and, when grants are made under this NIA, 2 CFR 3474.10, the Secretary may impose special conditions and, in appropriate circumstances, high-risk conditions on a grant if the applicant or grantee is not financially stable; has a history of unsatisfactory performance; has a financial or other management system that does not meet the standards in 34 CFR part 74, as applicable or, when grants are awarded, the standards in 2 CFR 200, subpart D; has not fulfilled the conditions of a prior grant; or is otherwise not responsible.

VI. Award Administration Information

1. *Award Notices:* If your application is successful, we notify your U.S. Representative and U.S. Senators and send you a Grant Award Notification (GAN); or we may send you an email containing a link to access an electronic version of your GAN. We may notify you informally, also.

If your application is not evaluated or not selected for funding, we notify you.

2. *Administrative and National Policy Requirements:* We identify administrative and national policy requirements in the application package and reference these and other requirements in the *Applicable Regulations* section of this notice.

We reference the regulations outlining the terms and conditions of an award in the *Applicable Regulations* section of this notice and include these and other specific conditions in the GAN. The GAN also incorporates your approved application as part of your binding commitments under the grant.

3. *Reporting:* (a) If you apply for a grant under this competition, you must ensure that you have in place the necessary processes and systems to comply with the reporting requirements in 2 CFR part 170 should you receive funding under the competition. This does not apply if you have an exception under 2 CFR 170.110(b).

(b) At the end of your project period, you must submit a final performance report, including financial information, as directed by the Secretary. If you receive a multi-year award, you must submit an annual performance report that provides the most current performance and financial expenditure information as directed by the Secretary under 34 CFR 75.118. The Secretary may also require more frequent performance reports under 34 CFR 75.720(c). For specific requirements on reporting, please go to *www.ed.gov/fund/grant/apply/appforms/appforms.html*.

4. *Performance Measures:* Under the Government Performance and Results Act of 1993 (GPRA), the Department developed the following performance measures to evaluate the overall effectiveness of CAMP: (1) the percentage of CAMP participants completing the first academic year of their postsecondary program, and (2) the percentage of CAMP participants who, after completing the first academic year of college, continue their postsecondary education.

Applicants must propose annual targets for these measures in their applications. The national target for GPRA measure 1 for FY 2015 is that 86 percent of CAMP participants will complete the first academic year of their postsecondary program. The national target for GPRA measure 2 for FY 2015 is that 85 percent of CAMP participants continue their postsecondary education after completing the first academic year of college. The national targets for subsequent years may be adjusted based on additional baseline data. The panel readers will score related selection criteria on the basis of how well an applicant addresses these GPRA measures. Therefore, applicants will want to consider how to demonstrate a sound capacity to provide reliable data on GPRA measures, including the project's annual performance targets for addressing the GPRA performance measures, as is required by the Office of Management and Budget approved annual performance report that is included in the application package. All grantees will be required to submit, as part of their annual performance report, information with respect to these GPRA performance measures.

5. *Continuation Awards:* In making a continuation award under 34 CFR 75.253, the Secretary considers, among other things: Whether a grantee has made substantial progress in achieving the goals and objectives of the project; whether the grantee has expended funds in a manner that is consistent with its approved application and budget; and, if the Secretary has established performance measurement requirements, the performance targets in the grantee's approved application. In making a continuation grant, the Secretary also considers whether the grantee is operating in compliance with the assurances in its approved application, including those applicable to Federal civil rights laws that prohibit discrimination in programs or activities receiving Federal financial assistance from the Department (34 CFR 100.4, 104.5, 106.4, 108.8, and 110.23).

VII. Agency Contact

FOR FURTHER INFORMATION CONTACT: Nathan Weiss, U.S. Department of Education, Office of Migrant Education, 400 Maryland Avenue SW., room 3E321, Washington, DC 20202–6135. Telephone Number: (202) 260–7496, or by email: *nathan.weiss@ed.gov.*

If you use a TDD or a TYY, call the FRS, toll free, at 1–800–877–8339.

VIII. Other Information

Accessible Format: Individuals with disabilities can obtain this document and a copy of the application package in an accessible format (*e.g.,* braille, large print, audiotape, or compact disc) on request to the program contact person listed under **FOR FURTHER INFORMATION CONTACT** in section VII of this notice.

Electronic Access to This Document: The official version of this document is the document published in the **Federal Register**. Free Internet access to the official edition of the **Federal Register** and the Code of Federal Regulations is available via the Federal Digital System at: *www.gpo.gov/fdsys.* At this site you can view this document, as well as all other documents of this Department published in the **Federal Register,** in text or Adobe Portable Document Format (PDF). To use PDF you must have Adobe Acrobat Reader, which is available free at the site.

You may also access documents of the Department published in the **Federal Register** by using the article search feature at: *www.federalregister.gov.* Specifically, through the advanced search feature at this site, you can limit your search to documents published by the Department.

Dated: December 18, 2014.

Deborah S. Delisle,

Assistant Secretary for Elementary and Secondary Education.

[FR Doc. 2014–30210 Filed 12–24–14; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF ENERGY

Plains & Eastern Clean Line Transmission Project Draft Environmental Impact Statement Notice of Availability and Public Hearings; Correction

AGENCY: Office of Electricity Delivery and Energy Reliability, Department of Energy.

ACTION: Correction.

SUMMARY: On December 17, 2014, the U.S. Department of Energy (DOE) published a notice of availability in the **Federal Register** of the *Draft Environmental Impact Statement for the Plains & Eastern Clean Line Transmission Project* (DOE/EIS–0486; Draft EIS). This notice corrects the date of the public comment period.

FOR FURTHER INFORMATION CONTACT: Jane Summerson, Ph.D., DOE NEPA Document Manager on behalf of the Office of Electricity Delivery and Energy Reliability, U.S. Department of Energy, NNSA, PO Box 391 Building 401, Kirtland Air Force Base East, Albuquerque, NM 87185; email at *Jane.Summerson01@nnsa.doe.gov;* or phone (505) 845–4091.

Correction

In the **Federal Register** dated December 17, 2014 in FR Doc. 2014–29524, please make the following corrections on page 75132:

The end of the first sentence in the **DATES** section, is corrected by removing ''which ends on March 17, 2015'' and adding ''which begins on December 19, 2014, and ends on March 19, 2015'' in its place.

Issued in Washington, DC on December 19, 2014.

Patricia A. Hoffman,

Assistant Secretary Office of Electricity Delivery and Energy Reliability.

[FR Doc. 2014–30393 Filed 12–24–14; 8:45 am]

BILLING CODE 6450–01–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: ER14–2325–000.
Applicants: Mosaic Fertilizer, LLC.
Description: eTariff filing per 35.19a(b): Mosaic Refund Report to be effective N/A.
Filed Date: 12/19/14.
Accession Number: 20141219–5107.
Comments Due: 5 p.m. ET 1/9/15.

Docket Numbers: ER14–2666–002.
Applicants: Avalon Solar Partners, LLC.
Description: Notice of Non-Material Change in Status of Avalon Solar Partners, LLC.
Filed Date: 12/19/14.
Accession Number: 20141219–5080.
Comments Due: 5 p.m. ET 1/9/15.

Docket Numbers: ER14–2666–002.
Applicants: Avalon Solar Partners, LLC.
Description: Errata [Appendix B] to December 19, 2014 Notice of Non-Material Change in Status of Avalon Solar Partners, LLC.
Filed Date: 12/19/14.
Accession Number: 20141219–5135.
Comments Due: 5 p.m. ET 1/9/15.

Docket Numbers: ER14–2937–000.
Applicants: American Transmission Systems, Incorporated, PJM Interconnection, L.L.C.
Description: eTariff filing per 35.19a(b): ATSI submits Refund Report under Docket No. ER14–2937 to be effective N/A.
Filed Date: 12/18/14.
Accession Number: 20141218–5317.
Comments Due: 5 p.m. ET 1/8/15.

Docket Numbers: ER14–2940–001.
Applicants: PJM Interconnection, L.L.C.
Description: Compliance filing per 35: Compliance Filing per 11/28/2014 Order in Docket No. ER14–2940–000 to be effective 12/1/2014.
Filed Date: 12/19/14.
Accession Number: 20141219–5145.
Comments Due: 5 p.m. ET 1/9/15.

Docket Numbers: ER14–2956–002.
Applicants: Hoopeston Wind, LLC.
Description: Tariff Amendment per 35.17(b): Hoopeston MBRA Amendment to be effective 12/18/2014.
Filed Date: 12/19/14.
Accession Number: 20141219–5001.
Comments Due: 5 p.m. ET 12/29/14.

Docket Numbers: ER15–618–001.
Applicants: PJM Interconnection, L.L.C., Virginia Electric and Power Company.
Description: Tariff Amendment per 35.17(b): Dominion Errata Filing to Resubmit Amended Service Agreement No. 3453 to be effective 12/12/2014.
Filed Date: 12/19/14.
Accession Number: 20141219–5147.
Comments Due: 5 p.m. ET 1/9/15.

Docket Numbers: ER15–660–000.
Applicants: PJM Interconnection, L.L.C.
Description: Tariff Withdrawal per 35.15: Notice of Cancellation of Original Service Agreement No. 3528; Queue No. X3–041 to be effective 12/19/2014.
Filed Date: 12/19/14.
Accession Number: 20141219–5082.
Comments Due: 5 p.m. ET 1/9/15.

Docket Numbers: ER15–661–000.
Applicants: Public Service Company of Oklahoma.
Description: § 205(d) rate filing per 35.13(a)(2)(iii): PSO–OMPA Marlow Delivery Point Agreement to be effective 12/4/2014.
Filed Date: 12/19/14.
Accession Number: 20141219–5093.
Comments Due: 5 p.m. ET 1/9/15.

Docket Numbers: ER15–662–000.
Applicants: PJM Interconnection, L.L.C.
Description: Tariff Withdrawal per 35.15: Notice of Cancellation of Service Agreement No. 3588 to be effective 1/2/2015.
Filed Date: 12/19/14.
Accession Number: 20141219–5096.
Comments Due: 5 p.m. ET 1/9/15.

Docket Numbers: ER15–663–000.
Applicants: AEP Generation Resources Inc.
Description: § 205(d) rate filing per 35.13(a)(2)(iii): Ohio Power Supply Agreement Amd Reflecting State Commission Mandated Updates to be effective 1/1/2015.
Filed Date: 12/19/14.
Accession Number: 20141219–5111.
Comments Due: 5 p.m. ET 1/9/15.

Docket Numbers: ER15–664–000.
Applicants: PacifiCorp.
Description: § 205(d) rate filing per 35.13(a)(2)(iii): Certificate of Concurrence to be effective 1/1/2015.
Filed Date: 12/19/14.
Accession Number: 20141219–5158.
Comments Due: 5 p.m. ET 1/9/15.

Docket Numbers: ER15–665–000.
Applicants: AP Holdings, LLC.
Description: § 205(d) rate filing per 35.13(a)(2)(iii): AP Holdings—Seller Category Filing to be effective 2/17/2015.
Filed Date: 12/19/14.
Accession Number: 20141219–5192.
Comments Due: 5 p.m. ET 1/9/15.

Docket Numbers: ER15–666–000.
Applicants: AP Gas & Electric (PA), LLC.
Description: § 205(d) rate filing per 35.13(a)(2)(iii): AP–PA—Seller Category Filing to be effective 2/17/2015.
Filed Date: 12/19/14.
Accession Number: 20141219–5193.
Comments Due: 5 p.m. ET 1/9/15.

Docket Numbers: ER15–667–000.
Applicants: AP Gas & Electric (MD), LLC.
Description: § 205(d) rate filing per 35.13(a)(2)(iii): AP–MD—Seller Category Filing to be effective 2/17/2015.
Filed Date: 12/19/14.
Accession Number: 20141219–5194.
Comments Due: 5 p.m. ET 1/9/15.

Docket Numbers: ER15–668–000.
Applicants: AP Gas & Electric (NJ), LLC.
Description: § 205(d) rate filing per 35.13(a)(2)(iii): AP–NJ Seller Category Filing to be effective 2/17/2015.
Filed Date: 12/19/14.
Accession Number: 20141219–5195.

Comments Due: 5 p.m. ET 1/9/15.

Docket Numbers: ER15–669–000.
Applicants: AP Gas & Electric (IL), LLC.
Description: § 205(d) rate filing per 35.13(a)(2)(iii): AP–IL—Seller Category Filing to be effective 2/17/2015.
Filed Date: 12/19/14.
Accession Number: 20141219–5196.
Comments Due: 5 p.m. ET 1/9/15.

Docket Numbers: ER15–670–000.
Applicants: AP Gas & Electric (OH), LLC.
Description: § 205(d) rate filing per 35.13(a)(2)(iii): AP–OH—Seller Category Filing to be effective 2/17/2015.
Filed Date: 12/19/14.
Accession Number: 20141219–5197.
Comments Due: 5 p.m. ET 1/9/15.

Docket Numbers: ER15–671–000.
Applicants: AP Gas & Electric (NY), LLC.
Description: § 205(d) rate filing per 35.13(a)(2)(iii): AP–NY—Seller Category Filing to be effective 2/17/2015.
Filed Date: 12/19/14.
Accession Number: 20141219–5198.
Comments Due: 5 p.m. ET 1/9/15.

Docket Numbers: ER15–672–000.
Applicants: AP Gas & Electric (TX), LLC.
Description: § 205(d) rate filing per 35.13(a)(2)(iii): AP–TX—Seller Category Filing to be effective 2/17/2015.
Filed Date: 12/19/14.
Accession Number: 20141219–5199.
Comments Due: 5 p.m. ET 1/9/15.

Docket Numbers: ER15–673–000.
Applicants: Southwest Power Pool, Inc.
Description: § 205(d) rate filing per 35.13(a)(2)(iii): Revisions to Attachment AF Section 3—Mitigation Test for Manual Commitments to be effective 2/17/2015.
Filed Date: 12/19/14.
Accession Number: 20141219–5213.
Comments Due: 5 p.m. ET 1/9/15.

The filings are accessible in the Commission's eLibrary system by clicking on the links or querying the docket number.

Any person desiring to intervene or protest in any of the above proceedings must file in accordance with Rules 211 and 214 of the Commission's Regulations (18 CFR 385.211 and 385.214) on or before 5:00 p.m. Eastern time on the specified comment date. Protests may be considered, but intervention is necessary to become a party to the proceeding.

eFiling is encouraged. More detailed information relating to filing requirements, interventions, protests, service, and qualifying facilities filings can be found at: *http://www.ferc.gov/docs-filing/efiling/filing-req.pdf.* For other information, call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Dated: December 19, 2014.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. 2014–30330 Filed 12–24–14; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Combined Notice Of Filings

Take notice that the Commission has received the following Natural Gas Pipeline Rate and Refund Report filings:

Filings in Existing Proceedings

Docket Numbers: RP15–106–001.

Applicants: Trailblazer Pipeline Company LLC.

Description: Compliance filing per 154.203: Compliance to RP15–106 to be effective N/A.

Filed Date: 12/17/14.

Accession Number: 20141217–5167.

Comments Due: 5 p.m. ET 12/22/14.

Docket Numbers: RP15–50–002.

Applicants: American Midstream (AlaTenn), LLC.

Description: Compliance filing per 154.203: AlaTenn OFO Filing to be effective 12/17/2014.

Filed Date: 12/17/14.

Accession Number: 20141217–5175

Comments Due: 5 p.m. ET 12/29/14.

Any person desiring to protest in any of the above proceedings must file in accordance with Rule 211 of the Commission's Regulations (18 CFR 385.211) on or before 5:00 p.m. Eastern time on the specified comment date.

The filings are accessible in the Commission's eLibrary system by clicking on the links or querying the docket number.

eFiling is encouraged. More detailed information relating to filing requirements, interventions, protests, service, and qualifying facilities filings can be found at: *http://www.ferc.gov/docs-filing/efiling/filing-req.pdf.* For other information, call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Dated: December 18, 2014.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. 2014–30327 Filed 12–24–14; 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 exempt wholesale generator filings:

Docket Numbers: EG15–29–000.
Applicants: Iberdrola Arizona Renewables, LLC.
Description: Notice of Non-Material Change in Facts of Iberdrola Arizona Renewables, LLC.
Filed Date: 12/10/14.
Accession Number: 20141210–5218.
Comments Due: 5 p.m. ET 12/31/14.

Docket Numbers: EG15–30–000.
Applicants: Cross & Company, PLLC.
Description: Molex Incorporated Notice of Exempt Wholesale Generator Status.
Filed Date: 12/18/14.
Accession Number: 20141218–5102.
Comments Due: 5 p.m. ET 1/8/15

Take notice that the Commission received the following electric rate filings:

Docket Numbers: ER10–2302–005.
Applicants: Public Service Company of New Mexico.
Description: Supplement to August 18, 2014 Notice of Change in Status of Public Service Company of New Mexico.
Filed Date: 12/17/14.
Accession Number: 20141217–5201.
Comments Due: 5 p.m. ET 1/7/15.

Docket Numbers: ER14–2916–000.
Applicants: Midcontinent Independent System Operator, Inc.
Description: Report Filing: 2014–12–18_SA 2698 OTP-Courtenay Wind Farm GIA_Response (J262/J263) to be effective N/A.
Filed Date: 12/18/14.
Accession Number: 20141218–5154.
Comments Due: 5 p.m. ET 1/8/15.

Docket Numbers: ER14–2936–000.
Applicants: Sunbury Generation LP.
Description: Report Filing: Sunbury PJM Refund Response to be effective N/A.
Filed Date: 12/18/14.
Accession Number: 20141218–5001.
Comments Due: 5 p.m. ET 1/8/15.

Docket Numbers: ER15–631–000.
Applicants: Crawfordsville Energy, LLC.
Description: Supplement to December 15, 2014 Crawfordsville Energy, LLC tariff filing.
Filed Date: 12/17/14.
Accession Number: 20141217–5120.
Comments Due: 5 p.m. ET 1/7/15.

Docket Numbers: ER15–645–000.

Applicants: PJM Interconnection, L.L.C.

Description: § 205(d) rate filing per 35.13(a)(2)(iii): Service Agreement No. 4053; Queue No. Z2–088 to be effective 11/18/2014.

Filed Date: 12/17/14.

Accession Number: 20141217–5161.

Comments Due: 5 p.m. ET 1/7/15.

Docket Numbers: ER15–646–000.

Applicants: AEP Generation Resources Inc.

Description: Request seeking Commission authorization for extension of an ongoing affiliate power sales agreement of AEP Generation Resources Inc.

Filed Date: 12/15/14.

Accession Number: 20141215–5326.

Comments Due: 5 p.m. ET 1/5/15.

Docket Numbers: ER15–647–000.

Applicants: Kay Wind, LLC.

Description: Initial rate filing per 35.12 Kay Wind MBR Tariff Revised to be effective 2/16/2015.

Filed Date: 12/18/14.

Accession Number: 20141218–5075.

Comments Due: 5 p.m. ET 1/8/15.

Docket Numbers: ER15–648–000.

Applicants: South Carolina Electric & Gas Company.

Description: Compliance filing per 35: NAESB Transmission Service Products—Attachment O to be effective 2/2/2015.

Filed Date: 12/18/14.

Accession Number: 20141218–5132.

Comments Due: 5 p.m. ET 1/8/15.

Docket Numbers: ER15–649–000.

Applicants: The Connecticut Light and Power Company.

Description: § 205(d) rate filing per 35.13(a)(2)(iii): Revision to Market Based Rate Tariff NUSCO Electric Rate Schedule, FERC No. 7 to be effective 2/16/2015.

Filed Date: 12/18/14.

Accession Number: 20141218–5182.

Comments Due: 5 p.m. ET 1/8/15.

Docket Numbers: ER15–650–000.

Applicants: Arizona Public Service Company.

Description: § 205(d) rate filing per 35.13(a)(2)(iii): Service Agreement No. 318 Modifications, NITS with NTUA to be effective 12/1/2014.

Filed Date: 12/18/14.

Accession Number: 20141218–5183.

Comments Due: 5 p.m. ET 1/8/15.

Docket Numbers: ER15–651–000.

Applicants: Public Service Company of New Hampshire.

Description: § 205(d) rate filing per 35.13(a)(2)(iii): Revision to Market Based Rate Tariff NUSCO Electric Rate Schedule, FERC No. 7 to be effective 2/16/2015.

Filed Date: 12/18/14.

Accession Number: 20141218–5184.

Comments Due: 5 p.m. ET 1/8/15.

The filings are accessible in the Commission's eLibrary system by clicking on the links or querying the docket number.

Any person desiring to intervene or protest in any of the above proceedings must file in accordance with Rules 211 and 214 of the Commission's Regulations (18 CFR 385.211 and 385.214) on or before 5:00 p.m. Eastern time on the specified comment date. Protests may be considered, but intervention is necessary to become a party to the proceeding.

eFiling is encouraged. More detailed information relating to filing requirements, interventions, protests, service, and qualifying facilities filings can be found at: *http://www.ferc.gov/docs-filing/efiling/filing-req.pdf.* For other information, call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Dated: December 18, 2014.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. 2014–30258 Filed 12–24–14; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Combined Notice of Filings #2

Take notice that the Commission received the following electric corporate filings:

Docket Numbers: EC14–126–000.

Applicants: Wisconsin Energy Corporation, Integrys Energy Group, Inc.

Description: Response to Staff Letter requesting additional information of Wisconsin Energy Corporation and Integrys Energy Group, Inc.

Filed Date: 12/18/14.

Accession Number: 20141218–5387.

Comments Due: 5 p.m. ET 1/8/15.

Docket Numbers: EC15–54–000.

Applicants: Idaho Power Company, PacifiCorp.

Description: Joint Application for Authorization for Disposition of Jurisdictional Facilities of Idaho Power Company and PacifiCorp.

Filed Date: 12/19/14.

Accession Number: 20141219–5342.

Comments Due: 5 p.m. ET 1/9/15.

Take notice that the Commission received the following electric rate filings:

Docket Numbers: ER10–1103–004.

Applicants: AmerenEnergy Medina Valley Cogen, L.L.C.

Description: Compliance filing per 35.37: Triennial Market Power Update and MBR Tariff Changes to be effective 12/20/2014.

Filed Date: 12/19/14.

Accession Number: 20141219–5324.

Comments Due: 5 p.m. ET 2/17/15.

Docket Numbers: ER10–1119–004.

Applicants: Ameren Illinois Company.

Description: Compliance filing per 35.37: Triennial Market Power Update and MBR Tariff Changes to be effective 12/20/2014.

Filed Date: 12/19/14.

Accession Number: 20141219–5308.

Comments Due: 5 p.m. ET 2/17/15.

Docket Numbers: ER10–1123–004.

Applicants: Union Electric Company.

Description: Compliance filing per 35.37: Triennial Market Power Update and MBR Tariff Changes to be effective 12/20/2014.

Filed Date: 12/19/14.

Accession Number: 20141219–5320.

Comments Due: 5 p.m. ET 2/17/15.

Docket Numbers: ER10–2848–006; *ER11–1939–008; ER11–2754–008; ER12–999–006; ER12–1002–006; ER12–1005–006; ER12–1006–006; ER12–1007–007.*

Applicants: AP Holdings, LLC, AP Gas & Electric (IL), LLC, AP Gas & Electric (MD), LLC, AP Gas & Electric (NJ), LLC, AP Gas & Electric (NY), LLC, AP Gas & Electric (OH), LLC, AP Gas & Electric (PA), LLC, AP Gas & Electric (TX), LLC.

Description: Notification of Non-Material Change in Status of AP Holdings Subsidiaries.

Filed Date: 12/19/14.

Accession Number: 20141219–5222.

Comments Due: 5 p.m. ET 1/9/15.

Docket Numbers: ER12–162–011; *ER11–3876–014; ER11–2044–014; ER10–2611–012.*

Applicants: Bishop Hill Energy II LLC, Cordova Energy Company LLC, MidAmerican Energy Company, Saranac Power Partners, L.P.

Description: Triennial Market Power Analysis Update for the Central Region of Bishop Hill Energy II LLC, *et. al.* under ER12–162, *et. al.*

Filed Date: 12/19/14.

Accession Number: 20141219–5264.

Comments Due: 5 p.m. ET 2/17/15.

Docket Numbers: ER14–1822–004.

Applicants: New York Independent System Operator, Inc.

Description: Compliance filing per 35: Minimum Oil Burn Settlement Agreement No. 2178 TC Ravenswood, et. al. to be effective 5/1/2014.

Filed Date: 12/19/14.

Accession Number: 20141219–5272.

Comments Due: 5 p.m. ET 1/9/15.

Docket Numbers: ER15–674–000.

Applicants: New York Independent System Operator, Inc., Niagara Mohawk Power Corporation.

Description: § 205(d) rate filing per 35.13(a)(2)(iii): 205—Cost Reimbursement Agreement 2177 between NiMo and NYPA to be effective 11/21/2014.

Filed Date: 12/19/14.

Accession Number: 20141219–5225.

Comments Due: 5 p.m. ET 1/9/15.

Docket Numbers: ER15–675–000.

Applicants: NorthWestern Corporation.

Description: § 205(d) rate filing per 35.13(a)(2)(iii): Revisions to OATT Schedules 4 and 9 to be effective 3/19/2015.

Filed Date: 12/19/14.

Accession Number: 20141219–5318.

Comments Due: 5 p.m. ET 1/9/15.

Docket Numbers: ER15–678–000.

Applicants: Public Service Company of Colorado.

Description: § 205(d) rate filing per 35.13(a)(2)(iii): SIC Changes in Availability to be effective 2/17/2015.

Filed Date: 12/19/14.

Accession Number: 20141219–5328.

Comments Due: 5 p.m. ET 1/9/15.

Docket Numbers: ER15–679–000.

Applicants: San Diego Gas & Electric Company.

Description: § 205(d) rate filing per 35.13(a)(2)(iii): 2015 SDGE TRBAA TACBAA update to Transmission Owner Tariff Filing to be effective 1/1/2015.

Filed Date: 12/19/14.

Accession Number: 20141219–5329.

Comments Due: 5 p.m. ET 1/9/15.

Docket Numbers: ER15–680–000.

Applicants: PacifiCorp.

Description: § 205(d) rate filing per 35.13(a)(2)(iii): Idaho Power Bridger, JOOA, Termination Agreements to be effective 12/31/9998.

Filed Date: 12/19/14.

Accession Number: 20141219–5354.

Comments Due: 5 p.m. ET 1/9/15.

The filings are accessible in the Commission's eLibrary system by clicking on the links or querying the docket number.

Any person desiring to intervene or protest in any of the above proceedings must file in accordance with Rules 211 and 214 of the Commission's Regulations (18 CFR 385.211 and 385.214) on or before 5:00 p.m. Eastern time on the specified comment date. Protests may be considered, but intervention is necessary to become a party to the proceeding.

eFiling is encouraged. More detailed information relating to filing requirements, interventions, protests, service, and qualifying facilities filings can be found at: *http://www.ferc.gov/docs-filing/efiling/filing-req.pdf.* For other information, call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Dated: December 19, 2014.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. 2014–30326 Filed 12–24–14; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RM98–1–000]

Records Governing Off-the-Record Communications; Public Notice

This constitutes notice, in accordance with 18 CFR 385.2201(b), of the receipt of prohibited and exempt off-the-record communications.

Order No. 607 (64 FR 51222, September 22, 1999) requires Commission decisional employees, who make or receive a prohibited or exempt off-the-record communication relevant to the merits of a contested proceeding, to deliver to the Secretary of the Commission, a copy of the communication, if written, or a summary of the substance of any oral communication.

Prohibited communications are included in a public, non-decisional file associated with, but not a part of, the decisional record of the proceeding. Unless the Commission determines that the prohibited communication and any responses thereto should become a part of the decisional record, the prohibited off-the-record communication will not be considered by the Commission in reaching its decision. Parties to a proceeding may seek the opportunity to respond to any facts or contentions made in a prohibited off-the-record communication, and may request that the Commission place the prohibited communication and responses thereto in the decisional record. The Commission will grant such a request only when it determines that fairness so requires. Any person identified below as having made a prohibited off-the-record communication shall serve the document on all parties listed on the official service list for the applicable proceeding in accordance with Rule 2010, 18 CFR 385.2010.

Exempt off-the-record communications are included in the decisional record of the proceeding, unless the communication was with a cooperating agency as described by 40 CFR 1501.6, made under 18 CFR 385.2201(e)(1)(v).

The following is a list of off-the-record communications recently received by the Secretary of the Commission. The communications listed are grouped by docket numbers in ascending order. These filings are available for electronic review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the eLibrary link. Enter the docket number, excluding the last three digits, in the docket number field to access the document. For assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll free at (866) 208–3676, or for TTY, contact (202) 502–8659.

Docket No.	File date	Presenter or requester
Prohibited:		
1. CP14–17–000	12–9–14	Grouped emails [1].
2. CP13–113–000	12–10–14	Illegible signature.
3. CP14–96–000, PF14–22–000	12–18–14	Suzanne Langlois.
Exempt:		
1. CP13–193–000	11–24–14	FERC Staff [2].
2. CP13–193–000	11–26–14	FERC Staff [3].
3. CP14–96–000	12–2–14	United South & Eastern Tribes, Inc.
4. CP14–504–000	12–2–14	FERC Staff [4].
5. P–2299–000	12–12–14	FERC Staff [5].
6. P–2299–000	12–12–14	FERC Staff [6].
7. ER14–2862–000	12–12–14	City of Norway, MI.
8. CP14–17–000	12–17–14	Hon. Donald Norcross.

[1] Limited mass mailing: 12 emails have been sent to FERC Commissioners and staff under this docket number.

[2] Phone record.
[3] Phone record.
[4] Phone record.
[5] Email record.
[6] Email record.

Dated: December 19, 2014.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. 2014–30329 Filed 12–24–14; 8:45 am]

BILLING CODE 6717–01–P

ENVIRONMENTAL PROTECTION AGENCY

[EPA–HQ–OPPT–2014–0486; FRL–9915–17]

Agency Information Collection Activities; Proposed Renewal and Consolidation of Several Currently Approved Collections; Comment Request

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (PRA), this document announces that EPA is planning to submit a request to renew and consolidate three currently approved Information Collection Requests (ICRs) to the Office of Management and Budget (OMB). The consolidated ICR is entitled: ''Lead Training, Certification, Accreditation and Authorization Activities'' and identified by (EPA ICR No. 2507.01 and OMB Control No. 2070-(NEW)). This new ICR consolidates the following three ICRs, whose existing approval EPA is seeking to renew in order to allow for the consolidated ICR to complete the PRA process: ''Lead-Based Paint Pre-Renovation Information Dissemination—TSCA Sec. 406(b)'' (EPA ICR No. 1669.06, OMB Control No. 2070–0158; scheduled to expire on April 30, 2015); ''TSCA Section 402 and Section 404 Training and Certification, Accreditation and Standards for Lead-Based Paint Activities and Renovation, Repair, and Painting'' (EPA ICR No. 1715.13, OMB Control No. 2070–0155; scheduled to expire on December 31, 2015); and ''Lead; Clearance and Clearance Testing Requirements for the Renovation, Repair, and Painting Program'' (EPA ICR No. 2381.02, OMB Control No. 2070–0181; scheduled to expire on April 30, 2015). Before submitting these ICRs to OMB for review and approval under the PRA, EPA is required to solicit comments on specific aspects of the information collections. Please note that the three ICR renewals are exactly the same as the ICRs that are currently approved. The Agency has not made any changes to these renewal ICRs because the covered activities are being consolidated, along with the estimated burdens, into the consolidated ICR.

DATES: Comments must be received on or before February 27, 2015.

ADDRESSES: Submit your comments, identified by docket identification (ID) number EPA–HQ–OPPT–2014–0486, 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:* Document Control Office (7407M), Office of Pollution Prevention and Toxics (OPPT), Environmental Protection Agency, 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.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: *For technical information contact:* Hans Scheifele, National Program Chemicals Division, (7404–T), Office of Pollution Prevention and Toxics, Environmental Protection Agency, 1200 Pennsylvania Ave. NW., Washington, DC 20460–0001; telephone number: (202) 564–3122; email address: *scheifele.hans@epa.gov.*

For general information contact: The TSCA-Hotline, ABVI-Goodwill, 422 South Clinton Ave., Rochester, NY 14620; telephone number: (202) 554–1404; email address: *TSCA-Hotline@epa.gov.*

SUPPLEMENTARY INFORMATION:

I. What information is EPA particularly interested in?

Pursuant to PRA section 3506(c)(2)(A) (44 U.S.C. 3506(c)(2)(A)), EPA specifically solicits comments and information to enable it to:

1. Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the Agency, including whether the information will have practical utility.
2. Evaluate the accuracy of the Agency's estimates of the burden of the proposed collection of information, including the validity of the methodology and assumptions used.
3. Enhance the quality, utility, and clarity of the information to be collected.
4. Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.,* permitting electronic submission of responses. In particular, EPA is requesting comments from very small businesses (those that employ less than 25) on examples of specific additional efforts that EPA could make to reduce the paperwork burden for very small businesses affected by this collection.

II. What should I consider when I prepare my comments for EPA?

You may find the following suggestions helpful for preparing your comments:

1. Explain your views as clearly as possible and provide specific examples.
2. Describe any assumptions that you used.
3. Provide copies of any technical information and/or data you used that support your views.
4. If you estimate potential burden or costs, explain how you arrived at the estimate that you provide.
5. Submit your comments by the deadline identified under **DATES**.
6. Identify the docket ID number assigned to the ICR in the subject line on the first page of your response. You may also provide the ICR title and related EPA and OMB numbers.

III. What do I need to know about PRA?

An Agency may not conduct or sponsor, and a person is not required to respond to, a collection of information subject to PRA approval unless it displays a currently valid OMB control number. The OMB control numbers for the EPA regulations in title 40 of the Code of Federal Regulations (CFR), after appearing in the preamble of the final rule, are further displayed either by publication in the **Federal Register** or by other appropriate means, such as on the related collection instruments or

form, if applicable. The display of OMB control numbers for certain EPA regulations is consolidated in a list at 40 CFR 9.1.

As used in the PRA context, burden is defined in 5 CFR 1320.3(b).

IV. What ICRs does this request apply to?

A. New Consolidated ICR

Title: Lead Training, Certification, Accreditation and Authorization Activities.

ICR numbers: EPA ICR No. 2507.01; OMB Control No. 2070–(NEW).

ICR status: This is a new ICR that reflects the consolidation of the three ICRs identified in unit IV.B.

Abstract: This information collection involves third-party notification, required under section 406(b) of the Toxic Substances Control Act (TSCA), to owners and occupants of housing that will inform such individuals about the dangers of lead-contaminated dust and lead-based paint debris that are sometimes generated during renovations of housing where lead-based paint is present, thereby aiding them in avoiding potentially hazardous exposures and protecting public health. Since young children are especially susceptible to the hazards of lead, owners and occupants with children can take action to protect their children from lead poisonings. Section 406(b) of TSCA requires EPA to promulgate regulations requiring certain persons who perform renovations for compensation on target housing to provide a lead hazard information pamphlet (developed under TSCA section 406(a)) to the owner and occupants of such housing prior to beginning the renovation. Further, the firm performing the renovation must keep records acknowledging receipt of the pamphlet on file for 3 years after completion of work. Those who fail to provide the pamphlet or keep records as required may be subject to both civil and criminal sanctions.

This information collection also addresses the reporting and recordkeeping requirements for individuals or firms conducting lead-based paint activities or renovation in or on houses, apartments, or child-occupied facilities built before 1978, under the authority of sections 402 and 404 of TSCA. These sections and their implementing regulations require EPA to develop and administer a training and certification program as well as work practice standards for persons who perform lead-based paint activities and/or renovations. 40 CFR part 745, subpart E, covers work practice standards, recordkeeping and reporting requirements, individual and firm certification, and enforcement for renovations done in target housing or child-occupied facilities. 40 CFR part 745, subpart L, covers inspections, lead hazard screens, risk assessments, and abatement activities (referred to as ''lead-based paint activities'') done in target housing and child-occupied facilities. 40 CFR part 745, subpart Q, establishes the requirements that state or tribal programs must meet for authorization to administer the standards, regulations, or other requirements established under TSCA section 402. Section 401 of TSCA defines target housing as any housing constructed before 1978 except housing for the elderly or disabled or 0-bedroom dwellings.

Responses to the collection of information are mandatory (see 40 CFR part 745). Respondents may claim all or part of a document confidential. EPA will disclose information that is covered by a claim of confidentiality only to the extent permitted by, and in accordance with, the procedures in TSCA section 14 and 40 CFR part 2. The consolidated ICR, a copy of which is available in the docket, provides a detailed explanation of this estimate, which is only briefly summarized here.

Burden statement: The annual public reporting and recordkeeping burden for this collection of information is estimated to range between 0.2 hours per response and 10.2 hours per response, depending upon the nature of the respondent.

Respondents/Affected entities: Entities potentially affected by this ICR include persons who are engaged in lead-based paint activities and/or perform renovations of target housing or child-occupied facilities for compensation, dust sampling, or dust testing; or who perform lead-based paint inspections, lead hazard screens, risk assessments or abatements in target housing or child-occupied facilities; or who provide training or operate a training program for individuals who perform any of these activities; or state, territorial or Native American agencies that administer lead-based paint activities and/or renovation programs.

Estimated total number of potential respondents: 588,357.

Frequency of response: On occasion.

Estimated total average number of responses for each respondent: 46.3.

Estimated total annual burden hours: 5,585,213 hours.

Estimated total annual costs: $277,147,047. This includes an estimated cost of $0 for capital investment or maintenance and operational costs.

B. Renewal of Existing ICRs

EPA intends to seek the renewal of the existing approvals for the following three ICRs in order to provide sufficient time to allow for the consolidated ICR to complete the PRA process. The three ICR renewals are exactly the same as the ICRs that are currently approved. The Agency has not made any changes to these renewal ICRs because the covered activities and related burdens are being consolidated into the new ICR described in Unit IV.A.

1. *Renewal under OMB Control No. 2070–0158.*

Title: Lead-Based Paint Pre-Renovation Information Dissemination—TSCA Sec. 406(b).

ICR numbers: EPA ICR No. 1669.07; OMB Control No. 2070–0158.

ICR status: This ICR is scheduled to expire on April 30, 2015. Under OMB regulations, the Agency may continue to conduct or sponsor the collection of information while this renewal submission is pending at OMB.

Abstract: This ICR involves third-party notification to owners and occupants of housing that will inform such individuals about the dangers of lead-contaminated dust and lead-based paint debris that are sometimes generated during renovations of housing where lead-based paint is present, thereby aiding them in avoiding potentially hazardous exposures and protecting public health. Since young children are especially susceptible to the hazards of lead, owners and occupants with children can take action to protect their children from lead poisonings. Section 406(b) of TSCA requires EPA to promulgate regulations requiring certain persons who perform renovations for compensation on target housing to provide a lead hazard information pamphlet (developed under TSCA section 406(a)) to the owner and occupants of such housing prior to beginning the renovation. Further, the firm performing the renovation must keep records acknowledging receipt of the pamphlet on file for 3 years after completion of work. Those who fail to provide the pamphlet or keep records as required may be subject to both civil and criminal sanctions.

Responses to the collection of information are mandatory (see 40 CFR 745, subpart E). Respondents may claim all or part of a notice as CBI. EPA will disclose information that is covered by a CBI claim only to the extent permitted by, and in accordance with, the procedures in 40 CFR part 2.

Burden statement: The annual public reporting and recordkeeping burden for this collection of information is

estimated to average about 0.23 hours per response. The ICR, a copy of which is available in the docket, provides a detailed explanation of this estimate, which is only briefly summarized here.

Respondents/Affected entities: Entities potentially affected by this action are certain persons performing renovations of target housing, constructed prior to 1978, for compensation.

Estimated total number of potential respondents: 320,504.

Frequency of response: On occasion.

Estimated total average number of responses for each respondent: 35.4.

Estimated total annual burden hours: 2,577,280 hours.

Estimated total annual costs: $140,498,539. This includes an estimated cost of $0 for capital investment or maintenance and operational costs.

2. *Renewal under OMB Control No. 2070–0155.*

Title: TSCA Section 402 and Section 404 Training and Certification, Accreditation and Standards for Lead-Based Paint Activities and Renovation, Repair, and Painting.

ICR numbers: EPA ICR No. 1715.14; OMB Control No. 2070–0155.

ICR status: This ICR is scheduled to expire on December 31, 2015. Under OMB regulations, the Agency may continue to conduct or sponsor the collection of information while this renewal submission is pending at OMB.

Abstract: This ICR covers the reporting and recordkeeping requirements for individuals or firms conducting lead-based paint activities or renovation in or on houses, apartments, or child-occupied facilities built before 1978, under the authority of TSCA sections 402 and 404 (15 U.S.C. 2682, 2684).

Sections 402(a) and 402(c)(3) of TSCA require EPA to develop and administer a training and certification program as well as work practice standards for persons who perform lead-based paint activities and/or renovations. The current regulations in 40 CFR part 745, subpart E, cover work practice standards, recordkeeping and reporting requirements, individual and firm certification, and enforcement for renovations done in target housing or child-occupied facilities. The current regulations in 40 CFR part 745, subpart L, cover inspections, lead hazard screens, risk assessments, and abatement activities (referred to as ''lead-based paint activities'') done in target housing and child-occupied facilities. The current regulations in 40 CFR part 745, subpart Q, establish the requirements that state or tribal programs must meet for authorization to administer the standards, regulations, or other requirements established under TSCA section 402. (see 40 CFR part 745, subparts E, L and Q.) Section 401 of TSCA defines target housing as any housing constructed before 1978 except housing for the elderly or disabled or 0-bedroom dwellings.

Sections 402(a) and 402(c)(3) of TSCA require reporting and/or recordkeeping from four entities: Firms engaged in lead-based paint activities or renovations in target housing and child-occupied facilities; individuals who perform lead-based paint activities in target housing and child-occupied facilities; training providers; and states/territories/tribes/Alaskan native villages. This information collection applies to the reporting and recordkeeping requirements outlined above.

Responses to the collection of information are mandatory (see 40 CFR part 745, subparts E, L and Q). Respondents may claim all or part of a notice as CBI. EPA will disclose information that is covered by a CBI claim only to the extent permitted by, and in accordance with, the procedures in 40 CFR part 2.

Burden statement: The annual public reporting and recordkeeping burden for this collection of information is estimated to average 0.8 hours for individuals, 9.9 hours for firms, and 5.8 hours for governments per response. The ICR, a copy of which is available in the docket, provides a detailed explanation of this estimate, which is only briefly summarized here.

Respondents/Affected entities: Entities potentially affected by this ICR are persons who provide training in lead-based paint activities and/or renovation, persons who are engaged in lead-based paint activities and/or renovation, and state agencies that administer lead-based paint activities and/or renovation programs.

Estimated total number of potential respondents: 367,815.

Frequency of response: Annual.

Estimated total average number of responses for each respondent: Varies.

Estimated total annual burden hours: 3,312,524 hours.

Estimated total annual costs: $151,077,143. This includes an estimated cost of $0 for capital investment or maintenance and operational costs.

3. *Renewal under OMB Control No. 2070–0181.*

Title: Lead; Clearance and Clearance Testing Requirements for the Renovation, Repair, and Painting Program.

ICR numbers: EPA ICR No. 2381.03; OMB Control No. 2070–0181.

ICR status: This ICR is scheduled to expire on April 30, 2015. Under OMB regulations, the Agency may continue to conduct or sponsor the collection of information while this renewal submission is pending at OMB.

Abstract: This ICR covers revisions to the 2008 Renovation, Repair, and Painting (RRP) rule which established reporting and recordkeeping requirements for individuals and firms conducting renovations in target housing, which is most housing constructed before 1978, and child-occupied facilities, which are pre-1978 residential, public, or commercial buildings where children under 6 are regularly present. EPA is revising the RRP rule under the authority of TSCA sections 402, 404 and 407.

Burden statement: The annual public reporting and recordkeeping burden for this collection of information is estimated to average 0.9 hours for training providers. The ICR, a copy of which is available in the docket, provides a detailed explanation of this estimate, which is only briefly summarized here.

Respondents/Affected entities: Entities potentially affected by this ICR include training programs providing training services in lead-based paint activities and renovations.

Estimated total number of potential respondents: 170.

Frequency of response: On occasion.

Estimated total average number of responses for each respondent: 89.

Estimated total annual burden hours: 151 hours.

Estimated total annual costs: $27. This includes an estimated cost of $0 for capital investment or maintenance and operational costs.

V. Are there changes in the estimates from the last approvals?

The Agency has not made any changes to the three ICRs that are currently approved and whose renewal is being sought because changes to the information collection activities and burdens and adjusted estimates are in the consolidated ICR. Once consolidated, the new ICR is expected to reflect an overall decrease of 677,579 hours in the total estimated combined respondent burden that is currently approved by OMB. This decrease reflects changes in EPA's estimates of the burden including: Revisions to the estimated number of respondents based on the number of respondents reporting to EPA for the prior information collection; the fact the housing market and related industries including

housing rentals, property management and building renovation have yet to recover from the drop in the housing market; and the use of actual certification data instead of broader assumptions about industry behavior. Further details about these changes are included in the supporting statement for the new consolidated ICR. This change is an adjustment.

VI. What is the next step in the process for this ICR?

EPA will consider the comments received and amend the consolidated ICR as appropriate. The final ICR packages will then be submitted to OMB for review and approval pursuant to 5 CFR 1320.12. EPA will issue another **Federal Register** document pursuant to 5 CFR 1320.5(a)(1)(iv) to announce the submission of the ICR to OMB and the opportunity for the public to submit additional comments for OMB consideration.

If you have any questions about this ICR or the approval process, please contact the technical person listed under **FOR FURTHER INFORMATION CONTACT**.

Authority: 44 U.S.C. 3501 *et seq.*

Dated: November 13, 2014.

James Jones,

Assistant Administrator, Office of Chemical Safety and Pollution Prevention.

[FR Doc. 2014–30412 Filed 12–24–14; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[EPA–HQ–OW–2014–0359; FRL 9920–75–OEI]

Information Collection Request Submitted to OMB for Review and Approval; Comment Request; Underground Injection Control (UIC) Program (Renewal)

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: The U.S. Environmental Protection Agency (EPA) submitted an information collection request (ICR), ''Underground Injection Control (UIC) Program (Renewal)'' (EPA ICR No. 0370.25, OMB Control No. 2040–0042) 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 revision of the ICR, which is currently approved through December 31, 2014. EPA requested public comments via the **Federal Register** (79 FR 46437) on August 8, 2014, for a 60-day comment period. This notice allows for an additional 30 days for public comments. A fuller description of the ICR is provided in this request, 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 January 28, 2015.

ADDRESSES: Submit your comments, referencing Docket ID Number EPA–HQ–OW–2014–0359, to (1) EPA online using *www.regulations.gov* (our preferred method), or by mail to: EPA Docket Center, Environmental Protection Agency, Mail Code 28221T, 1200 Pennsylvania Ave. NW., Washington, DC 20460, 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: Robert E. Smith, Office of Ground Water and Drinking Water/Drinking Water Protection Division, 4606M, Environmental Protection Agency, 1200 Pennsylvania Ave. NW., Washington, DC 20460; telephone number: 202–564–3895; fax number: 202–564–3756; email address: *smith.robert-eu@epa.gov.*

SUPPLEMENTARY INFORMATION: Supporting documents which explain in detail the information that the EPA will be collecting are available in the public docket for this ICR. The docket can be viewed online at *www.regulations.gov* or in person at the EPA Docket Center, WJC West, Room 3334, 1301 Constitution Ave. NW., Washington, DC. The telephone number for the Docket Center is 202–566–1744. For additional information about EPA's public docket, visit *www.epa.gov/dockets.*

Abstract: The UIC program under The Safe Drinking Water Act established a federal and state regulatory system to protect underground sources of drinking water (USDWs) from contamination by injected fluids. Injected fluids include trillions of gallons of various types of fluids each year, such as hazardous waste; oil field brines or produced water; mineral processing fluids; various types of industrial fluids; automotive, sanitary and other wastes; and carbon dioxide injected for enhanced recovery or geologic sequestration. Owners or operators of underground injection wells must obtain permits, conduct environmental monitoring, maintain records and report results to the EPA or the state UIC primacy (primary enforcement) agency. States must report to EPA on permittee compliance and related information. Primacy agencies report mandatory information using standardized forms and annual reports. UIC authorities use data to ensure the protection of USDWs.

Form Numbers: The forms are 7520–1, 7520–2A, 7520–2B, 7520–3, 7520–4, 7520–6, 7520–7, 7520–8, 7520–9, 7520–10, 7520–11, 7520–12, 7520–14, 7520–16 and 7520–17.

Respondents/affected entities: Owners or operators of underground injection wells and state UIC primacy agencies.

Respondent's obligation to respond: Mandatory (40 CFR parts 144 through 148).

Estimated number of respondents: 45,811 (total).

Frequency of response: Annual, semi-annual and quarterly.

Total estimated burden: 1,714,046 hours (per year). Burden is defined at 5 CFR 1320.03(b).

Total estimated cost: $250,332,398 (per year), includes $173,230,258 annualized capital or operation and maintenance costs.

Changes in the Estimates: There is an increase of 700,646 hours in the total estimated respondent burden compared with the ICR currently approved by OMB. This increase is due to adjustments associated with an increase in the injection well inventory, primarily the number of Class II permit applications expected to be approved, as well as increases in the Class I and Class III inventories and the deployment of Class VI (geologic sequestration) activities. These increases are offset by burden reductions associated with decreases in the number Class V well operators submitting inventory information, continued implementation of electronic reporting by states and reduced state reporting frequencies.

Courtney Kerwin,

Acting Director, Collection Strategies Division.

[FR Doc. 2014–30254 Filed 12–24–14; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[ER–FRL–9018–6]

Environmental Impact Statements; Notice of Availability

Responsible Agency: Office of Federal Activities, General Information (202) 564–7146 or *http://www.epa.gov/compliance/nepa/.*

Weekly receipt of Environmental Impact Statements

Filed 12/15/2014 Through 12/19/2014

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. 20140373, Draft EIS, USFS, AK, Kake to Petersburg Transmission Line Intertie Project, Comment Period Ends: 02/11/2015, Contact: Tom Parker 907–772–5974.

EIS No. 20140374, Final EIS, FHWA, NY, Portageville Bridge Project, Contact: Jonathan McDade 518–431–4127.

Under MAP–21 section 1319, FHWA has issued a single FEIS and ROD. Therefore, the 30-day wait/review period under NEPA does not apply to the above action.

EIS No. 20140375, Final EIS, BLM, NM, Prehistoric Trackways National Monument Proposed Resource Management Plan, review period ends: 01/27/2015, Contact: Jennifer Montoya 575–525–4316.

EIS No. 20140376, Final EIS, USFS, ID, Golden Hand No. 1 and No. 2 Lode Mining Claims Project, review period ends: 01/27/2015, Contact: Anthony Botello 208–634–0601.

EIS No. 20140377, Draft EIS, BLM, CA, Proposed Land Exchange between Bureau of Land Management and Agua Caliente Band of Cahuilla Indians, comment period ends: 03/29/2015, Contact: Jim Foote 760–833–7136.

EIS No. 20140378, Second Final Supplement, FSA, 00, PROGRAMMATIC—Conservation Reserve Program, review period ends: 02/15/2015, Contact: Nell Fuller 202–720–6303.

EIS No. 20140379, Final EIS, FERC, CA, Relicensing the Upper Drum-Spaulding Hydroelectric Project, FERC No. 2310–193; Lower Drum Hydroelectric Project, FERC No. 14531–000; Deer Creek Hydroelectric Project, FERC No. 14530–000; and Yuba-Bear Hydroelectric Project, FERC No. 2266–102, review period ends: 02/11/2015, Contact: Alan Mitchnick 202–502–6074.

Amended Notices

EIS No. 20140344, Final EIS, FHWA, TX, U.S. 181 Harbor Bridge, Review Period Ends: 01/20/2015, Contact: Gregory S. Punske 512–536–5960. Revision to FR Notice Published 12/05/2014; Extending the Review Period from 01/05/2015 to 01/20/2015.

EIS No. 20140372, Draft EIS, DOE, 00, Plains and Eastern Clean Line Transmission Project, Comment Period Ends: 03/19/2015, Contact: Jane Summerson, Ph.D. 505–845–4091 Revision to FR Notice Published 12/19/2014; Correction to the Comment Period from 02/02/2015 to 03/19/2015.

Dated: December 22, 2014.

Cliff Rader,

Director, NEPA Compliance Division, Office of Federal Activities.

[FR Doc. 2014–30401 Filed 12–24–14; 8:45 am]

BILLING CODE 6560–50–P

FEDERAL COMMUNICATIONS COMMISSION

[OMB 3060–0645]

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 (44 U.S.C. 3501–3520), the Federal Communications 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 PRA comments should be submitted on or before February 27, 2015. 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 Number:* 3060–0645.

Title: Sections 17.4, 17.48 and 17.49, Antenna Structure Registration Requirements.

Form Number: N/ A.

Type of Review: Revision of a currently approved collection.

Respondents: Business or other for-profit entities, not-for-profit institutions and state, local or tribal government.

Number of Respondents: 20,000 respondents; 475,134 responses.

Estimated Time per Response: .1–.25 hours.

Frequency of Response: On occasion reporting requirement, recordkeeping requirement and third party disclosure requirement.

Obligation to Respond: Required to obtain or retain benefits. Statutory authority for this information collection is contained in Sections 4, 303, 48 Stat. 1066, 1082, as amended; 47 U.S.C. 154, 303.

Total Annual Burden: 50,198 hours.

Total Annual Cost: $64,380.

Privacy Impact Assessment: N/A.

Nature and Extent of Confidentiality: There is no need for confidentiality. However, respondents may request materials or information submitted to the Commission be withheld from public inspection under 47 CFR 0.459 of the Commission's rules.

Needs and Uses: The Commission is seeking Office of Management and Budget (OMB) approval for a revision of this information collection in order to obtain the full three year approval pursuant to FCC 14–117. The Commission initiated this proceeding to update and modernize the

Commission's rules. The revised information collection requirements are as follows:

Section 17.4 includes third party disclosure requirements. Specifically, Section 17.4 requires the owner of any proposed or existing antenna structure that requires notice of proposed construction to the Federal Aviation Administration (FAA) to register the structure with the Commission. This includes those structures used as part of the stations licensed by the Commission for the transmission of radio energy, or to be used as part of a cable television head-end system. If a Federal Government antenna structure is to be used by a Commission licensee, the structure must be registered with the Commission. Section 17.4(f) currently requires antenna structure owners to provide their tenants with copies of the antenna structure registration. This rule is being revised to provide that antenna structure owners may either provide a copy or a link to the FCC antenna structure Web site. The revised rules provide that this notification may be done electronically or via paper mail.

Section 17.4(g) currently requires antenna structure owners to display the Antenna Structure Registration Number a conspicuous place that is readily visible near the base of the antenna. This rule is being revised to require that the Antenna Structure Number be displayed so that it is conspicuously visible and legible from the publicly accessible area nearest the base of the antenna structure along the publicly accessible roadway or path. Where an antenna structure is surrounded by a perimeter fence, or where the point of access includes an access gate, the Antenna Structure Registration Number should be posted on the perimeter fence or access gate. Where multiple antenna structures having separate Antenna Structure Registration Numbers are located within a single fenced area, the Antenna Structure Registration Numbers must be posted both on the perimeter fence or access gate and near the base of each antenna structure. If the base of the antenna structure has more than one point of access, the revised rule will require that the Antenna Structure Registration Number be posted so that it is visible at the publicly accessible area nearest each such point of access. The registration number is issued to identify antenna structure owners in order to enforce the Congressionally-mandated provisions related to the owners.

Sections 17.48 and 17.49 contain reporting and recordkeeping requirements. Section 17.48(a) currently requires that antenna structure owners promptly report outages of top steady burning lights or flashing antenna structure lights to the FAA. Upon receipt of the outage notification, the FAA will issue a Notice to Airmen (NOTAM), which notifies aircraft of the outage. However, the FAA cancels all such notices within 15 days. Currently, the Commission's rules do not require antenna structure owners to provide any notification to the FAA regarding the status of repairs other than the initial outage report and the resumption of normal operation. Thus, if the repairs to an antenna structure's lights require more than 15 days, the FAA may not have any record of the outage from that 15th day to the resumption of normal operation. This rule is being revised to require antenna structure owners to provide the FAA with regular updates on the status of their repairs of lighting outages so that the FAA can maintain notifications to aircraft throughout the entire period of time the antenna structure remains unlit. Consistent with the current FAA requirements, if a lighting outage cannot be repaired within the FAA's original NOTAM period, the revised rule will require the antenna structure owner to notify the FAA of that fact. In addition, the revised rule provides that the antenna structure owner must provide any needed updates to its estimated return-to-service date to the FAA. The revised rule will also require antenna structure owners to continue to provide these updates to the FAA every NOTAM period until its lights are repaired.

Section 17.49 currently requires antenna structure owners to maintain a record of observed or otherwise known extinguishments or improper functioning of structure lights, but does not specify the time period for which such records must be maintained. This rules is being revised to require antenna structure owners to maintain a record of observed or otherwise known extinguishments or improper functioning of structure lights for two years and provide the records to the Commission upon request.

Federal Communications Commission.

Sheryl D. Todd,

Deputy Secretary, Office of the Secretary, Office of the Managing Director.

[FR Doc. 2014–30383 Filed 12–24–14; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

[3060–1198]

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 (44 U.S.C. 3501–3520), the Federal Communications Commission (FCC or the Commission) invites the general public and other Federal agencies to take this opportunity to comment on the following information collection. Comments are requested concerning: Whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; the accuracy of the Commission's burden estimate; ways to enhance the quality, utility, and clarity of the information collected; ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology; and ways to further reduce the information collection burden on small business concerns with fewer than 25 employees.

The FCC may not conduct or sponsor a collection of information unless it displays a currently valid control number. No person shall be subject to any penalty for failing to comply with a collection of information subject to the PRA that does not display a valid Office of Management and Budget (OMB) control number.

DATES: Written PRA comments should be submitted on or before February 27, 2015. 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: Submit your PRA comments to Benish Shah, Federal Communications Commission, via the Internet at *Benish.Shah@fcc.gov.* To submit your PRA comments by email send them to: *PRA@fcc.gov.*

FOR FURTHER INFORMATION CONTACT: Benish Shah, Office of Managing Director, (202) 418–7866.

SUPPLEMENTARY INFORMATION:

OMB Control Number: 3060–1198.

Title: Band Plan.

Form Number: N/A.

Type of Review: Revision of a currently approved collection.

Respondents: Business or other for-profit entities, and state, local, or tribal government.

Number of Respondents: 2,283 respondents; 2,283 responses.

Estimated Time per Response: 1 hour (range of 1 to 2 hours).

Frequency of Response: On occasion reporting and one-time reporting requirements; third party disclosure.

Obligation to Respond: Required to obtain or retain benefits. Statutory authority for these collections are contained in Sections 4(i), 11, 303(g), 303(r), and 332(c) (7) of the Communications Act of 1934, as amended, 47 U.S.C. 154(i), 161, 303(g), 303(r), 332(c)(7), unless otherwise noted.

Total Annual Burden: 2,336 hours.

Total Annual Cost: None.

Privacy Impact Assessment: No impact(s).

Nature and Extent of Confidentiality: There is no need for confidentiality with this collection of information.

Needs and Uses: Section 90.531(b)(2) of the Commission's rules provides that narrowband reserve channels are designated for General Use subject to Commission approved regional planning committee regional plans and technical rules applicable to General Use channels. T-Band incumbents shall enjoy priority access to these channels in certain markets provided that such incumbent commits to return to the Commission an equal amount of T-Band spectrum and obtains concurrence from the relevant regional planning committee(s). *Section 90.531(b)(7)* of the Commission's rules reserves certain narrowband channels for air-ground communications to be used by low-altitude aircraft and ground based stations subject to state administration (*e.g.* letter of concurrence).

Commission staff will use the information to assign licenses for narrowband public safety channels. The information will also be used to determine whether prospective licensees operate in compliance with the Commission's rules. Without such information, the Commission could not accommodate State interoperability or regional planning requirements or provide for the efficient use of narrowband public safety frequencies. This information collection includes rules to govern the operation and licensing of 700 MHz band systems to ensure that licensees continue to fulfill their statutory responsibilities in accordance with the Communications Act of 1934, as amended. Such information will continue to be used to verify that applicants are legally and technically qualified to hold licenses, and to determine compliance with Commission rules.

Federal Communications Commission.

Marlene H. Dortch,

Secretary, Office of the Secretary, Office of the Managing Director.

[FR Doc. 2014–30253 Filed 12–24–14; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL DEPOSIT INSURANCE CORPORATION

Agency Information Collection Activities: Proposed Collection Renewals; Comment Request (3064–0022, 3064–0027 & 3064–0115)

AGENCY: Federal Deposit Insurance Corporation (FDIC).

ACTION: Notice and request for comment.

SUMMARY: The FDIC, 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 the renewal of existing information collections, as required by the Paperwork Reduction Act of 1995 (44 U.S.C. 35). On October 20, 2014, (79 FR 62616), the FDIC requested comment for 60 days on a proposal to renew the following information collections: (1) Uniform Application/Uniform Termination for Municipal Securities Principal or Representative (3064–0022); (2) Request for Deregistration for Registered Transfer Agents (3064–0027); and, (3) Prompt Corrective Action (3064–0115). No comments were received. The FDIC hereby gives notice of its plan to submit to OMB a request to approve the renewal of these collections, and again invites comment on this renewal.

DATES: Comments must be submitted on or before January 28, 2015.

ADDRESSES: Interested parties are invited to submit written comments to the FDIC by any of the following methods:

- *http://www.FDIC.gov/regulations/laws/federal/notices.html.*
- *Email: comments@fdic.gov* Include the name and number of the collection in the subject line of the message.
- *Mail:* Gary A. Kuiper (202.898.3877), Counsel, John W. Popeo (202.898.6923), Counsel MB–3007, Federal Deposit Insurance Corporation, 550 17th Street NW., Washington, DC 20429.
- *Hand Delivery:* Comments may be hand-delivered to the guard station at the rear of the 17th Street Building (located on F Street), on business days between 7:00 a.m. and 5:00 p.m.

All comments should refer to the relevant OMB control number. A copy of the comments may also be submitted to the OMB desk officer for the FDIC: Office of Information and Regulatory Affairs, Office of Management and Budget, New Executive Office Building, Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: Gary A. Kuiper or John W. Popeo, at the FDIC address above.

SUPPLEMENTARY INFORMATION:

Proposal to renew the following currently-approved collections of information:

1. *Title:* Uniform Application/Uniform Termination for Municipal Principal or Representative.

OMB Number: 3064–0022.

Form Numbers: Form MSD–4 or Form MSD–5.

Affected Public: State non-member banks and savings associations.

Estimated Number of Respondents: 75.

Estimated Time per Response: 1 hour.

Frequency of Response: On occasion.

Total estimated annual burden: 75 hours.

General Description of Collection: An insured state nonmember bank that serves as a municipal securities dealer must file Form MSD–4 or Form MSD–5, as applicable, to permit an employee to become associated with, or to terminate the association with, the municipal securities dealer. The filing requirements are based on rules promulgated by the Municipal Securities Rulemaking Board.

2. *Title:* Request for Deregistration for Registered Transfer Agents.

OMB Number: 3064–0027.

Form Number: FDIC Form 6342/12.

Affected Public: Insured financial institutions.

Estimated Number of Respondents: 5.

Frequency of Response: On occasion.

Estimated Annual Burden Hours per Response: .42 hours.

Total estimated annual burden: 2.1 hours.

General Description of Collection: Under the Securities Exchange Act of 1934 (15 U.S.C. 78q–1), an insured nonmember bank (or a subsidiary of such a bank) that functions as a transfer agent may withdraw from registration as a transfer agent by filing a written notice of withdrawal with the FDIC. The FDIC requires such banks to file FDIC Form 6342/12.

3. *Title:* Prompt Corrective Action.

OMB Number: 3064–0115.
Affected Public: Insured financial institutions.
Estimated Burden Hours:
Number of reports submitted: 50.
Hours to prepare the report: 4 hours.
Total annual burden hours 200 hours.
General Description of Collection: The Prompt Corrective Action (''PCA'') provisions of section 38 of the Federal Deposit Insurance Act require or permit the FDIC and other federal banking agencies to take certain supervisory actions when FDIC-insured institutions fall within one of five capital categories. They also restrict or prohibit certain activities and require the submission of a capital restoration plan when an insured institution becomes undercapitalized. Various provisions of the statute and the FDIC's implementing regulations require the prior approval of the FDIC before an FDIC-supervised institution can engage in certain activities, or allow the FDIC to make exceptions to restrictions that would otherwise be imposed. This collection of information consists of the applications that are required to obtain the FDIC's prior approval.

Request for Comment

Comments are invited on: (a) Whether the collections of information are necessary for the proper performance of the FDIC's functions, including whether the information has practical utility; (b) the accuracy of the estimates of the burden of the information collections, including the validity of the methodology and assumptions used; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the information collections on respondents, including through the use of automated collection techniques or other forms of information technology. All comments will become a matter of public record.

Dated at Washington, DC, this 22nd day of December, 2014.

Federal Deposit Insurance Corporation.

Robert E. Feldman,

Executive Secretary.

[FR Doc. 2014–30333 Filed 12–24–14; 8:45 am]

BILLING CODE 6714–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Solicitation of Nominations for Membership on the Secretary's Advisory Committee on Human Research Protections

AGENCY: Office for Human Research Protections, Office of the Assistant Secretary for Health, Office of the Secretary, Department of Health and Human Services.

ACTION: Notice.

AUTHORITY: 42 U.S.C. 217a, section 222 of the Public Health Service Act, as amended. The Committee is governed by the provisions of Public Law 92–463, as amended (5 U.S.C. Appendix 2), which sets forth standards for the formation and use of advisory committees.

SUMMARY: The Office for Human Research Protections (OHRP), a program office in the Office of the Assistant Secretary for Health, Department of Health and Human Services (HHS), is seeking nominations of qualified candidates to be considered for appointment as members of the Secretary's Advisory Committee on Human Research Protections (SACHRP). SACHRP provides advice and recommendations to the Secretary, HHS, through the Assistant Secretary for Health on matters pertaining to the continuance and improvement of functions within the authority of HHS directed toward protections for human subjects in research. SACHRP was established by the Secretary, HHS, on October 1, 2002. OHRP is seeking nominations of qualified candidates to fill two positions on the Committee membership that will be vacated during the 2015 calendar year. Previous nominees may be considered for the upcoming vacancies.

DATES: Nominations for membership on the Committee must be received no later than February 12, 2015.

ADDRESSES: Nominations should be mailed or delivered to Julia Gorey, Executive Director, SACHRP, Office for Human Research Protections, Department of Health and Human Services, 1101 Wootton Parkway, Suite 200; Rockville, MD 20852. Nominations will not be accepted by email or by facsimile.

FOR FURTHER INFORMATION CONTACT: Julia Gorey, Executive Director, SACHRP, Office for Human Research Protections, 1101 Wootton Parkway, Suite 200, Rockville, MD 20852, telephone: (240) 453–8141. A copy of the Committee charter and list of the current members can be obtained by contacting Ms. Gorey, accessing the SACHRP Web site at *www.hhs.gov/ohrp/sachrp,* or requesting via email at *sachrp@osophs.dhhs.gov.*

SUPPLEMENTARY INFORMATION: The Committee provides advice on matters pertaining to the continuance and improvement of functions within the authority of HHS directed toward protections for human subjects in research. Specifically, the Committee provides advice relating to the responsible conduct of research involving human subjects with particular emphasis on special populations such as neonates and children, prisoners, the decisionally impaired, pregnant women, embryos and fetuses, individuals and populations in international studies, populations in which there are individually identifiable samples, data or information; and investigator conflicts of interest.

In addition, the Committee is responsible for reviewing selected ongoing work and planned activities of the OHRP and other offices/agencies within HHS responsible for human subjects protection. These evaluations may include, but are not limited to, a review of assurance systems, the application of minimal research risk standards, the granting of waivers, education programs sponsored by OHRP, and the ongoing monitoring and oversight of institutional review boards (IRBs) and the institutions that sponsor research.

Nominations: The OHRP is requesting nominations to fill two positions for voting members of SACHRP which will become vacant in July 2015. Nominations of potential candidates for consideration are being sought from a wide array of fields, including, but not limited to: Public health and medicine, behavioral and social sciences, health administration, and biomedical ethics. To qualify for consideration of appointment to the Committee, an individual must possess demonstrated experience and expertise in any of the several disciplines and fields pertinent to human subjects protection and/or clinical research.

The individuals selected for appointment to the Committee can be invited to serve a term of up to four years. Committee members receive a stipend and reimbursement for per diem and any travel expenses incurred for attending Committee meetings and/or conducting other business in the interest of the Committee. Interested applicants may self-nominate. Nominations may be retained and considered for future vacancies.

Nominations should be typewritten. The following information should be included in the package of material submitted for each individual being nominated for consideration: (1) A letter of nomination that clearly states the name and affiliation of the nominee, the basis for the nomination (*i.e.,* specific attributes which qualify the nominee for service in this capacity), and a statement that the nominee is willing to serve as

a member of the Committee; (2) the nominator's name, address, daytime telephone number, and the home and/or work address, telephone number, and email address of the individual being nominated; and (3) a current copy of the nominee's curriculum vitae. Federal employees should not be nominated for consideration of appointment to this Committee.

The Department makes every effort to ensure that the membership of HHS Federal advisory committees is fairly balanced in terms of points of view represented and the committee's function. Every effort is made to ensure that individuals from a broad representation of geographic areas, women and men, ethnic and minority groups, and the disabled are given consideration for membership on HHS Federal advisory committees. Appointment to this Committee shall be made without discrimination on the basis of age, race, ethnicity, gender, sexual orientation, disability, and cultural, religious, or socioeconomic status.

Individuals who are selected to be considered for appointment will be required to provide detailed information regarding their financial holdings, consultancies, and research grants or contracts. Disclosure of this information is necessary in order to determine if the selected candidate is involved in any activity that may pose a potential conflict with the official duties to be performed as a member of SACHRP.

Dated: December 22, 2014.

Jerry Menikoff,

Director, Office for Human Research Protections, Executive Secretary, Secretary's Advisory Committee, on Human Research Protections.

[FR Doc. 2014–30400 Filed 12–24–14; 8:45 am]

BILLING CODE 4150–36–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Administration for Children and Families

Request for Information

AGENCY: Office of Child Support Enforcement (OCSE), Administration for Children and Families, HHS.

ACTION: Notice of request for information.

SUMMARY: The Administration for Children and Families (ACF) published a notice in the **Federal Register** on October 23, 2014, (79 FR 63406) requesting public comments to inform its upcoming Report to Congress. The Report to Congress is required to be submitted no later than June 30, 2015, under title III, section 305 of H.R. 4980 (Pub. L. 113–183), Preventing Sex Trafficking and Strengthening Families Act of 2014. ACF stated in the notice that the request for information would remain open until December 22, 2014, for the receipt of public comments. To provide the public with more time to comment, ACF extends the period of time for which the comments will remain open.

To provide clarification on the first bullet point under the Background Section, which was truncated in the first **Federal Register** Notice, please consider the following: A review of the effectiveness of state child support programs and collection practices and an analysis of the extent to which the practices result in unintended consequences or performance issues.

DATES: Comments must be received by 11:59 p.m. on February 27, 2015, to be considered.

FOR FURTHER INFORMATION CONTACT: The Office of Child Support Enforcement at *OCSEreport@acf.hhs.gov*.

Dated: December 19, 2014.

Donna Bonar,

Deputy Comissioner, Office of Child Support Enforcement.

[FR Doc. 2014–30285 Filed 12–24–14; 8:45 am]

BILLING CODE 4184–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2014–N–2214]

Next Generation Sequencing Diagnostic Tests; Public Workshop; Request for Comments

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice of public workshop; request for comments.

SUMMARY: The Food and Drug Administration (FDA) is announcing the following public workshop entitled ''Optimizing FDA's Regulatory Oversight of Next Generation Sequencing Diagnostic Tests.'' The purpose of this workshop is to discuss and receive feedback from the community on the questions in the discussion paper on diagnostic tests for human genetics or genomics using next generation sequencing (NGS) technology.

DATES: The public workshop will be held on February 20, 2015, from 8:30 a.m. to 5 p.m.

ADDRESSES: The public workshop will be held at the Natcher Center at the National Institutes of Health Campus, 9000 Rockville Pike, Bldg. 45 Auditorium, Bethesda, MD 20814. For parking and security information, please refer to *http://www.nih.gov/about/visitor/.*

FOR FURTHER INFORMATION CONTACT: David Litwack, Office of In Vitro Diagnostics and Radiological Health, Center for Devices and Radiological Health, Food and Drug Administration, Bldg. 66, Rm. 5544, 10903 New Hampshire Ave., Silver Spring, MD 20993, 301–796–6697, email: *ernest.litwack@fda.hhs.gov.*

SUPPLEMENTARY INFORMATION:

Registration: Registration is free and available on a first-come, first-served basis. Persons interested in attending this public workshop must register online by 4 p.m. February 12, 2015. Early registration is recommended because facilities are limited and, therefore, FDA may limit the number of participants from each organization. If time and space permits, onsite registration on the day of the public workshop will be provided beginning at 7:30 a.m.

If you need special accommodations due to a disability, please contact Susan Monahan, 301–796–5661, email: *Susan.Monahan@fda.hhs.gov* no later than February 6, 2015.

To register for the public workshop, please visit FDA's Medical Devices News & Events—Workshops & Conferences calendar at *http://www.fda.gov/MedicalDevices/NewsEvents/WorkshopsConferences/default.htm.* (Select this public workshop from the posted events list.) Please provide complete contact information for each attendee, including name, title, affiliation, address, email, and telephone number. If you are unable to register online, please contact Susan Monahan (see *Registration.*) Registrants will receive confirmation after they have been accepted. You will be notified if you are on a waiting list.

Streaming Webcast of the Public Workshop: This public workshop will also be Webcast. Persons interested in viewing the Webcast must register online by February 12, 2015. Early registration is recommended because Webcast connections are limited. Organizations are requested to register all participants, but to view using one connection per location. Webcast participants will be sent technical system requirements after registration and will be sent connection access information after February 13, 2015. If you have never attended a Connect Pro

event before, test your connection at *https://collaboration.fda.gov/common/help/en/support/meeting_test.htm.* To get a quick overview of the Connect Pro program, visit *http://www.adobe.com/go/connectpro_overview.* (FDA has verified the Web site addresses in this document, but FDA is not responsible for any subsequent changes to the Web sites after this document publishes in the **Federal Register**.)

Comments: FDA is holding this public workshop to obtain feedback from the community on the questions in the discussion paper. In order to permit the widest possible opportunity to obtain public comment, FDA is soliciting either electronic or written comments on all aspects of the public workshop topics. The deadline for submitting comments related to this public workshop is March 20, 2015.

Regardless of attendance at the public workshop, interested persons may submit either electronic comments regarding this document to *http://www.regulations.gov* or written comments to the Division of Dockets Management (HFA–305), Food and Drug Administration, 5630 Fishers Lane, Rm. 1061, Rockville, MD 20852. It is only necessary to send one set of comments. Identify comments with the docket number found in brackets in the heading of this document. In addition, when responding to specific questions as outlined in section II, please identify the question you are addressing. Received comments may be seen in the Division of Dockets Management between 9 a.m. and 4 p.m., Monday through Friday, and will be posted to the docket at *http://www.regulations.gov.*

Transcripts: Please be advised that as soon as a transcript is available, it will be accessible at *http://www.regulations.gov.* It may be viewed at the Division of Dockets Management (see *Comments*). A transcript will also be available in either hardcopy or on CD–ROM, after submission of a Freedom of Information request. Written requests are to be sent to the Division of Freedom of Information (ELEM–1029), Food and Drug Administration, 12420 Parklawn Dr., Element Bldg., Rockville, MD 20857. A link to the transcripts will also be available approximately 45 days after the public workshop on the Internet at *http://www.fda.gov/MedicalDevices/NewsEvents/WorkshopsConferences/default.htm.* (Select this public workshop from the posted events list).

I. Background

In vitro diagnostic devices, including laboratory-developed tests that utilize NGS technology to generate information on an individual's genome, are rapidly transforming healthcare. Because NGS tests generate large amounts of data and consequently may have relatively broad or undefined intended uses or indications, these tests pose certain challenges during review of premarket submissions. At the same time, this large amount of data provides opportunities for novel approaches to assure the analytical and clinical validity of NGS tests. FDA is committed to providing efficient and effective oversight for NGS tests to assure their safety and effectiveness. By doing so, FDA will promote innovation and advance precision medicine. The Agency is therefore requesting public input on the regulatory strategy for NGS tests that produce results on variation in the human genome. Further details of current and new approaches that may be considered in the workshop are outlined in the discussion paper entitled ''Optimizing FDA's Regulatory Oversight of Next Generation Sequencing Diagnostic Tests'' available at *http://www.fda.gov/MedicalDevices/NewsEvents/WorkshopsConferences/default.htm.* (Select this public workshop from the posted events list).

II. Topics for Discussion at the Public Workshop

The workshop discussion will focus on regulatory strategies to assure the analytical and clinical validity of NGS tests. Specific topics to be discussed at the workshop are outlined in the discussion paper entitled ''Optimizing FDA's Regulatory Oversight of Next Generation Sequencing Diagnostic Tests'' available at *http://www.fda.gov/MedicalDevices/NewsEvents/WorkshopsConferences/default.htm.* (Select this public workshop from the posted events list). A detailed agenda will be posted on this Web site in advance of the workshop.

Dated: December 22, 2014.

Leslie Kux,

Associate Commissioner for Policy.

[FR Doc. 2014–30308 Filed 12–22–14; 4:15 pm]

BILLING CODE 4164–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Resources and Services Administration

National Vaccine Injury Compensation Program; List of Petitions Received

AGENCY: Health Resources and Services Administration, HHS.

ACTION: Notice.

SUMMARY: The Health Resources and Services Administration (HRSA) is publishing this notice of petitions received under the National Vaccine Injury Compensation Program (the Program), as required by Section 2112(b)(2) of the Public Health Service (PHS) Act, as amended. While the Secretary of Health and Human Services is named as the respondent in all proceedings brought by the filing of petitions for compensation under the Program, the United States Court of Federal Claims is charged by statute with responsibility for considering and acting upon the petitions.

FOR FURTHER INFORMATION CONTACT: For information about requirements for filing petitions, and the Program in general, contact the Clerk, United States Court of Federal Claims, 717 Madison Place NW., Washington, DC 20005, (202) 357–6400. For information on HRSA's role in the Program, contact the Director, National Vaccine Injury Compensation Program, 5600 Fishers Lane, Room 11C–26, Rockville, MD 20857; (301) 443–6593.

SUPPLEMENTARY INFORMATION: The Program provides a system of no-fault compensation for certain individuals who have been injured by specified childhood vaccines. Subtitle 2 of Title XXI of the PHS Act, 42 U.S.C. 300aa–10 *et seq.,* provides that those seeking compensation are to file a petition with the U.S. Court of Federal Claims and to serve a copy of the petition on the Secretary of Health and Human Services, who is named as the respondent in each proceeding. The Secretary has delegated this responsibility under the Program to HRSA. The Court is directed by statute to appoint special masters who take evidence, conduct hearings as appropriate, and make initial decisions as to eligibility for and amount of compensation.

A petition may be filed with respect to injuries, disabilities, illnesses, conditions, and deaths resulting from vaccines described in the Vaccine Injury Table (the Table) set forth at Section 2114 of the PHS Act or as set forth at 42 CFR 100.3, as applicable. This Table lists for each covered childhood vaccine the conditions which may lead to compensation and, for each condition, the time period for occurrence of the first symptom or manifestation of onset or of significant aggravation after vaccine administration. Compensation may also be awarded for conditions not listed in the Table and for conditions that are manifested outside the time periods specified in the Table, but only

if the petitioner shows that the condition was caused by one of the listed vaccines.

Section 2112(b)(2) of the PHS Act, 42 U.S.C. 300aa–12(b)(2), requires that ''[w]ithin 30 days after the Secretary receives service of any petition filed under section 2111 the Secretary shall publish notice of such petition in the **Federal Register**.'' Set forth below is a list of petitions received by HRSA on November 1, 2014, through November 30, 2014. This list provides the name of petitioner, city, and state of vaccination (if unknown then city and state of person or attorney filing claim), and case number. In cases where the Court has redacted the name of a petitioner and/or the case number, the list reflects such redaction.

Section 2112(b)(2) also provides that the special master ''shall afford all interested persons an opportunity to submit relevant, written information'' relating to the following:

1. The existence of evidence ''that there is not a preponderance of the evidence that the illness, disability, injury, condition, or death described in the petition is due to factors unrelated to the administration of the vaccine described in the petition,'' and

2. Any allegation in a petition that the petitioner either:

(a) ''Sustained, or had significantly aggravated, any illness, disability, injury, or condition not set forth in the Vaccine Injury Table but which was caused by'' one of the vaccines referred to in the Table, or

(b) ''Sustained, or had significantly aggravated, any illness, disability, injury, or condition set forth in the Vaccine Injury Table the first symptom or manifestation of the onset or significant aggravation of which did not occur within the time period set forth in the Table but which was caused by a vaccine'' referred to in the Table.

In accordance with Section 2112(b)(2), all interested persons may submit written information relevant to the issues described above in the case of the petitions listed below. Any person choosing to do so should file an original and three (3) copies of the information with the Clerk of the U.S. Court of Federal Claims at the address listed above (under the heading **FOR FURTHER INFORMATION CONTACT**), with a copy to HRSA addressed to Director, Division of Injury Compensation Programs, Healthcare Systems Bureau, 5600 Fishers Lane, Room 11C–26, Rockville, MD 20857. The Court's caption (Petitioner's Name v. Secretary of Health and Human Services) and the docket number assigned to the petition should be used as the caption for the written submission. Chapter 35 of title 44, United States Code, related to paperwork reduction, does not apply to information required for purposes of carrying out the Program.

Dated: December 17, 2014.

Mary K. Wakefield,

Administrator.

List of Petitions Filed

1. Candi Gonzalez on behalf of Marley Alecia-Sapphire Morales, Linwood, New Jersey, Court of Federal Claims No: 14–1072V.
2. Rosemary West, Walnut Creek, California, Court of Federal Claims No: 14–1073V.
3. Michael Smith, Kalispell, Montana, Court of Federal Claims No: 14–1074V.
4. Karen Comeiro, Boston, Massachusetts, Court of Federal Claims No: 14–1075V.
5. Louis Mansolillo, Providence, Rhode Island, Court of Federal Claims No: 14–1080V.
6. Donald Weiss, Rossford, Ohio, Court of Federal Claims No: 14–1081V.
7. Lynn Henderson, Lafayette, Indiana, Court of Federal Claims No: 14–1082V.
8. Marilyn Witbrodt, Palm Harbor, Florida, Court of Federal Claims No: 14–1086V.
9. Martha Scrantom, Hillsborough, North Carolina, Court of Federal Claims No: 14–1087V.
10. Stephanie Stout on behalf of Z. S., Louisville, Kentucky, Court of Federal Claims No: 14–1088V.
11. Howard McCosh, Provo, Utah, Court of Federal Claims No: 14–1089V.
12. Virgil Kim, Bothell, Washington, Court of Federal Claims No: 14–1090V.
13. Natalee Hessell, Troy, Michigan, Court of Federal Claims No: 14–1091V.
14. Jasmine Morgan on behalf of C. S., Deceased, Roanoke, Virginia, Court of Federal Claims No: 14–1094V.
15. Kristen Walter, Mt. Holly, New Jersey, Court of Federal Claims No: 14–1095V.
16. Milford B. Reiman, Wellesley Hills, Massachusetts, Court of Federal Claims No: 14–1096V.
17. Janice Steinkamp, Lincoln, Nebraska, Court of Federal Claims No: 14–1097V.
18. Jeffrey Edgar, Marblehead, Massachusetts, Court of Federal Claims No: 14–1098V.
19. Nicholas J. Xanthopoulos, St. Paul, Minnesota, Court of Federal Claims No: 14–1101V.
20. Kayla Nichols and Jason Nichols on behalf of Noah Nichols, Phoenix, Arizona, Court of Federal Claims No: 14–1103V.
21. Kristina Ries on behalf of Nickolas Ries, Deceased, Phoenix, Arizona, Court of Federal Claims No: 14–1104V.
22. Noemi Frette on behalf of N. F., Scottsdale, Arizona, Court of Federal Claims No: 14–1105V.
23. Kathi Aho, St. Cloud, Minnesota, Court of Federal Claims No: 14–1106V.
24. Matthew Smith and Michelle Smith on behalf of M. S., Chicago, Illinois, Court of Federal Claims No: 14–1107V.
25. Suzanne Fuhri on behalf of Thomas Fic, Chicago, Illinois, Court of Federal Claims No: 14–1108V.
26. Purvi Desai-Leyva, Albany, New York, Court of Federal Claims No: 14–1109V.
27. Olga Molina, San Antonio, Texas, Court of Federal Claims No: 14–1110V.
28. Eula Jane Matthews, Cleburne, Texas, Court of Federal Claims No: 14–1111V.
29. Ashley Puroll on behalf of P. H., Muskegon, Michigan, Court of Federal Claims No: 14–1112V.
30. Paul Judge, Glen Rock, New Jersey, Court of Federal Claims No: 14–1113V.
31. Antoinette McCormick, College Station, Texas, Court of Federal Claims No: 14–1114V.
32. Daniel E. McKinney, Berkeley Heights, New Jersey, Court of Federal Claims No: 14–1116V.
33. Robin McCarthy-Stancavage on behalf of A. S., Severna Park, Maryland, Court of Federal Claims No: 14–1117V.
34. Cornell Yellen, Souderton, Pennsylvania, Court of Federal Claims No: 14–1118V.
35. Eva Cruz and Omar Lopez Jiminez on behalf of L. J. L., Deceased, Las Vegas, Nevada, Court of Federal Claims No: 14–1119V.
36. Elmer D. McKercher, Duluth, Minnesota, Court of Federal Claims No: 14–1124V.
37. Barbara Goforth, Farmville, Virginia, Court of Federal Claims No: 14–1128V.
38. Teresa Bray, Green Bay, Wisconsin, Court of Federal Claims No: 14–1131V.
39. Judith Rosenfield, Sherman Oaks, California, Court of Federal Claims No: 14–1132V.
40. Jose Guadalupe Garcia, II, Pasadena, Texas, Court of Federal Claims No: 14–1136V.
41. Robert Handeyside, Saginaw, Michigan, Court of Federal Claims No: 14–1137V.

42. Marlie Dulaurier, M.D., Columbus, Ohio, Court of Federal Claims No: 14–1138V.
43. Larry Thompson, Lynchburg, Virginia, Court of Federal Claims No: 14–1139V.
44. Richard Greenslade, Ann Arbor, Michigan, Court of Federal Claims No: 14–1140V.
45. Navid Nourani, Tempe, Arizona, Court of Federal Claims No: 14–1142V.
46. Andrew Funk, Tempe, Arizona, Court of Federal Claims No: 14–1143V.
47. Duke Duquette, Uxbridge, Massachusetts, Court of Federal Claims No: 14–1144V.
48. Candace Johnson, Portland, Oregon, Court of Federal Claims No: 14–1145V.
49. Thalia Monsha Stallworth Lewis on behalf of Alton Jerome Lewis, Deceased, Birmingham, Alabama, Court of Federal Claims No: 14–1147V.
50. Billy Whitchurch, Dallas, Texas, Court of Federal Claims No: 14–1148V.
51. Andrea Gasaway, Dallas, Tennessee, Court of Federal Claims No: 14–1149V.
52. Barbara Budgake, Rahway, New Jersey, Court of Federal Claims No: 14–1150V.
53. Douglas A. Dinunzio, Charlotte, North Carolina, Court of Federal Claims No: 14–1151V.
54. Imogene B. Fowler, Tuscaloosa, Alabama, Court of Federal Claims No: 14–1152V.
55. Mary Daniels, Boston, Massachusetts, Court of Federal Claims No: 14–1153V.
56. Amy Junker, Frederick, Maryland, Court of Federal Claims No: 14–1155V.
57. Paula Pasquinelli, Carnegie, Pennsylvania, Court of Federal Claims No: 14–1156V.

[FR Doc. 2014–30402 Filed 12–24–14; 8:45 am]

BILLING CODE 4165–15–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Center For Scientific Review; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. App.), notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: Cell Biology Integrated Review Group; Nuclear and Cytoplasmic Structure/Function and Dynamics Study Section.
Date: January 29–30, 2015.
Time: 8:00 a.m. to 5:00 p.m.
Agenda: To review and evaluate grant applications.
Place: Embassy Suites at the Chevy Chase Pavilion, 4300 Military Road NW., Washington, DC 20015.
Contact Person: David Balasundaram, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5189, MSC 7840, Bethesda, MD 20892, 301–435–1022, *balasundaramd@csr.nih.gov.*

Name of Committee: Risk, Prevention and Health Behavior Integrated Review Group; Psychosocial Risk and Disease Prevention Study Section.
Date: January 29–30, 2015.
Time: 8:00 a.m. to 5:00 p.m.
Agenda: To review and evaluate grant applications.
Place: Villa Florence Hotel, 225 Powell Street, San Francisco, CA 94102,
Contact Person: Stacey FitzSimmons, Ph.D., MPH, Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3114, MSC 7808, Bethesda, MD 20892, (301) 451–9956, *fitzsimmonss@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel; Psychosocial Risk and Disease Prevention.
Date: January 29, 2015.
Time: 10:30 a.m. to 11:00 a.m.
Agenda: To review and evaluate grant applications.
Place: Villa Florence Hotel, 225 Powell Street, San Francisco, CA 94102.
Contact Person: Kristen Prentice, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3112, MSC 7808, Bethesda, MD 20892, (301) 496–0726, *prenticekj@mail.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel; PAR 13–374 Modeling of Social Behavior.
Date: January 29, 2015.
Time: 12:00 p.m. to 3:00 p.m.
Agenda: To review and evaluate grant applications.
Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892, (Telephone Conference Call).
Contact Person: Jacinta Bronte-Tinkew, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3164, MSC 7770, Bethesda, MD 20892, (301) 806–0009, *brontetinkewjm@csr.nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.306, Comparative Medicine; 93.333, Clinical Research, 93.306, 93.333, 93.337, 93.393–93.396, 93.837–93.844, 93.846-93.878, 93.892, 93.893, National Institutes of Health, HHS)

Dated: December 19, 2014.

Anna Snouffer,

Deputy Director, Office of Federal Advisory Committee Policy.

[FR Doc. 2014–30257 Filed 12–24–14; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Notice of Correction for National Institute of Neurological Disorders and Stroke, Interagency Pain Research Coordinating Committee Call for Committee Membership Nominations

The National Institutes of Health (NIH) is correcting a notice previously published in the **Federal Register** on December 15, 2014 (79 FR 74102) and titled ''National Institute of Neurological Disorders and Stroke, Interagency Pain Research Coordinating Committee Call for Committee Membership Nominations.'' The notice announced that The Department of Health and Human Services (HHS) is seeking nominations for the Interagency Pain Research Coordinating Committee.

NIH is amending the due date for nominations from January 5, 2015, as stated toward the end of the notice, to January 12, 2015. For further information about the meeting, please contact Linda Porter, Ph.D., *porterl@ninds.nih.gov.*

Dated: December 16, 2014.

Walter J. Koroshetz,

Acting Director, National Institute of Neurological Disorders and Stroke, National Institutes of Health.

[FR Doc. 2014–30387 Filed 12–24–14; 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. 35). To request a copy of these

documents, call the SAMHSA Reports Clearance Officer on (240) 276–1243.

Project: National System of Care Expansion Evaluation—NEW

The Substance Abuse and Mental Health Services Administration (SAMHSA), Center for Mental Health Services (CMHS) is requesting approval from the Office of Management and Budget (OMB) for the new collection of data for the National System of Care (SOC) Expansion Evaluation.

Evaluation Plan and Data Collection Activities. The purpose of the National SOC Expansion Evaluation is to assess the success of the SOC expansion planning and implementation grants in expanding the reach of SOC values, principles, and practices. These include maximizing system-level coordination and planning, offering a comprehensive array of services, and prioritizing family and youth involvement. In order to obtain a clear picture of SOC expansion grant activities, this longitudinal, multi-level evaluation will measure activities and performance of grantees at three levels essential to building and sustaining effective SOCs. The three levels are: jurisdiction, local system, and child and family levels.

Data collection activities will occur through four evaluation components. Each component includes data collection activities and analyses involving similar topics. Each component has multiple instruments that will be used to address various aspects. Thus, there are a total of eight new instruments that will be used to conduct this evaluation. All four evaluation components involve collecting data from implementation grantees, but only the Implementation assessment includes data collection from planning grantees as well.

The four studies with their corresponding data collection activities are as follows:

(1) The Implementation assessment will document the development and expansion of SOCs. Data collection activities include: (a) Stakeholder Interviews with high-level administrators, youth and family representatives, and child agencies to describe the early implementation and expansion efforts of planning and implementation grants, (b) the web-based Self-Assessment of Implementation Survey (SAIS) to assess SOC implementation and expansion at the jurisdictional level over time, and (c) the SOC Expansion Assessment (SOCEA) administered to local providers, managers, clients, and their caregivers to measure SOC expansion strategies and processes implemented related to direct service delivery at the local system level. Implementation grantees will participate in all three of the Implementation assessment data collection activities. Planning grantee participation will be limited to the Stakeholder Interview and the Self-Assessment of Implementation Survey.

(2) The Network Analysis will use Network Analysis Surveys to determine the depth and breadth of the SOC collaboration across agencies and organization. Separate network analysis surveys will be administered at the jurisdiction and local service system levels. The Geographic Information System (GIS) Component will measure the geographic coverage and spread of the SOC, including reaching underserved areas and populations. At the jurisdictional and local service system levels, the GIS component will use office and business addresses of attendees to key planning, implementation and expansion events. At the child/youth and family level, Census block groups (derived from home addresses) will be used to depict the geographic spread of populations served by SOCs.

(3) The Financial Mapping Component involves the review of implementation grantees' progress in developing financial sustainability and expansion plans. The Financial Mapping Interview will be conducted with financial administrators of Medicaid Agencies, Mental Health Authorities, mental health provider trade associations, and family organizations. The Benchmark Component will compare relative rates of access, utilization, and costs for children's mental health services using the Benchmarking Tool and administrative data requested from financial administrators and personnel working with Medicaid Agency and Mental Health Authority reporting and payment systems.

(4) The Child and Family Outcome Component will collect longitudinal data on child clinical and functional outcomes, family outcomes, and child and family background. Data will be collected at intake, 6-months, and 12-months post service entry (as long as the child/youth is still receiving services). Data will also be collected at discharge if the child/youth leaves services before the 12-month data collection point. Data will be collected using the following scales: (a) A shortened version of the Caregiver Strain Questionnaire, (b) the Columbia Impairment Scale, (c) the Pediatric Symptom Checklist-17, (d) Family/Living Situation items, and (e) background information gathered through the Common Data Platform (CDP). Although OMB approval for the CPD has been sought separately under an unrelated contract, this data collection will include *both* youth age 11 to 17 *and* their caregivers whereas CDP includes only one of these respondents (*i.e.,* youth or caregiver).

Estimated Burden. Data will be collected from approximately 51 planning and 106 implementation grant jurisdictions and local systems. Data collection for this evaluation will be conducted over a 4-year period.

The average annual respondent burden estimate reflects the average number of respondents in each respondent category, the average number of responses per respondent per year, the average length of time it will take to complete each response, and the total average annual burden for each category of respondent for all categories of respondents combined. Table 1 shows the estimated annual burden estimate by instrument and respondent. Burden is summarized in Table 2.

TABLE 1—ESTIMATED AVERAGE ANNUAL BURDEN

Instrument/Data collection activity	Respondent	Number of respondents	Responses per respondent	Total number of responses	Hours per response	Total annual burden hours
Implementation Assessment						
Stakeholder Interviews [a].	Project Director	57	1	57	1.6	90
	Family Organization Representative	57	1	57	1.6	90
	Youth Organization Representative	57	1	57	1.6	90
	Core Agency Partners [b]	287	1	287	1.3	358
SAIS [a]	Grant leadership	1,540	1.93	2,970	0.82	2,426

TABLE 1—ESTIMATED AVERAGE ANNUAL BURDEN—Continued

Instrument/Data collection activity	Respondent	Number of respondents	Responses per respondent	Total number of responses	Hours per response	Total annual burden hours
SOCEA	Project Director & Representatives from Family & Youth Organizations.	143	1	143	1.5	215
	Core Agency Rep, Service Providers	429	1	429	1.0	533
	Care Coordinators	95	1	95	1.7	162
	Caregivers	95	1	95	0.75	106
	Clients 14–21	95	1	95	0.5	48
Network Analysis Survey						
Jurisdiction	Grant leadership	353	1	353	0.4	147
Local system	Local providers of direct services	707	1	707	0.4	294
GIS Component: Group Collaborative Events for GIS Analysis Form						
Jurisdiction	Grant administrator/Project Director	106	4	424	0.25	106
Local system	Local administrator/Project Director	106	4	424	0.25	106
Financial Mapping and Benchmark Components						
Financial Mapping Interview.	Financial administrators at: Medicaid Agencies & MH Authorities.	97	1	97	2.0	217
	Financial administrators at: Trade associations & Family organizations.	332	1	332	1.5	52
Benchmark Tool	Payment/reporting personnel at: Medicaid Agencies & MH Authorities.	24	1	24	40.0	960
Child and Family Outcome Component						
Background Information (CDP) [c].	Caregivers of clients age 11–17 [d]	631	[e] 2.12	1,337	0.37	491
	Clients age 11–17	631	2.12	1,337	0.37	491
Family/Living Information.	Caregivers of clients age 5–17 [f]	3,172	2.12	6,725	.05	336
	Clients age 18–21 [g]	650	2.12	1,377	.05	69
Caregiver Strain Questionnaire—Short Form.	Caregivers of clients age 5–17	3,172	2.12	6,725	0.12	807
Columbia Impairment Scale.	Caregivers of clients age 5–17	3,172	2.12	6,725	0.08	538
	Clients age 11–21 [h]	1,911	2.12	4,051	0.08	324
Pediatric Symptom Checklist-17.	Caregivers of clients age 5–17	3,172	2.12	6,725	0.05	336
	Clients age 11–21	1,911	2.12	4,051	0.05	203
Client record review.	Site staff	28	407	11,261	0.21	2,365
Total Annual Burden						
All	All	9,365		56,664		11,958

a. Burden includes planning and implementation grantees.
b. Core agency partners include (1) representatives from MH, child welfare, and juvenile justice and (2) CMHI quality monitors.
c. OMB clearance sought for CDP is limited to the added burden for a second respondent (Caregiver *OR* Client age 11 to 17). For clients age 11 to 17, CDP only collects information from *either* Caregivers *OR* youth. In addition, clearance is requested for the burden only as OMB approval of CDP has been sought separately.
d. Assumes 33% of clients will be age 11 to 17 and that the additional CDP interview for clients age 11 to 17 and their caregiver will be evenly split between clients and caregivers. Evaluation design requires all participating clients age 5 to 17 to have a caregiver participating in the evaluation.
e. Accounts for attrition.
f. Assumes 83% of clients will be age 5 to 17.
g. Assumes 17% of clients will be age 18 to 21.
h. Assumes 50% of clients will be age 11 to 21.

TABLE 2—TOTAL ESTIMATED ANNUAL BURDEN

Instrument/Data collection activity	Number of respondents	Total number of responses	Average annual burden (hours)
Stakeholder Interviews	459	459	628

TABLE 2—TOTAL ESTIMATED ANNUAL BURDEN—Continued

Instrument/Data collection activity	Number of respondents	Total number of responses	Average annual burden (hours)
SAIS	1,540	2,970	2,426
SOCEA	858	858	1,063
Network analysis survey	1,060	1,060	442
GIS	212	848	212
Financial mapping interview	129	129	269
Benchmark Tool	24	24	960
Child and family tools (respondent & staff burden)	5,083	50,316	5,959
Total	9,365	56,664	11,958

Written comments and recommendations concerning the proposed information collection should be sent by January 28, 2015 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. 2014–30288 Filed 12–24–14; 8:45 am]

BILLING CODE 4162–20–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. 35). To request a copy of these documents, call the SAMHSA Reports Clearance Officer on (240) 276–1243.

Project: Networking Suicide Prevention Hotlines—Evaluation of the Lifeline Policies for Helping Callers at Imminent Risk (OMB No. 0930–0333)—REVISION

The Substance Abuse and Mental Health Services Administration's (SAMHSA), Center for Mental Health Services (CMHS) funds a National Suicide Prevention Lifeline Network (''Lifeline''), consisting of a toll-free telephone number that routes calls from anywhere in the United States to a network of local crisis centers. In turn, the local centers link callers to local emergency, mental health, and social service resources. This project is a revision of the Evaluation of Lifeline Policies for Helping Callers at Risk and builds on previously approved data collection activities [Evaluation of Networking Suicide Prevention Hotlines Follow-Up Assessment (OMB No. 0930–0274) and Call Monitoring of National Suicide Prevention Lifeline Form (OMB No. 0930–0275)]. The extension and revision data collection is an effort to advance the understanding of crisis hotline utilization and its impact.

The overarching purpose of the proposed Evaluation of the Lifeline Policies for Helping Callers at Imminent Risk is to implement data collection to evaluate hotline counselors' management of imminent risk callers and third party callers concerned about persons at imminent risk, and counselor adherence to *Lifeline Policies and Guidelines for Helping Callers at Imminent Risk of Suicide.* Specifically, the Evaluation of the Lifeline Policies for Helping Callers at Imminent Risk will collect data, using a revised imminent risk form, to inform the network's knowledge of the extent to which counselors are aware of and being guided by the Lifeline's imminent risk guidelines; counselors' definitions of imminent risk; the rates of active rescue of imminent risk callers; types of rescue (voluntary or involuntary); barriers to intervention; circumstances in which active rescue is initiated, including the caller's agreement to receive the intervention, profile of imminent risk callers; and the types of interventions counselors used with them.

Approval is being requested for one activity to assess the knowledge, actions, and practices of counselors to aid callers who are determined to be at imminent risk for suicide and who may require active rescue. This evaluation will allow researchers to examine and understand the actions taken by counselors to aid imminent risk callers, the need for active rescue, the types of interventions used, and, ultimately, improve the delivery of crisis hotline services to imminent risk callers. A total of eight new centers will participate in this evaluation. Thus, SAMHSA is requesting OMB review and approval of the National Suicide Prevention Lifeline—Imminent Risk Form-Revised.

Crisis counselors at eight new participating centers will record information discussed with imminent risk callers on the Imminent Risk Form-Revised, which does not require direct data collection from callers. As with previously approved evaluations, callers will maintain anonymity. Counselors will be asked to complete the form for 100% of imminent risk callers to the eight centers participating in the evaluation. This form requests information in 15 content areas, each with multiple sub-items and response options. Response options include open-ended, yes/no, Likert-type ratings, and multiple choice/check all that apply. The form also requests demographic information on the caller, the identification of the center and counselor submitting the form, and the date of the call. Specifically, the form is divided into the following sections: (1) Counselor information, (2) center information, (3) call characteristics (*e.g.*, line called, language spoken, participation of third party), (4) suicidal desire, (5) suicidal intent, (6) suicidal capability, (7) buffers to suicide, (8)

interventions agreed to by caller or implemented by counselor without caller's consent, (9) whether imminent risk was reduced enough such that active rescue was not needed, (10) interventions for third party callers calling about a person at imminent risk, (11) whether supervisory consultation occurred during or after the call, (12) barriers to getting needed help to the person at imminent risk, (13) steps taken to confirm whether emergency contact was made with person at risk, (14) outcome of attempts to rescue person at risk, and (15) outcome of attempts to follow-up on the case. The revised form reduces and streamlines responses options for intervention questions. It also adds information about the center, the call (*e.g.*, language and military service), interventions (*e.g.*, supervisor contact, rescue initiation), and follow-up/outcome. The form will take approximately 15 minutes to complete and may be completed by the counselor during or after the call. It is expected that a total of 750 forms will be completed by 132 counselors over the three-year data collection period.

The estimated response burden to collect this information is annualized over the requested three-year clearance period and is presented below:

TOTAL AND ANNUALIZED BURDEN: RESPONDENTS, RESPONSES AND HOURS

Instrument	Number of respondents	Responses per respondent	Total responses	Hours per response	Total hour burden
Imminent Risk Form	132	1.9	250	.26	65

Written comments and recommendations concerning the proposed information collection should be sent by January 28, 2015 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. 2014–30290 Filed 12–24–14; 8:45 am]

BILLING CODE 4162–20–P

DEPARTMENT OF HOMELAND SECURITY

Transportation Security Administration

Intent To Request Renewal From OMB of One Current Public Collection of Information: TSA OLE/FAMS Canine Training and Evaluation Section (CTES) End of Course Level 1 Critique (Formerly Named: National Explosives Detection Canine Team Program (NEDCTP) Handler Training Assessment Survey)

AGENCY: Transportation Security Administration, DHS.

ACTION: 60-day Notice.

SUMMARY: The Transportation Security Administration (TSA) invites public comment on one currently approved Information Collection Request (ICR), Office of Management and Budget (OMB) control number 1652–0041, abstracted below that we will submit to OMB for a revision in compliance with the Paperwork Reduction Act (PRA). The ICR describes the nature of the information collection and its expected burden. The collection involves the submission of numerical ratings and written comments about the quality of training instruction from students who graduate from the Federal Air Marshal Service (FAMS)/Canine Training and Evaluation Section (CTES) Explosives Detection Canine Handlers Course, Passenger Screening Canine Handler Course and the Supervisor/Trainer Seminars.

DATES: Send your comments by February 27, 2015.

ADDRESSES: Comments may be emailed to *TSAPRA@dhs.gov* or delivered to the TSA PRA Officer, Office of Information Technology (OIT), TSA–11, Transportation Security Administration, 601 South 12th Street, Arlington, VA 20598–6011.

FOR FURTHER INFORMATION CONTACT: Christina A. Walsh at the above address, or by telephone (571) 227–2062.

SUPPLEMENTARY INFORMATION:

Comments Invited

In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*), 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 OMB control number. The ICR documentation is available at *http://www.reginfo.gov.* Therefore, in preparation for OMB review and approval of the following information collection, TSA is soliciting comments to—

(1) Evaluate whether the proposed information requirement is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

(2) Evaluate the accuracy of the agency's estimate of the burden;

(3) Enhance the quality, utility, and clarity of the information to be collected; and

(4) Minimize the burden of the collection of information on those who are to respond, including using appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology.

Information Collection Requirement

OMB Control Number 1652–0041; TSA OLE/FAMS Canine Training and Evaluation Section End of Course Level 1 Critique (Formerly Named: National Explosives Detection Canine Team Program (NEDCTP) Handler Training Assessment Survey). The FAMS/CTES Explosives Detection Canine Handlers Course, Passenger Screening Canine Handler Course and the Supervisor/Trainer Seminars are given to state and local personnel as well as TSA personnel who are trained to be canine handlers. The state and local personnel participate under agency specific cooperative agreements in that portion of the TSA Grant program administered by the National Explosives Detection Canine Team Program (NEDCTP). The End of Course Level 1 Survey captures from graduating students numerical ratings and written comments about the quality of training instruction at the FAMS/CTES Explosives Detection Canine Handlers Course, Passenger Screening Canine Handler Course and the Supervisor/Trainer Seminars. The

data is collected by the CTES Training Support Unit and provides valuable feedback to the Supervisory Air Marshal in Charge (SAC) and CTES instructional staff and supervisors on how the training material was presented and received. The Level 1 Surveys are mandatory for students who successfully complete training, but the students may remain anonymous. Once reviewed, the feedback is used to improve the course curriculum and the course of instruction. The estimated burden is approximately one hour per participant, 180 hours per calendar year (average 180 students per calendar year) to read, answer, and submit the questions.

Dated: December 22, 2014.

Christina A. Walsh,

TSA Paperwork Reduction Act Officer, Office of Information Technology.

[FR Doc. 2014–30395 Filed 12–24–14; 8:45 am]

BILLING CODE 9110–05–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–5819–N–01]

Waivers and Alternative Requirements for the Family Self-Sufficiency Program

AGENCY: Office of the Assistant Secretary for Public and Indian Housing, HUD.

ACTION: Notice.

SUMMARY: Previously, the Family Self-Sufficiency Program was administered as two separate programs—one for Housing Choice Voucher (Section 8) participants and one for Public Housing participants. Appropriations for the Family Self-Sufficiency (FSS) program in the Consolidated Appropriations Act, 2014, provided, however, that the two programs be merged into one program under a separate line item. The Consolidated Appropriations Act, 2014, also provided that the Secretary could, by **Federal Register** notice, waive or specify alternative requirements under specific sections of the United States Housing Act of 1937 in order to facilitate the operation of a unified Family Self-Sufficiency program. Based on this authority, HUD has unified these programs. This notice provides waivers and alternative requirements to facilitate the operation of a unified self-sufficiency program.

DATES: This notice is effective: December 29, 2014.

FOR FURTHER INFORMATION CONTACT: Anice Chenault, FSS Program Manager, at *Anice.S.Chenault@hud.gov,* Office of Public Housing Investments, Department of Housing and Urban Development, 451 7th Street SW., Room 4120, Washington, DC 20410, telephone number 202–402–2341 (this is not a toll-free number). Persons with hearing- or speech-impairments may access this number through TTY by calling the toll-free Federal Relay Service at 800–877–8339.

SUPPLEMENTARY INFORMATION:

I. Background

Approximately $75 million in appropriations was made available for HUD's (FY) 2014 FSS program, in the Consolidated Appropriations Act, 2014, (Pub. L. 113–76, 128 Stat. 5, enacted January 17, 2014). Previously HUD administered the FSS program as two separate programs—one for Housing Choice Voucher (Section 8) participants and one for Public Housing participants. Consolidated Appropriations Act, 2014 provided, however, that the two programs be merged into one program under a separate line item. The objective of the FSS program is to enable participating low-income families to increase their earned income and reduce their dependency on welfare assistance and rental subsidies. Under the FSS program, low-income families are provided opportunities for education, job training, and other forms of social service assistance, while living in assisted housing, so they can obtain skills necessary to achieve self-sufficiency.

II. Applicable Rules, Statutes, Waivers, and Alternative Requirements

To facilitate the operation of a unified self-sufficiency program, the Consolidated Appropriations Act, 2014, authorizes the Secretary to waive, or specify alternative requirements of the sections (b)(3), (b)(4), (b)(5) or (c)(1) of Section 23 of the United States Housing Act of 1937 (42 U.S.C. 1437u) (1937 Act). Under this authority, the Secretary hereby authorizes the following waivers and alternative requirements, which has the effect of modifying the FSS statute.

1. Waiver allowing the Alternative requirement to permit families in either the public housing or Housing Choice Voucher program to count towards compliance with public housing agencies' (PHAs') mandatory FSS participation level and its reduction. HUD is providing an alternative requirement to Sections 23(b)(3) and (b)(4) to allow public housing agencies to operate a unified FSS program that combines the number of families under the formerly separated programs and formerly count graduating participants from either rental assistance program to both fulfill their mandatory program size requirements and subsequently reduce the program size in accordance with Section 236(b)(4). Without such a policy, PHAs would have to continue the separate tracking of families from each program, which would be unnecessarily burdensome. Moreover, this flexibility will allow some PHAs that have had difficulty meeting program requirements to come into compliance, and enable more families to benefit from FSS. This will apply to all PHAs, including those that administer only a single FSS program now and choose to expand to serve residents from the other rental assistance program. For example, if a PHA serves voucher participants only through their FSS program and the PHA expands its FSS program to public housing residents as well, then the PHA may count both its voucher FSS and public housing FSS graduating participants in reducing its mandatory program size.

2. Waiver allowing Alternative requirement to the timely processing of assistance. HUD is providing an alternative requirement to Section (b)(5) to provide that public housing applicants, like HCV applicants, shall not be delayed in receipt of housing assistance due to electing not to participate in FSS. Section 23(b)(5) required no delay in admission of HCV applicants who decline to participate in FSS, but is silent about public housing admissions. Extending the existing policy to public housing applicants promotes uniformity, and also avoids the risk that some families will indicate an interest in FSS just to gain admission to assisted housing, and then not make effective use of the opportunity. It also supports the principle that participation in FSS is voluntary.

3. Waiver to allow Alternative requirements on Conditions of Participation. HUD is providing an alternative requirement to Section (c)(1) that provides that housing assistance may not be terminated or withheld as a consequence of failure to complete the Contract of Participation without good cause. Section 23(c)(1) allows PHAs to have a policy that HCV assistance may be withheld or terminated for those families that fail to comply with their FSS contracts without good cause, but does not authorize eviction of public housing tenants for FSS non-compliance. This alternative requirement will promote uniformity as well as the principle that participation in FSS is voluntary. Anecdotal evidence suggests that the risk of termination has dampened interest in FSS among HCV participants at agencies that have adopted the option, making it more

difficult for PHAs to comply with FSS requirements.

Dated: December 17, 2014.

Jemine Bryon,

Acting Assistant Secretary for Public and Indian Housing.

[FR Doc. 2014–30342 Filed 12–24–14; 8:45 am]

BILLING CODE 4210–67–P

DEPARTMENT OF THE INTERIOR

Office of the Secretary

[156D0102DM DMSN000000.000000 DS10700000 DX.10701.CEN00000]

Renewal of Information Collection for the Source Directory of American Indian and Alaska Native Owned and Operated Arts and Crafts Businesses

AGENCY: Indian Arts and Crafts Board, Department of the Interior.

ACTION: Notice and request for comments.

SUMMARY: The Indian Arts and Crafts Board (IACB) collects information to identify and revise listings for the *Source Directory of American Indian and Alaska Native Owned and Operated Arts and Crafts Businesses* (*Source Directory*). In compliance with the Paperwork Reduction Act of 1995, the IACB has submitted a request for renewal of approval of this information collection to the Office of Management and Budget (OMB), and requests public comments on this submission.

DATES: OMB has up to 60 days to approve or disapprove the information collection request, but may respond after 30 days; therefore, public comments should be submitted to OMB by January 28, 2015, in order to be assured of consideration.

ADDRESSES: Send your written comments by facsimile (202) 395–5806 or email (*OIRA_Submission@omb.eop.gov*) to the Office of Information and Regulatory Affairs, Office of Management and Budget, Attention: Department of the Interior Desk Officer (1085–0001). Also, please send a copy of your comments to Meridith Z. Stanton, Indian Arts and Crafts Board, U.S. Department of the Interior, MS 2528–MIB, 1849 C Street NW., Washington, DC 20240. If you wish to submit comments by facsimile, the number is (202) 208–5196, or by email to *(iacb@ios.doi.gov).*

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the *Source Directory* application and renewal form, *i.e.,* the information collection instrument, should be directed to Meridith Z. Stanton, Director, Indian Arts and Crafts Board, 1849 C Street NW., MS 2528–MIB, Washington, DC 20240. You may also request additional information by telephone (202) 208–3773 (not a toll free call), or by email to (*iacb@ios.doi.gov)* or by facsimile to (202) 208–5196. You may also review the information collection request online at *http://www.reginfo.gov/public/do/PRAMain.*

SUPPLEMENTARY INFORMATION:

I. Abstract

The *Source Directory* of American Indian and Alaska Native owned and operated arts and crafts enterprises is a program of the Indian Arts and Crafts Board that promotes American Indian and Alaska Native arts and crafts. The *Source Directory* is a listing of American Indian and Alaska Native owned and operated arts and crafts businesses that may be accessed by the public on the Indian Arts and Crafts Board's Web site *http://www.iacb.doi.gov/.*

The service of being listed in this directory is provided free-of-charge to members of federally recognized tribes. Businesses listed in the *Source Directory* include American Indian and Alaska Native artists and craftspeople, cooperatives, tribal arts and crafts enterprises, businesses privately-owned-and-operated by American Indian and Alaska Native artists, designers, and craftspeople, and businesses privately owned-and-operated by American Indian and Alaska Native merchants who retail and/or wholesale authentic Indian and Alaska Native arts and crafts. Business listings in the *Source Directory* are arranged alphabetically by State.

The Director of the Board uses this information to determine whether an individual or business applying to be listed in the *Source Directory* meets the requirements for listing. The approved application will be printed in the *Source Directory.* The *Source Directory* is updated as needed to include new businesses and to update existing information. There is one type of application form, with a box to check what type of listing they are applying for: (1) New businesses—group; (2) new businesses—individual; (3) businesses already listed—group; and (4) businesses already listed—individual.

As required under 5 CFR 1320.8(d), a **Federal Register** notice soliciting comments on the collection of information was published on August 29, 2014 (79 FR 51582). No comments were received. This notice provides the public with an additional 30 days in which to comment on the following information collection activity.

II. Data

(1) *Title: Source Directory* of American Indian and Alaska Native Owned and Operated Arts and Crafts Businesses.

OMB Control Number: 1085–0001.

Current Expiration Date: 1/31/2015.

Type of Review: Renewal of an existing collection.

Affected Entities: American Indian owned or operated arts and crafts businesses.

Estimated annual number of respondents: 100.

Frequency of Response: As needed.

(2) Annual Reporting and Record Keeping Burden.

Total Annual Reporting per Respondent: 15 minutes.

Total Annual Burden Hours: 25 hours.

(3) Description of the Need and Use of the Information: Submission of this information is required to receive the benefit of being listed in the Indian Arts and Crafts Board *Source Directory.* The information is collected to determine the applicant's eligibility for the service and to obtain the applicant's name and business address to be added to the online directory.

(4) As required under 5 CFR 1320.8(d), a **Federal Register** notice soliciting comments on the information collection was published on August 29, 2014 (79 FR 51582). No comments were received. This notice provides the public with an additional 30 days in which to comment on the proposed information collection activity.

III. Request for Comments

The Department of the Interior invites comments on:

(a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

(b) The accuracy of the agency's estimate of the burden of the collection and the validity of the methodology and assumptions used;

(c) Ways to enhance the quality, utility, and clarity of the information to be collected; and

(d) Ways to minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other collection techniques or other forms of information technology.

''Burden'' means the total time, effort, or financial resources expended by persons to generate, maintain, retain, disclose, or provide information to or for a federal agency. This includes the

time needed to review instructions; to develop, acquire, install and utilize technology and systems for the purpose of collecting, validating and verifying information, processing and maintaining information, and disclosing and providing information; to train personnel and to be able to respond to a collection of information, to search data sources, to complete and review the collection of information; and to transmit or otherwise disclose the information.

All written comments, with names and addresses, will be available for public inspection. If you wish us to withhold your personal information, you must prominently state at the beginning of your comment what personal information you want us to withhold. We will honor your request to the extent allowable by law. If you wish to view any comments received, you may do so by scheduling an appointment with the Indian Arts & Crafts Board at the contact information provided in the **ADDRESSES** section. A valid picture identification is required for entry into the Department of the Interior, 1849 C Street NW., Washington, DC 20240.

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid Office of Management and Budget control number.

Dated: December 18, 2014.

Meridith Z. Stanton,

Director, Indian Arts and Crafts Board.

[FR Doc. 2014–30267 Filed 12–24–14; 8:45 am]

BILLING CODE 4334–12–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

[FWS–R8–ES–2015–N255; FXES11130800000–156–FF08E00000]

Endangered Species Recovery Permit Applications

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of receipt of permit applications; request for comment.

SUMMARY: We, the U.S. Fish and Wildlife Service, invite the public to comment on the following applications to conduct certain activities with endangered species. With some exceptions, the Endangered Species Act (Act) prohibits activities with endangered and threatened species unless a Federal permit allows such activity. The Act also requires that we invite public comment before issuing recovery permits to conduct certain activities with endangered species.

DATES: Comments on these permit applications must be received on or before January 28, 2015.

ADDRESSES: Written data or comments should be submitted to the Endangered Species Program Manager, U.S. Fish and Wildlife Service, Region 8, 2800 Cottage Way, Room W–2606, Sacramento, CA 95825 (telephone: 916–414–6464; fax: 916–414–6486). Please refer to the respective permit number for each application when submitting comments.

FOR FURTHER INFORMATION CONTACT: Daniel Marquez, Fish and Wildlife Biologist; see **ADDRESSES** (telephone: 760–431–9440; fax: 760–431–9624).

SUPPLEMENTARY INFORMATION: The following applicants have applied for scientific research permits to conduct certain activities with endangered species under section 10(a)(1)(A) of the Act (16 U.S.C. 1531 *et seq.*). We seek review and comment from local, State, and Federal agencies and the public on the following permit requests.

Applicants

Permit No. TE–50899B–0

Applicant: Nicholas S. Bonzey, Sacramento, California

The applicant requests a permit to take (capture, collect, and collect vouchers) the Conservancy fairy shrimp (*Branchinecta conservatio*), longhorn fairy shrimp (*Branchinecta longiantenna*), Riverside fairy shrimp (*Streptocephalus woottoni*), San Diego fairy shrimp (*Branchinecta sandiegonensis*), and vernal pool tadpole shrimp (*Lepidurus packardi*) in conjunction with survey activities throughout the range of the species in California for the purpose of enhancing the species' survival.

Permit No. TE–829204

Applicant: Harry Lee Jones, Lake Forest, California

The applicant requests a permit renewal to take (harass by survey) the southwestern willow flycatcher (*Empidonax traillii extimus*) and take (locate and monitor nests) the least Bell's vireo (*Vireo bellii pusillus*), in conjunction with surveys and population monitoring activities throughout the range of the species in California for the purpose of enhancing the species' survival.

Permit No. TE–800930

Applicant: Viviane J. Marquez-Waller, Encinitas, California

The applicant requests a permit renewal to take (harass by survey) the southwestern willow flycatcher (*Empidonax traillii extimus*), and take (survey by pursuit) the Quino checkerspot butterfly (*Euphydryas editha quino*) in conjunction with survey and population monitoring activities throughout the range of the species in California for the purpose of enhancing the species' survival.

Permit No. TE–54716A

Applicant: Christine L. Harvey, San Diego, California

The applicant requests a permit renewal to take (harass by survey) the southwestern willow flycatcher (*Empidonax traillii extimus*) in conjunction with survey activities throughout the range of the species in California for the purpose of enhancing the species' survival.

Permit No. TE–09375A

Applicant: Laura Ann Eliassen, Bradley, California

The applicant requests a permit renewal to take (capture, collect, and collect vouchers) the Conservancy fairy shrimp (*Branchinecta conservatio*), longhorn fairy shrimp (*Branchinecta longiantenna*), Riverside fairy shrimp (*Streptocephalus woottoni*), San Diego fairy shrimp (*Branchinecta sandiegonensis*), and vernal pool tadpole shrimp (*Lepidurus packardi*) in conjunction with survey activities throughout the range of the species in California for the purpose of enhancing the species' survival.

Permit No. TE–811188

Applicant: Rosi Dagit, Agoura Hills, California

The applicant requests a permit to take (harass by survey, capture, handle, and release) the tidewater goby (*Eucyclogobius newberryi*) in conjunction with research activities throughout the range of the species in Los Angeles and Ventura Counties, California, for the purpose of enhancing the species' survival.

Permit No. TE–14231A

Applicant: Caesara W. Brungraber, Bend, Oregon

The applicant requests a permit renewal to take (capture, collect, and collect vouchers) the Riverside fairy shrimp (*Streptocephalus woottoni*) and San Diego fairy shrimp (*Branchinecta sandiegonensis*), and take (survey by pursuit) the Quino checkerspot butterfly (*Euphydryas editha quino*) in conjunction with survey activities throughout the range of the species within the jurisdiction of the Carlsbad Fish and Wildlife Service Office in

California for the purpose of enhancing the species' survival.

Permit No. TE–134333

Applicant: California State University, Chico, California

The applicant requests a permit renewal to take (harass by survey, capture, handle, mark, and release) the California tiger salamander (Santa Barbara County Distinct Population Segment (DPS) and Sonoma County DPS) (*Ambystoma californiense*) in conjunction with surveys and population monitoring throughout the range of the species in California for the purpose of enhancing the species' survival.

Permit No. TE–799570

Applicant: Carol W. Witham, Sacramento, California

The applicant requests a permit amendment to remove/reduce to possession the *Tuctoria mucronata* (Solano grass), from lands under Federal jurisdiction in conjunction with restoration activities in Yolo County, California, for the purpose of enhancing the species' survival.

Permit No. TE–50992B

Applicant: Antonette T. Gutierrez, Imperial Beach, California

The applicant requests a permit to take (survey by pursuit) the Quino checkerspot butterfly (*Euphydryas editha quino*), take (harass by survey, locate and monitor nests) the southwestern willow flycatcher (*Empidonax traillii extimus*) and California least tern (*Sternula antillarum browni*) (*Sterna a. browni*), take (harass by survey by playing taped vocalizations, locate and monitor nests) the least Bell's vireo (*Vireo bellii pusillus*) and light-footed Ridgway's rail (light-footed clapper r.) (*Rallus obsoletus levipes*) (*R. longirostris l.*), and take (harass by survey, capture, handle, release) the tidewater goby (*Eucyclogobius newberryi*), in conjunction with survey and population monitoring activities throughout the range of the species in California for the purpose of enhancing the species' survival.

Permit No. TE–114936

Applicant: Bonnie J. Johnson, Norco, California

The applicant requests a permit renewal to take (locate and monitor nests) the least Bell's vireo (*Vireo bellii pusillus*) in conjunction with population monitoring activities throughout the range of the species in Orange, Riverside, San Diego, and San Bernardino Counties, California, for the purpose of enhancing the species' survival.

Permit No. TE–50999B

Applicant: Autumn N. Meisel, San Jose, California

The applicant requests a permit to take (harass by survey, capture, handle, and release) the California tiger salamander (Santa Barbara County DPS and Sonoma County DPS) (*Ambystoma californiense*) in conjunction with surveys and population monitoring throughout the range of the species in California for the purpose of enhancing the species' survival.

Permit No. TE–098994

Applicant: Kelly J. Goocher, Lancaster, California

The applicant requests a permit renewal to take (harass by survey) the southwestern willow flycatcher (*Empidonax traillii extimus*), and take (survey by pursuit) the Laguna Mountains skipper (*Pyrgus ruralis lagunae*) in conjunction with survey activities throughout the range of the species in California for the purpose of enhancing the species' survival.

Permit No. TE–022227

Applicant: Harry F. Smead, Lemon Grove, California

The applicant requests a permit renewal to take (capture, collect, and collect vouchers) the Conservancy fairy shrimp (*Branchinecta conservatio*), longhorn fairy shrimp (*Branchinecta longiantenna*), Riverside fairy shrimp (*Streptocephalus woottoni*), San Diego fairy shrimp (*Branchinecta sandiegonensis*), and vernal pool tadpole shrimp (*Lepidurus packardi*) in conjunction with survey activities throughout the range of the species in California for the purpose of enhancing the species' survival.

Permit No. TE–95006A

Applicant: Steven Chen, San Luis Obispo, California

The applicant requests a permit amendment to take (survey by pursuit) the Delhi Sands flower-loving fly (*Rhaphiomidas terminatus abdominalis*) in conjunction with survey activities throughout the range of the species in California for the purpose of enhancing the species' survival.

Permit No. TE–142435

Applicant: Debra M. Shier, Temecula, California

The applicant requests a permit amendment to take (conduct behavioral experiments, artificial lighting experiments, stress/hormone experiments, and inject reproductive hormones) the Pacific pocket mouse (*Perognathus longimembris pacificus*), and take (conduct behavioral experiments and artificial lighting experiments) the San Bernardino Merriam's kangaroo rat (*Dipodomys merriami parvus*) and Stephens' kangaroo rat (*Dipodomys stephensi*) in conjunction with authorized captive propagation activities and population monitoring research throughout the range of the species in California for the purpose of enhancing the species' survival.

Permit No. TE–048739

Applicant: Daniel A. Cordova, Sacramento, California

The applicant requests a permit renewal and amendment to take (locate and monitor nests) the California least tern (*Sternula antillarum browni*) (*Sterna a. browni*), take (harass by survey, capture, handle, release) the tidewater goby (*Eucyclogobius newberryi*), and take (harass by survey, capture, handle, mark, and release) the California tiger salamander (Santa Barbara County DPS and Sonoma County DPS) (*Ambystoma californiense*) in conjunction with surveys and population monitoring throughout the range of the species in California for the purpose of enhancing the species' survival.

Public Comments

We invite public review and comment on each of these recovery permit applications. Comments and materials we receive will be available for public inspection, by appointment, during normal business hours at the address listed in the **ADDRESSES** section of this notice.

Before including your address, phone number, email address, or other personal identifying information in your comment, you should be aware that your entire comment—including your personal identifying information—may be made publicly available at any time. While you can ask us in your comment to withhold your personal identifying information from public review, we cannot guarantee that we will be able to do so.

Michael Long,

Acting Regional Director, Pacific Southwest Region, Sacramento, California.

[FR Doc. 2014–30420 Filed 12–24–14; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[LLNML0000 L16100000.DQ0000 14XL1109AF]

Notice of Availability of the Proposed Prehistoric Trackways National Monument Resource Management Plan and Final Environmental Impact Statement, New Mexico

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice.

SUMMARY: In accordance with the National Environmental Policy Act of 1969 (NEPA), as amended, and the Federal Land Policy and Management Act of 1976, as amended, the Bureau of Land Management (BLM) has prepared a proposed Resource Management Plan (RMP)/final Environmental Impact Statement (EIS) for the Prehistoric Trackways National Monument and by this notice is announcing its availability.

DATES: BLM planning regulations state that any person who meets the conditions as described in the regulations may protest the BLM's proposed RMP. A person who meets the conditions must file their protest within 30 days of the date that the Environmental Protection Agency publishes its Notice of Availability in the **Federal Register.**

ADDRESSES: Copies of the proposed RMP/final EIS have been sent to affected Federal, tribal, State, and local government agencies and to other stakeholders. Copies of the proposed RMP/final EIS are available for public inspection at the Las Cruces District Office, 1800 Marquess St., Las Cruces, NM 88005, and the New Mexico State Office, 301 Dinosaur Trail, Santa Fe, NM 87502. Interested persons may also review the proposed RMP/final EIS at: *http://www.blm.gov/nm/trackwaysrmp*.

All protests must be in writing and mailed to one of the following addresses:

Regular Mail: BLM Director (210); Attention: Protest Coordinator; P.O. Box 71383, Washington, DC 20024–1383.

Overnight Mail: BLM Director (210); Attention: Protest Coordinator; 20 M Street SE., Room 2134LM, Washington, DC 20003.

FOR FURTHER INFORMATION CONTACT: Jennifer Montoya, Planning and Environmental Coordinator, Las Cruces District Office; telephone 575–525–4316; address 1800 Marquess St., Las Cruces, NM 88005; email *jamontoy@blm.gov*. Persons who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339 to contact Ms. Montoya during normal business hours. The FIRS is available 24 hours a day, 7 days a week, to leave a message or question for Ms. Montoya. You will receive a reply during normal business hours.

SUPPLEMENTARY INFORMATION: The proposed RMP/final EIS analyzes the environmental consequences of four alternatives under consideration by the BLM for managing the Prehistoric Trackways National Monument, which consists of approximately 5,280 acres in southern New Mexico. The RMP will provide a comprehensive management plan for the long-term protection and management of the Prehistoric Trackways National Monument. The plan is needed to prescribe the appropriate uses and management of the Prehistoric Trackways National Monument, consistent with the provisions of its designating legislation (Omnibus Public Lands Management Act of 2009), and would replace the 1993 Mimbres RMP for this specific location. The proposed RMP/final EIS includes decisions for all BLM-managed surface estate and subsurface mineral estate within the National Monument's boundary.

The four alternatives analyzed in detail in the proposed RMP/final EIS are Alternative A (No Action Alternative), which is a continuation of the existing management decisions and the legislation; Alternative B, which emphasizes resource conservation and protection; Alternative C, which strives to balance resource uses with protections; and Alternative D, which allows greater opportunity for resource use and development. Alternative C was selected as the Proposed RMP because it protects and enhances the Prehistoric Trackways National Monument objects, resources, and values, while allowing uses such as scientific research, recreation, and livestock grazing. In Alternative C, the impacts of uses are limited in sensitive areas and management decisions for monitoring and mitigation are included. As required by the legislation, the existing designations of the Wilderness Study Area and Area of Critical Environmental Concern would remain within the Prehistoric Trackways National Monument. These designations overlap about 789 acres of the Prehistoric Trackways National Monument. The designating legislation withdraws the Prehistoric Trackways National Monument from the following, subject to valid existing rights: (1) Entry, appropriation, or disposal under the public land laws; (2) Location, entry, and patent under the mining laws; and (3) Operation of the mineral leasing laws, geothermal leasing laws, and minerals materials laws.

The RMP process began with a Notice of Intent published in the **Federal Register** on January 5, 2010 (75 FR 431). This announced a 30-day public comment period. During that time, a public meeting was held in Las Cruces in order to introduce the planning process to the public and solicit comments. On September 22, 2010, the BLM held a public workshop to get feedback on preliminary RMP alternatives. A Notice of Availability of the Draft RMP/EIS was published in the **Federal Register** on July 20, 2012 (77 FR 42758) to announce a 90-day public review and comment period of the draft document. During this period, the BLM held one public open-house meeting in Las Cruces for the purpose of assisting the public in its review and to solicit their comments. The draft RMP/EIS was sent to multiple Federal, tribal, State, and local government agencies and interested parties and was made available for viewing at the Las Cruces District Office, the New Mexico State Office, and on the Internet. During the comment period, the Las Cruces District Office received about 45 comment letters, emails, or comment forms. Each submission was carefully reviewed to identify substantive comments in accordance with regulations on the implementation of NEPA (40 CFR 1503.4). Comments on the draft RMP/EIS received from the public and internal BLM reviews were considered and incorporated as appropriate into the proposed RMP/final EIS. Public comments resulted in the addition of data and clarifying text, but did not significantly change proposed land use plan decisions.

Instructions for filing a protest with the Director of the BLM regarding the proposed plan may be found in the ''Dear Reader Letter'' of the proposed RMP/final EIS and at 43 CFR 1610.5–2. All protests must be in writing and mailed to the appropriate address, as set forth in the **ADDRESSES** section above. Emailed protests will not be accepted as valid protests unless the protesting party also provides the original letter by either regular or overnight mail postmarked by the close of the protest period. Under these conditions, the BLM will consider the emailed protest as an advance copy and it will receive full consideration. If you wish to provide the BLM with such advance

notification, please direct emails to *protest@blm.gov.*

Before including your address, phone number, email address, or other personal identifying information in your comment, you should be aware that your entire comment—including your personal identifying information—may be made publicly available at any time. While you can ask us in your comment to withhold your personal identifying information from public review, we cannot guarantee that we will be able to do so.

Authority: (40 CFR 1506.6; 40 CFR 1506.10; 43 CFR 1610.2; 43 CFR 1610.5–2)

Sheila Mallory,

Acting, State Director.

[FR Doc. 2014–30169 Filed 12–24–14; 8:45 am]

BILLING CODE 4310–FB–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[LLCAD06800.L17110000.FM0000]

Notice of Availability of a Draft Environmental Impact Statement for the Proposed Land Exchange Between the Bureau of Land Management and the Agua Caliente Band of Cahuilla Indians, California

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice.

SUMMARY: In accordance with the National Environmental Policy Act of 1969, as amended, the Bureau of Land Management (BLM), Palm Springs-South Coast Field Office, has prepared a Draft Environmental Impact Statement (EIS) for the Proposed Land Exchange between the BLM and the Agua Caliente Band of Cahuilla Indians (Tribe) and by this notice is announcing the opening of the comment period.

DATES: To ensure comments will be considered, the BLM must receive written comments on the Draft EIS for the Proposed Land Exchange between the BLM and the Tribe within 90 days following the date the Environmental Protection Agency publishes its Notice of Availability in the **Federal Register**. The BLM will announce future meetings or hearings and any other public involvement activities at least 15 days in advance through public notices, media releases, and/or mailings.

ADDRESSES: You may submit comments related to the Draft EIS for the Proposed Land Exchange between the BLM and the Tribe by any of the following methods:

- *Email: AguaCalienteExchange@blm.gov.*
- *Fax:* 760–833–7199.
- *Mail:* National Monument Manager, BLM Palm Springs-South Coast Field Office, 1201 Bird Center Dr., Palm Springs, CA 92262.

Copies of the Draft EIS for the Proposed Land Exchange between the BLM and the Tribe are available in the Palm Springs-South Coast Field Office at the above address, or on the Internet at *http://www.blm.gov/ca/st/en/fo/palmsprings.html.*

FOR FURTHER INFORMATION CONTACT: Jim Foote, National Monument Manager, telephone 760–833–7136; address BLM Palm Springs-South Coast Field Office, 1201 Bird Center Dr., Palm Springs, CA 92262; email *jfoote@blm.gov.* Persons who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339 to contact the above individual during normal business hours. The FIRS is available 24 hours a day, 7 days a week, to leave a message or question with the above individual. You will receive a reply during normal business hours.

SUPPLEMENTARY INFORMATION: The BLM proposes to exchange certain Federal lands for properties owned by the Agua Caliente Band of Cahuilla Indians. The selected Federal lands and offered tribal lands occur within the Santa Rosa and San Jacinto Mountains National Monument. The exchange would transfer all or portions of the following described Federal lands to the Agua Caliente Band of Cahuilla Indians:

San Bernardino and Base Meridian, California

T.4S. R.4E.
Section 16, all;
Section 17, W1/2NW1/4NE1/4, W1/2E1/2NW1/4NE1/4;
Section 18, W1/2NE1/4, N1/2NE1/4SW1/4, S1/2 of lot 1, N1/2 of lot 2;
Section 36, lots 1–4, W1/2NE1/4, W1/2SE1/4, E1/2SW1/4, SE1/4NW1/4, N1/2SW1/4SW1/4, E1/2NW1/4SW1/4, SW1/4NW1/4SW1/4, S1/2NW1/4NW1/4SW1/4.
T.5S. R.4E.
Section 5, lots 1–4, S1/2NE1/4, S1/2NW1/4, S1/2;
Sections 16, 21, 27, 29, 32, and 36, all.

The described Federal lands were withdrawn from all forms of appropriation under the public land laws and mining laws under Public Law 106–351 dated October 24, 2000. However, Section 5(i) of Public law 106–351 specifically allows the exchange of Federal lands within the monument in certain circumstances.

The United States would acquire all or portions of the following described land from the Agua Caliente Band of Cahuilla Indians:

San Bernardino and Base Meridian, California

T.5S. R. 5E.
Section 7, all;
Section 19, all;
Section 20, W1/2W1/2.

The Draft EIS describes and analyzes alternatives based on varying amounts of Federal lands to be exchanged for tribal lands, as well as the no action alternative. The BLM's preferred alternative eliminates certain Federal lands from consideration that, if exchanged, would be contrary to the purpose of the exchange, which is to promote effective and efficient management of the Federal and tribal lands by reducing the extent of ''checkerboard'' landownership, thereby providing the BLM and the Tribe with more logical and consistent land management responsibility in the Monument.

Important issues identified by the public during scoping address purpose and need for the proposed land exchange; conformance with statutes, regulations, policies, and land use plans; development of alternatives and mitigation measures; public access to trails; protection of threatened and endangered species; and potential development of exchanged lands. Responses to specific questions related to these issues are provided in the Draft EIS. Lands acquired by the BLM through the land exchange would be managed in accordance with applicable statutes and regulations, as well as the California Desert Conservation Area Plan, as amended, and the Santa Rosa and San Jacinto Mountains National Monument Management Plan. Lands acquired by the Tribe would be managed in accordance with its Land Use Ordinance, Indian Canyons Master Plan, and Tribal Habitat Conservation Plan.

Public participation has been sought through a comment period provided for an Environmental Assessment that preceded preparation of the Draft EIS, and during the scoping process to identify issues to be addressed in the Draft EIS for the proposed land exchange. Please note that public comments and information submitted including names, street addresses, and email addresses of persons who submit comments will be available for public review and disclosure at the above address during regular business hours (8 a.m. to 4 p.m.), Monday through Friday, except holidays.

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.

Authority: 40 CFR 1506.6, 40 CFR 1506.10.

John R. Kalish,

Field Manager, Palm Springs-South Coast Field Office.

[FR Doc. 2014–30324 Filed 12–24–14; 8:45 am]

BILLING CODE 4310–40–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[LLAK910000 L13100000.DB0000 LXSINSSI0000]

Notice of Public Meeting, North Slope Science Initiative—Science Technical Advisory Panel

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of public meeting.

SUMMARY: In accordance with the Federal Land Policy and Management Act of 1976 (FLPMA) as amended and the Federal Advisory Committee Act of 1972 (FACA), the North Slope Science Initiative (NSSI)—Science Technical Advisory Panel (STAP), Bureau of Land Management, U.S. Department of the Interior will meet as indicated below.

DATES: The meeting will be January 26–28, 2015, at the Inupiat Heritage Center, 5421 North Star Blvd., Barrow, Alaska. The meetings will begin at 1:00 p.m. on Monday, January 26, and at 9:00 a.m. on Tuesday, January 27 and Wednesday, January 28. The NSSI STAP will receive public comment between 3:00 p.m. and 4:00 p.m. on Tuesday, January 27.

FOR FURTHER INFORMATION CONTACT: Denny Lassuy, Deputy Director, North Slope Science Initiative and Acting Designated Federal Officer, North Slope Science Initiative, AK–910, c/o Bureau of Land Management, 222 W. Seventh Avenue, #13, Anchorage, AK 99513, 907–271–3431, or email *dlassuy@blm.gov*. Persons who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1 (800) 877–8339 to contact the above individual during normal business hours. The FIRS is available 24 hours a day, seven days a week, to leave a message or question with the above individual. You will receive a reply during normal business hours.

SUPPLEMENTARY INFORMATION: The NSSI STAP provides advice and recommendations to the NSSI Oversight Group regarding priority information needs for management decisions across the North Slope of Alaska. These priority information needs may include recommendations on inventory, monitoring, and research activities that contribute to informed resource management decisions.

The NSSI STAP meeting agenda will include: Continue dialogue for prioritizing inventory, monitoring and research using the North Slope Scenarios Project results for the North Slope and adjacent marine environments; Continue dialogue on a long-term monitoring strategy for the North Slope; Review the status of the emerging issue summaries released October 2010 and revised June 2014; and a joint meeting on Wednesday, January 28, with the NSSI Oversight Group.

The public may present written comments to the NSSI STAP through the Deputy Director, NSSI. Each formal meeting will have time allotted for public comments. Depending on the number of persons wishing to comment and time available, the time for individual oral comments may be limited. Individuals who plan to attend and need special assistance, such as sign language interpretation, transportation, or other reasonable accommodations, should contact the Deputy Director, NSSI. Before including your address, phone number, email address, or other personal identifying information in your comment, you should be aware that your entire comment—including your personal identifying information—may be made publicly available at any time. While you can ask us in your comment to withhold your personal identifying information from public review, we cannot guarantee that we will be able to do so.

Dated: December 19, 2014.

Bud C. Cribley,

State Director.

[FR Doc. 2014–30298 Filed 12–24–14; 8:45 am]

BILLING CODE 4310–JA–P

DEPARTMENT OF THE INTERIOR

National Park Service

[NPS–SERO–CAHA–16843; PPSESEROC3, PPMPSAS1Y.YP0000]

Notice of Intent To Prepare a Draft Environmental Impact Statement for a Special Use Permit to Dare County for Activities Related to the Protection of North Carolina Highway 12 in Cape Hatteras National Seashore, North Carolina

AGENCY: National Park Service, Interior.

ACTION: Notice of Intent.

SUMMARY: The National Park Service (NPS) is preparing a draft Environmental Impact Statement (EIS) in response to a request from Dare County, North Carolina, for a Special Use Permit for activities related to the protection of North Carolina Highway 12 (Highway 12) in the Buxton area. The EIS will assist the NPS in determining whether, where, and under what conditions the NPS would issue a Special Use Permit to Dare County for actions related to the protection of Highway 12 in the Buxton Village area. The NPS is considering this proposal to address erosion issues and prevent future emergency closure of these areas of Highway 12 due to storm impacts to the road in this narrow area of Hatteras Island. This notice initiates the public scoping process for this EIS.

DATES: The date, time, and location of public meetings will be announced through the NPS Planning, Environment, and Public Comment (PEPC) Web site *http://parkplanning.nps.gov/caha,* the Cape Hatteras National Seashore Web site, and in local media outlets. The NPS will conduct public meetings in the local area to receive input from interested parties on issues, concerns, and suggestions regarding the potential to issue a Special Use Permit to Dare County for activities related to the protection of Highway 12 in the Buxton area. The comment period will be announced at the meetings and will be published on the Cape Hatteras National Seashore Web site for this project at *http://parkplanning.nps.gov/caha.*

ADDRESSES: Interested individuals, organizations, and agencies are encouraged to provide written comments or suggestions to assist the NPS in determining the scope of issues related to the issuance of a Special Use Permit to Dare County for activities related to the protection of Highway 12 near Buxton. Written comments may be sent to: Superintendent, 1401 National

Park Road, Manteo, North Carolina 27954.

FOR FURTHER INFORMATION CONTACT: Superintendent, 1401 National Park Road, Manteo, North Carolina 27954 at the address shown above, by phone at (252) 475–9000, or via email at *CAHA_Superintendent@nps.gov.*

SUPPLEMENTARY INFORMATION: Pursuant to Section 102(2)(c) of the National Environmental Policy Act of 1969, a draft EIS will be prepared and presented to the public for review and comment, followed by preparation and availability of the final EIS. Alternatives to be developed and considered in the EIS will likely focus on strategies for the protection of Highway 12, particularly in and around the areas of Buxton village that are regularly impacted or threatened by storms. The EIS will look to identify practical solutions, such as the consideration of beach nourishment, to address these threats and ongoing impacts. Before including your address, phone number, email address, or other personal identifying information in any 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.

The responsible official for this EIS is the Regional Director, NPS Southeast Region, 100 Alabama Street SW., 1924 Building, Atlanta, Georgia 30303.

Dated: December 19, 2014.

Stan Austin,

Regional Director, Southeast Region.

[FR Doc. 2014–30352 Filed 12–24–14; 8:45 am]

BILLING CODE 4310–JD–P

DEPARTMENT OF THE INTERIOR

Bureau of Reclamation

[RR83570000, 145R5065C6, RX.59389832.1055700]

Agency Information Collection Activities Under OMB Review; Renewal of a Currently Approved Collection (OMB Control Number 1006–0028)

AGENCY: Bureau of Reclamation, Interior.

ACTION: Notice and request for comments.

SUMMARY: We, the Bureau of Reclamation, have forwarded the following Information Collection Request to the Office of Management and Budget (OMB) for review and approval: Recreation Visitor Use Surveys, OMB Control Number 1006–0028. The Information Collection Request describes the nature of the information collection and its expected cost burden.

DATES: OMB has up to 60 days to approve or disapprove this Information Collection Request, but may respond after 30 days; therefore, public comments must be received on or before January 28, 2015.

ADDRESSES: Send written comments to the Desk Officer for the Department of the Interior at the Office of Management and Budget, Office of Information and Regulatory Affairs, via facsimile to (202) 395–5806, or email to *oira_submission@omb.eop.gov.* A copy of your comments should also be directed to Jerome Jackson, Bureau of Reclamation, 84–57000, P.O. Box 25007, Denver, CO 80225–0007, or via email to *jljackson@usbr.gov.* Please reference OMB Control Number 1006–0028 in your comments.

FOR FURTHER INFORMATION CONTACT: Jerome Jackson, Bureau of Reclamation, at (303) 445–2712. You may also view the Information Collection Request at *www.reginfo.gov.*

SUPPLEMENTARY INFORMATION:

I. Abstract

The Bureau of Reclamation is responsible for recreation development at all of its reservoirs. Presently, there are 289 designated recreation areas on our lands within the 17 Western States. We must be able to respond to emerging trends, changes in the demographic profile of users, changing values, needs, wants and desires, and conflicts between user groups. Statistically valid and up-to-date data derived from the user is essential to developing and providing recreation programs relevant to today's visitor.

The required 60-day comment period for the Recreation Visitor Use Surveys was initiated by a notice published in the **Federal Register** on August 14, 2014 (79 FR 47673). No comments were received.

II. Data

OMB Control Number: 1006–0028.

Title: Recreation Visitor Use Surveys.

Frequency: Varies by survey.

Respondents: Respondents to the surveys will be members of the public engaged in recreational activities on our lands. The surveys target people engaged in specific activities such as boating on a specific lake/river, or people camping at a developed campground. Visitors will primarily consist of local residents, people from large metropolitan areas in the vicinity of the lake/river, and visitors from out of state.

Estimated Total Number of Respondents: 6,141.

Estimated Number of Responses per Respondent: 1.0.

Estimated Total of Annual Responses: 6,141.

Estimated Total Annual Burden Hours on Respondents: 2,044.

ESTIMATE OF BURDEN FOR EACH FORM

Survey instrument	Burden estimate per survey (in minutes)	Number of surveys (times/yr.)	Number of respondents per survey	Total estimated number of respondents	Total annual hour burden
Marina Survey	20	2	278	556	185
Campground Survey	25	2	278	556	232
River Instream Flow Survey	25	2	278	556	232
Reservoir Preferred Water Level Survey	25	2	278	556	232
Lake/River Visit Expenditure Survey	15	2	278	556	139
Recreation Activities Survey	25	2	278	556	232
Recreation Management Survey	20	2	278	556	185
Recreation Fee Survey	10	1	581	581	97
Recreation Development Survey	10	2	278	556	93
Water Level Impacts on Recreation Boating Use	20	2	278	556	185
River Recreation Quality Survey	25	2	278	556	232

ESTIMATE OF BURDEN FOR EACH FORM—Continued

Survey instrument	Burden estimate per survey (in minutes)	Number of surveys (times/yr.)	Number of respondents per survey	Total estimated number of respondents	Total annual hour burden
Totals				6,141	2,044

In addition, there are an estimated 1,575 number of contacts who will not respond. These non-respondents account for 13 total burden hours per year.

III. Request for Comments

We invite comments concerning this information collection on:

(a) Whether the proposed collection of information is necessary for the proper performance of our functions, including whether the information will have practical use;

(b) The accuracy of our burden estimate for the proposed collection of information, including the validity of the methodology and assumptions used;

(c) Ways to enhance the quality, usefulness, and clarity of the information to be collected; and

(d) Ways to minimize the burden of the collection of information on respondents.

We will summarize written responses to this notice and address them in our submission for OMB approval. As a result of your comments, we will make any necessary adjustments to the burden in our submission to OMB.

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. Reclamation will display a valid OMB control number on the forms.

IV. Public Disclosure of Comments

Before including your address, phone number, email address, or other personal identifying information in your comment, you should be aware that your entire comment—including your personal identifying information—may be made publicly available at any time. While you can ask us in your comment to withhold your personal identifying information from public review, we cannot guarantee that we will be able to do so.

Dated: December 16, 2014.

Karl Stock,

Acting Director, Policy and Administration.

[FR Doc. 2014–30294 Filed 12–24–14; 8:45 am]

BILLING CODE 4332–90–P

DEPARTMENT OF THE INTERIOR

Bureau of Reclamation

[RR83550000, 145R5065C6, RX.59389832.1009676]

Change in Discount Rate for Water Resources Planning

AGENCY: Bureau of Reclamation, Interior.

ACTION: Notice of change.

SUMMARY: The Water Resources Planning Act of 1965 and the Water Resources Development Act of 1974 require an annual determination of a discount rate for Federal water resources planning. The discount rate for Federal water resources planning for fiscal year 2015 is 3.375 percent. Discounting is to be used to convert future monetary values to present values.

DATES: This discount rate is to be used for the period October 1, 2014, through and including September 30, 2015.

FOR FURTHER INFORMATION CONTACT: Max Millstein, Bureau of Reclamation, Reclamation Law Administration Division, Denver, Colorado 80225; telephone: 303–445–2853.

SUPPLEMENTARY INFORMATION: Notice is hereby given that the interest rate to be used by Federal agencies in the formulation and evaluation of plans for water and related land resources is 3.375 percent for fiscal year 2015.

This rate has been computed in accordance with Section 80(a), Pub. L. 93–251 (88 Stat. 34), and 18 CFR 704.39, which: (1) Specify that the rate will be based upon the average yield during the preceding fiscal year on interest-bearing marketable securities of the United States which, at the time the computation is made, have terms of 15 years or more remaining to maturity (average yield is rounded to nearest one-eighth percent); and (2) provide that the rate will not be raised or lowered more than one-quarter of 1 percent for any year. The U.S. Department of the Treasury calculated the specified average to be 3.3378 percent. This rate, rounded to the nearest one-eighth percent, is 3.375 percent, which is a change of less than the allowable one-quarter of 1 percent. Therefore, the fiscal year 2015 rate is 3.375 percent.

The rate of 3.375 percent will be used by all Federal agencies in the formulation and evaluation of water and related land resources plans for the purpose of discounting future benefits and computing costs or otherwise converting benefits and costs to a common-time basis.

Dated: November 20, 2014.

Roseann Gonzales,

Director, Policy and Administration.

[FR Doc. 2014–30426 Filed 12–24–14; 8:45 am]

BILLING CODE 4332–90–P

DEPARTMENT OF JUSTICE

Notice of Lodging of Proposed Consent Decree Under CERCLA

On December 15, 2014, the Department of Justice lodged a proposed Consent Decree with the United States District Court for the Eastern District of Michigan, in the lawsuit entitled *United States* v. *Riverview Trenton Railroad Company, Civ. Action No. 2:14–cv–14707–PDB–MJH.*

Riverview Trenton Railroad Company (''RTRR'') owns property that was formerly part of the McLouth Steel facility located near Detroit, Michigan (''RTRR Site''). The proposed settlement resolves the United States' claims against RTRR under Section 107 of the Comprehensive Environmental Response, Compensation, and Liability Act, 42 U.S.C. 9607, for recovery of response costs incurred at the RTRR Site. Under the proposed Consent Decree, RTRR will pay $675,000.00 to resolve the Government's claims.

The publication of this notice opens a period for public comment on the Consent Decree. Comments should be addressed to the Assistant Attorney General, Environment and Natural Resources Division, and should refer to *United States* v. *Riverview Trenton Railroad Company, Civ. Action No. 2:14–cv–14707–PDB–MJH,* D.J. Ref. No. 90–11–3–10709. All comments must be submitted no later than thirty (30) days after the publication date of this notice. Comments may be submitted either by email or by mail:

To submit comments:	Send them to:
By e-mail	pubcomment-ees.enrd@usdoj.gov.
By mail	Assistant Attorney General, U.S. DOJ—ENRD, P.O. Box 7611, Washington, DC 20044–7611.

During the public comment period, the Consent Decree may be examined and downloaded at this Justice Department Web site: *http://www.usdoj.gov/enrd/Consent_Decrees.html.* We will provide a paper copy of the Consent Decree upon written request and payment of reproduction costs. Please mail your request and payment to: Consent Decree Library, U.S. DOJ—ENRD, P.O. Box 7611, Washington, DC 20044–7611.

Please enclose a check or money order for $5.75 (25 cents per page reproduction cost) payable to the United States Treasury.

Randall M. Stone,

Acting Assistant Section Chief, Environmental Enforcement Section, Environment and Natural Resources Division.

[FR Doc. 2014–30331 Filed 12–24–14; 8:45 am]

BILLING CODE 4410–15–P

DEPARTMENT OF LABOR

Employment and Training Administration

Comment Request for Information Collection for the Evaluation of Grants Serving Young Offenders; New Collection

AGENCY: Employment and Training Administration, Labor.

ACTION: Notice.

SUMMARY: The Department, as part of its continuing effort to reduce paperwork and respondent burden, conducts a pre-clearance consultation program to provide the public and Federal agencies with an opportunity to comment on proposed and/or continuing collections of information in accordance with the Paperwork Reduction Act of 1995 (PRA) [44 U.S.C. 3505(c)(2)(A)]. PRA helps to ensure that requested data can be provided in the desired format, reporting burden (time and financial resources) is minimized, collection instruments are clearly understood, and the impact of the collection requirements on respondents can be properly assessed.

Currently, the Employment and Training Administration (ETA) is soliciting comments concerning the information collection activities associated with the random assignment evaluation of ETA-funded grants serving young offenders, specifically, the Face Forward Grants (FFG) Rounds I and II; and the High-Poverty, High-Crime Communities Grants (HPHCG). These grants are aimed at serving young adult offenders, juvenile offenders, and students in high-risk high schools; and provide specific supports and interventions, such as enrollment in school or job training programs as well as access to housing, the availability of adult mentors, mental health services, and supporting social services through referrals. The objective of the evaluation is to determine whether these grants improve youth educational and employment outcomes, and reduce recidivism.

DATES: Written comments must be submitted to the office listed in the addresses section below on or before February 27, 2015.

ADDRESSES: Submit written comments to Gloribel Nieves-Cartagena, Office of Policy Development and Research, Room N–5641, Employment and Training Administration, U.S. Department of Labor, 200 Constitution Avenue NW., Washington, DC 20210. Telephone number: 202–693–2771 (this is not a toll-free number). Individuals with hearing or speech impairments may access the telephone number above via TTY by calling the toll-free Federal Information Relay Service at 1–877–889–5627 (TTY/TDD). Fax: 202–693–2766. Email: *nieves-cartagena.gloribel@dol.gov.* A copy of the proposed information collection request with applicable supporting documentation including a description of likely respondents, proposed frequency of responses, and estimated total burden can be obtained free of charge by contacting the office listed above.

SUPPLEMENTARY INFORMATION:

I. Background

For those leaving incarceration, overcoming the barriers to successful reentry may mean the difference between living a healthy and fulfilling life in a community and facing instability and potential homelessness. Understanding the ways Federal programs and systems interact with the formerly incarcerated is critical to helping individuals overcome these barriers. Additionally, it is important that employers and job seekers understand the facts around the role of a criminal record in making hiring decisions.

The Department assists young ex-offenders in finding employment and making a smooth transition to community life through employment-centered programs that include mentoring, job training, and other transitional services implemented by local faith-based and community organizations in collaboration with the American Job Centers.

In Program Years 2012 and 2013, the Department awarded $120 million in funds to implement projects aimed at serving young adult offenders, juvenile offenders, and students in high-risk high schools. The FFG and the HPHCG programs are holistic program models offering a full complement of services including educational programs, vocational and employment programs, and mentoring. In addition, the programs target the same youth outcomes-educational attainment, improved labor market outcomes, and reduced recidivism.

Understanding the effectiveness of these Department of Labor-funded youth offender programs requires a rigorous evaluation that can address potential biases resulting from fundamental differences between program participants and nonparticipants. ETA has contracted with Mathematica Policy Research and its subcontractor, Social Policy Research Associates, to conduct (1) a random assignment evaluation to measure the impact of the youth offender programs, and (2) a process study to understand program implementation and help interpret impact study results.

The proposed evaluation will include two data collection efforts: (1) A request for youth consent to participate in the random assignment study in the Contact Information Form; and (2) baseline and contact information collected for the random assignment evaluation, in the Baseline Information Form.

Understanding the effectiveness of youth offender programs requires data collection from multiple sources. This evaluation effort intends to collect a rich set of baseline, service, and outcome data on treatment and control group members. The Baseline Information Form will enable the evaluators to describe the characteristics of study participants at the time they are randomly assigned to the treatment or control group, ensure that random assignment was conducted properly, create subgroups for the analysis, provide contact information to locate individuals for follow-up surveys, and improve the precision of the impact estimates.

II. Desired Focus of Comments

The Department is particularly interested in comments which:

• Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

• evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

• enhance the quality, utility, and clarity of the information to be collected; and

• minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.,* permitting electronic submissions of responses.

III. Current Actions

Type of Review: New Collection.

Title: Evaluation of ETA Grants Serving Young Offenders.

OMB Number: 1205–0NEW.

Affected Public: Individuals or households (Young ex-offenders) & private sector (staff).

BURDEN ESTIMATES FOR CONTACT INFORMATION FORM AND BASELINE INFORMATION FORM DATA COLLECTION FOR YOUNG OFFENDERS GRANTS EVALUATION

	Number of respondents	Burden per response (minutes)	Total respondent burden (hours)
Youth	5,000	13	1,083
Staff	40	13 minutes per youth, with an average of 125 youth per staff member	1,083
Total	5,040		2,166

Total Estimated Annual Other Costs Burden: 0.

We will summarize and/or include in the request for OMB approval of the ICR, the comments received in response to this comment request; they will also become a matter of public record.

Portia Wu,

Assistant Secretary for Employment and Training, Labor.

[FR Doc. 2014–30284 Filed 12–24–14; 8:45 am]

BILLING CODE 4510–FN–P

DEPARTMENT OF LABOR

Bureau of Labor Statistics

Proposed Collection, Comment Request

ACTION: Notice.

SUMMARY: The Department of Labor, as part of its continuing effort to reduce paperwork and respondent burden, conducts a pre-clearance consultation program to provide the general public and Federal agencies with an opportunity to comment on proposed and/or continuing collections of information, in accordance with the Paperwork Reduction Act of 1995 (PRA95) [44 U.S.C. 3506(c)(2)(A)]. This program helps to ensure that requested data can be provided in the desired format, reporting burden (time and financial resources) is minimized, collection instruments are clearly understood, and the impact of collection requirements on respondents can be properly assessed. The Bureau of Labor Statistics (BLS) is soliciting comments concerning the proposed extension of the ''Job Openings and Labor Turnover Survey.'' A copy of the proposed information collection request (ICR) can be obtained by contacting the individual listed below in the Addresses section of this notice.

DATES: Written comments must be submitted to the office listed in the **ADDRESSES** section below on or before February 27, 2015.

ADDRESSES: Send comments to Erin Good, BLS Clearance Officer, Division of Management Systems, Bureau of Labor Statistics, Room 4080, 2 Massachusetts Avenue NE., Washington, DC 20212. Written comments also may be transmitted by fax to 202–691–5111 (this is not a toll free number.)

FOR FURTHER INFORMATION CONTACT: Erin Good, BLS Clearance Officer, telephone number 202–691–7763. (See **ADDRESSES** section.)

SUPPLEMENTARY INFORMATION:

I. Background

The Job Openings and Labor Turnover Survey (JOLTS) collects data on job vacancies, labor hires, and labor separations. As the monthly JOLTS time series grow longer, their value in assessing the business cycle, the difficulty that employers have in hiring workers, and the extent of the mismatch between the unused supply of available workers and the unmet demand for labor by employers will increase. The study of the complex relationship between job openings and unemployment is of particular interest to researchers. While these two measures are expected to move in opposite directions over the course of the business cycle, their relative levels and movements depend on the efficiency of the labor market in matching workers and jobs.

Along with the job openings rate, trends in hires and separations may broadly identify which aggregate industries face the tightest labor markets. Quits rates, the number of persons who quit during an entire month as a percentage of total employment, may provide clues about workers' views of the labor market or their success in finding better jobs. In addition, businesses will be able to compare their own turnover rates to the national, regional, and major industry division rates.

The BLS uses the JOLTS form to gather information on employment, job openings, hires, and total separations from business establishments. The information is collected once a month at the BLS Data Collection Center (DCC) in Atlanta, Georgia. The information is collected using Computer Assisted Telephone Interviewing (CATI), Web, email, and FAX. An establishment is in the sample for 24 consecutive months.

II. Current Action

Office of Management and Budget clearance is being sought for the JOLTS. The BLS is requesting an extension to the existing clearance for the JOLTS. There are no major changes being made to the forms, procedures, data collection methodology, or other aspects of the survey.

III. Desired Focus of Comments

The Bureau of Labor Statistics 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.

• Minimize the burden of the collection of information on those who are to respond, through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.,* permitting electronic submissions of responses.

Type of Review: Extension of a currently approved collection.

Agency: Bureau of Labor Statistics.

Title: Job Openings and Labor Turnover Survey.

OMB Number: 1220–0170.

Affected Public: Federal Government; State, Local, or Tribal governments; Businesses or other for-profit; Not-for-profit institutions; Small businesses and organizations.

Affected public	Total respondents	Frequency	Total responses	Average time per response (min.)	Estimated total burden
Private	9,017	Monthly	108,204	10	18,034
State, Local, & Tribal Gov't	1,415	Monthly	16,980	10	2,830
Federal Gov't	393	Monthly	4,716	10	786
TOTALS	10,825	Monthly	129,899	10	21,650

Total Burden Cost (capital/startup): $0.

Total Burden Cost (operating/maintenance): $0.

Comments submitted in response to this notice will be summarized and/or included in the request for Office of Management and Budget approval of the information collection request; they also will become a matter of public record.

Signed at Washington, DC, this 19th day of December 2014.

Eric Molina,

Acting Chief, Division of Management Systems, Bureau of Labor Statistics.

[FR Doc. 2014–30249 Filed 12–24–14; 8:45 am]

BILLING CODE 4510–24–P

NUCLEAR REGULATORY COMMISSION

[NRC–2014–0001]

Sunshine Act Meeting Notice

DATE: December 29, 2014; January 5, 12, 19, 26, February 2, 2015.

PLACE: Commissioners' Conference Room, 11555 Rockville Pike, Rockville, Maryland.

STATUS: Public.

Week of December 29, 2014

There are no meetings scheduled for the week of December 29, 2014.

Week of January 5, 2015—Tentative

There are no meetings scheduled for the week of January 5, 2015.

Week of January 12, 2015—Tentative

There are no meetings scheduled for the week of January 12, 2015.

Week of January 19, 2015—Tentative

There are no meetings scheduled for the week of January 19, 2015.

Week of January 26, 2015—Tentative

Thursday, January 29, 2015

9 a.m. Briefing on Foreign Ownership, Control, and Domination (Public Meeting) (Contact: Shawn Harwell, 301–415–1309)

This meeting will be webcast live at the Web address—*http://www.nrc.gov/.*

Week of February 2, 2015—Tentative

Monday, February 2, 2015

1 p.m. Discussion of International Activities (Closed—Ex. 9)

Wednesday, February 4, 2015

8:30 a.m. Hearing on Combined License for Fermi, Unit 3 (Public Meeting) (Contact: Adrian Muniz, 301–415–4093)

This meeting will be webcast live at the Web address—*http://www.nrc.gov/.*

* * * * *

The schedule for Commission meetings is subject to change on short notice. For more information or to verify the status of meetings, contact Glenn Ellmers at (301) 415–0442 or via email at *Glenn.Ellmers@nrc.gov.*

* * * * *

The NRC Commission Meeting Schedule can be found on the Internet at: *http://www.nrc.gov/public-involve/public-meetings/schedule.html.*

* * * * *

The NRC provides reasonable accommodation to individuals with disabilities where appropriate. If you need a reasonable accommodation to participate in these public meetings, or need this meeting notice or the transcript or other information from the public meetings in another format (*e.g.* braille, large print), please notify Kimberly Meyer, NRC Disability Program Manager, at 301–287–0727, by videophone at 240–428–3217, or by email at *Kimberly.Meyer-Chambers@nrc.gov.* Determinations on requests for reasonable accommodation will be made on a case-by-case basis.

* * * * *

Members of the public may request to receive this information electronically. If you would like to be added to the distribution, please contact the Office of the Secretary, Washington, DC 20555 (301–415–1969), or send an email to *Patricia.Jimenez@nrc.gov* or *Brenda.Akstulewicz@nrc.gov.*

Dated: December 23, 2014.

Glenn Ellmers,

Policy Coordinator, Office of the Secretary.

[FR Doc. 2014–30542 Filed 12–24–14; 11:15 am]

BILLING CODE 7590–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. IC–31387]

Notice of Applications for Deregistration Under Section 8(f) of the Investment Company Act of 1940

December 19, 2014.

The following is a notice of applications for deregistration under section 8(f) of the Investment Company Act of 1940 for the month of December 2014. A copy of each application may be obtained via the Commission's Web site by searching for the file number, or for an applicant using the Company name box, at *http://www.sec.gov/search/search.htm* or by calling (202) 551–8090. An order granting each application will be issued unless the

SEC orders a hearing. Interested persons may request a hearing on any application by writing to the SEC's Secretary at the address below and serving the relevant applicant with a copy of the request, personally or by mail. Hearing requests should be received by the SEC by 5:30 p.m. on January 13, 2015, and should be accompanied by proof of service on applicants, in the form of an affidavit or, for lawyers, a certificate of service. Pursuant to Rule 0–5 under the Act, hearing requests should state the nature of the writer's interest, any facts bearing upon the desirability of a hearing on the matter, the reason for the request, and the issues contested. Persons who wish to be notified of a hearing may request notification by writing to the Commission's Secretary.

ADDRESSES: The Commission: Brent J. Fields, Secretary, U.S. Securities and Exchange Commission, 100 F Street NE., Washington, DC 20549–1090.

FOR FURTHER INFORMATION CONTACT: Diane L. Titus at (202) 551–6810, SEC, Division of Investment Management, Chief Counsel's Office, 100 F Street NE., Washington, DC 20549–8010.

Morgan Creek Global Equity Long/Short Fund [File No. 811–22460]

Summary: Applicant, a closed-end investment company, seeks an order declaring that it has ceased to be an investment company. On June 30, 2012, applicant made a liquidating distribution to its shareholders, based on net asset value. Applicant incurred no expenses in connection with the liquidation.

Filing Date: The application was filed on December 10, 2014.

Applicant's Address: 301 West Barbee Chapel Rd., Suite 200, Chapel Hill, NC 27517.

WY Funds [File No. 811–21675]

Summary: Applicant seeks an order declaring that it has ceased to be an investment company. On September 26, 2014, applicant made a liquidating distribution to its shareholders, based on net asset value. Expenses of $2,400 incurred in connection with the liquidation were paid by Wertz York Capital Management Group, LLC, applicant's investment adviser.

Filing Date: The application was filed on December 5, 2014.

Applicant's Address: 5502 N. Nebraska Ave., Tampa, FL 33604.

Pax World Funds Trust II [File No. 811–22187]

Summary: Applicant seeks an order declaring that it has ceased to be an investment company. Applicant transferred its assets to Pax World Funds Series Trust I, and on March 31, 2014, made a distribution to its shareholders based on net asset value. Expenses of approximately $419,000 incurred in connection with the reorganization were paid by the acquiring fund and Pax World Management LLC, applicant's investment adviser.

Filing Date: The application was filed on December 2, 2014.

Applicant's Address: 30 Penhallow Street, Suite 400, Portsmouth, NH 03801.

COUNTRY Mutual Funds Trust [File No. 811–10475]

Summary: Applicant seeks an order declaring that it has ceased to be an investment company. On October 31, 2013, applicant made a liquidating distribution to its shareholders, based on net asset value. Expenses of $57,097 incurred in connection with the liquidation were paid by applicant and COUNTRY Fund Management, applicant's investment adviser.

Filing Date: The application was filed on November 25, 2014.

Applicant's Address: 1705 North Towanda Ave., Bloomington, IL 61702.

BlackRock Income Opportunity Trust, Inc. [File No. 811–6443]

Summary: Applicant, a closed-end investment company, seeks an order declaring that it has ceased to be an investment company. Applicant transferred its assets to BlackRock Core Bond Trust, and on November 10, 2014, made a distribution to its shareholders based on net asset value. Expenses of approximately $409,641 incurred in connection with the reorganization were paid by applicant and BlackRock Advisors, LLC, applicant's investment adviser.

Filing Date: The application was filed on November 21, 2014.

Applicant's Address: 100 Bellevue Pkwy., Wilmington, DE 19809.

J.P. Morgan Series Trust II [File No. 811–8212]

Summary: Applicant seeks an order declaring that it has ceased to be an investment company. Applicant transferred its assets to JPMorgan Insurance Trust, and on April 24, 2009, made distributions to its shareholders based on net asset value. Expenses of $676,471 incurred in connection with the reorganization were paid by J.P. Morgan Investment Management Inc. and JPMorgan Funds Management, Inc., applicant's investment adviser and administrator, and JPMorgan Investment Advisors Inc., investment adviser to the acquiring fund.

Filing Dates: The application was filed on July 3, 2012, and amended on September 13, 2012 and November 7, 2014.

Applicant's Address: 270 Park Ave., New York, NY 10017.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

Kevin M. O'Neill,

Deputy Secretary.

[FR Doc. 2014–30278 Filed 12–24–14; 8:45 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. IA–3987/803–00217]

Crestview Advisors, L.L.C.; Notice of Application

December 19, 2014.

AGENCY: Securities and Exchange Commission (''Commission'').

ACTION: Notice of application for an exemptive order under Section 206A of the Investment Advisers Act of 1940 (the ''Advisers Act'') and Rule 206(4)–5(e).

Applicant: Crestview Advisors, L.L.C. (''Applicant'').

Relevant Advisers Act Sections: Exemption requested under section 206A of the Advisers Act and rule 206(4)–5(e) from rule 206(4)–5(a)(1) under the Advisers Act.

Summary of Application: Applicant requests that the Commission issue an order under section 206A of the Advisers Act and rule 206(4)–5(e) exempting it from rule 206(4)–5(a)(1) under the Advisers Act to permit Applicant to receive compensation for investment advisory services provided to a government entity within the two-year period following a contribution by a covered associate of Applicant to an official of the government entity.

Filing Dates: The application was filed on November 14, 2012, and amended and restated applications were filed on March 26, 2014, July 11, 2014 and November 13, 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 Applicant with a copy of the request, personally or by mail. Hearing requests should be received by the Commission by 5:30 p.m. on January 13, 2015, and should be accompanied by proof of

service on Applicant, in the form of an affidavit or, for lawyers, a certificate of service. Pursuant to rule 0–5 under the Advisers Act, hearing requests should state the nature of the writer's interest, any facts bearing upon the desirability of a hearing on the matter, the reason for the request, and the issues contested. Persons may request notification of a hearing by writing to the Commission's Secretary.

ADDRESSES: Secretary, Securities and Exchange Commission, 100 F Street NE., Washington, DC 20549–1090. Applicant, Crestview Advisors, L.L.C., 667 Madison Avenue, 10th Floor, New York, NY 10065.

FOR FURTHER INFORMATION CONTACT: Aaron T. Gilbride, Senior Counsel, at (202) 551–6906, or Melissa R. Harke, Branch Chief, at (202) 551–6722 (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 either at *http://www.sec.gov/rules/iareleases.shtml* or by searching for the file number, or for an applicant using the Company name box, at *http://www.sec.gov/search/search.htm,* or by calling (202) 551–8090.

Applicant's Representations

1. Applicant is a limited liability company organized in Delaware and registered with the Commission as an investment adviser under the Advisers Act. Applicant serves as investment adviser to a private equity fund (the ''Fund'') that is a ''covered investment pool,'' as defined in rule 206(4)-5 under the Advisers Act. One of the investors in the Fund is a public pension plan identified as a government entity with respect to the State of Texas (the ''Investor''). The investment decisions for the Investor are overseen by a board of trustees composed of nine members, all of whom are appointed by the Governor of Texas.

2. On August 29, 2011, Jeffrey A. Marcus, a senior investment professional of the Applicant (the ''Contributor''), made a $2,500 campaign contribution (the ''Contribution'') to the campaign of James Richard ''Rick'' Perry (the ''Official''), the Governor of Texas. The Contribution was given in connection with a fundraiser held in Colorado for the Official's Presidential campaign on or about August 25, 2011, which the Contributor attended (the ''Fundraiser''). At the time of the Contribution, the Official was a candidate for the federal office of President of the United States.

3. Applicant represents that the amount of the Contribution, profile of the candidate, and characteristics of the campaign fall generally within the pattern of the Contributor's other political donations.

4. Applicant represents that the Contributor has confirmed that he has not, at any time, had any contact with the Official regarding the Investor's investment activities with the Applicant.

5. Applicant represents that since the date of the Contribution through the two-year period ended August 29, 2013, the Contributor's role with the Investor was limited to making a presentation to the Investor's representatives regarding the Applicant's media and communication portfolio companies. Applicant represents that the Contributor had no contact with any representative of the Investor outside of such presentation and no contact with any member of the board of trustees which oversees the investment decisions of the Investor. Applicant represents that since August 29, 2013, the Contributor has had similarly limited interaction with the Investor. Applicant represents that the Contributor was not involved in any discussions with the Investor regarding the Investor's decision to invest in the Fund.

6. Applicant represents that the Investor made its first investment in the Fund in December 2007, and made its most recent investment in a successor fund complex in November 2013 (with an additional commitment in June 2014).

7. Applicant represents that the Contributor did not solicit any other persons to make contributions to the Official's campaign and did not arrange any introductions to potential supporters.

8. Applicant represents that the Contribution was discovered by Crestview's Compliance Department through the Contributor's voluntary disclosure in response to an annual certification, and that the Contributor obtained a full refund of the Contribution within one week after the Contribution was discovered. Applicant established an escrow account for the benefit of the Investor and deposited an amount equal to the sum of carried interest and management fees payable for the two years from the date of the Contribution.

9. Applicant represents that it has taken steps designed to limit the Contributor's contact with representatives of the Investor following the Contribution for the duration of the two-year period beginning August 29, 2011. Applicant represents that the Contributor completed quarterly certifications beginning the quarter ended December 31, 2012 through the quarter ended September 30, 2013 and has kept a log of any interactions with the investor.

10. Applicant represents that while it is possible that the Contributor mentioned the Fundraiser in passing to a principal of the Applicant who also has a home in Colorado, neither the Contributor nor such principal recalls any such conversation. Applicant represents that such principal did not attend the Fundraiser and did not make any contribution to the Official. Applicant represents that at no time did any other of Applicant's officers, principals and employees have any knowledge that the Contribution had been made prior to its discovery by Crestview's Compliance Department in January 2012.

11. Applicant represents that at all relevant times it had compliance procedures that have been more restrictive than is required under rule 206(4)–5. Applicant represents that its compliance procedures prohibit contributions, with no exceptions for *de minimis* contributions, to: (i) Politically connected individuals or entities with the intention of influencing such individuals or entities for business purposes; (ii) state, local or foreign government entities, officials, candidates, political parties or political action committees; and (iii) any national political candidates who hold a state or local office. Applicant represents that its compliance procedures also require pre-clearance of contributions to any national political candidate, party or action committee. Applicant represents that its compliance procedures apply to all of Applicant's officers, principals and employees and their covered family members. Applicant represents that all employees are required to certify their compliance on a periodic basis. Applicant represents that the Contributor failed to appreciate that contributions to federal candidates who held state or local office would trigger the prohibition on compensation under rule 206(4)–5 and were prohibited by the Applicant's policies.

Applicant's Legal Analysis

1. Rule 206(4)–5(a)(1) under the Advisers Act prohibits a registered investment adviser from providing investment advisory services for compensation to a government entity within two years after a contribution to an official of the government entity is made by the investment adviser or any covered associate of the investment

adviser. The Investor is a ''government entity,'' as defined in rule 206(4)–5(f)(5), the Contributor is a ''covered associate'' as defined in rule 206(4)-5(f)(2), and the Official is an ''official'' as defined in rule 206(4)–5(f)(6). Rule 206(4)–5(c) provides that when a government entity invests in a covered investment pool, the investment adviser to that covered investment pool is treated as providing advisory services directly to the government entity. The Fund is a ''covered investment pool,'' as defined in rule 206(4)–5(f)(3)(ii).

2. Section 206A of the Advisers Act grants the Commission the authority to ''conditionally or unconditionally exempt any person or transaction . . . from any provision or provisions of [the Advisers Act] or of any rule or regulation thereunder, if and to the extent that such exemption is necessary or appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policy and provisions of [the Advisers Act].''

3. Rule 206(4)–5(e) provides that the Commission may exempt an investment adviser from the prohibition under rule 206(4)–5(a)(1) upon consideration of the factors listed below, among others:

(1) Whether the 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 Advisers Act;

(2) Whether the investment adviser: (i) Before the contribution resulting in the prohibition was made, adopted and implemented policies and procedures reasonably designed to prevent violations of the rule; and (ii) prior to or at the time the contribution which resulted in such prohibition was made, had no actual knowledge of the contribution; and (iii) after learning of the contribution: (A) Has taken all available steps to cause the contributor involved in making the contribution which resulted in such prohibition to obtain a return of the contribution; and (B) has taken such other remedial or preventive measures as may be appropriate under the circumstances;

(3) Whether, at the time of the contribution, the contributor was a covered associate or otherwise an employee of the investment adviser, or was seeking such employment;

(4) The timing and amount of the contribution which resulted in the prohibition;

(5) The nature of the election (*e.g.,* federal, state or local); and

(6) The contributor's apparent intent or motive in making the contribution which resulted in the prohibition, as evidenced by the facts and circumstances surrounding such contribution.

4. Applicant requests an order pursuant to section 206A and rule 206(4)–5(e), exempting it from the two-year prohibition on compensation imposed by rule 206(4)–5(a)(1) with respect to investment advisory services provided to the Investor within the two-year period following the Contribution.

5. Applicant submits that the exemption is necessary and appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the Advisers Act. Applicant further submits that the other factors set forth in rule 206(4)–5(e) similarly weigh in favor of granting an exemption to the Applicant to avoid consequences disproportionate to the violation.

6. Applicant states that the relationship with the Investor pre-dates the Contribution and that the Investor did not make an additional commitment to the Fund subsequent to the Contribution (although the Applicant notes that the Investor made an investment in a successor fund managed by the Applicant 22 months following the return of the Contribution). Applicant states that the Contribution was made three and a half years after the Investor's investment in the Fund and at a time when the Investor was not contemplating any investment-related decisions with respect to the Applicant. Applicant notes that it established and maintains its relationships with the Applicant on an arms'-length basis free from any improper influence as a result of the Contribution.

7. Applicant states that at all relevant times it had policies which were fully compliant with, and more rigorous than, rule 206(4)–5's requirements at the time of the Contribution. Applicant further states that at no time did Applicant or any employees of Applicant, other than the Contributor, have any knowledge that the Contribution had been made prior to its discovery by Crestview's Compliance Department in January 2012. After learning of the Contribution, Applicant and the Contributor took all available steps to obtain a return of the Contribution, which was returned within one week of discovery, and an escrow account was set up for the Investor and a sum equal to the carried interest and all fees charged to the Investor's capital account in the Fund since the date of the Contribution were deposited by Applicant in the escrow account for immediate return to the Investor should an exemptive order not be granted.

8. Applicant states that the Contributor's apparent intent in making the Contribution was not to influence the selection or retention of the Applicant. Applicant states that the Contributor has a long-standing history of supporting the Official. The amount of the Contribution, profile of the candidate, and characteristics of the campaign fall generally within the pattern of the Contributor's other political donations. Applicant further states, as discussed above, that the Contributor has confirmed that he has not, at any time, had any contact with the Official regarding the Investor's investment activities with the Applicant, and apart from requesting in January 2012 that his Contribution be returned, the Contributor's contact with the Official concerning campaign contributions was limited to the fundraising event at which the Contribution was made. Applicant further states that since the date of the Contribution, the Contributor's role with the Investor was limited to making a presentation to the Investor's representatives regarding the Applicant's media and communication portfolio companies.

For the Commission, by the Division of Investment Management, under delegated authority.

Kevin M. O'Neill,

Deputy Secretary.

[FR Doc. 2014–30277 Filed 12–24–14; 8:45 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–73888; File No. SR–BATS–2014–070]

Self-Regulatory Organizations; BATS Exchange, Inc.; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change To Extend the Penny Pilot Program

December 19, 2014.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 (the ''Act'') [1] and Rule 19b–4 thereunder,[2] notice is hereby given that on December 17, 2014, BATS Exchange, Inc. (the ''Exchange'' or ''BATS'') filed with the Securities and Exchange Commission (the ''SEC'' or ''Commission'') the proposed rule change as described in Items I and II below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons. The

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

Exchange has designated this proposal as a ''non-controversial'' proposed rule change pursuant to section 19(b)(3)(A) of the Act [3] and Rule 19b–4(f)(6)(iii) thereunder,[4] which renders it effective upon filing with the Commission. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange filed a proposal for the BATS Options Market (''BATS Options'') to extend through June 30, 2015, the Penny Pilot Program (''Penny Pilot'') in options classes in certain issues (''Pilot Program'') previously approved by the Commission.[5]

The text of the proposed rule change is available at the Exchange's Web site at *http://www.batstrading.com/,* at the principal office of the Exchange, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant parts of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and the Statutory Basis for, the Proposed Rule Change

1. Purpose

The purpose of this filing is to extend the Penny Pilot, which was previously approved by the Commission, through June 30, 2015, and to provide a revised date for adding replacement issues to the Pilot Program. The Exchange proposes that any Pilot Program issues that have been delisted may be replaced on the second trading day following January 1, 2015. The replacement issues will be selected based on trading activity for the six month period beginning June 1, 2014, and ending November 30, 2014.

The Exchange represents that the Exchange has the necessary system capacity to continue to support operation of the Penny Pilot. The Exchange believes the benefits to public customers and other market participants who will be able to express their true prices to buy and sell options have been demonstrated to outweigh the increase in quote traffic.

2. Statutory Basis

The Exchange believes that its proposal is consistent with the requirements of the Act and the rules and regulations thereunder that are applicable to a national securities exchange, and, in particular, with the requirements of section 6(b) of the Act.[6] In particular, the proposal is consistent with section 6(b)(5) of the Act,[7] because it would promote just and equitable principles of trade, remove impediments to, and perfect the mechanism of, a free and open market and a national market system. The Exchange believes that the Pilot Program promotes just and equitable principles of trade by enabling public customers and other market participants to express their true prices to buy and sell options. Accordingly, the Exchange believes that the proposal is consistent with the Act because it will allow the Exchange to extend the Pilot Program prior to its expiration on December 31, 2014. The Exchange notes that this proposal does not propose any new policies or provisions that are unique or unproven, but instead relates to the continuation of an existing program that operates on a pilot basis.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act. In this regard, the Exchange notes that the rule change is being proposed in order to continue the Pilot Program, which is a competitive response to analogous programs offered by other options exchanges. The Exchange believes this proposed rule change is necessary to permit fair competition among the options exchanges.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

The Exchange has not solicited, and does not intend to solicit, comments on this proposed rule change. The Exchange has not received any written comments from members or other interested parties.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The Exchange has filed the proposed rule change pursuant to section 19(b)(3)(A)(iii) of the Act [8] and Rule 19b–4(f)(6) thereunder.[9] Because the proposed rule change does not: (i) significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; and (iii) become operative prior to 30 days from the date on which it was filed, or such shorter time as the Commission may designate if consistent with the protection of investors and the public interest, the proposed rule change has become effective pursuant to section 19(b)(3)(A) of the Act [10] and Rule 19b–4(f)(6)(iii) thereunder.

A proposed rule change filed under Rule 19b–4(f)(6) normally does not become operative prior to 30 days after the date of the filing.[11] However, pursuant to Rule 19b–4(f)(6)(iii),[12] the Commission may designate a shorter time if such action is consistent with the protection of investors and the public interest. The Exchange has asked the Commission to waive the 30-day operative delay so that the proposal may become operative immediately upon filing. The Commission believes that waiving the 30-day operative delay is consistent with the protection of investors and the public interest because doing so will allow the Pilot Program to continue without interruption in a manner that is consistent with the Commission's prior approval of the extension and expansion of the Pilot Program and will allow the Exchange and the Commission additional time to analyze the impact of

[3] 15 U.S.C. 78s(b)(3)(A).

[4] 17 CFR 240.19b–4(f)(6)(iii).

[5] The rules of BATS Options, including rules applicable to BATS Options' participation in the Penny Pilot, were approved on January 26, 2010. *See* Securities Exchange Act Release No. 61419 (January 26, 2010), 75 FR 5157 (February 1, 2010) (SR–BATS–2009–031). BATS Options commenced operations on February 26, 2010. The Penny Pilot was extended for BATS Options through December 31, 2014. *See* Securities Exchange Act Release No. 72371 (June 12, 2014), 79 FR 34810 (June 18, 2014) (SR–BATS–2014–023).

[6] 15 U.S.C. 78f(b).

[7] 15 U.S.C. 78f(b)(5).

[8] 15 U.S.C. 78s(b)(3)(A)(iii).

[9] 17 CFR 240.19b–4(f)(6).

[10] 15 U.S.C. 78s(b)(3)(A).

[11] 17 CFR 240.19b–4(f)(6). In addition, Rule 19b–4(f)(6)(iii) requires the Exchange to give the Commission written notice of the Exchange's intent to file the proposed rule change along with a brief description and the text of the proposed rule change, at least five business days prior to the date of filing of the proposed rule change, or such shorter time as designated by the Commission. The Exchange has satisfied this pre-filing requirement.

[12] 17 CFR 240.19b–4(f)(6)(iii).

the Pilot Program.[13] Accordingly, the Commission designates the proposed rule change as operative upon filing with the Commission.[14]

At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act. 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–BATS–2014–070 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–BATS–2014–070. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml).* Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for Web site viewing and printing in the Commission's Public Reference Room, 100 F Street NE., Washington, DC 20549, on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–BATS–2014–070 and should be submitted on or before January 20, 2015.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[15]

Brent J. Fields,

Secretary.

[FR Doc. 2014–30272 Filed 12–24–14; 8:45 am]

BILLING CODE 8011–01–P

[13] *See* Securities Exchange Act Release No. 61061 (November 24, 2009), 74 FR 62857 (December 1, 2009) (SR–NYSEArca–2009–44). *See also supra* note 5.

[14] For purposes only of waiving the operative delay for this proposal, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. *See* 15 U.S.C. 78c(f).

[15] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–73892; File No. SR–EDGA–2014–33]

Self-Regulatory Organizations; EDGA Exchange, Inc.; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change To Convert Direct Edge, Inc., the Parent Company of EDGA Exchange, Inc., From a Delaware Corporation to a Delaware Limited Liability Company

December 19, 2014

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 (the ''Act''),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on December 12, 2014, EDGA Exchange, Inc. (the ''Exchange'' or ''EDGA'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I and II below, which Items have been prepared by the Exchange. The Exchange has designated this proposal as a ''non-controversial'' proposed rule change pursuant to section 19(b)(3)(A) of the Act[3] and Rule 19b–4(f)(6)(iii) thereunder,[4] which renders it effective upon filing with the Commission. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange filed a proposal to: (i) Convert Direct Edge, Inc. (''DE'') from a Delaware corporation to a Delaware limited liability company (the ''Conversion''), and, in connection therewith, change the name of DE from ''Direct Edge, Inc.'' to ''Direct Edge LLC,'' and (ii) amend the Third Amended and Restated Bylaws of the Exchange (the ''Exchange Bylaws'') to reflect the name change of DE as the Exchange's sole stockholder.

The text of the proposed rule change is available at the Exchange's Web site at *http://www.directedge.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 parts of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and the Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange submits this Proposed Rule Change to seek the Commission's approval of the Conversion, the adoption of the Organizational Documents, and the Amended Exchange Bylaws. The Conversion is proposed as a means to simplify the administration associated with the Exchange's overall corporate structure. The name change from ''Direct Edge, Inc.'' to ''Direct Edge LLC'' reflected in the Amended Exchange Bylaws is a non-substantive change. Other than converting DE from a corporation to a limited liability company and changing the name of DE from ''Direct Edge, Inc.'' to ''Direct Edge LLC'' in the Amended Exchange Bylaws, no changes to the ownership or structure of the Exchange, DE Holdings, or the other entities included in the Exchange's overall corporate structure

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] 15 U.S.C. 78s(b)(3)(A).

[4] 17 CFR 240.19b–4(f)(6)(iii).

are proposed.[5] The proposed Organizational Documents are consistent in form and scope with the most recent governing documents that were approved by the Commission.[6]

There are no new regulatory issues implicated in this proposal. Other than as described herein and set forth in the attached Exhibits 5A through 5C, the Exchange will continue to conduct its regulated activities (including operating and regulating its market and Members[7]) in the manner currently conducted, and will not make any changes to its regulated activities in connection with the Conversion. The Exchange is not proposing any amendments to its trading and regulatory rules at this time. If the Exchange determines to make any such changes, it will seek the approval of the Commission to the extent required by the Act, and the Commission's rules thereunder, and the Rules of the Exchange.

1. Current Corporate Structures

The Exchange and EDGX Exchange, Inc. (''EDGX'', and together with the Exchange, the ''DE Exchanges''), are each Delaware corporations that are national securities exchanges registered with the Commission pursuant to section 6(a) of the Act.[8] Each DE Exchange is a direct, wholly owned subsidiary of DE, a Delaware corporation. DE, originally formed as a Delaware corporation on July 22, 2010, is a direct, wholly owned subsidiary of DE Holdings. In addition, DE Holdings owns 100 percent of the equity interest in Direct Edge ECN LLC d/b/a DE Route, a Delaware limited liability company and the routing broker-dealer for the DE Exchanges. BATS Global Markets, Inc., a Delaware corporation (''BGM''), owns 100 percent of the equity interest in DE Holdings, and is the ultimate parent entity in the Exchange's overall corporate structure.

2. The Conversion

On December 9, 2014, the Board of Directors of DE approved the Conversion and Organizational Documents on December 9 2014, and DE Holdings approved the Conversion and Organizational Documents of DE on December 9, 2014. Pursuant to the Conversion, DE would be converted from a Delaware corporation to a Delaware limited liability company. BGM will continue to own 100 percent of the equity interests in DE Holdings, and DE Holdings will continue to own 100 percent of the equity interest in DE, which in turn, will continue to own 100 percent of the equity interest in each DE Exchange.

3. Adoption of Certificate and Operating Agreement

The Exchange proposes that DE adopt a new Certificate and Operating Agreement to replace the existing Restated Certificate of Incorporation of DE and the existing Amended and Restated Bylaws of DE. Each of the proposed Certificate and Operating Agreement are modeled on, and are substantially similar to, the current certificate of formation and operating agreement, respectively, of DE Holdings, which is similarly situated as an intermediate holding company. The Commission has previously found the DE Holdings certificate of formation and operating agreement to be consistent with the Act.[9] Each of the regulatory provisions described below, which the Exchange proposes to adopt within the Operating Agreement of DE, are also consistent with current provisions set forth in the existing Restated Certificate of Incorporation of DE and the existing Amended and Restated Bylaws of DE.

Although DE will not carry out any regulatory functions, the Exchange notes that its activities with respect to the operation of the DE Exchanges must be consistent with, and must not interfere with, the self-regulatory obligations of each DE Exchange. As further described below, the Operating Agreement therefore will include provisions that are designed to maintain the independence of the Exchange's self-regulatory functions, enable the Exchange to operate in a manner that complies with the federal securities laws, including the objectives of sections 6(b)[10] and 19(g)[11] of the Act, and facilitate the ability of the Exchange and the Commission to fulfill their regulatory and oversight obligations under the Act.

a. Certificate of Formation

In connection with the Conversion, the Exchange proposes that DE adopt a new Certificate, as set forth in Exhibit 5A, to replace the existing Restated Certificate of Incorporation of DE. The proposed Certificate includes the following provisions required under Delaware law:

- The full legal name of DE as ''Direct Edge LLC''; and
- The name and address of DE's registered office in the State of Delaware.

b. Operating Agreement

In connection with the Conversion, the Exchange proposes that DE adopt a new Operating Agreement, as set forth in Exhibit 5B, to replace the existing Amended and Restated Bylaws of DE. The proposed Operating Agreement contains several provisions designed to protect the independence of the self-regulatory functions of the DE Exchanges.

The Operating Agreement would require DE Holdings and DE's officers, employees and agents to give due regard to the preservation of the independence of the self-regulatory function of the Exchange, as well as to its obligations to investors and the general public, and not interfere with the effectuation of any decisions by the Exchange Board of Directors relating to its regulatory functions (including disciplinary matters) or which would interfere with the ability of the Exchange to carry out its responsibilities under the Act. The Operating Agreement would require that DE comply with the U.S. federal securities laws and rules and regulations thereunder and cooperate with the Commission and the Exchange pursuant to and to the extent of their respective regulatory authority. Pursuant to the Operating Agreement, DE's officers, employees and agents, by virtue of their acceptance of such positions, shall be deemed to agree to (i) comply with the U.S. federal securities laws and the rules and regulations thereunder; and (ii) cooperate with the Commission and the Exchange in respect of the Commission's oversight responsibilities regarding the Exchange and its self-regulatory functions, and DE will take reasonable steps to cause its officers, employees and agents to so cooperate.

Furthermore, DE and its officers, directors, employees and agents will be deemed to irrevocably submit to the

[5] The Exchange notes that the Third Amended and Restated Bylaws of EDGX Exchange, Inc. will also be amended and restated to reflect the name change of DE as the sole stockholder of EDGX Exchange, Inc.

[6] *See* Securities Exchange Act Release Nos. 60651 (September 11, 2009), 74 FR 47827 (Notice of Filing of Applications, as Amended, for Registration as National Securities Exchanges under section 6 of the Securities Exchange Act of 1934) (including the EDGX and EDGA Form 1 Applications and Exhibits); *and* 61698 (March 12, 2010), 75 FR 13151 (March 18, 2010) (In the Matter of the Applications of EDGX Exchange, Inc. and EDGA Exchange, Inc. for Registration as National Securities Exchanges); *and* Securities Exchange Act Release No. 71449 (January 30, 2014), 79 FR 6961 (February 5, 2014) (SR–EDGA–2013–34; SR–EDGX–2013–43).

[7] The term ''Member'' is defined as ''any registered broker or dealer, or any person associated with a registered broker or dealer, that has been admitted to the membership in the Exchange. A Member will have the status of a ''member'' of the Exchange as that term is defined in section 3(a)(3) of the Act.'' *See* Exchange Rule 1.5(n).

[8] 15 U.S.C. 78f(a).

[9] *See supra* note 6.

[10] 15 U.S.C. 78f(b).

[11] 15 U.S.C. 78s(g).

jurisdiction of the U.S. federal courts, the Commission, and each DE Exchange, as applicable, for the purposes of any suit, action, or proceeding pursuant to the U.S. federal securities laws or the rules or regulations thereunder relating to or arising out of the activities of a DE Exchange.

The Operating Agreement would also contain a number of provisions designed to ensure that the Exchange has sufficient access to the books and records of DE. Pursuant to the Operating Agreement, the books, records, premises, officers, agents, and employees of DE are deemed to be the books, records, premises, officers, agents and employees of the Exchange to the extent they are related to the operation or administration of the Exchange. In addition, for as long as DE controls the Exchange, DE's books and records shall be subject at all times to inspection and copying by the Commission and the Exchange, provided that such books and records are related to the operation or administration of the Exchange.

The Operating Agreement also would provide that, to the fullest extent permitted by applicable law, all confidential information pertaining to the self-regulatory functions of the Exchange (including but not limited to disciplinary matters, trading data, trading practices and audit information) contained in the books and records of the Exchanges that shall come into the possession of DE shall (i) be retained in confidence by DE Holdings, DE, and DE's officers, employees and agents, and (ii) not be used for any non-regulatory purposes. The Operating Agreement provides, however, that the foregoing shall not limit or impede the rights of the Commission or the Exchange to access and examine such confidential information pursuant to the U.S. federal securities laws and the rules and regulations thereunder, or limit or impede the ability of DE Holdings or DE's officers, employees or agents to disclose such confidential information to the Commission or the Exchange.

In addition, the Operating Agreement would provide that for so long as DE directly or indirectly controls a registered national securities exchange, before any amendment to or repeal of any provision of the Operating Agreement may be effective, the changes must be submitted to the Board of Directors of each such exchange, and if the change is required to be filed with or filed with and approved by the Commission before the change may be effective under section 19 of the Act and the rules promulgated thereunder,[12] then such proposed change shall not be effective until filed with or filed with and approved by the Commission, as the case may be.

The Operating Agreement identifies DE Holdings as the sole Member of DE.[13] The identification of the sole Member of DE is designed to assure that any change to the indirect ownership or control of the DE Exchanges occurs through a change in the ownership or control of DE Holdings, or in accordance with the rule filing process described above. If the change of control occurs through a change in the ownership or control of DE Holdings, any purported change of such ownership or control would need to comply with DE Holdings' organizational documents.

4. Amended Exchange Bylaws

The Exchange proposes to amend the Exchange Bylaws, as set forth in Exhibit 5C, to change the name of its sole stockholder from ''Direct Edge, Inc.'' to ''Direct Edge LLC''. The name change from ''Direct Edge, Inc.'' to ''Direct Edge LLC'' as reflected in the Amended Exchange Bylaws is a non-substantive change. No other changes to the ownership or structure of the Exchange have taken place.

2. Statutory Basis

The Exchange believes that the Proposed Rule Change is consistent with the requirements of the Act and the rules and regulations thereunder that are applicable to a national securities exchange, and, in particular, with the requirements of section 6(b) of the Act.[14] In particular, the proposal is consistent with section 6(b)(1) of the Act[15] in that it enables the Exchange to be so organized as to have the capacity to be able to carry out the purposes of the Act and to comply, and to enforce compliance by its Members and persons associated with its Members, with the provisions of the Act, the rules and regulations thereunder, and the Rules of the Exchange. The Proposed Rule Change is designed to effect the Conversion while ensuring that the Exchange will continue to have the authority and ability to effectively fulfill its self-regulatory duties pursuant to the Act and the rules promulgated thereunder. In particular, the Proposed Rule Change includes in the Operating Agreement various provisions intended to protect and maintain the integrity of the self-regulatory functions of the Exchange. For example, the Operating Agreement, as described above, is drafted to preserve the independence of the Exchange's self-regulatory function and ensure that the Exchange is able to obtain information it needs from the specified parties to detect and deter any fraudulent and manipulative acts in its marketplace and carry out their regulatory responsibilities under the Act. Moreover, with the Proposed Rule Change, the Commission will continue to have regulatory authority[16] over the Exchange, as is currently the case, as well as jurisdiction over the Exchange's direct and indirect parents with respect to activities related to the Exchange. As a result, the Proposed Rule Change will facilitate an ownership structure that will provide the Commission with appropriate oversight tools to ensure that the Commission will have the ability to enforce the Act with respect to the Exchange, its direct and indirect parent entities and their directors, officers, employees and agents to the extent they are involved in the activities of the Exchange.

The Exchange also believes that the Proposed Rule Change furthers the objectives of section 6(b)(5) of the Act[17] because the Proposed Rule Change would be consistent with and facilitate a governance and regulatory structure that is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities, to remove impediments to, and perfect the mechanism of a free and open market and a national market system and, in general, to protect investors and the public interest. Furthermore, the Exchange is not proposing any changes to its regulated activities in connection with the Conversion; the Exchange will operate and regulate its Members in the same manner upon consummation of the Conversion as it does today. Therefore, the Exchange believes that it will continue to satisfy the requirements of the Act and the rules and regulations thereunder that are applicable to a national securities exchange.

In addition, the Proposed Rule Change provides transparency and certainty, and promotes efficiency, with respect to the governance and corporate structure of the Exchange and its direct and indirect parent companies. The Exchange believes that these additional changes, among other things, will remove administrative impediments to

[12] 15 U.S.C. 78s(b).

[13] *See* Operating Agreement, Art. II, section 2.01.

[14] 15 U.S.C. 78f(b).

[15] 15 U.S.C. 78f(b)(1).

[16] *See, e.g.*, Operating Agreement, Article X, section 10.03.

[17] 15 U.S.C. 78f(b)(5).

the governance of the Exchange. By simplifying the governance structure in this way, the Proposed Rule Change promotes the maintenance of a fair and orderly market, the protection of investors and the protection of the public interest.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the Proposed Rule Change would result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act, as amended. The Exchange will continue to conduct regulated activities (including operating and regulating its market and Members) of the type it currently conducts, but will be able to do so in a more efficient manner to the benefit of its Members. Furthermore, the proposed Conversion is not a competitive proposal, but rather is intended to add efficiency with respect to the governance process for the Exchange and its affiliates.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

The Exchange has not solicited or received written comments on the Proposed Rule Change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Because the foregoing proposed rule change does not: (1) significantly affect the protection of investors or the public interest; (2) impose any significant burden on competition; and (3) by its terms does not become operative for 30 days after the date of this filing, or such shorter time as the Commission may designate if consistent with the protection of investors and the public interest, the proposed rule change has become effective pursuant to section 19(b)(3)(A) of the Act [18] and Rule 19b–4(f)(6) thereunder.[19]

A proposed rule change filed under Rule 19b–4(f)(6) normally does not become operative for 30 days after the date of filing. However, Rule 19b–4(f)(6)(iii) permits the Commission to designate a shorter time if such action is consistent with the protection of investors and the public interest. The Exchange has asked the Commission to waive the 30-day operative delay so that the proposal may become operative immediately upon filing. The Commission believes that waiving the 30-day operative delay is consistent with the protection of investors and the public interest as it will allow the Exchange to effect the Conversion upon filing with the Secretary of State of the State of Delaware and, according to the Exchange, simplify the administration associated with the Exchange's overall corporate structure immediately.[20] Accordingly, the Commission hereby grants the Exchange's request and designates the proposal operative upon filing.

At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov.* Please include File Number SR–EDGA–2014–33 on the subject line.

Paper Comments

- Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–EDGA–2014–33. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml).* Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for Web site viewing and printing in the Commission's Public Reference Room, 100 F Street NE., Washington, DC 20549, on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–EDGA–2014–33, and should be submitted on or before January 20, 2015.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[21]

Brent J. Fields,

Secretary.

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BILLING CODE 8011–01–P

[18] 15 U.S.C. 78s(b)(3)(A).

[19] 17 CFR 240.19b–4(f)(6). In addition, Rule 19b–4(f)(6)(iii) requires a self-regulatory organization to provide the Commission with written notice of its intent to file the proposed rule change, along with a brief description and text of the proposed rule change, at least five business days prior to the date of filing of the proposed rule change, or such shorter time as designated by the Commission. The Exchange has met this requirement.

[20] For purposes only of waiving the 30-day operative delay, the Commission has also considered the proposed rule's impact on efficiency, competition, and capital formation. *See* 15 U.S.C. 78c(f).

[21] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–73894; File No. SR–BX–2014–060]

Self-Regulatory Organizations; NASDAQ OMX BX, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Relating to Ports

December 19, 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 December 15, 2014, NASDAQ OMX BX, Inc. (''BX'' or ''Exchange'') filed with the Securities and Exchange Commission (''SEC'' or ''Commission'') the proposed rule change as described in Items I, 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.

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to amend chapter XV, section 3 entitled ''BX Options Market—Access Services.'' Specifically, the Exchange is proposing to adopt additional port fees.

While the changes proposed herein are effective upon filing, the Exchange has designated the amendments become operative on January 2, 2015.

The text of the proposed rule change is available on the Exchange's Web site at *http://nasdaqomxbx.cchwallstreet.com,* at the principal office of the Exchange, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The purpose of this filing is to adopt Port Fees for the following ports: Order Entry Ports,[3] CTI Ports,[4] BX Depth Ports,[5] BX TOP Ports,[6] and Order Entry DROP Ports,[7] (collectively ''BX Ports''). The Exchange proposes to assess a $200 Port Fee for each of the BX Ports on a per port, per month, per mnemonic basis. The Exchange would also note that BX Depth and BX Top Port Fees will be assessed to non-BX Participants and BX Participants. Additionally, the Exchange will note that it will continue to assess no fee for SQF Ports [8] by placing the SQF Port Fee in new chapter XV, section 3(b) along with the new BX Port Fees.

Each BX Options Participant is assigned a Market Participant Identifier or ''mnemonic'' [9] and in some cases, certain BX Participants request multiple mnemonics for purposes of accounting for trading activity. These mnemonics identify users at a particular BX Participant. The Exchange bills its Port Fees based on the number of mnemonics configured for each port. By way of example, if a BX Participant, ABC, requested 2 ports from the Exchange and further requested that each port be configured to be accessed by 4 mnemonics or in some cases account numbers,[10] the BX Participant would be billed for 8 ports at the rate of $550 [sic] per port for that month. All billing is captured at the Participant level. BX Participants may choose to have multiple mnemonics or in some case multiple account numbers for the convenience of conducting their business, however only one mnemonic and one account number is required to conduct business on BX.

Today, the NASDAQ Options Market LLC (''NOM'') assesses port fees for similar ports, with the exception of SQF. The Exchange desires to commence assessing such fees on BX at this time, with the exception of SQF as it desires to continue to encourage BX Market Makers to participate in this market.

2. Statutory Basis

BX believes that the proposed rule change is consistent with the provisions of section 6 of the Act,[11] in general, and with section 6(b)(4) and 6(b)(5) of the Act,[12] in particular, in that it provides for the equitable allocation of reasonable dues, fees and other charges among members and issuers and other persons using any facility or system which BX operates or controls, and is not designed to permit unfair discrimination between customers, issuers, brokers, or dealers.

The Exchange believes that adopting Port Fees for the BX Ports at $200 per port, per month, per mnemonic is reasonable because it would allow the Exchange to recoup fees associated with offering the BX Ports. The BX Port Fees reflect a portion of the costs that the Exchange bears with respect to offering and maintaining the BX Ports. The Port Fees are reasonable because they enable the Exchange to offset, in part, its connectivity costs associated with making such ports available, including costs based on gateway software and hardware enhancements and resources dedicated to gateway development, quality assurance, and support. The Exchanges port fees are lower than the costs for ports at other options exchanges [13] as BX Options is a relatively new market and the Exchange seeks to remain competitive with more mature options markets.

The Exchange believes that Port Fees for the BX Ports at $200 per port, per month, per mnemonic is equitable and not unfairly discriminatory because the

[3] The Order Entry Port Fee is a connectivity fee in connection with routing orders to the Exchange via an external order entry port. BX Participants access the Exchange's network through order entry ports. A BX Participant may have more than one order entry port.

[4] CTI offers real-time clearing trade updates. A real-time clearing trade update is a message that is sent to a member after an execution has occurred and contains trade details. The message containing the trade details is also simultaneously sent to The Options Clearing Corporation. The trade messages are routed to a member's connection containing certain information. The administrative and market event messages include, but are not limited to: system event messages to communicate operational-related events; options directory messages to relay basic option symbol and contract information for options traded on the Exchange; complex strategy messages to relay information for those strategies traded on the Exchange; trading action messages to inform market participants when a specific option or strategy is halted or released for trading on the Exchange; and an indicator which distinguishes electronic and non-electronically delivered orders.

[5] BX Depth is a data feed that provides quotation information for individual orders on the BX book, last sale information for trades executed on BX, and Order Imbalance Information as set forth in BX Rules chapter VI, section 8. BX Depth is the options equivalent of the BX TotalView/ITCH data feed that BX offers under BX Rule 7023 with respect to equities traded on BX. As with TotalView, members use BX Depth to ''build'' their view of the BX book by adding individual orders that appear on the feed, and subtracting individual orders that are executed. *See* chapter VI, section 1 at subsection (a)(3)(A).

[6] BX TOP Port is a data feed that provides the BX Best Bid and Offer (''BBO'') and last sale information for trades executed on BX. The BBO and last sale information are identical to the information that BX sends to the Options Price Regulatory Authority (''OPRA'') and which OPRA disseminates via the consolidated data feed for options. BX TOP Port is the options equivalent of the BX Basic data feed offered for equities under BX Rule 7047. *See* chapter VI, section 1 at subsection (a)(3)(B).

[7] The DROP interface provides real time information regarding orders sent to BX and executions that occurred on BX. The DROP interface is not a trading interface and does not accept order messages.

[8] SQF ports are ports that receive inbound quotes at any time within that month. The SQF Port allows a BX Participant to access information such as execution reports and other relevant data through a single feed. For example, this data would show which symbols are trading on BX and the current state of an options symbol (*i.e.,* open for trading, trading, halted or closed). Auction notifications and execution reports are also available. BX Market Makers rely on data available through the SQF Port to provide them the necessary information to perform market making activities.

[9] A mnemonic is a unique identifier consisting of a four character alpha code.

[10] Account numbers are assigned by the Exchange and associated with particular BX Participants.

[11] 15 U.S.C. 78f.

[12] 15 U.S.C. 78f(b)(4) and (5).

[13] Miami International Securities Exchange LLC (''MIAX'') assesses ports fees that range from $1,000 to $5,000 depending on connectivity levels. *See* MIAX's Fee Schedule. ISE Gemini, LLC (''ISE Gemini'') assesses port fees that range from $750–$12,500 depending on connectivity levels. *See* ISE Gemini's Fee Schedule. Finally, C2 Options Exchange, Incorporated (''C2'') assesses port fees that range from $500–$1,000 depending on connectivity levels. *See* C2's Fee Schedule.

Exchange will assess the same fees for all BX Ports to all BX Participants.

The Exchange believes that continuing to assess no fee for SQF Ports, while assessing fees for other BX Ports, is reasonable because the Exchange desires to incentivize more BX Market Makers to engage in market marking activities on the Exchange. The proposal would provide all BX Market Makers with the opportunity to maintain lower costs while also obtaining and utilizing the appropriate number of SQF to conduct their business.

The Exchange believes that continuing to assess no fee for SQF Ports, while assessing fees for other BX Ports, is equitable and not unfairly discriminatory because SQF Ports are utilized particularly by BX Market Makers in connection with their market making activities. Unlike other BX Participants, BX Market Makers add value to the market through continuous quoting [14] and a commitment of capital. The Exchange has traditionally assessed BX Market Makers lower transaction fees as compared to other BX Participants because BX Market Makers 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.[15] Also, because of the volume of message traffic, BX Market Makers that utilize SQF Ports require more technology infrastructure and more ports than BX Participants that are not engaged in market making.

B. Self-Regulatory Organization's Statement on Burden on Competition

BX 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 the proposed BX Port fees are fair and equitable, and therefore, will not unduly burden any particular group of market participants trading on the Exchange. The Exchange's proposal to adopt fees for the BX Ports would be applied in a uniform manner to all BX Participants. The proposed fees are designed to ensure a fair and reasonable use of Exchange resources by allowing the Exchange to recoup a certain portion of connectivity costs, while continuing to offer competitive rates to BX Participants given the market is not a mature market.

With respect to the SQF Port Fee, the Exchange believes that continuing to assess no fee for SQF Ports, while assessing fees for other BX Ports, does not impose an undue burden on competition because SQF Ports are utilized particularly by BX Market Makers that add value to the market through continuous quoting [16] and a commitment of capital. The Exchange has traditionally assessed BX Market Makers lower transaction fees as compared to other BX Participants because BX Market Makers 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.[17]

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.[18] At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission shall institute proceedings to determine whether the proposed rule should be approved or disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml);* or
- Send an email to *rule-comments@sec.gov. Please include File Number SR–BX–2014–060 on the subject line.*

Paper Comments

- Send paper comments in triplicate to Brent J. Fields, Secretary, Securities and Exchange Commission, 100 F Street NE., Washington, DC 20549–1090.

All submissions should refer to File Number *SR–BX–2014–060.* This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml).* Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for Web site viewing and printing in the Commission's Public Reference Room, 100 F Street NE., Washington, DC 20549, on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number *SR–BX–2014–060* and should be submitted on or before January 20, 2015.[19]

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.

Brent J. Fields,

Secretary.

[FR Doc. 2014–30275 Filed 12–24–14; 8:45 am]

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[14] Pursuant to chapter VII (Market Participants), section 5 (Obligations of Market Makers), in registering as a market maker, an Options Participant commits himself to various obligations. Transactions of a Market Maker in its market making capacity must constitute a course of dealings reasonably calculated to contribute to the maintenance of a fair and orderly market, and Market Makers should not make bids or offers or enter into transactions that are inconsistent with such course of dealings. *See* chapter VII, section 5.

[15] *See* chapter VII, section 5.

[16] *See* note 14.

[17] *See* note 15.

[18] 15 U.S.C. 78s(b)(3)(A)(ii).

[19] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–73893; File No. SR–EDGX–2014–34]

Self-Regulatory Organizations; EDGX Exchange, Inc.; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change To Convert Direct Edge, Inc., the Parent Company of EDGX Exchange, Inc., From a Delaware Corporation to a Delaware Limited Liability Company

December 19, 2014.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 (the ''Act''),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on December 12, 2014, EDGX Exchange, Inc. (the ''Exchange'' or ''EDGX'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I and II below, which Items have been prepared by the Exchange. The Exchange has designated this proposal as a ''non-controversial'' proposed rule change pursuant to section 19(b)(3)(A) of the Act[3] and Rule 19b–4(f)(6)(iii) thereunder,[4] which renders it effective upon filing with the Commission. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange filed a proposal to: (i) Convert Direct Edge, Inc. (''DE'') from a Delaware corporation to a Delaware limited liability company (the ''Conversion''), and, in connection therewith, change the name of DE from ''Direct Edge, Inc.'' to ''Direct Edge LLC,'' and (ii) amend the Third Amended and Restated Bylaws of the Exchange (the ''Exchange Bylaws'') to reflect the name change of DE as the Exchange's sole stockholder.

The text of the proposed rule change is available at the Exchange's Web site at *http://www.directedge.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 parts of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and the Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange submits this Proposed Rule Change to seek the Commission's approval of the Conversion, the adoption of the Organizational Documents, and the Amended Exchange Bylaws. The Conversion is proposed as a means to simplify the administration associated with the Exchange's overall corporate structure. The name change from ''Direct Edge, Inc.'' to ''Direct Edge LLC'' reflected in the Amended Exchange Bylaws is a non-substantive change. Other than converting DE from a corporation to a limited liability company and changing the name of DE from ''Direct Edge, Inc.'' to ''Direct Edge LLC'' in the Amended Exchange Bylaws, no changes to the ownership or structure of the Exchange, DE Holdings, or the other entities included in the Exchange's overall corporate structure are proposed.[5] The proposed Organizational Documents are consistent in form and scope with the most recent governing documents that were approved by the Commission.[6]

There are no new regulatory issues implicated in this proposal. Other than as described herein and set forth in the attached Exhibits 5A through 5C, the Exchange will continue to conduct its regulated activities (including operating and regulating its market and Members[7]) in the manner currently conducted, and will not make any changes to its regulated activities in connection with the Conversion. The Exchange is not proposing any amendments to its trading and regulatory rules at this time. If the Exchange determines to make any such changes, it will seek the approval of the Commission to the extent required by the Act, and the Commission's rules thereunder, and the Rules of the Exchange.

1. Current Corporate Structures

The Exchange and EDGA Exchange, Inc. (''EDGA'', and together with the Exchange, the ''DE Exchanges''), are each Delaware corporations that are national securities exchanges registered with the Commission pursuant to section 6(a) of the Act.[8] Each DE Exchange is a direct, wholly owned subsidiary of DE, a Delaware corporation. DE, originally formed as a Delaware corporation on July 22, 2010, is a direct, wholly owned subsidiary of DE Holdings. In addition, DE Holdings owns 100 percent of the equity interest in Direct Edge ECN LLC d/b/a DE Route, a Delaware limited liability company and the routing broker-dealer for the DE Exchanges. BATS Global Markets, Inc., a Delaware corporation (''BGM''), owns 100 percent of the equity interest in DE Holdings, and is the ultimate parent entity in the Exchange's overall corporate structure.

2. The Conversion

On December 9, 2014, the Board of Directors of DE approved the Conversion and Organizational Documents on December 9, 2014, and DE Holdings approved the Conversion and Organizational Documents of DE on December 9, 2014. Pursuant to the Conversion, DE would be converted from a Delaware corporation to a Delaware limited liability company. BGM will continue to own 100 percent of the equity interests in DE Holdings, and DE Holdings will continue to own 100 percent of the equity interest in DE, which in turn, will continue to own 100 percent of the equity interest in each DE Exchange.

3. Adoption of Certificate and Operating Agreement

The Exchange proposes that DE adopt a new Certificate and Operating Agreement to replace the existing Restated Certificate of Incorporation of DE and the existing Amended and

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] 15 U.S.C. 78s(b)(3)(A).

[4] 17 CFR 240.19b–4(f)(6)(iii).

[5] The Exchange notes that the Third Amended and Restated Bylaws of EDGA Exchange, Inc. will also be amended and restated to reflect the name change of DE as the sole stockholder of EDGA Exchange, Inc.

[6] *See* Securities Exchange Act Release Nos. 60651 (September 11, 2009), 74 FR 47827 (Notice of Filing of Applications, as Amended, for Registration as National Securities Exchanges under section 6 of the Securities Exchange Act of 1934) (including the EDGX and EDGA Form 1 Applications and Exhibits); *and* 61698 (March 12, 2010), 75 FR 13151 (March 18, 2010) (In the Matter of the Applications of EDGX Exchange, Inc. and EDGA Exchange, Inc. for Registration as National Securities Exchanges); *and* Securities Exchange Act Release No. 71449 (January 30, 2014), 79 FR 6961 (February 5, 2014) (SR–EDGA–2013–34; SR–EDGX–2013–43).

[7] The term ''Member'' is defined as ''any registered broker or dealer, or any person associated with a registered broker or dealer, that has been admitted to the membership in the Exchange. A Member will have the status of a ''member'' of the Exchange as that term is defined in section 3(a)(3) of the Act.'' *See* Exchange Rule 1.5(n).

[8] 15 U.S.C. 78f(a).

Restated Bylaws of DE. Each of the proposed Certificate and Operating Agreement are modeled on, and are substantially similar to, the current certificate of formation and operating agreement, respectively, of DE Holdings, which is similarly situated as an intermediate holding company. The Commission has previously found the DE Holdings certificate of formation and operating agreement to be consistent with the Act.[9] Each of the regulatory provisions described below, which the Exchange proposes to adopt within the Operating Agreement of DE, are also consistent with current provisions set forth in the existing Restated Certificate of Incorporation of DE and the existing Amended and Restated Bylaws of DE.

Although DE will not carry out any regulatory functions, the Exchange notes that its activities with respect to the operation of the DE Exchanges must be consistent with, and must not interfere with, the self-regulatory obligations of each DE Exchange. As further described below, the Operating Agreement therefore will include provisions that are designed to maintain the independence of the Exchange's self-regulatory functions, enable the Exchange to operate in a manner that complies with the federal securities laws, including the objectives of sections 6(b)[10] and 19(g)[11] of the Act, and facilitate the ability of the Exchange and the Commission to fulfill their regulatory and oversight obligations under the Act.

a. Certificate of Formation

In connection with the Conversion, the Exchange proposes that DE adopt a new Certificate, as set forth in Exhibit 5A, to replace the existing Restated Certificate of Incorporation of DE. The proposed Certificate includes the following provisions required under Delaware law:

- The full legal name of DE as ''Direct Edge LLC''; and
- The name and address of DE's registered office in the State of Delaware.

b. Operating Agreement

In connection with the Conversion, the Exchange proposes that DE adopt a new Operating Agreement, as set forth in Exhibit 5B, to replace the existing Amended and Restated Bylaws of DE. The proposed Operating Agreement contains several provisions designed to protect the independence of the self-regulatory functions of the DE Exchanges.

The Operating Agreement would require DE Holdings and DE's officers, employees and agents to give due regard to the preservation of the independence of the self-regulatory function of the Exchange, as well as to its obligations to investors and the general public, and not interfere with the effectuation of any decisions by the Exchange Board of Directors relating to its regulatory functions (including disciplinary matters) or which would interfere with the ability of the Exchange to carry out its responsibilities under the Act. The Operating Agreement would require that DE comply with the U.S. federal securities laws and rules and regulations thereunder and cooperate with the Commission and the Exchange pursuant to and to the extent of their respective regulatory authority. Pursuant to the Operating Agreement, DE's officers, employees and agents, by virtue of their acceptance of such positions, shall be deemed to agree to (i) comply with the U.S. federal securities laws and the rules and regulations thereunder; and (ii) cooperate with the Commission and the Exchange in respect of the Commission's oversight responsibilities regarding the Exchange and its self-regulatory functions, and DE will take reasonable steps to cause its officers, employees and agents to so cooperate.

Furthermore, DE and its officers, directors, employees and agents will be deemed to irrevocably submit to the jurisdiction of the U.S. federal courts, the Commission, and each DE Exchange, as applicable, for the purposes of any suit, action, or proceeding pursuant to the U.S. federal securities laws or the rules or regulations thereunder relating to or arising out of the activities of a DE Exchange.

The Operating Agreement would also contain a number of provisions designed to ensure that the Exchange has sufficient access to the books and records of DE. Pursuant to the Operating Agreement, the books, records, premises, officers, agents, and employees of DE are deemed to be the books, records, premises, officers, agents and employees of the Exchange to the extent they are related to the operation or administration of the Exchange. In addition, for as long as DE controls the Exchange, DE's books and records shall be subject at all times to inspection and copying by the Commission and the Exchange, provided that such books and records are related to the operation or administration of the Exchange.

The Operating Agreement also would provide that, to the fullest extent permitted by applicable law, all confidential information pertaining to the self-regulatory functions of the Exchange (including but not limited to disciplinary matters, trading data, trading practices and audit information) contained in the books and records of the Exchanges that shall come into the possession of DE shall (i) be retained in confidence by DE Holdings, DE, and DE's officers, employees and agents, and (ii) not be used for any non-regulatory purposes. The Operating Agreement provides, however, that the foregoing shall not limit or impede the rights of the Commission or the Exchange to access and examine such confidential information pursuant to the U.S. federal securities laws and the rules and regulations thereunder, or limit or impede the ability of DE Holdings or DE's officers, employees or agents to disclose such confidential information to the Commission or the Exchange.

In addition, the Operating Agreement would provide that for so long as DE directly or indirectly controls a registered national securities exchange, before any amendment to or repeal of any provision of the Operating Agreement may be effective, the changes must be submitted to the Board of Directors of each such exchange, and if the change is required to be filed with or filed with and approved by the Commission before the change may be effective under Section 19 of the Act and the rules promulgated thereunder,[12] then such proposed change shall not be effective until filed with or filed with and approved by the Commission, as the case may be.

The Operating Agreement identifies DE Holdings as the sole Member of DE.[13] The identification of the sole Member of DE is designed to assure that any change to the indirect ownership or control of the DE Exchanges occurs through a change in the ownership or control of DE Holdings, or in accordance with the rule filing process described above. If the change of control occurs through a change in the ownership or control of DE Holdings, any purported change of such ownership or control would need to comply with DE Holdings' organizational documents.

4. Amended Exchange Bylaws

The Exchange proposes to amend the Exchange Bylaws, as set forth in Exhibit 5C, to change the name of its sole stockholder from ''Direct Edge, Inc.'' to ''Direct Edge LLC''. The name change from ''Direct Edge, Inc.'' to ''Direct Edge LLC'' as reflected in the Amended

[9] *See supra* note 6.

[10] 15 U.S.C. 78f(b).

[11] 15 U.S.C. 78s(g).

[12] 15 U.S.C. 78s(b).

[13] *See* Operating Agreement, Art. II, section 2.01.

Exchange Bylaws is a non-substantive change. No other changes to the ownership or structure of the Exchange have taken place.

2. Statutory Basis

The Exchange believes that the Proposed Rule Change is consistent with the requirements of the Act and the rules and regulations thereunder that are applicable to a national securities exchange, and, in particular, with the requirements of section 6(b) of the Act.[14] In particular, the proposal is consistent with section 6(b)(1) of the Act[15] in that it enables the Exchange to be so organized as to have the capacity to be able to carry out the purposes of the Act and to comply, and to enforce compliance by its Members and persons associated with its Members, with the provisions of the Act, the rules and regulations thereunder, and the Rules of the Exchange. The Proposed Rule Change is designed to effect the Conversion while ensuring that the Exchange will continue to have the authority and ability to effectively fulfill its self-regulatory duties pursuant to the Act and the rules promulgated thereunder. In particular, the Proposed Rule Change includes in the Operating Agreement various provisions intended to protect and maintain the integrity of the self-regulatory functions of the Exchange. For example, the Operating Agreement, as described above, is drafted to preserve the independence of the Exchange's self-regulatory function and ensure that the Exchange is able to obtain information it needs from the specified parties to detect and deter any fraudulent and manipulative acts in its marketplace and carry out their regulatory responsibilities under the Act. Moreover, with the Proposed Rule Change, the Commission will continue to have regulatory authority[16] over the Exchange, as is currently the case, as well as jurisdiction over the Exchange's direct and indirect parents with respect to activities related to the Exchange. As a result, the Proposed Rule Change will facilitate an ownership structure that will provide the Commission with appropriate oversight tools to ensure that the Commission will have the ability to enforce the Act with respect to the Exchange, its direct and indirect parent entities and their directors, officers, employees and agents to the extent they are involved in the activities of the Exchange.

The Exchange also believes that the Proposed Rule Change furthers the objectives of section 6(b)(5) of the Act[17] because the Proposed Rule Change would be consistent with and facilitate a governance and regulatory structure that is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities, to remove impediments to, and perfect the mechanism of a free and open market and a national market system and, in general, to protect investors and the public interest. Furthermore, the Exchange is not proposing any changes to its regulated activities in connection with the Conversion; the Exchange will operate and regulate its Members in the same manner upon consummation of the Conversion as it does today. Therefore, the Exchange believes that it will continue to satisfy the requirements of the Act and the rules and regulations thereunder that are applicable to a national securities exchange.

In addition, the Proposed Rule Change provides transparency and certainty, and promotes efficiency, with respect to the governance and corporate structure of the Exchange and its direct and indirect parent companies. The Exchange believes that these additional changes, among other things, will remove administrative impediments to the governance of the Exchange. By simplifying the governance structure in this way, the Proposed Rule Change promotes the maintenance of a fair and orderly market, the protection of investors and the protection of the public interest.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the Proposed Rule Change would result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act, as amended. The Exchange will continue to conduct regulated activities (including operating and regulating its market and Members) of the type it currently conducts, but will be able to do so in a more efficient manner to the benefit of its Members. Furthermore, the proposed Conversion is not a competitive proposal, but rather is intended to add efficiency with respect to the governance process for the Exchange and its affiliates.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

The Exchange has not solicited or received written comments on the Proposed Rule Change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Because the foregoing proposed rule change does not: (1) Significantly affect the protection of investors or the public interest; (2) impose any significant burden on competition; and (3) by its terms does not become operative for 30 days after the date of this filing, or such shorter time as the Commission may designate if consistent with the protection of investors and the public interest, the proposed rule change has become effective pursuant to section 19(b)(3)(A) of the Act[18] and Rule 19b–4(f)(6) thereunder.[19]

A proposed rule change filed under Rule 19b–4(f)(6) normally does not become operative for 30 days after the date of filing. However, Rule 19b–4(f)(6)(iii) permits the Commission to designate a shorter time if such action is consistent with the protection of investors and the public interest. The Exchange has asked the Commission to waive the 30-day operative delay so that the proposal may become operative immediately upon filing. The Commission believes that waiving the 30-day operative delay is consistent with the protection of investors and the public interest as it will allow the Exchange to effect the Conversion upon filing with the Secretary of State of the State of Delaware and, according to the Exchange, simplify the administration associated with the Exchange's overall corporate structure immediately.[20] Accordingly, the Commission hereby grants the Exchange's request and designates the proposal operative upon filing.

At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if

[14] 15 U.S.C. 78f(b).

[15] 15 U.S.C. 78f(b)(1).

[16] *See, e.g.,* Operating Agreement, Article X, section 10.03.

[17] 15 U.S.C. 78f(b)(5).

[18] 15 U.S.C. 78s(b)(3)(A).

[19] 17 CFR 240.19b–4(f)(6). In addition, Rule 19b–4(f)(6)(iii) requires a self-regulatory organization to provide the Commission with written notice of its intent to file the proposed rule change, along with a brief description and text of the proposed rule change, at least five business days prior to the date of filing of the proposed rule change, or such shorter time as designated by the Commission. The Exchange has met this requirement.

[20] For purposes only of waiving the 30-day operative delay, the Commission has also considered the proposed rule's impact on efficiency, competition, and capital formation. *See* 15 U.S.C. 78c(f).

it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act..

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov.* Please include File Number SR–EDGX–2014–34 on the subject line.

Paper Comments

- Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–EDGX–2014–34. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml).* Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for Web site viewing and printing in the Commission's Public Reference Room, 100 F Street NE., Washington, DC 20549, on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–EDGX–2014–34, and should be submitted on or before January 20, 2015.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[21]

Brent J. Fields,

Secretary.

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BILLING CODE 8011–01–P

[21] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–73895; File No. SR–BATS–2014–054]

Self-Regulatory Organizations; BATS Exchange, Inc.; Notice of Filing of a Proposed Rule Change To List and Trade Shares of the iShares Short Maturity Municipal Bond ETF of the iShares U.S. ETF Trust Under Rule 14.11(i) of BATS Exchange, Inc.

December 19, 2014.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 (the ''Act''),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on December 12, 2014, BATS Exchange, Inc. (the ''Exchange'' or ''BATS'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I and II below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of the Substance of the Proposed Rule Change

The Exchange filed a proposal to list and trade shares of the iShares Short Maturity Municipal Bond ETF (the ''Fund'') of the iShares U.S. ETF Trust (the ''Trust'') under BATS Rule 14.11(i) (''Managed Fund Shares''). The shares of the Fund are referred to herein as the ''Shares.''

The text of the proposed rule change is available at the Exchange's Web site at *http://www.batstrading.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 parts of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange proposes to list and trade the Shares under BATS Rule 14.11(i), which governs the listing and trading of Managed Fund Shares on the Exchange.[3] The Fund will be an actively managed fund. The Shares will be offered by the Trust, which was established as a Delaware statutory trust on June 21, 2011. The Trust is registered with the Commission as an open-end investment company and has filed a registration statement on behalf of the Fund on Form N–1A (''Registration Statement'') with the Commission.[4]

Description of the Shares and the Fund

BlackRock Fund Advisors is the investment adviser (''BFA'' or ''Adviser'') to the Fund.[5] State Street Bank and Trust Company is the administrator, custodian, and transfer agent (''Administrator,'' ''Custodian,'' and ''Transfer Agent,'' respectively) for the Trust. BlackRock Investments, LLC serves as the distributor (''Distributor'') for the Trust.

BATS Rule 14.11(i)(7) provides that, if the investment adviser to the investment company issuing Managed Fund Shares is affiliated with a broker-dealer, such investment adviser shall erect a ''fire wall'' between the investment adviser and the broker-dealer with respect to access to information concerning the composition and/or changes to such investment company portfolio.[6] In addition, Rule

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] The Commission approved BATS Rule 14.11(i) in Securities Exchange Act Release No. 65225 (August 30, 2011), 76 FR 55148 (September 6, 2011) (SR–BATS–2011–018).

[4] *See* Registration Statement on Form N–1A for the Trust, dated September 3, 2014 (File Nos. 333–179904 and 811–22649). The descriptions of the Fund and the Shares contained herein are based, in part, on information in the Registration Statement. The Commission has issued an order granting certain exemptive relief to the Trust under the Investment Company Act of 1940 (15 U.S.C. 80a–1) (''1940 Act'') (the ''Exemptive Order''). *See* Investment Company Act Release No. 29571 (January 24, 2011) (File No. 812–13601).

[5] BFA is an indirect wholly owned subsidiary of BlackRock, Inc.

[6] An investment adviser to an open-end fund is required to be registered under the Investment Advisers Act of 1940 (the ''Advisers Act''). As a result, the Adviser and its related personnel are

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14.11(i)(7) further requires that personnel who make decisions on the investment company's portfolio composition must be subject to procedures designed to prevent the use and dissemination of material nonpublic information regarding the applicable investment company portfolio. Rule 14.11(i)(7) is similar to BATS Rule 14.11(b)(5)(A)(i), however, Rule 14.11(i)(7) in connection with the establishment of a ''fire wall'' between the investment adviser and the broker-dealer reflects the applicable open-end fund's portfolio, not an underlying benchmark index, as is the case with index-based funds. The Adviser is not a registered broker-dealer, but is affiliated with multiple broker-dealers and has implemented ''fire walls'' with respect to such broker-dealers regarding access to information concerning the composition and/or changes to the Fund's portfolio. In addition, Adviser personnel who make decisions regarding the Fund's portfolio are subject to procedures designed to prevent the use and dissemination of material nonpublic information regarding the Fund's portfolio. In the event that (a) the Adviser becomes registered as a broker-dealer or newly affiliated with another broker-dealer, or (b) any new adviser or sub-adviser is a registered broker-dealer or becomes affiliated with a broker-dealer, it will implement a fire wall with respect to its relevant personnel or such broker-dealer affiliate, as applicable, regarding access to information concerning the composition and/or changes to the portfolio, and will be subject to procedures designed to prevent the use and dissemination of material non-public information regarding such portfolio.

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.

iShares Short Maturity Municipal Bond ETF

According to the Registration Statement, the Fund will seek to maximize tax-free current income. To achieve its objective, the Fund will invest, under normal circumstances,[7] at least 80% of its net assets in Municipal Securities, as defined below, such that the interest on each bond is exempt from U.S. federal income taxes and the federal alternative minimum tax (the ''AMT''), along with Short-Term Instruments and Repurchase Agreements, as both terms are defined below. The Fund is not a money market fund and does not seek to maintain a stable net asset value of $1.00 per share. The Fund will be classified as a ''diversified'' investment company under the 1940 Act.[8]

The Fund will not purchase the securities of issuers conducting their principal business activity in the same industry if, immediately after the purchase and as a result thereof, the value of the Fund's investments in that industry would equal or exceed 25% of the current value of the Fund's total assets, provided that this restriction does not limit the Fund's: (i) Investments in securities of other investment companies, (ii) investments in securities issued or guaranteed by the U.S. government, its agencies or instrumentalities, (iii) investments in securities of state, territory, possession or municipal governments and their authorities, agencies, instrumentalities or political subdivisions or (iv) investments in repurchase agreements collateralized by any such obligations.[9]

The Fund intends to qualify each year as a regulated investment company (a ''RIC'') under subchapter M of the Internal Revenue Code of 1986, as amended. The Fund will invest its assets, and otherwise conduct its operations, in a manner that is intended to satisfy the qualifying income, diversification and distribution requirements necessary to establish and maintain RIC qualification under subchapter M.

Principal Holdings—Municipal Securities

To achieve its objective, the Fund will invest, under normal circumstances, in U.S.-dollar denominated investment-grade short-term fixed- and floating-rate municipal bonds, municipal notes and variable rate demand obligations, as well as money market instruments and registered investment companies. Investment-grade securities are rated a minimum of BBB- or higher by Standard & Poor's Ratings Services and/or Fitch, or Baa3 or higher by Moody's, or if unrated, determined by the Adviser to be of equivalent quality.[10] Generally, the Fund's effective duration will be 1.2 years or less, as calculated by the management team, and it is not expected to exceed 1.5 years.[11]

Municipal securities (''Municipal Securities'') are fixed and floating rate securities issued in the U.S. by U.S. states and territories, municipalities and other political subdivisions, agencies, authorities, and instrumentalities of states and multi-state agencies and authorities and will include only the following instruments: General obligation bonds,[12] limited obligation bonds (or revenue bonds),[13] private

[7] The term ''under normal circumstances'' includes, but is not limited to, the absence of adverse market, economic, political, or other conditions, including extreme volatility or trading halts in the financial markets; 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.

[8] The diversification standard is set forth in section 5(b)(1) of the 1940 Act.

[9] *See* Form N–1A, Item 9. The Commission has taken the position that a fund is concentrated if it invests in more than 25% of the value of its total assets in any one industry. *See, e.g.,* Investment Company Act Release No. 9011 (October 30, 1975), 40 FR 54241 (November 21, 1975).

[10] According to the Adviser, BFA may determine that unrated securities are of ''equivalent quality'' based on such credit quality factors that it deems appropriate, which may include among other things, performing an analysis similar, to the extent possible, to that performed by a nationally recognized statistical ratings organization when rating similar securities and issuers. In making such a determination, BFA may consider internal analyses and risk ratings, third party research and analysis, and other sources of information, as deemed appropriate by the Adviser.

[11] Effective duration is a measure of the Fund's price sensitivity to changes in yields or interest rates.

[12] General obligation bonds are obligations involving the credit of an issuer possessing taxing power and are payable from such issuer's general revenues and not from any particular source.

[13] Limited obligation bonds are payable only from the revenues derived from a particular facility or class of facilities or, in some cases, from the proceeds of a special excise or other specific revenue source, and also include industrial development bonds issued pursuant to former U.S. federal tax law. Industrial development bonds generally are also revenue bonds and thus are not payable from the issuer's general revenues. The credit and quality of industrial development bonds are usually related to the credit of the corporate user of the facilities. Payment of interest on and repayment of principal of such bonds is the responsibility of the corporate user (and/or any guarantor).

activity bonds,[14] municipal notes,[15] municipal commercial paper,[16] tender option bonds,[17] variable rate demand obligations (''VRDOs''),[18] municipal lease obligations,[19] stripped securities,[20] structured securities,[21] when issued securities,[22] zero coupon securities,[23] and exchange traded and non-exchange traded investment companies (including investment companies advised by BFA or its affiliates) that invest in such Municipal Securities.[24]

The Fund may also enter into repurchase and reverse repurchase agreements for Municipal Securities (collectively, ''Repurchase Agreements''). Repurchase Agreements involve the sale of securities with an agreement to repurchase the securities at an agreed-upon price, date and interest payment and have the characteristics of borrowing as part of the Fund's principal holdings.[25] As discussed above, the Fund may also invest in short-term instruments (''Short-Term Instruments'') [26] as part of its principal holdings, which includes exchange traded and non-exchange traded investment companies (including investment companies advised by BFA or its affiliates) that invest in money market instruments.[27]

In the absence of normal circumstances, the Fund may temporarily depart from its normal investment process, provided that such departure is, in the opinion of the Adviser, consistent with the Fund's investment objective and in the best interest of the Fund. For example, the Fund may hold a higher than normal proportion of its assets in cash in response to adverse market, economic or political conditions.

The Fund intends to qualify each year as a regulated investment company (a ''RIC'') under subchapter M of the Internal Revenue Code of 1986, as amended.[28] The Fund will invest its assets, and otherwise conduct its operations, in a manner that is intended to satisfy the qualifying income, diversification and distribution requirements necessary to establish and maintain RIC qualification under subchapter M.

Other Portfolio Holdings

The Fund may also, to a limited extent (under normal circumstances, less than 20% of the Fund's net assets), engage in transactions in interest rate futures contracts for hedging purposes.[29] The Fund's investments will be consistent with its investment objective and will not be used to achieve leveraged returns (*i.e.* two times or three times the Fund's benchmark, as described in the Registration Statement).

The Fund may also invest up to 20% of its net assets in Municipal Securities that pay interest that is subject to the AMT.

Investment Restrictions

The Fund may hold up to an aggregate amount of 15% of its net assets in illiquid assets (calculated at the time of investment), as deemed illiquid by the Adviser [30] under the 1940 Act.[31] The

[14] Private activity bonds are bonds issued by or on behalf of public authorities to obtain funds to provide privately operated housing facilities, airport, mass transit or port facilities, sewage disposal, solid waste disposal or hazardous waste treatment or disposal facilities, and certain local facilities for water supply, gas, or electricity. Other types of private activity bonds, the proceeds of which are used for the construction, equipment, repair or improvement of privately operated industrial or commercial facilities, may constitute municipal securities, although the current U.S. federal tax laws place substantial limitations on the size of such issues.

[15] Municipal notes are shorter-term municipal debt obligations that may provide interim financing in anticipation of tax collection, receipt of grants, bond sales, or revenue receipts.

[16] Municipal commercial paper is generally unsecured debt that is issued to meet short-term financing needs.

[17] Tender option bonds are synthetic floating-rate or variable-rate securities issued when long-term bonds are purchased in the primary or secondary market and then deposited into a trust. Custodial receipts are then issued to investors, such as the Fund, evidencing ownership interests in the trust.

[18] VRDOs are tax-exempt obligations that contain a floating or variable interest rate adjustment formula and a right of demand on the part of the holder thereof to receive payment of the unpaid principal balance plus accrued interest upon a short notice period not to exceed seven days.

[19] Municipal lease obligations include certificates of participation issued by government authorities or entities to finance the acquisition or construction of equipment, land, and/or facilities.

[20] Stripped securities are created when an issuer separates the interest and principal components of an instrument and sells them as separate securities. In general, one security is entitled to receive the interest payments on the underlying assets and the other to receive the principal payments.

[21] Structured securities are privately negotiated debt obligations where the principal and/or interest is determined by reference to the performance of an underlying investment, index, or reference obligation, and may be issued by governmental agencies. While structured securities are part of the principal holdings of the Fund, the Issuer represents that such securities, when combined with those instruments held as part of the other portfolio holdings described below, will not exceed 20% of the Fund's net assets.

[22] The Fund may purchase or sell securities that it is entitled to receive on a when issued or delayed delivery basis as well as through a forward commitment.

[23] Zero coupon securities are securities that are sold at a discount to par value and do not pay interest during the life of the security. The discount approximates the total amount of interest the security will accrue and compound over the period until maturity at a rate of interest reflecting the market rate of the security at the time of issuance. Upon maturity, the holder of a zero coupon security is entitled to receive the par value of the security.

[24] The Fund currently anticipates investing in only registered open-end investment companies, including mutual funds and the open-end investment company funds described in BATS Rule 14.11. The Fund may invest in the securities of other investment companies to the extent permitted by law.

[25] The Fund's exposure to reverse repurchase agreements will be covered by liquid assets having a value equal to or greater than such commitments. The use of reverse repurchase agreements is a form of leverage because the proceeds derived from reverse repurchase agreements may be invested in additional securities. As further stated below, the Fund's investments will be consistent with its investment objective and will not be used to achieve leveraged returns.

[26] The Fund may invest in Short-Term Instruments, including money market instruments, on an ongoing basis to provide liquidity or for other reasons. Money market instruments are generally short-term investments that include only the following: (i) Shares of money market funds (including those advised by BFA or otherwise affiliated with BFA); (ii) obligations issued or guaranteed by the U.S. government, its agencies or instrumentalities (including government-sponsored enterprises); (iii) negotiable certificates of deposit (''CDs''), bankers' acceptances, fixed-time deposits and other obligations of U.S. and non-U.S. banks (including non-U.S. branches) and similar institutions; (iv) commercial paper, including asset-backed commercial paper; (v) non-convertible corporate debt securities (*e.g.,* bonds and debentures) with remaining maturities at the date of purchase of not more than 397 days and that satisfy the rating requirements set forth in Rule 2a–7 under the 1940 Act; and (vi) short-term U.S. dollar-denominated obligations of non-U.S. banks (including U.S. branches) that, in the opinion of BFA, are of comparable quality to obligations of U.S. banks which may be purchased by the Fund. All money market securities acquired by the Fund will be rated investment grade. The Fund does not intend to invest in any unrated money market securities. However, it may do so, to a limited extent, such as where a rated money market security becomes unrated, if such money market security is determined by the Adviser to be of comparable quality. BFA may determine that unrated securities are of comparable quality based on such credit quality factors that it deems appropriate, which may include, among other things, performing an analysis similar, to the extent possible, to that performed by a nationally recognized statistical rating organization rating similar securities and issuers.

[27] *See* supra note 24.

[28] 26 U.S.C. 851.

[29] Futures will be exchange traded and collateralized.

[30] In reaching liquidity decisions, the Adviser may consider factors including: the frequency of trades and quotes for the security; the number of dealers wishing to purchase or sell the security and the number of other potential purchasers; dealer undertakings to make a market in the security; the nature of the security and the nature of the marketplace trades (*e.g.,* the time needed to dispose of the security, the method of soliciting offers, and the mechanics of transfer); any legal or contractual restrictions on the ability to transfer the security or asset; significant developments involving the issuer or counterparty specifically (*e.g.,* default, bankruptcy, etc.) or the securities markets generally; and settlement practices, registration procedures, limitations on currency conversion or repatriation, and transfer limitations (for foreign securities or other assets).

[31] The Commission has stated that long-standing Commission guidelines have required open-end funds to hold no more than 15% of their net assets in illiquid securities and other illiquid assets. *See* Investment Company Act Release No. 28193 (March

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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 the 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.

Net Asset Value

According to the Registration Statement, the net asset value (''NAV'') of the Fund will be calculated each business day as of the close of regular trading on the New York Stock Exchange (''NYSE''), generally 4:00 p.m. Eastern Time (the ''NAV Calculation Time''), on each day that the NYSE is open for trading, based on prices at the NAV Calculation Time. NAV per Share is calculated by dividing the Fund's net assets by the number of Shares outstanding.

According to the Registration Statement, unless otherwise described below, the Fund values Municipal Securities using prices provided directly from one or more broker-dealers, market makers, or independent third-party pricing services which may use matrix pricing and valuation models, as well as recent market transactions for the same or similar assets, to derive values.

Exchange traded investment companies will be valued at market closing price or, if no closing price is available, at the last traded price on the primary exchange on which they are traded. Price information for such securities will be taken from the exchange where the security is primarily traded. Investment companies not listed on an exchange are valued at their net asset value.

Futures contracts will be valued at their last sale price or settle price as of the close of the applicable exchange.

Repurchase Agreements will generally be valued at par. In certain circumstances, Short-Term Instruments may be valued on the basis of amortized cost.

According to the Registration Statement, generally, trading in money market instruments, and certain Municipal Securities is substantially completed each day at various times prior to the close of business on the Exchange. Additionally, trading in certain derivatives is substantially completed each day at various times prior to the close of business on the Exchange. The values of such securities and derivatives used in computing the NAV of the Fund are determined at such times.

According to the Registration Statement, when market quotations are not readily available or are believed by BFA to be unreliable, the Fund's investments are valued at fair value. Fair value determinations are made by BFA in accordance with policies and procedures approved by the Trust's board of trustees and in accordance with the 1940 Act. BFA may conclude that a market quotation is not readily available or is unreliable if a security or other asset or liability is thinly traded, or where there is a significant event [32] subsequent to the most recent market quotation.

According to the Registration Statement, fair value represents a good faith approximation of the value of an asset or liability. The fair value of an asset or liability held by the Fund is the amount the Fund might reasonably expect to receive from the current sale of that asset or the cost to extinguish that liability in an arm's-length transaction. Valuing the Fund's investments using fair value pricing will result in prices that may differ from current valuations and that may not be the prices at which those investments could have been sold during the period in which the particular fair values were used.

The Shares

The Fund will issue and redeem Shares on a continuous basis at the NAV per Share only in large blocks of a specified number of Shares or multiples thereof (''Creation Units'') in transactions with authorized participants who have entered into agreements with the Distributor. The Fund currently anticipates that a Creation Unit will consist of 50,000 Shares, though this number may change from time to time, including prior to listing of the Fund. The exact number of Shares that will constitute a Creation Unit will be disclosed in the Registration Statement of the Fund. Once created, Shares of the Fund trade on the secondary market in amounts less than a Creation Unit.

The consideration for purchase of Creation Units of the Fund generally will consist of the in-kind deposit of a designated portfolio of securities (including any portion of such securities for which cash may be substituted) (*i.e.,* the ''Deposit Securities''), and the ''Cash Component'' computed as described below. Together, the Deposit Securities and the Cash Component constitute the ''Fund Deposit,'' which represents the minimum initial and subsequent investment amount for a Creation Unit of the Fund.

The portfolio of securities required for purchase of a Creation Unit may not be identical to the portfolio of securities the Fund will deliver upon redemption of Shares. The Deposit Securities and Fund Securities (as defined below), as the case may be, in connection with a purchase or redemption of a Creation Unit, generally will correspond *pro rata* to the securities held by the Fund.

The Cash Component will be an amount equal to the difference between the NAV of the Shares (per Creation Unit) and the ''Deposit Amount,'' which will be an amount equal to the market value of the Deposit Securities, and serve to compensate for any differences between the NAV per Creation Unit and the Deposit Amount. The Fund generally offers Creation Units partially for cash. BFA will make available through the National Securities Clearing Corporation (''NSCC'') on each business day, prior to the opening of business on the Exchange, the list of names and the required number or par value of each Deposit Security and the amount of the Cash Component to be included in the current Fund Deposit (based on information as of the end of the previous business day) for the Fund.

The identity and number or par value of the Deposit Securities may change pursuant to changes in the composition of the Fund's portfolio as rebalancing adjustments and corporate action events occur from time to time. The composition of the Deposit Securities may also change in response to adjustments to the weighting or composition of the holdings of the Fund.

11, 2008), 73 FR 14618 (March 18, 2008), footnote 34. *See also,* Investment Company Act Release No. 5847 (October 21, 1969), 35 FR 19989 (December 31, 1970) (Statement Regarding ''Restricted Securities''); Investment Company Act Release No. 18612 (March 12, 1992), 57 FR 9828 (March 20, 1992) (Revisions of Guidelines to Form N–1A). A fund's portfolio security is illiquid if it cannot be disposed of in the ordinary course of business within seven days at approximately the value ascribed to it by the fund. *See* Investment Company Act Release No. 14983 (March 12, 1986), 51 FR 9773 (March 21, 1986) (adopting amendments to Rule 2a–7 under the 1940 Act); Investment Company Act Release No. 17452 (April 23, 1990), 55 FR 17933 (April 30, 1990) (adopting Rule 144A under the Securities Act of 1933).

[32] A ''significant event'' is an event that, in the judgment of BFA, is likely to cause a material change to the closing market price of the asset or liability held by the Fund.

The Fund reserves the right to permit or require the substitution of a ''cash in lieu'' amount to be added to the Cash Component to replace any Deposit Security that may not be available in sufficient quantity for delivery or that may not be eligible for transfer through the Depository Trust Company (''DTC'') or the clearing process through the NSCC.[33]

Except as noted below, all creation orders must be placed for one or more Creation Units and must be received by the Distributor in proper form no later than 4:00 p.m., Eastern Time, in each case on the date such order is placed in order for creation of Creation Units to be effected based on the NAV of Shares of the Fund as next determined on such date after receipt of the order in proper form. Orders requesting substitution of a ''cash in lieu'' amount generally must be received by the Distributor no later than 2:00 p.m., Eastern Time on the Settlement Date. The ''Settlement Date'' is generally the third business day after the transmittal date. On days when the Exchange or the bond markets close earlier than normal, the Fund may require orders to create or to redeem Creation Units to be placed earlier in the day.

Fund Deposits must be delivered through the Federal Reserve System (for cash and government securities), through DTC (for corporate and municipal securities), or through a central depository account, such as with Euroclear or DTC, maintained by State Street or a sub-custodian (a ''Central Depository Account'') by an authorized participant. Any portion of a Fund Deposit that may not be delivered through the Federal Reserve System or DTC must be delivered through a Central Depository Account. The Fund Deposit transfer must be ordered by the authorized participant in a timely fashion so as to ensure the delivery of the requisite number of Deposit Securities to the account of the Fund by no later than 3:00 p.m., Eastern Time, on the Settlement Date.

A standard creation transaction fee will be imposed to offset the transfer and other transaction costs associated with the issuance of Creation Units.

Shares of the Fund may be redeemed only in Creation Units at their NAV next determined after receipt of a redemption request in proper form by the Distributor and only on a business day. BFA will make available through the NSCC, prior to the opening of business on the Exchange on each business day, the designated portfolio of securities (including any portion of such securities for which cash may be substituted) that will be applicable (subject to possible amendment or correction) to redemption requests received in proper form on that day (''Fund Securities''). Fund Securities received on redemption may not be identical to Deposit Securities that are applicable to creations of Creation Units.

Unless cash redemptions are available or specified for the Fund, the redemption proceeds for a Creation Unit generally will consist of a specified amount of cash, Fund Securities, plus additional cash in an amount equal to the difference between the NAV of the Shares being redeemed, as next determined after the receipt of a request in proper form, and the value of the specified amount of cash and Fund Securities, less a redemption transaction fee. The Fund generally redeems Creation Units partially for cash.

A standard redemption transaction fee will be imposed to offset transfer and other transaction costs that may be incurred by the Fund.

Redemption requests for Creation Units of the Fund must be submitted to the Distributor by or through an authorized participant no later than 4:00 p.m. Eastern Time on any business day, in order to receive that day's NAV. The authorized participant must transmit the request for redemption in the form required by the Fund to the Distributor in accordance with procedures set forth in the authorized participant agreement.

Additional information regarding the Shares and the Fund, including investment strategies, risks, creation and redemption procedures, fees and expenses, portfolio holdings disclosure policies, distributions, taxes and reports to be distributed to beneficial owners of the Shares can be found in the Registration Statement or on the Web site for the Fund (*www.iShares.com*), as applicable.

Availability of Information

The Fund's Web site, which will be publicly available prior to the public offering of Shares, will include a form of the prospectus for the Fund that may be downloaded. The Web site will include additional quantitative information updated on a daily basis, including, for the Fund: (1) The prior business day's NAV and the market closing price or mid-point of the bid/ask spread at the time of calculation of such NAV (the ''Bid/Ask Price''),[34] and a calculation of the premium or discount of the market closing price or Bid/Ask Price against the NAV; and (2) data in chart format displaying the frequency distribution of discounts and premiums of the daily Bid/Ask Price against the NAV, within appropriate ranges, for each of the four previous calendar quarters. Daily trading volume information will be available in the financial section of newspapers, through subscription services such as Bloomberg, Thomson Reuters, and International Data Corporation, which can be accessed by authorized participants and other investors, as well as through other electronic services, including major public Web sites. On each business day, before commencement of trading in Shares during Regular Trading Hours on the Exchange, the Fund will disclose on its Web site the identities and quantities of the portfolio of securities and other assets (the ''Disclosed Portfolio'') held by the Fund that will form the basis for the Fund's calculation of NAV at the end of the business day.[35] The Disclosed Portfolio will include, as applicable, the names, quantity, percentage weighting and market value of securities and other assets held by the Fund and the characteristics of such assets. The Web site and information will be publicly available at no charge.

In addition, for the Fund, an estimated value, defined in BATS Rule 14.11(i)(3)(C) as the ''Intraday Indicative Value,'' that reflects an estimated intraday value of the Fund's portfolio, will be disseminated. Moreover, the Intraday Indicative Value will be based upon the current value for the components of the Disclosed Portfolio and will be updated and widely disseminated by one or more major market data vendors at least every 15 seconds during the Exchange's Regular Trading Hours.[36]

The dissemination of the Intraday Indicative Value, together with the Disclosed Portfolio, will allow investors to determine the value of the underlying portfolio of the Fund on a daily basis

[33] The Adviser represents that, to the extent the Trust permits or requires a ''cash in lieu'' amount, such transactions will be effected in the same manner or in an equitable manner for all authorized participants.

[34] The Bid/Ask Price of the Fund will be determined using the highest bid and the lowest offer on the Exchange as of the time of calculation of the Fund's NAV. The records relating to Bid/Ask Prices will be retained by the Fund or its service providers.

[35] Under accounting procedures to be followed by the Fund, trades made on the prior business day (''T'') will be booked and reflected in NAV on the current business day (''T+1''). Accordingly, the Fund will be able to disclose at the beginning of the business day the portfolio that will form the basis for the NAV calculation at the end of the business day.

[36] Currently, it is the Exchange's understanding that several major market data vendors display and/or make widely available Intraday Indicative Values published via the Consolidated Tape Association (''CTA'') or other data feeds.

and provide a close estimate of that value throughout the trading day.

Intraday, executable price quotations on assets held by the Fund are available from major broker-dealer firms and for exchange-traded assets, including investment companies, such intraday information is available directly from the applicable listing exchange. All such intraday price information is available through subscription services, such as Bloomberg, Thomson Reuters and International Data Corporation, which can be accessed by authorized participants and other investors. Pricing information for Repurchase Agreements and securities not listed on an exchange or national securities market will be available from major broker-dealer firms and/or subscription services, such as Bloomberg, Thomson Reuters and International Data Corporation.

Information regarding market price and volume of the Shares will be continually available on a real-time basis throughout the day on brokers' computer screens and other electronic services. The previous day's closing price and trading volume information for the Shares will be published daily in the financial section of newspapers. Quotation and last sale information for the Shares will be available on the facilities of the CTA. Price information relating to all other securities held by the Fund will be available from major market data vendors. Quotations and last sale information for the underlying exchange traded investment companies will be available through CTA.

Initial and Continued Listing

The Shares will be subject to BATS Rule 14.11(i), which sets forth the initial and continued listing criteria applicable to Managed Fund Shares. The Exchange represents that, for initial and/or continued listing, the Fund must be in compliance with Rule 10A–3 under the Act.[37] A minimum of 100,000 Shares will be outstanding at the commencement of trading on the Exchange. 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 Halts

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 Fund. The Exchange will halt trading in the Shares under the conditions specified in BATS Rule 11.18. Trading may be halted because of market conditions or for reasons that, in the view of the Exchange, make trading in the Shares inadvisable. These may include: (1) The extent to which trading is not occurring in the securities and/or the financial instruments composing the Disclosed Portfolio of the Fund; or (2) whether other unusual conditions or circumstances detrimental to the maintenance of a fair and orderly market are present. Trading in the Shares also will be subject to Rule 14.11(i)(4)(B)(iv), which sets forth circumstances under which Shares of the Fund may be halted.

Trading Rules

The Exchange deems the Shares to be equity securities, thus rendering trading in the Shares subject to the Exchange's existing rules governing the trading of equity securities. BATS will allow trading in the Shares from 8:00 a.m. until 5:00 p.m. Eastern Time. The Exchange has appropriate rules to facilitate transactions in the Shares during all trading sessions. As provided in BATS Rule 11.11(a), the minimum price variation for quoting and entry of orders in Managed Fund Shares traded on the Exchange is $0.01, with the exception of securities that are priced less than $1.00, for which the minimum price variation for order entry is $0.0001.

Surveillance

The Exchange believes that its surveillance procedures are adequate to properly monitor the trading of the Shares on the Exchange during all trading sessions and to deter and detect violations of Exchange rules and the applicable federal securities laws. Trading of the Shares through the Exchange will be subject to the Exchange's surveillance procedures for derivative products, including Managed Fund Shares. The Exchange may obtain information regarding trading in the Shares and the underlying shares in exchange traded equity securities via the ISG, from other exchanges that are members or affiliates of the ISG, or with which the Exchange has entered into a comprehensive surveillance sharing agreement.[38] In addition, the Exchange is able to access, as needed, trade information for certain fixed income instruments reported to FINRA's Trade Reporting and Compliance Engine (''TRACE'').

As it relates to exchange traded investment companies, the Fund will only invest in investment companies that trade on markets that are a member of the ISG or with which the Exchange has in place a comprehensive surveillance sharing agreement. To the extent that the Fund invests in futures contracts, the Fund will only invest in futures contracts that are traded on an exchange that is a member of the ISG or with which the Exchange has in place a comprehensive surveillance sharing agreement.

The Exchange prohibits the distribution of material non-public information by its employees.

Information Circular

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: (1) The procedures for purchases and redemptions of Shares in Creation Units (and that Shares are not individually redeemable); (2) BATS Rule 3.7, which imposes suitability obligations on Exchange members with respect to recommending transactions in the Shares to customers; (3) how information regarding the Intraday Indicative Value is disseminated; (4) the risks involved in trading the Shares during the Pre-Opening[39] and After Hours Trading Sessions[40] when an updated Intraday Indicative Value will not be calculated or publicly disseminated; (5) the requirement that members deliver a prospectus to investors purchasing newly issued Shares prior to or concurrently with the confirmation of a transaction; and (6) trading information.

In addition, the Information Circular will advise members, prior to the commencement of trading, of the prospectus delivery requirements applicable to the Fund. Members purchasing Shares from the Fund for resale to investors will deliver a prospectus to such investors. The Information Circular will also discuss any exemptive, no-action, and interpretive relief granted by the Commission from any rules under the Act.

In addition, the Information Circular will reference that the Fund is subject

[37] *See* 17 CFR 240.10A–3.

[38] For a list of the current members of ISG, *see www.isgportal.org*. The Exchange notes that not all components of the Disclosed Portfolio for the Fund may trade on markets that are members of ISG or with which the Exchange has in place a comprehensive surveillance sharing agreement.

[39] The Pre-Opening Session is from 8:00 a.m. to 9:30 a.m. Eastern Time.

[40] The After Hours Trading Session is from 4:00 p.m. to 5:00 p.m. Eastern Time.

to various fees and expenses described in the Registration Statement. The Information Circular will also disclose the trading hours of the Shares of the Fund and the applicable NAV Calculation Time for the Shares. The Information Circular will disclose that information about the Shares of the Fund will be publicly available on the Fund's Web site. In addition, the Information Circular will reference that the Trust is subject to various fees and expenses described in the Fund's Registration Statement.

2. Statutory Basis

The Exchange believes that the proposal is consistent with section 6(b) of the Act [41] in general and section 6(b)(5) of the Act [42] in particular in that it is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in facilitating transactions in securities, to remove impediments to and perfect the mechanism of a free and open market and a national market system and, in general, to protect investors and the public interest.

The Exchange believes that the proposed rule change is designed to prevent fraudulent and manipulative acts and practices in that the Shares will be listed and traded on the Exchange pursuant to the initial and continued listing criteria in BATS Rule 14.11(i). The Exchange believes that its surveillance procedures are adequate to properly monitor the trading of the Shares on the Exchange during all trading sessions and to deter and detect violations of Exchange rules and the applicable federal securities laws. BATS Rule 14.11(i)(7) provides that, if the investment adviser to the investment company issuing Managed Fund Shares is affiliated with a broker-dealer, such investment adviser shall erect a ''fire wall'' between the investment adviser and the broker-dealer with respect to access to information concerning the composition and/or changes to such investment company portfolio. The Adviser is not a registered broker-dealer, but is affiliated with multiple broker-dealers and has implemented ''fire walls'' with respect to such broker-dealers regarding access to information concerning the composition and/or changes to the Fund's portfolio. In addition, Adviser personnel who make decisions regarding the Fund's portfolio are subject to procedures designed to prevent the use and dissemination of material nonpublic information regarding the Fund's portfolio. The Exchange may obtain information regarding trading in the Shares and the underlying shares in exchange traded equity securities via the ISG, from other exchanges that are members or affiliates of the ISG, or with which the Exchange has entered into a comprehensive surveillance sharing agreement. In addition, the Exchange is able to access, as needed, trade information for certain fixed income instruments reported to TRACE.

According to the Registration Statement, the Fund will invest, under normal circumstances,[43] at least 80% of its net assets in Municipal Securities, Short-Term Instruments, and Repurchase Agreements. Additionally, the Fund may hold up to an aggregate amount of 15% of its net assets in illiquid assets (calculated at the time of investment), as deemed illiquid by the Adviser [44] under the 1940 Act.[45] The 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 the 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 proposed rule change is designed to promote just and equitable principles of trade and to protect investors and the public interest in that 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. In addition, a large amount of information is publicly available regarding the Fund and the Shares, thereby promoting market transparency. Moreover, the Intraday Indicative Value will be disseminated by one or more major market data vendors at least every 15 seconds during Regular Trading Hours. On each business day, before commencement of trading in Shares during Regular Trading Hours, the Fund will disclose on its Web site the Disclosed Portfolio that will form the basis for the Fund's calculation of NAV at the end of the business day. Pricing information will include additional quantitative information updated on a daily basis, including, for the Fund: (1) The prior business day's NAV and the market closing price or mid-point of the bid/ask spread at the time of calculation of such NAV (the ''Bid/Ask Price''),[46] and a calculation of the premium or discount of the market closing price or Bid/Ask Price against the NAV; and (2) data in chart format displaying the frequency distribution of discounts and premiums of the daily Bid/Ask Price against the NAV, within appropriate ranges, for each of the four previous calendar quarters. Additionally, information regarding market price and trading of the Shares will be continually available on a real-time basis throughout the day on brokers' computer screens and other electronic services, and quotation and last sale information for the Shares will be available on the facilities of the CTA. The Web site for the Fund will include a form of the prospectus for the Fund and additional data relating to NAV and other applicable quantitative information. Trading in Shares of the Fund will be halted under the conditions specified in BATS Rule 11.18. Trading may also be halted because of market conditions or for reasons that, in the view of the Exchange, make trading in the Shares inadvisable. Finally, trading in the Shares will be subject to BATS Rule 14.11(i)(4)(B)(iv), which sets forth circumstances under which Shares may be halted. In addition, as noted above, investors will have ready access to information regarding the Fund's holdings, the Intraday Indicative Value, the Disclosed Portfolio, and quotation and last sale information for the Shares.

[41] 15 U.S.C. 78f.

[42] 15 U.S.C. 78f(b)(5).

[43] *See* supra note 7.

[44] *See* supra note 29.

[45] The Commission has stated that long-standing Commission guidelines have required open-end funds to hold no more than 15% of their net assets in illiquid securities and other illiquid assets. *See* Investment Company Act Release No. 28193 (March 11, 2008), 73 FR 14618 (March 18, 2008), footnote 34. *See also*, Investment Company Act Release No. 5847 (October 21, 1969), 35 FR 19989 (December 31, 1970) (Statement Regarding ''Restricted Securities''); Investment Company Act Release No. 18612 (March 12, 1992), 57 FR 9828 (March 20, 1992) (Revisions of Guidelines to Form N–1A). A fund's portfolio security is illiquid if it cannot be disposed of in the ordinary course of business within seven days at approximately the value ascribed to it by the fund. *See* Investment Company Act Release No. 14983 (March 12, 1986), 51 FR 9773 (March 21, 1986) (adopting amendments to Rule 2a–7 under the 1940 Act); Investment Company Act Release No. 17452 (April 23, 1990), 55 FR 17933 (April 30, 1990) (adopting Rule 144A under the Securities Act of 1933).

[46] The Bid/Ask Price of the Fund will be determined using the highest bid and the lowest offer on the Exchange as of the time of calculation of the Fund's NAV. The records relating to Bid/Ask Prices will be retained by the Fund or its service providers.

Intraday, executable price quotations on assets held by the Fund are available from major broker-dealer firms and for exchange-traded assets, including investment companies, such intraday information is available directly from the applicable listing exchange. All such intraday price information is available through subscription services, such as Bloomberg, Thomson Reuters and International Data Corporation, which can be accessed by authorized participants and other investors.

The proposed rule change is designed to perfect the mechanism of a free and open market and, in general, to protect investors and the public interest in that it will facilitate the listing and trading of an additional type of actively-managed exchange traded product that will enhance competition among market participants, to the benefit of investors and the marketplace. As noted above, the Exchange has in place surveillance procedures relating to trading in the Shares and may obtain information via ISG, from other exchanges that are members of ISG, or with which the Exchange has entered into a comprehensive surveillance sharing agreement. In addition, the Exchange is able to access, as needed, trade information for certain fixed income instruments reported to TRACE. As noted above, investors will also have ready access to information regarding the Fund's holdings, the Intraday Indicative Value, the Disclosed Portfolio, and quotation and last sale information for the Shares.

For the above reasons, the Exchange believes that the proposed rule change is consistent with the requirements of section 6(b)(5) of the Act.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purpose of the Act. The Exchange notes that the proposed rule change will facilitate the listing and trading of an additional actively-managed exchange-traded product that will enhance competition among market participants, to the benefit of investors and the marketplace.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

The Exchange has neither solicited nor received written comments on the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

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 Exchange consents, the Commission will: (a) by order approve or disapprove such proposed rule change, or (b) institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov.* Please include File Number SR–BATS–2014–054 on the subject line.

Paper Comments

- Send paper comments in triplicate to Brent J. Fields, Secretary, Securities and Exchange Commission, 100 F Street NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–BATS–2014–054. 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–BATS–2014–054, and should be submitted on or before January 20, 2015.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[47]

Brent J. Fields,

Secretary.

[FR Doc. 2014–30276 Filed 12–24–14; 8:45 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

[File No. 500–1]

In the Matter of American Heritage International Inc.; Order of Suspension of Trading

December 16, 2014.

It appears to the Securities and Exchange Commission that there is a lack of current and accurate information concerning the securities of American Heritage International Inc. (''American Heritage'') because of concerns regarding potentially manipulative activity related to American Heritage common stock. American Heritage is a Nevada corporation with its principal place of business located in Las Vegas, Nevada. Its stock is quoted on OTC Link (previously ''Pink Sheets'') operated by OTC Markets Group Inc., and on OTC Bulletin Board under the ticker symbol: AHII.

The Commission is of the opinion that the public interest and the protection of investors require a suspension of trading in the securities of the above-listed company.

Therefore, it is ordered, pursuant to Section 12(k) of the Securities Exchange Act of 1934, that trading in the securities of the above-listed company is suspended for the period from 9:30 a.m. EST, on December 16, 2014 through 11:59 p.m. EST, on December 30, 2014.

By the Commission.

Jill M. Peterson,

Assistant Secretary.

[FR Doc. 2014–30348 Filed 12–23–14; 11:15 am]

BILLING CODE 8011–01–P

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[47] 17 CFR 200.30–3(a)(12).

SOCIAL SECURITY ADMINISTRATION

[Docket No. SSA–2014–0075]

Rate for Assessment on Direct Payment of Fees to Representatives in 2015

AGENCY: Social Security Administration (SSA).

ACTION: Notice.

SUMMARY: We are announcing that the assessment percentage rate under sections 206(d) and 1631(d)(2)(C) of the Social Security Act (Act), 42 U.S.C. 406(d) and 1383(d)(2)(C), is 6.3 percent for 2015.

FOR FURTHER INFORMATION CONTACT: Jeffrey C. Blair, Associate General Counsel for Program Law, Office of the General Counsel, Social Security Administration, 6401 Security Boulevard, Baltimore, MD 21235–6401, Phone: (410) 965–3157, email *Jeff.Blair@ssa.gov.*

SUPPLEMENTARY INFORMATION: A claimant may appoint a qualified individual as a representative to act on his or her behalf in matters before the Social Security Administration. If the individual was represented either by an attorney or by a non-attorney representative who has met certain prerequisites, the Act provides that we may withhold up to 25 percent of the past-due benefits and use that money to pay the representative's approved fee directly to the representative.

When we pay the representative's fee directly to the representative, we must collect from that fee payment an assessment to recover the costs we incur in determining and paying representatives' fees. The Act provides that the assessment we collect will be the lesser of two amounts: A specified dollar limit; or the amount determined by multiplying the fee we are paying by the assessment percentage rate. (Sections 206(d), 206(e), and 1631(d)(2) of the Act, 42 U.S.C. 406(d), 406(e), and 1383(d)(2).)

The Act initially set the dollar limit at $75 in 2004 and provides that the limit will be adjusted annually based on changes in the cost-of-living. (Sections 206(d)(2)(A) and 1631(d)(2)(C)(ii)(I) of the Act, 42 U.S.C. 406(d)(2)(A) and 1383(d)(2)(C)(ii)(I).) The maximum dollar limit for the assessment currently is $91, as we announced in the **Federal Register** on October 29, 2014 (79 FR 64455).

The Act requires us each year to set the assessment percentage rate at the lesser of 6.3 percent or the percentage rate necessary to achieve full recovery of the costs we incur to determine and pay representatives' fees. (Sections 206(d)(2)(B)(ii) and 1631(d)(2)(C)(ii)(II) of the Act, 42 U.S.C. 406(d)(2)(B)(ii) and 1383(d)(2)(C)(ii)(II).)

Based on the best available data, we have determined that the current rate of 6.3 percent will continue for 2015. We will continue to review our costs for these services on a yearly basis.

Dated: December 18, 2014.

Peter D. Spencer,

Deputy Commissioner for Budget, Finance, Quality, and Management.

[FR Doc. 2014–30332 Filed 12–24–14; 8:45 am]

BILLING CODE 4191–02–P

OFFICE OF THE UNITED STATES TRADE REPRESENTATIVE

2015 Special 301 Review: Identification of Countries Under Section 182 of the Trade Act of 1974: Request for Public Comment and Announcement of Public Hearing

AGENCY: Office of the United States Trade Representative.

ACTION: Request for written submissions from the public and announcement of public hearing.

SUMMARY: Section 182 of the Trade Act of 1974 (Trade Act) (19 U.S.C. 2242) requires the United States Trade Representative (Trade Representative) to identify countries that deny adequate and effective protection of intellectual property rights (IPR) or deny fair and equitable market access to U.S. persons who rely on intellectual property protection. The provisions of Section 182 are commonly referred to as the ''Special 301'' provisions of the Trade Act. The Trade Act requires the Trade Representative to determine which, if any, of these countries to identify as Priority Foreign Countries. Acts, policies, or practices that are the basis of a country's identification as a Priority Foreign Country can be subject to the procedures set out in sections 301–305 of the Trade Act.

In addition, the Office of the United States Trade Representative (USTR) has created a ''Priority Watch List'' and ''Watch List'' to assist the Administration in pursuing the goals of the Special 301 provisions. Placement of a trading partner on the Priority Watch List or Watch List indicates that particular problems exist in that country with respect to IPR protection, enforcement, or market access for persons that rely on intellectual property protection. Trading partners placed on the Priority Watch List are the focus of increased bilateral attention concerning the problem areas.

USTR chairs the Special 301 Subcommittee of the Trade Policy Staff Committee (Subcommittee). The Subcommittee reviews information from many sources, and consults with and makes recommendations to the Trade Representative on issues arising under Special 301. Written submissions from interested persons are a key source of information for the Special 301 review process. In 2015, USTR again will conduct a public hearing as part of the review process as well as offer the opportunity, as described below, for hearing participants to provide additional information relevant to the review. At the conclusion of the process, USTR will publish the results of the review in a ''Special 301'' Report.

USTR is hereby requesting written submissions from the public concerning foreign countries that deny adequate and effective protection of intellectual property rights or deny fair and equitable market access to U.S. persons who rely on intellectual property protection. USTR requests that interested parties provide the information described below in the ''Public Comments'' section, and identify whether a particular trading partner should be named as a Priority Foreign Country under Section 182 of the Trade Act or placed on the Priority Watch List or Watch List. Foreign governments that have been identified in previous Special 301 Reports or that are nominated for review in 2015 are considered interested parties, and are invited to respond to this request for public submissions. Interested parties, including foreign governments, wishing to submit information to be considered during the review or testify at the public hearing must adhere to the procedures and deadlines set forth below.

Dates/Deadlines: The schedule and deadlines for the 2015 Special 301 review are as follows:

Friday, February 6, 2015—Deadline for interested parties, except foreign governments, to submit written comments, notice of intent to testify at the Special 301 Public Hearing, and hearing statements.

Friday, February 13, 2015—Deadline for foreign governments to submit written comments, notice of intent to testify at the Special 301 Public Hearing, and, although not mandatory, any prepared hearing statements.

Tuesday, February 24, 2015—Public Hearing—The Special 301 Subcommittee will hold a Public Hearing for interested parties, including representatives of foreign governments, at the offices of the International Trade Commission, 500 E Street SW., Washington, DC. No later than Friday,

February 20, 2015, USTR will confirm the date and location of the hearing and provide the schedule at *www.ustr.gov.*

Friday, February 27, 2015—Deadline for submitting post-hearing written comments. Interested parties may provide written comments after the hearing. To ensure consideration, comments must be received no later than Friday, February 27, 2015. Please submit additional written comments electronically via *www.regulations.gov,* docket number USTR–2014–0025.

On or about April 30, 2015—USTR will publish the 2015 Special 301 Report within 30 days of the publication of the National Trade Estimate (NTE) Report.

Procedures/Addresses: All written comments, notices of intent to testify at the public hearing, hearing statements and post-hearing written responses must be in English and submitted electronically via *www.regulations.gov,* docket number USTR–2014–0025. Please specify ''2015 Special 301 Review'' in the ''Type Comment'' field.

FOR FURTHER INFORMATION CONTACT: Susan F. Wilson, Director for Intellectual Property and Innovation, Office of the United States Trade Representative, at *Special301@ustr.eop.gov.* Information on the Special 301 annual review is also available at *www.ustr.gov.*

SUPPLEMENTARY INFORMATION:

1. Background

USTR requests that interested persons identify through the process outlined in this notice those countries whose acts, policies, or practices deny adequate and effective protection for intellectual property rights or deny fair and equitable market access to U.S. persons who rely on intellectual property protection.

Section 182 further requires the Trade Representative to identify any act, policy, or practice of Canada that affects cultural industries, is adopted or expanded after December 17, 1992, and is actionable under Article 2106 of the North American Free Trade Agreement (NAFTA). The public is invited to submit views relevant to this aspect of the review.

Section 182 requires the Trade Representative to identify all such acts, policies, or practices within 30 days of the publication of the National Trade Estimate (NTE) Report. In accordance with this statutory requirement, USTR will publish the annual Special 301 Report on or about April 30, 2015.

2. Comments From the Public

a. Requirements for Written Comments

To facilitate the review, written comments should be as detailed as possible and provide all necessary information for identifying and assessing the effect of the acts, policies, and practices. USTR requests that interested parties provide specific references to laws, regulations, policy statements, executive, presidential or other orders, administrative, court or other determinations that should factor in the review. USTR also requests that, where relevant, submissions mention particular regions, provinces, states, or other subdivisions of a country in which an act, policy, or practice is believed to warrant special attention. Finally, submissions proposing countries for review should include data, loss estimates, and other information regarding the economic impact on the United States, U.S. industry and the U.S. workforce caused by the denial of adequate and effective intellectual property protection. Comments that include quantitative loss claims should be accompanied by the methodology used in calculating such estimated losses.

b. Filing Instructions

Comments must be in English. All comments should be sent electronically via *www.regulations.gov,* docket number USTR–2014–0025. To submit comments, locate the docket (folder) by entering the number USTR–2014–0025 in the ''Enter Keyword or ID'' window at the *www.regulations.gov* home page and click ''Search.'' The site will provide a search-results page listing all documents associated with this docket. Locate the reference to this notice by selecting ''Notice'' under ''Document Type'' on the left side of the search-results page, and click on the link entitled ''Comment Now!.'' USTR requests that comments be provided in an attached document, and that the file be named according to the following protocol, as appropriate: *Commenter Name* or *Organization_2015 Special 301 Review_Comment* or *Notice of Intent to Testify* or *Hearing Testimony.* Please include the following information in the ''Type Comment'' field: ''2015 Special 301 Review'' and whether the submission is a comment, a request to testify at the public hearing, or hearing testimony. Please submit documents prepared in (or compatible with) Microsoft Word (.doc) or Adobe Acrobat (.pdf) formats. If the submission was prepared in a compatible format, please indicate the name of the relevant software application in the ''Type Comment'' field. For further information on using the *www.regulations.gov* Web site, please select ''How to Use Regulations.gov'' on the bottom of any page.

3. Public Hearing

a. Notice of Public Hearing

The Special 301 Subcommittee will hold a public hearing on February 24, 2015, at the offices of the International Trade Commission, 500 E Street SW., Washington, DC, at which interested parties, including representatives of foreign governments, may appear. The hearing will be open to the public. Please consult *www.ustr.gov* on or after February 20, 2015, to confirm the date and location of the hearing, and to obtain copies of the hearing. USTR also will post the transcript and recording of the hearing on the site as soon after the hearing as possible.

b. Submission of Notice of Intent To Testify and Hearing Statements

Prepared oral testimony before the Special 301 Subcommittee must be delivered in person, in English, and will be limited to five minutes. Subcommitte member agencies may ask questions following the prepared statement.

Interested parties, except foreign governments, wishing to testify at the hearing must submit a ''Notice of Intent to Testify'' and ''Hearing Statement'' to *www.regulations.gov* (following the procedures set forth in ''Filing Instructions'' above). The filing deadline is Friday, February 7, 2015. The Notice of Intent to Testify must include the name of the witness, name of the organization (if applicable), address, telephone number, fax number, and email address. A Hearing Statement must accompany the Notice of Intent to Testify. There is no requirement regarding the length of the Hearing Statement; however, the content of the testimony must be relevant to the Special 301 Review.

All interested foreign governments that wish to testify at the hearing must submit a ''Notice of Intent to Testify'' to *www.regulations.gov* (following the procedures set forth in ''Filing Instructions'' above). The Notice of Intent to Testify must be filed by Friday, February 14, 2015, and include the name of the witness, name of the organization (if applicable), address, telephone number, fax number, and email address. Although not mandatory, government witnesses may submit a Hearing Statement when filing the Notice of Intent to Testify.

4. Business Confidential Information

A person requesting that information contained in a comment submitted by that person be treated as confidential business information must certify that such information is business confidential and would not customarily be released to the public by the submitter. The filenames of both documents should reflect their status—''BCI'' for the business confidential version and ''PUBLIC'' for the public version. In the document, confidential business information must be clearly designated as such, the submission must be marked ''BUSINESS CONFIDENTIAL'' at the top and bottom of the cover page and each succeeding page, and the submission should indicate, via brackets, the specific information that is confidential. Additionally, the submitter should write ''Business Confidential'' in the ''Type Comment'' field. Anyone submitting a comment containing business confidential information must also submit, as a separate submission, a non-business confidential version of the submission, indicating where the business confidential information has been redacted. The non-business confidential version will be placed in the docket at *www.regulations.gov* and be available for public inspection.

5. Inspection of Comments

USTR will maintain a publicly accessible docket for the 2015 Special 301 Review. This public file will include all non-business confidential comments, notices of intent to testify, and hearing statements that USTR receives from the public, including foreign governments, in conjunction with the 2015 Special 301 Review. Comments will be placed in the docket upon receipt and be open to public inspection pursuant to 15 CFR 2006.13. Comments containing confidential business information are exempt from public inspection in accordance with 15 CFR 2006.15. However, USTR will require submission of non-business confidential versions of such documents, as described above, and will post non-business confidential versions to the public docket. Comments may be viewed at *www.regulations.gov* by entering docket number USTR–2014–0025 in the search field on the home page.

Susan F. Wilson,

Director for Intellectual Property and Innovation.

[FR Doc. 2014–30312 Filed 12–24–14; 8:45 am]

BILLING CODE 3290–F5–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

[Docket No. FAA–2011–1149]

Clarification of Policy Regarding Designated Aircraft Dispatcher Examiners

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

ACTION: Policy Revision.

SUMMARY: This notice announces a revision to policy contained in FAA Order 8900.1, regarding the qualification, authority, and limitations of Designated Aircraft Dispatcher Examiners (DADEs). This policy revision will be published in 8900.1, Volume 3, chapter 13, sections 1 through 4, and Volume 5, Chapter 5, Section 10. This policy provides guidance to FAA employees on the responsibilities, qualifications, and oversight of DADEs under 14 CFR part 183. Under this revision, the FAA is clarifying its policy regarding the qualifications, privileges, and limitations of these designees, in addition to establishing guidelines for DADEs when testing applicants for an Aircraft Dispatcher Certificate.

DATES: This policy will ultimately be published in conjunction with policy related to Aircraft Dispatcher Certification Courses, which is posted for public comment in docket number, FAA–2014–0820. These two sets of policy are somewhat interrelated. Therefore we will hold publication of this policy revision until the conclusion of the comment period and subsequent adjudication of comments, to the draft Aircraft Dispatcher Certification policy contained in FAA–2014–0820. The comment period for the Aircraft Dispatcher Certification policy will close on February 22, 2015.

ADDRESSES: For information on where to obtain copies of rulemaking documents and other information related to this final policy, see ''How To Obtain Additional Information'' in the **SUPPLEMENTARY INFORMATION** section of this document.

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 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: Theodora Kessaris,, New Program Implementation and Technical Support Branch, Air Transportation Division, Flight Standards Service, Federal Aviation Administration, 800 Independence Avenue SW., Washington, DC 20591; telephone: 202–267–8166; facsimile: 202–267–5229; email: *Theodora.kessaris@faa.gov.*

SUPPLEMENTARY INFORMATION:

Background

On November 8, 2011, the FAA announced the availability of a proposed revision to policy contained in FAA Order 8900.1, regarding the qualification, authority, and limitations of Designated Aircraft Dispatcher Examiners (DADEs). The public was provided with a total of 90 days in which to provide comment to the proposed revision. The initial comment period, which was 30 days, was extended to 90 days at the public's request. The FAA has carefully considered the comments submitted by the public and incorporated them into this DADE policy revision as appropriate. This policy revision takes into consideration comments received in this docket during the period between November 8, 2011 and February 8, 2012. A table containing the FAA's disposition of those comments has also been provided in this docket. The FAA will hold publication of this DADE policy revision in Order 8900.1, until such time as it can be published simultaneously with the policy related to Aircraft Dispatcher Certification Courses, which is currently available for public in docket number FAA–2014–0820. Final publication of the DADE policy revision contained in this docket, as well as the Aircraft Dispatcher Certification Course policy contained in docket number FAA–2014–0820, will be announced by Notice which will be published on Flight Standards Information Management System Web site at *http://fsims.faa.gov.* When published, the Notice will also be available at *http://www.faa.gov/regulations_policies/orders_notices.* A copy of the final draft of the policy related to DADEs is available for review in the assigned docket for the Order at *http://www.regulations.gov.*

Issued in Washington, DC on December 15, 2014.

John Barbagallo,

Deputy Director, FAA Flight Standards Service.

[FR Doc. 2014–30230 Filed 12–24–14; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Notice of a Land Release Affecting Federal Grant Assurance Obligations at Tucson International Airport, Tucson, Pima County, Arizona

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of a Land Release.

SUMMARY: The Federal Aviation Administration (FAA) proposes to rule and invites public comment on the application for a land release of approximately 60 acres of airport property at Tucson International Airport, Tucson, Pima County, Arizona from the aeronautical use provisions of the Grant Agreement Assurances since the land is not needed for airport purposes. The property will be used by Pima County, Arizona to relocate an existing roadway that is too close to United States Air Force Plant Number 4, a military ordnance manufacturing facility. The proposed land release will allow the relocated public roadway to comply with the military safety separation standards from the ordnance facility. The airport will be compensated for the fair market value of the land. The use of the land for a roadway represents a compatible land use that will not interfere with the airport or its operation, thereby protecting the interests of civil aviation.

DATES: Comments must be received on or before January 28, 2015.

FOR FURTHER INFORMATION CONTACT: Comments on the request may be mailed or delivered to the FAA at the following address: Mr. Mike N. Williams, Manager, Airports District Office, Federal Register Comment, Federal Aviation Administration, Phoenix Airports District Office, 3800 N. Central Avenue, Suite 1025, Phoenix, Arizona 85012. In addition, one copy of the comment submitted to the FAA must be mailed or delivered to Mr. Eric Roudebush, Director of Environmental Services, Tucson Airport Authority, 7005 South Plumer Avenue, Tucson, Arizona 85756.

SUPPLEMENTARY INFORMATION: In accordance with the Wendell H. Ford Aviation Investment and Reform Act for the 21st Century (AIR 21), Public Law 10–181 (Apr. 5, 2000; 114 Stat. 61), this notice must be published in the **Federal Register** 30 days before the DOT Secretary may waive any condition imposed on a federally obligated airport by surplus property conveyance deeds or grant agreements.

The following is a brief overview of the request:

The Tucson Airport Authority (TAA) requested a release from the provisions of the Grant Agreement Assurances to permit the disposal of approximately 60 acres of land at Tucson International Airport, Tucson, Pima County, Arizona to permit the construction of a relocated replacement roadway by Pima County (County) to comply with safety arcs defined by the United States Air Force (USAF) for USAF Plant Number 44. The County proposes to relocate a portion of East Hughes Access Road between the South Nogales Highway and South Alvernon Way about 2,500 feet to the south of its present location so the new roadway and its users will be outside the designated safety zones used by the United States Air Force Plant Number 44 to keep the public a safe distance from an ordnance plant. The Tucson Airport Authority will sell the land, about 3 miles in length, that is obligated by Airport Improvement Program grants. In return, TAA will be compensated for the fair market value of the right of way property. In addition, when the old roadway is abandoned, TAA will have its rights restored to the portions that it originally owned. The use of the land for a roadway is a compatible land use that will not interfere with or impede the operations and development of the airport. Based on the benefits of fair compensation and enhanced public safety, the interests of civil aviation will be properly served.

Issued in Hawthorne, California, on December 18, 2014.

Brian Q. Armstrong,

Manager, Safety and Standards Branch, Airports Division, Western-Pacific Region.

[FR Doc. 2014–30361 Filed 12–24–14; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Transit Administration

[FTA Docket No. FTA–2014–0029]

Agency Information Collection Activity Under OMB Review

AGENCY: Federal Transit Administration, DOT.

ACTION: Notice of request for comments.

SUMMARY: The Federal Transit Administration invites public comment about its intention to request the Office of Management and Budget's (OMB) approval to renew the following information collection:

49 U.S.C. 5308—Clean Fuels Grant Program

The information collected is necessary to determine eligibility of applicants and ensure the proper and timely expenditure of federal funds within the scope of the program. The **Federal Register** notice with a 60-day comment period soliciting comments for the Clean Fuels Grant Program was published on November 4, 2014 (Citation 79 FR 213). No comments were received from that notice.

DATES: Comments must be submitted before January 28, 2015. A comment to OMB is most effective, if OMB receives it within 30 days of publication.

FOR FURTHER INFORMATION CONTACT: Tia Swain, Office of Administration, Office of Management Planning, (202) 366–0354.

SUPPLEMENTARY INFORMATION:

Title: Clean Fuels Grant Program (*OMB Number: 2132–0573*).

Abstract: The Clean Fuels Grant Program helps communities achieve or maintain the National Ambient Air Quality Standards for ozone and carbon monoxide, while supporting transit agencies in the acquisition of emerging clean fuel and advanced propulsion technologies for transit buses. The Clean Fuels Grant Program was repealed by Congress under the Moving Ahead for Progress in the 21st Century Act (MAP–21). However, to meet federal program oversight responsibilities, FTA must continue to collect information under the program management stage until the period of availability expires; the funds are fully expended; the funds are rescinded by Congress; or the funds are otherwise reallocated.

Estimated Total Annual Burden: 340 hours.

ADDRESSES: All written comments must refer to the docket number that appears at the top of this document and be submitted to the Office of Information and Regulatory Affairs, Office of Management and Budget, 725–17th Street NW., Washington, DC 20503, Attention: FTA Desk Officer.

Comments are invited on: Whether the proposed collection of information is necessary for the proper performance of the functions of the Department, including whether the information will have practical utility; the accuracy of the Department's estimate of the burden of the proposed information collection; ways to enhance the quality, utility, and clarity of the information to be collected; and ways to minimize the burden of the collection of information on respondents, including the use of

automated collection techniques or other forms of information technology.

Matthew M. Crouch,

Associate Administrator for Administration.

[FR Doc. 2014–30335 Filed 12–24–14; 8:45 am]

BILLING CODE P

DEPARTMENT OF TRANSPORTATION

Federal Transit Administration

[FTA Docket No. 2014–0027]

Notice of Request for the Extension of a Currently Approved Information Collection

AGENCY: Federal Transit Administration, DOT.

ACTION: Notice of request for comments.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, this notice announces the intention of the Federal Transit Administration (FTA) to request the Office of Management and Budget (OMB) to approve the revision of the currently approved information collection: 49 U.S.C. 5335(a) and (b) National Transit Database (NTD).

DATES: Comments must be submitted before February 27, 2015.

ADDRESSES: To ensure that your comments are not entered more than once into the docket, submit comments identified by the docket number by only one of the following methods:

1. *Web site: www.regulations.gov.* Follow the instructions for submitting comments on the U.S. Government electronic docket site. (Note: The U.S. Department of Transportation's (DOT's) electronic docket is no longer accepting electronic comments.) All electronic submissions must be made to the U.S. Government electronic docket site at *www.regulations.gov.* Commenters should follow the directions below for mailed and hand-delivered comments.

2. *Fax:* 202–493–2251.

3. *Mail:* U.S. Department of Transportation, 1200 New Jersey Avenue SE., Docket Operations, M–30, West Building, Ground Floor, Room W12–140, Washington, DC 20590–0001.

4. *Hand Delivery:* U.S. Department of Transportation, 1200 New Jersey Avenue SE., Docket Operations, M–30, West Building, Ground Floor, Room W12–140, Washington, DC 20590–0001 between 9:00 a.m. and 5:00 p.m., Monday through Friday, except federal holidays.

Instructions: You must include the agency name and docket number for this notice at the beginning of your comments. Submit two copies of your comments if you submit them by mail. For confirmation that FTA has received your comments, include a self-addressed stamped postcard. Note that all comments received, including any personal information, will be posted and will be available to Internet users, without change, to *www.regulations.gov.* You may review DOT's complete Privacy Act Statement in the **Federal Register** published April 11, 2000, (65 FR 19477), or you may visit *www.regulations.gov.* Docket: For access to the docket to read background documents and comments received, go to *www.regulations.gov* at any time. Background documents and comments received may also be viewed at the U.S. Department of Transportation, 1200 New Jersey Avenue SE., Docket Operations, M–30, West Building, Ground Floor, Room W12–140, Washington, DC 20590–0001 between 9:00 a.m. and 5:00 p.m., Monday through Friday, except federal holidays.

FOR FURTHER INFORMATION CONTACT: National Transit Database—Mr. Keith Gates, Office of Budget and Policy (202) 366–1794, or email: *Keith.Gates@dot.gov.*

SUPPLEMENTARY INFORMATION: Interested parties are invited to send comments regarding any aspect of this information collection, including: (1) The necessity and utility of the information collection for the proper performance of the functions of the FTA; (2) the accuracy of the estimated burden; (3) ways to enhance the quality, utility, and clarity of the collected information; and (4) ways to minimize the collection burden without reducing the quality of the collected information. Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval of this information collection.

FTA currently has two (2) pending **Federal Register** notices (docket numbers FTA–2014–0006 and FTA–2014–0009) covering proposed changes to NTD reporting, including updates to the Safety and Security Reporting Module and the addition of a new Asset Inventory Module. The comment period on these notices ended in October 2014. FTA is currently in the process of reviewing and responding to the comments received from these notices. The estimated burden below is based on FTA's goal of implementing the proposed changes with minimal impact to current reporting burdens. A revised impact analysis and **Federal Register** Notice will be filed, if necessary, based on FTA's final proposal in response to the comments.

Title: 49 U.S.C. 5335(a) and (b) National Transit Database.

OMB Control No.: 2132–0008.

Background: 49 U.S.C. 5335(a) and (b) requires the Secretary of Transportation to maintain a reporting system, using a uniform system of accounts, to collect financial and operating information from the nation's public transportation systems. Congress created the NTD to be the repository of transit data for the nation to support public transportation service planning. FTA has established the NTD to meet these requirements, and has collected data for over 35 years. FTA continues to seek ways to reduce the burden of NTD reporting, introducing a new Sampling Manual in 2010 to reduce the burden of passenger mile sampling and introducing its new Small Systems Waiver in 2011 to reduce the reporting burden on small transit systems. An improved on-line reporting system is currently being deployed. The NTD is comprised of four modules, Rural, Urban Annual, Monthly, and Safety Event Reporting.

Estimated Annual Burden: Currently FTA receives reports from 54 State and Territorial DOTs. Combined, these States and Territories report on behalf of approximately 1,300 sub-recipients from FTA's Rural (Section 5311) Formula Program. For each sub-recipient, the State provides identifying information, sources of operating funds, sources of capital funds, vehicle revenue miles, vehicle revenue hours, and unlinked passenger trips. Additionally, a revenue vehicle inventory is reported, as well as total fatalities, injuries, and safety incidents for the year. FTA estimates that it takes approximately 20 hours to report on behalf of each sub-recipient, including the time needed for the sub-recipient to gather the information and report it to its State DOT, the time for the State DOT to assemble the data and submit it to FTA, and the time to respond to validation questions from FTA about the data.

Estimated Total Annual Burden: 26,000 hours.

Frequency: Annual reports.

NTD Annual Module—Small Systems Waiver: Each year about 300 transit systems with 30 or fewer vehicles claim a Small Systems Waiver and file a reduced report. There are an additional 122 Tribal Transit reporters that complete an annual report very similar to the small system reduced report.

Estimated Annual Burden: FTA provides reduced reporting requirements to urbanized area transit systems with 30 or fewer vehicles. These systems are exempt from sampling for passenger miles and report only summary financial and operating statistics compared to full reporters in urbanized areas, similar to what is

required of the rural sub-recipients. Additionally, they also report contact information, funding allocation information, a revenue vehicle inventory, the number of stations and maintenance facilities, and total injuries, fatalities, and safety incidents. The reports are also required to be reviewed by an auditor and certified by the CEO. Systems with this waiver are also exempt from the Monthly and Safety & Security Modules. FTA estimates that completing a report for a Small Systems Waiver requires approximately 27 hours, including time to assemble the information and respond to validation questions from FTA about the report.

Estimated Total Annual Urban Burden: 11,400 hours.

Frequency: Annually.

NTD Annual Module—Full Reports: FTA expects about 550 transit systems to file complete reports.

Estimated Annual Burden: The Full Report to the Annual Module is comprehensive. Basic contact information, as well as information on sub-recipients and purchased transportation contracts must be provided. Sources of funds for operating expenses and capital expenses must be provided, as well as detailed operating and capital expenses for each mode by function and object class. Key service data collected includes vehicle revenue miles, vehicle revenue hours, unlinked passenger trips, and passenger miles traveled; these must be provided by average, weekday, average Saturday, average Sunday, and as an annual total. Most systems that do not inherently collect passenger mile information (such as a ferryboat or commuter rail) must conduct random sampling for passenger mile information. Large systems with more than 100 vehicles are required to sample for passenger miles every year, whereas smaller systems are only required to sample every third year. A comprehensive revenue vehicle inventory is collected, as well as information on fixed guide-way mileage, passenger stations, maintenance facilities, fuel consumption, employee hours, and maintenance breakdowns. Reports are also required to be reviewed by an auditor and certified by the system CEO.

Approximately 100 large systems are required to sample for passenger miles each year and approximately 450 mid-size systems sample every three years. FTA estimates that it takes approximately 340 hours per year to sample for passenger miles, which is amortized over three years for mid-sized systems. FTA estimates that completing the remaining financial, operating, resource, and capital asset information requires approximately 250 hours per year per transit system, including gathering the information, completing the forms, and responding to validation questions.

Estimated Total Burden: 222,500 hours.

Frequency: Annually.

NTD Monthly Module: FTA expects about 550 transit systems to report to the Monthly Module.

Estimated Annual Burden: Each month, vehicle revenue miles, vehicle revenue hours, unlinked passenger trips, and vehicles operated in maximum service are submitted to the Monthly Module. FTA estimates that it takes approximately 4 hours each month for each system to report the data, including collecting and assembling the data for each mode, filling out the form, and responding to any validation questions in regards to the data.

Estimated Total Annual Urban Burden: 26,400 hours.

Frequency: Monthly.

NTD Safety Event Reporting Module: FTA expects about 550 transit systems to report to the Safety & Security Module.

Estimated Annual Burden: Each system provides an annual report on the total number of system security personnel, and an annual CEO certification of the safety data. Each month, systems provide a summary report of all minor fires and all incidents resulting in single-person injuries due to slips, falls, or electrical shocks. Additionally, systems must provide a detailed report within 30 days of any incident involving one or more fatalities, one or more injuries, or total property damage in excess of $25,000. FTA currently receives about 6,000 major incident reports per year, and estimates that it takes on average about 2 hours to collect data for each incident, enter it into the NTD, and respond to any validation question. Additionally, FTA estimates that each of the 550 full reporters spend on average one hour each month completing the minor incident summary reports.

Estimated Total Annual Urban Burden: 18,600 hours.

Frequency: Monthly.

Total Annual NTD Burden: 304,900 hours.

Matthew M. Crouch,

Associate Administrator for Administration.

[FR Doc. 2014–30334 Filed 12–24–14; 8:45 am]

BILLING CODE P

DEPARTMENT OF TRANSPORTATION

Federal Transit Administration

[FTA Docket No. 2014–0028]

Notice of Request for the Extension of a Currently Approved Information Collection

AGENCY: Federal Transit Administration, DOT.

ACTION: Notice of request for comments.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, this notice announces the intention of the Federal Transit Administration (FTA) to request the Office of Management and Budget (OMB) to approve the revision of the currently approved information collection: 49 U.S.C. 5320 Paul S. Sarbanes Transit in the Parks Program.

DATES: Comments must be submitted before February 27, 2015.

ADDRESSES: To ensure that your comments are not entered more than once into the docket, submit comments identified by the docket number by only one of the following methods:

1. *Web site: www.regulations.gov.* Follow the instructions for submitting comments on the U.S. Government electronic docket site. (Note: The U.S. Department of Transportation's (DOT's) electronic docket is no longer accepting electronic comments.) All electronic submissions must be made to the U.S. Government electronic docket site at *www.regulations.gov.* Commenters should follow the directions below for mailed and hand-delivered comments.

2. *Fax:* 202–493–2251.

3. *Mail:* U.S. Department of Transportation, 1200 New Jersey Avenue SE., Docket Operations, M–30, West Building, Ground Floor, Room W12–140, Washington, DC 20590–0001.

4. *Hand Delivery:* U.S. Department of Transportation, 1200 New Jersey Avenue SE., Docket Operations, M–30, West Building, Ground Floor, Room W12–140, Washington, DC 20590–0001 between 9:00 a.m. and 5:00 p.m., Monday through Friday, except federal holidays.

Instructions: You must include the agency name and docket number for this notice at the beginning of your comments. Submit two copies of your comments if you submit them by mail. For confirmation that FTA has received your comments, include a self-addressed stamped postcard. Note that all comments received, including any personal information, will be posted and will be available to Internet users, without change, to *www.regulations.gov.* You may review DOT's complete

Privacy Act Statement in the **Federal Register** published April 11, 2000, (65 FR 19477), or you may visit *www.regulations.gov.* Docket: For access to the docket to read background documents and comments received, go to *www.regulations.gov* at any time. Background documents and comments received may also be viewed at the U.S. Department of Transportation, 1200 New Jersey Avenue SE., Docket Operations, M–30, West Building, Ground Floor, Room W12–140, Washington, DC 20590–0001 between 9:00 a.m. and 5:00 p.m., Monday through Friday, except federal holidays.

FOR FURTHER INFORMATION CONTACT: Adam Schildge—Office of Program Management (202) 366–0778, or email: *adam.schildge@dot.gov*.

SUPPLEMENTARY INFORMATION: Interested parties are invited to send comments regarding any aspect of this information collection, including: (1) The necessity and utility of the information collection for the proper performance of the functions of the FTA; (2) the accuracy of the estimated burden; (3) ways to enhance the quality, utility, and clarity of the collected information; and (4) ways to minimize the collection burden without reducing the quality of the collected information. Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval of this information collection.

Title: 49 U.S.C. 5320 Paul S. Sarbanes Transit in the Parks Program.

OMB Control No.: 2132–0574.

Background: Section 3021 of the Safe, Accountable, Flexible, Efficient Transportation Equity Act—A Legacy for Users (SAFETEA–LU), as amended, established the Paul S. Sarbanes Transit in Parks Program (Transit in Parks Program—49 U.S.C. 5320). The program is administered by FTA in partnership with the Department of the Interior (DOI) and the U.S. Department of Agriculture's Forest Service. The program provides grants to Federal land management agencies that manage an eligible area, including but not limited to the National Park Service, the Fish and Wildlife Service, the Bureau of Land Management, the Forest Service, the Bureau of Reclamation; and State, tribal and local governments with jurisdiction over land in the vicinity of an eligible area, acting with the consent of a Federal land management agency, alone or in partnership with a Federal land management agency or other governmental or non-governmental participant. The purpose of the program is to provide for the planning and capital costs of alternative transportation systems that will enhance the protection of national parks and Federal lands; increase the enjoyment of visitors' experience by conserving natural, historical, and cultural resources; reduce congestion and pollution; improve visitor mobility and accessibility; enhance visitor experience; and ensure access to all, including persons with disabilities. The Paul S. Sarbanes Transit in the Parks program was repealed under the Moving Ahead for Progress in the 21st Century Act (MAP–21). However, funds previously authorized for programs repealed by MAP–21 remain available for their originally authorized purposes until the period of availability expires, the funds are fully expended, the funds are rescinded by Congress, or the funds are otherwise reallocated.

Respondents: Federal land management agencies that manage an eligible area, including but not limited to the National Park Service, the Fish and Wildlife Service, the Bureau of Land Management, the Forest Service, the Bureau of Reclamation; and State, tribal and local governments.

Estimated Annual Burden on Respondents: Approximately 4 hours for each of the 5 respondents.

Estimated Total Annual Burden: 20 hours.

Frequency: Quarterly.

Matthew M. Crouch,

Associate Administrator for Administration.

[FR Doc. 2014–30299 Filed 12–24–14; 8:45 am]

BILLING CODE P

DEPARTMENT OF THE TREASURY

Submission for OMB Review; Comment Request

December 22, 2014.

The Department of the Treasury will submit the following information collection requests to the Office of Management and Budget (OMB) for review and clearance in accordance with the Paperwork Reduction Act of 1995, Pub. L. 104–13, on or after the date of publication of this notice.

DATES: Comments should be received on or before January 28, 2015 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 8140, 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) 927–5331, or viewing the entire information collection request at *www.reginfo.gov*.

Alcohol and Tobacco Tax and Trade Bureau (TTB)

OMB Number: 1513–0006.

Type of Review: Extension of a currently approved collection.

Title: Applications—Volatile Fruit-Flavor Concentrate Plants, TTB REC 5520/2.

Form: TTB F 5520.3.

Abstract: Persons who wish to establish premises to manufacture volatile fruit-flavor concentrates are required to file an application and keep records to support the manufacture of these concentrates. TTB uses the application information to identify persons responsible for such manufacture, since these products contain ethyl alcohol and have potential for use as alcoholic beverages with consequent loss of revenue. The application constitutes registry of a still, a statutory requirement. TTB uses the records to ensure that the concentrates are manufactured properly.

Affected Public: Private Sector: Businesses or other for-profits.

Estimated Annual Burden Hours: 160.

OMB Number: 1513–0022.

Type of Review: Extension of a currently approved collection.

Title: Annual Report of Concentrate Manufacturers and Usual and Customary Business Records-Volatile Fruit-Flavor Concentrate, TTB REC 5520/1.

Form: TTB F 5520.2.

Abstract: As authorized by 26 U.S.C. 5511, manufacturers of volatile fruit-flavor concentrate must provide reports as necessary to ensure the protection of the revenue. The report, TTB F 5520.2, accounts for all concentrates manufactured, removed, or treated so as to be unfit for beverage use. TTB requires this information to verify that alcohol is not being diverted, thereby jeopardizing tax revenues. The records used to compile this report are usual and customary business records that the manufacturer would maintain in the course of doing business. These reports and records must be retained for 3 years from the date prepared or 3 years from the date of the last entry, whichever is later.

Affected Public: Private Sector: Businesses or other for-profits.

Estimated Annual Burden Hours: 27.
OMB Number: 1513–0030.
Type of Review: Revision of a currently approved collection.
Title: Claim—Alcohol, Tobacco, and Firearms Taxes.
Form: TTB F 5620.8.
Abstract: Taxpayers use TTB F 5620.8 to file a claim for abatement, allowance, credit, refund, or remission of Federal excise tax on taxable articles (alcohol, tobacco products, firearms, and ammunition) when such articles have been damaged, destroyed, or lost due to theft, when tax-paid wine is returned to bond, and when tax has been erroneously or excessively collected. Taxpayers also use TTB F 5620.8 to request drawback on excise taxes paid on distilled spirits used in non-beverage products.
Affected Public: Private Sector: Businesses or other for-profits.
Estimated Annual Burden Hours: 4,600.
OMB Number: 1513–0053.
Type of Review: Revision of a currently approved collection.
Title: Report of Wine Premises Operations.
Form: TTB F 5120.17.
Abstract: TTB uses the information submitted on TTB F 5120.17 to monitor wine premises operations to ensure collection of the Federal excise tax due on the wine produced, and to ensure wine is produced in accordance with Federal law and regulations. TTB also uses this report to collect raw data on wine premises activity for its monthly statistical report on wine operations.
Affected Public: Private Sector: Businesses or other for-profits.
Estimated Annual Burden Hours: 34,711.
OMB Number: 1513–0055.
Type of Review: Extension of a currently approved collection.
Title: Offer in Compromise of Liability Incurred Under Federal Alcohol Administration Act.
Form: TTB F 5640.2.
Abstract: A proponent or a proponent's agent may submit a monetary offer in compromise to resolve alleged violations of the Federal Alcohol Administration Act, as amended (FAA Act). The offer is a request by the party in violation to compromise penalties for the violations in lieu of civil or criminal action. A proponent or a proponent's agent completes and files TTB F 5640.2 with TTB to identify the FAA Act violation(s) to be compromised, the person who committed them, the amount of compromise offer, and justification for TTB's acceptance of the offer.
Affected Public: Public Sector: Businesses or other for-profits.
Estimated Annual Burden Hours: 24.
OMB Number: 1513–0065.
Type of Review: Extension of a currently approved collection.
Title: Wholesale Dealers Records of Receipt of Alcoholic Beverages, Disposition of Distilled Spirits, and Monthly Summary Report, TTB REC 5170/2.
Abstract: Title 26 U.S.C. 5121 requires wholesale liquor dealers to keep daily records of receipt and disposition of distilled spirits, and a record of all wine and beer the dealer receives. Records of receipt and disposition describe the activities of wholesale dealers and provide an audit trail from point or production to point of sale for these taxable commodities. TTB requires the monthly summary report only in exceptional circumstances to ensure that a particular wholesale dealer is maintaining the required records. The record retention requirement is 3 years.
Affected Public: Private Sector: Business or other for-profits.
Estimated Annual Burden Hours: 1,200.
OMB Number: 1513–0094.
Type of Review: Revision of a currently approved collection.
Title: Federal Firearms and Ammunition Quarterly Excise Tax Return.
Form: TTB F 5300.26.
Abstract: Title 26 U.S.C. 4181 imposes a Federal excise tax on the sale of pistols, revolvers, other firearms, and shells and cartridges sold by firearms manufacturers, producers, and importers. Title 26 U.S.C. 6001 and 6011 provides for the filing of a return for excise tax. TTB uses the information collected on this return, TTB F 5300.26, to determine how much excise tax is owed, and to verify that the taxpayer has correctly determined and paid the tax liability.
Affected Public: Private Sector: Business or other for-profits.
Estimated Annual Burden Hours: 18,200.

Dawn D. Wolfgang,
Treasury PRA Clearance Officer.

[FR Doc. 2014–30300 Filed 12–24–14; 8:45 am]
BILLING CODE 4810–31–P

DEPARTMENT OF VETERANS AFFAIRS

[OMB Control No. 2900–0548]

Agency Information Collection (Board of Veterans' Appeals Customer Satisfaction With Hearing Survey Card) Activities Under OMB Review

AGENCY: Board of Veterans' Appeals, Department of Veterans Affairs.

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (PRA) of 1995 (44 U.S.C. 3501–3521), this notice announces that the Board of Veterans' Appeals (BVA), Department of Veterans Affairs, will submit the collection of information abstracted below to the Office of Management and Budget (OMB) for review and comment. The PRA submission describes the nature of the information collection and its expected cost and burden and includes the actual data collection instrument.

DATES: Written comments and recommendations on the proposed collection of information should be received on or before January 28, 2015.

ADDRESSES: Submit written comments on the collection of information through *www.Regulations.gov,* or to Office of Information and Regulatory Affairs, Office of Management and Budget, Attn: VA Desk Officer; 725 17th St. NW., Washington, DC 20503 or sent through electronic mail to *oira_submission@omb.eop.gov.* Please refer to ''OMB Control No. 2900–0548'' in any correspondence. During the comment period, comments may be viewed online through the FDMS.

FOR FURTHER INFORMATION CONTACT: Crystal Rennie, Enterprise Records Service (005R1B), Department of Veterans Affairs, 810 Vermont Avenue NW., Washington, DC 20420, (202) 632–7492 or email *crystal.rennie@va.gov.* Please refer to ''OMB Control No. 2900–0548'' in any correspondence.

SUPPLEMENTARY INFORMATION: Under the PRA of 1995 (Public Law 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, BVA invites comments on: (1) Whether the proposed collection of information is necessary for the proper performance of BVA's functions, including whether the information will have practical utility; (2) the accuracy of BVA'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.

SUPPLEMENTARY INFORMATION:

Titles: Board of Veterans' Appeals Customer Satisfaction with Hearing Survey Card, VA Form 0745.

OMB Control Number: 2900–0548.

Type of Review: Revision of a currently approved collection.

Abstract: VA Form 0745 is completed by appellants at the conclusion their hearing with the Board of Veterans' Appeals. The data collected will be used to assess the effectiveness of current hearing procedures used in conducting hearings and to develop better methods of serving Veterans and their families.

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 **Federal Register** Notice with a 60-day comment period soliciting comments on this collection of information was published on October 7, 2014 at pages 60585–60586.

Affected Public: Individuals or households.

Estimated Annual Burden: 59 hours.

Estimated Average Burden per Respondent: 6 minutes.

Frequency of Response: On occasion.

Estimated Number of Respondents: 585.

Dated: December 22, 2014.

By direction of the Secretary.

Crystal Rennie,

VA Clearance Officer, U.S. Department of Veterans Affairs.

[FR Doc. 2014–30347 Filed 12–24–14; 8:45 am]

BILLING CODE 8320–01–P

DEPARTMENT OF VETERANS AFFAIRS

[OMB Control No. 2900–0695]

Agency Information Collection (Application for Reimbursement of Licensing or Certification Test Fees): Activity Under OMB Review

AGENCY: Veterans Benefits Administration, Department of Veterans Affairs

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (PRA) of 1995 (44 U.S.C. 3501–3521), this notice announces that the Veterans Benefits Administration (VBA), Department of Veterans Affairs, will submit the collection of information abstracted below to the Office of Management and Budget (OMB) for review and comment. The PRA submission describes the nature of the information collection and its expected cost and burden; it includes the actual data collection instrument.

DATES: Comments must be submitted on or before January 28, 2015.

ADDRESSES: Submit written comments on the collection of information through *www.Regulations.gov,* or to Office of Information and Regulatory Affairs, Office of Management and Budget, Attn: VA Desk Officer; 725 17th St. NW., Washington, DC 20503 or sent through electronic mail to *oira_submission@omb.eop.gov.* Please refer to ''OMB Control No. 2900–0695'' in any correspondence. During the comment period, comments may be viewed online through the FDMS.

FOR FURTHER INFORMATION CONTACT: Crystal Rennie, Enterprise Records Service (005R1B), Department of Veterans Affairs, 810 Vermont Avenue NW., Washington, DC 20420, (202) 632–7492 or email *crystal.rennie@va.gov.* Please refer to ''OMB Control No. 2900–0695'' in any correspondence.

SUPPLEMENTARY INFORMATION:

Title: Application for Reimbursement of Licensing or Certification Test Fees, (38 U.S.C. Chapters 30, 32, and 35; 10 U.S.C. Chapters 1606 & 1607), VA Form 22–0803.

OMB Control Number: 2900–0695.

Type of Review: Revision of a currently approved collection.

Abstract: Claimants complete VA Form 22–0803 to request reimbursement of licensing or certification fees paid.

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 **Federal Register** Notice with a 60-day comment period soliciting comments on this collection of information was published on October 2, 2014, at page 59558.

Affected Public: Individuals or households.

Estimated Annual Burden: 408 hours.

Frequency of Response: On occasion.

Estimated Average Burden per Respondents: 15 minutes.

Estimated Annual Responses: 1,631.

Dated: December 22, 2014.

By direction of the Secretary.

Crystal Rennie,

VA Clearance Officer, U.S. Department of Veterans Affairs.

[FR Doc. 2014–30359 Filed 12–24–14; 8:45 am]

BILLING CODE 8320–01–P

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Part II

Department of Defense

Office of the Secretary

32 CFR Part 273

Defense Materiel Disposition; Final Rule

DEPARTMENT OF DEFENSE

Office of the Secretary

32 CFR Part 273

[Docket ID: DOD–2013–OS–0145]

RIN 0790–AJ11

Defense Materiel Disposition

AGENCY: Under Secretary of Defense for Acquisition, Technology, and Logistics, DoD.

ACTION: Interim final rule.

SUMMARY: This interim final rule prescribes uniform procedures for the disposition of DoD personal property and establishes the sequence of processes for disposition of personal property of the DoD Components. Subpart A implements the statutory authority and regulations under which DoD personal property disposal takes place, as well as the scope and applicability for the program; defines the responsibilities of personnel and agencies involved in the Defense Materiel Disposition Program; provides procedures for disposal of excess property and scrap; and provides procedures for property donations, loans, and exchanges. Subpart B implements policy for reutilization, transfer, excess property screening, and issue of surplus property and foreign excess personal property (FEPP), scrap generated from qualified recycling programs (QRPs), and non-QRP scrap; and provides guidance for removing excess material through security assistance programs and foreign military sales (FMS).

DATES: Effective December 29, 2014. Comments must be received by February 27, 2015.

ADDRESSES: You may submit comments, identified by docket number and/or RIN number and title, by any of the following methods:

- *Federal Rulemaking Portal: http://www.regulations.gov.* Follow the instructions for submitting comments.
- *Mail:* Federal Docket Management System Office, 4800 Mark Center Drive, East Tower, Suite 02G09, Alexandria, VA 22350–3100.

Instructions: All submissions received must include the agency name and docket number or Regulatory Information Number (RIN) for this **Federal Register** document. The general policy for comments and other submissions from members of the public is to make these submissions available for public viewing on the Internet at *http://www.regulations.gov* as they are received without change, including any personal identifiers or contact information.

FOR FURTHER INFORMATION CONTACT: Randal Kendrick, 571–372–5202.

SUPPLEMENTARY INFORMATION:

Retrospective Review

This rule is part of DoD's retrospective plan, completed in August 2011, under Executive Order 13563, ''Improving Regulation and Regulatory Review.'' DoD's full plan and updates can be accessed at: *http://www.regulations.gov/#!docketDetail;dct=FR+PR+N+O+SR;rpp=10;po=0;D=DOD-2011-OS-0036.*

Interim Rule Justification

This rule is being published as an interim rule in order to provide property disposition procedures during one of the largest periods of drawdown in recent history. As the wars in Iraq and Afghanistan come to a close and the Department prepares for reductions in force structure, these procedures will guide the effective and efficient disposition of property to maximize stewardship of taxpayer-funded equipment. Failure to implement this as an interim rule will lead to a continuing reliance on individual waivers and exceptions to the current 1997 policy. Per direction from the Deputy Secretary of Defense December 16, 2013 memorandum, it is essential that DoD issuances remain current and accurate. Issuances codify DoD policy and direction, assignment of responsibilities, and delegations of authority and provide the foundational basis to efficiently and effectively managed DoD operations. DLA Disposition Services manages the disposal of hazardous property for DoD activities according to the same priorities as other property: Reutilization within DoD, transfer to other federal agencies, donations to qualified state and nonprofit organizations, and sale to the public including recyclers. This process maximizes the use of each item and minimizes the environmental risks and the costs associated with disposal. Furthermore, a lack of clear guidance will cause potential confusion on the part of both the public and the Department of Defense and sub-optimize the disposition decision-making process. The procedures for safely handling the hazardous property have undergone shifts between departments and agencies, *e.g.,* management of some items have moved from Department of State to Department of Commerce. Regulations were established which changed what materiel can be exported or sold. Some types of materiel are no longer released but now are incorporated into dual use items that are restricted. Waivers, interim changes, and changes between agencies and departments increase the risk of organizations following outdated procedures and incorrectly releasing materiel. For example, the 1997 manual does not include new technology, sensitive, and controlled items such as night vision, infrared and stealth listed items which are receiving a lot of public attention and require specific disposal procedures. The rule also updates the 1997 procedures for nuclear weapons related material (NWRW) disposal, controls on military unique uniforms, and requirements for demilitarization code B and Q DOD property which may be provided to law enforcement activities. Clear and current procedures can help prevent the occurrence of inadvertent releases of new technology, hazardous, sensitive, or controlled items that could compromise safety and security.

Executive Summary

I. Purpose of the Regulatory Action

a. The need for the regulatory action and how the action will meet that need

The purpose of this regulatory action is to define responsibilities of personnel and agencies involved in the Defense Materiel Disposition Program, and provide procedures for disposal of excess property and scrap, property donations, loans, and exchanges. It provides responsibilities and procedures about disposal guidance and procedures; and reutilization, transfer, and sale of property for defense materiel disposition. This regulatory action is important because of the drawdown of forces from the wars in Iraq and Afghanistan which resulted in surplus property (including hazardous property as defined in this rule) for which the proper disposition must be determined. This includes materials that could be considered hazardous waste under Resource Conservation and Recovery Act requirements in 42 U.S.C. 6901 *et seq.* upon being discarded.

b. Succinct statement of legal authority for the regulatory action (explaining, in brief, the legal authority laid out later in the preamble)

Given the authority in:

- 10 U.S.C. 2194, 2208, 2572, 2576, 2576a, and 2576b, the Secretary of Defense may:
  - Make surplus property available for donation to eligible recipients; donate, lend, or exchange without expense to the United States books, manuscripts, works of art, historical artifacts,

drawings, plans, models and condemned or obsolete combat materiel that are not needed by the Military Services.

○ Sell or donate designated items to State and local law enforcement, firefighting, homeland security, and emergency management agencies.

• 10 U.S.C. 2557, the Secretary of Defense may provide non-lethal DoD excess personal property for humanitarian purposes.

• 10 U.S.C. 2577, the Secretary of Defense may operate recycling programs at military installations and sell recyclable materials.

• 10 U.S.C. 4683, the Secretary of the Army may loan to recognized veterans' organizations (or local units of national veterans' organizations recognized by the U.S. Department of Veterans Affairs) obsolete or condemned rifles or cartridge belts for use by that unit for ceremonial purposes.

• 10 U.S.C. 7306, the Secretary of the Navy, with approval of Congress, may donate to eligible recipients any vessel stricken from the Naval Vessel Register or any captured vessel for use as a museum or memorial for public display.

• 10 U.S.C. 7545, the Secretary of the Navy may donate or loan captured, condemned, or obsolete ordnance materiel, books, manuscripts, works of art, drawings, plans, models, trophies and flags, and other condemned or obsolete materiel, as well as materiel of historical interest.

• 15 U.S.C. 3710(i), the Secretary of Defense may transfer (donate) laboratory (*e.g.,* scientific, research) equipment that is excess to the needs of that laboratory to public and private schools and nonprofit institutions in the U.S. zone of interior (ZI).

• 22 U.S.C. 2151, 2321b, 2321j, 2751, and 2778 *et se.,* the Secretary of Defense with the approval of the Secretary of State, may transfer excess defense articles to eligible recipients.

• 40 U.S.C. subtitle I and sections 101, 541 *et se.,* and 701, the Secretary of Defense may efficiently and economically dispose of excess property.

• 42 U.S.C. 3015 and 3020, the Secretary of Defense may donate surplus property to State and local government agencies, or nonprofit organizations or institutions that receive federal funding to conduct programs for older individuals.

• 42 U.S.C. Chapter 68, the Secretary of Defense may provide federal assistance to States, local governments, and relief organizations for emergency or major disaster assistance purposes.

II. Summary of the Major Provisions of the Regulatory Action in Question

This rule provides general guidelines and procedures for property disposition; provides guidance for budgeting for the disposal of excess, surplus, and foreign excess personal property (FEPP) property with updates via program budget decisions; ensures cost-effective disposal of precious metals bearing scrap and end items for the replenishment of valuable resources through the DoD Precious Metals Recovery Program (PMRP); outlines DoD screening methods for disposing of materiel; and describes procedures relating to foreign military sales.

III. Costs and Benefits

Benefits to the public and DoD:

a. Reduction of excess property from DoD inventory.

b. Cost avoidance for transportation and storage expenses of excess property.

c. Redistribution of excess property to other federal, state, and local organizations.

d. Environmental benefit of recycling material.

e. Reutilize, transfer, and donate excess property. Original acquisition property value of $2.5 B returned to the U.S. Treasury in FY12.

f. Revenue from sales of excess property. $77 M returned to the U.S. Treasury in FY12 Costs to the public and DoD:

a. $ 405M for 90 field offices and 1,500 people in DLA Disposition services worldwide to dispose of excess property and manage surplus useable property transfers, sales, and donations.

b. Cost to cut, shred, and demilitarize materiel is offset by the sales and recycling of the residue.

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

Executive Orders 13563 and 12866 direct agencies to assess all costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects, distribute impacts, and equity). Executive Order 13563 emphasizes the importance of quantifying both costs and benefits, of reducing costs, of harmonizing rules, and of promoting flexibility. This rule has been designated a ''significant regulatory action,'' although not economically significant, under section 3(f) of Executive Order 12866. Accordingly, the rule has been reviewed by the Office of Management and Budget (OMB).

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

Section 202 of the Unfunded Mandates Reform Act of 1995 (UMRA) (Pub. L. 104–4) requires agencies assess anticipated costs and benefits before issuing any rule whose mandates require spending in any 1 year of $100 million in 1995 dollars, updated annually for inflation. In 2014, that threshold is approximately $141 million. This interim final rule will not mandate any requirements for State, local, or tribal governments, nor will it affect private sector costs.

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

The Department of Defense certifies that this interim final rule is not subject to the Regulatory Flexibility Act (5 U.S.C. 601) because it would not, if promulgated, have a significant economic impact on a substantial number of small entities. Therefore, the Regulatory Flexibility Act, as amended, does not require us to prepare a regulatory flexibility analysis.

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

Sections 273.15(a)(6)(i)(E)(*2*) and 273.15(a)(6)(i)(D) of this interim final rule contain information collection requirements. DoD has submitted the following proposals to OMB under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35). OMB has approved these collections under OMB Control Number 0704–0382, ''End-Use Certificate'' and 0704–0534, ''Defense Materiel Disposition: Defense Materiel Disposition: ''Sale of Government Property Item Bid Page'' (SF 114); ''Statement of Intent'' (DRMS Form 1645); and, ''Pre-Award Review'' (DRMS 2006)''. As DoD processed an emergency collection for the requirements approved under 0704–0534, we are requesting comments in the preamble of this interim final rule to continue to meet the additional notice and comment requirements of the PRA. Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of DoD, including whether the information will have practical utility; (b) the accuracy of the estimate of the burden of the proposed information collection; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the information collection on respondents, including the use of automated

collection techniques or other forms of information technology.

Title: Defense Materiel Disposition: ''Sale of Government Property Item Bid Page'' (SF 114); ''Statement of Intent'' (DRMS Form 1645); and, ''Pre-Award Review'' (DRMS 2006).

Type of Request: Collection in use without OMB approval.

''SALE OF GOVERNMENT PROPERTY ITEM BID PAGE'' (SF 114)

Number of Respondents: 45.
Responses per Respondent: 1.
Annual Responses: 45.
Average Burden per Response: 45 minutes.
Annual Burden Hours: 33.75 hours.
Needs and Uses: The SF 114 is completed by members of the public who are placing a bid on an item that the DLA Disposition Services are selling.

''STATEMENT OF INTENT'' (DRMS 1645)

Number of Respondents: 72.
Responses per Respondent: 1.
Annual Responses: 72.
Average Burden per Response: 1.5 hours.
Annual Burden Hours: 108 hours.
Needs and Uses: The DRMS Form 1645 form is completed by the bidder to demonstrate responsibility and compliance with federal, state, county, city or local environmental/safety regulations or ordinances on the use and storage of Hazardous Property (HP) to qualify for an award.

''PRE-AWARD REVIEW'' (DRMS 2006)

Number of Respondents: 72.
Responses per Respondent: 1.
Annual Responses: 72.
Average Burden per Response: 1.25 hours.
Annual Burden Hours: 90 hours.
Needs and Uses: The review is completed by the customer (individual or company) who is submitting a bid for materiel to ensure they are able to comply with handling and storage requirements for the hazardous materiel. The review is used by the DoD Disposition site to ensure that the hazardous materiel will be safely handled by the customer upon receipt and that they have materiel handling equipment and vehicles that can safely transport the hazardous materiel.

Totals

Number of Respondents: 189.
Responses per Respondent: 1.
Annual Responses: 189.
Average Burden per Response: 1.25.
Annual Burden Hours: 232 hours.
Affected Public: Individuals or Households; Businesses or Other For Profit.
Frequency: On Occasion.
Respondent's Obligation: Required to Obtain or Retain Benefits.
OMB Desk Officer: Jasmeet Seehra.

Written comments and recommendations on the proposed information collection should be sent to Ms. Jasmeet Seehra at the Office of Management and Budget, Desk Officer for DoD, Room 10236, New Executive Office Building, Washington, DC 20503, with a copy to the 3500 Defense Pentagon Room 1E518, Washington, DC 20301–3500. Comments can be received from 30 to 60 days after the date of this notice, but comments to OMB will be most useful if received by OMB within 30 days after the date of this notice.

You may also submit comments, identified by docket number and title, by the following method:

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

Instructions: All submissions received must include the agency name, docket number and title for this **Federal Register** document. The general policy for comments and other submissions from members of the public is to make these submissions available for public viewing on the Internet at *http://www.regulations.gov* as they are received without change, including any personal identifiers or contact information.

To request more information on this proposed information collection or to obtain a copy of the proposal and associated collection instruments, please write to Randy Kendrick, 3500 Defense Pentagon Room 1E518, Washington, DC 20301–3500, Phone: 571–372–5202.

Executive Order 13132, ''Federalism''

Executive Order 13132 establishes certain requirements that an agency must meet when it promulgates a proposed rule (and subsequent final rule) that imposes substantial direct requirement costs on State and local governments, preempts State law, or otherwise has Federalism implications. This interim final rule will not have a substantial effect on State and local governments.

List of Subjects in 32 CFR Part 273

Defense materiel, Military arms sales, Waste treatment and disposal.

Accordingly, 32 CFR part 273 is added to read as follows:

PART 273—DEFENSE MATERIEL DISPOSITION

Subpart A—Disposal Guidance and Procedures

Sec.
273.1 Purpose.
273.2 Applicability.
273.3 Definitions.
273.4 Policy.
273.5 Responsibilities.
273.6 Procedures.
273.7 Excess DoD property and scrap disposal processing.
273.8 Donations, loans, and exchanges.
273.9 Through-life traceability of uniquely identified items.

Subpart B—Reutilization, Transfer, and Sale of Property

Sec.
273.10 Purpose.
273.11 Applicability.
273.12 Definitions.
273.13 Policy.
273.14 Responsibilities.
273.15 Procedures.

Authority: 10 U.S.C. 2194, 2208, 2557, 2572, 2576, 2576a, 2576b, 2577, 4683, 7306, 7545; 15 U.S.C. 3710(i); 22 U.S.C. 2151, 2321b, 2321j, 2751, and 2778 *et seq.;* 40 U.S.C. subtitle I and sections 101, 541 *et seq.,* and 701; 42 U.S.C. 3015 and 3020; and 42 U.S.C. Chapter 68.

PART 273—DEFENSE MATERIEL DISPOSITION

Subpart A—Disposal Guidance and Procedures

§ 273.1 Purpose.

(a) This part is composed of several subparts, each containing its own purpose. In accordance with the authority in DoD Directive 5134.12, ''Assistant Secretary of Defense for Logistics and Materiel Readiness (ASD(L&MR))'' (available at *http://www.dtic.mil/whs/directives/corres/pdf/513412p.pdf*); DoD Instruction 4140.01, ''Supply Chain Materiel Management Policy'' (available at *http://www.dtic.mil/whs/directives/corres/pdf/414001p.pdf*); and DoD Instruction 4160.28, ''DoD Demilitarization (DEMIL) Program'' (available at *http://www.dtic.mil/whs/directives/corres/pdf/416028p.pdf*), this part:

(1) Prescribes uniform procedures for the disposition of DoD personal property.

(2) Establishes the sequence of processes for disposition of personal property of the DoD Components.

(b) This subpart:

(1) Implements the statutory authority and regulations under which DoD personal property disposal takes place, as well as the scope and applicability for the program.

(2) Defines the responsibilities of personnel and agencies involved in the Defense Materiel Disposition Program.

(3) Provides procedures for disposal of excess property and scrap.

(4) Provides procedures for property donations, loans, and exchanges.

§ 273.2 Applicability.

(a) This subpart applies to the Office of the Secretary of Defense, the Military Departments, the Office of the Chairman of the Joint Chiefs of Staff and the Joint Staff, the Combatant Commands, the Office of the Inspector General of the Department of Defense, the Defense Agencies, the DoD Field Activities, and

all other organizational entities within the DoD (referred to collectively in this subpart as the ''DoD Components'').

(b) If a procedural conflict exists, these references take precedence:

(1) 41 CFR chapters 101 and 102 (also known as the Federal Property Management Regulations and Federal Management Regulation (FPMR and FMR)).

(2) 40 U.S.C. subtitle I, also known as the Federal Property and Administrative Services Act.

§ 273.3 Definitions.

Unless otherwise noted, these terms and their definitions are for the purpose of this subpart.

Abandonment and destruction (A/D). A method for handling property that:

(1) Is abandoned and a diligent effort to determine the owner is unsuccessful.

(2) Is uneconomical to repair or the estimated costs of the continued care and handling of the property exceeds the estimated proceeds of sale.

(3) Has an estimated cost of disposal by A/D that is less than the net sales cost.

Accountability. The obligation imposed by law, lawful order, or regulation, accepted by a person for keeping accurate records to ensure control of property, documents, or funds, with or without possession of the property. The person who is accountable is concerned with control while the person who has possession is responsible for custody, care, and safekeeping.

Acquisition cost. The amount paid for property, including transportation costs, net any trade and cash discounts. Also see standard price.

Ammunition. Generic term related mainly to articles of military application consisting of all kinds of bombs, grenades, rockets, mines, projectiles, and other similar devices or contrivances.

Automatic identification technology (AIT). A suite of technologies enabling the automatic capture of data, thereby enhancing the ability to identify, track, document, and control assets (*e.g.* materiel), deploying and redeploying forces, equipment, personnel, and sustainment cargo. AIT encompasses a variety of data storage or carrier technologies, such as linear bar codes, two-dimensional symbols (PDF417 and Data Matrix), magnetic strips, integrated circuit cards, optical laser discs (optical memory cards or compact discs), satellite tracking transponders, and radio frequency identification tags used for marking or ''tagging'' individual items, equipment, air pallets, or containers. Known commercially as automatic identification data capture.

Batchlot. The physical grouping of individual receipts of low-dollar-value property. The physical grouping consolidates multiple disposal turn-in documents (DTIDs) under a single cover DTID. The objective of batchlotting is to reduce the time and costs related to physical handling and administrative processes required for receiving items individually. The cover DTID establishes accountability in the accountable record and individual line items lose their identity.

Bid. A response to an offer to sell that, if accepted, would bind the bidder to the terms and conditions of the contract (including the bid price).

Bidder. Any entity that is responding to or has responded to an offer to sell.

Care and handling. Includes packing, storing, handling, and conserving excess, surplus, and foreign excess property. In the case of property that is dangerous to public health, safety, or the environment, this includes destroying or rendering such property harmless.

Commerce control list items (CCLI) (formerly known as strategic list item). Commodities and associated technical data (including software) subject to export controls in accordance with Export Administration Regulations (EAR) in 15 CFR parts 730 through 774. The EAR contains the CCL and is administered by the Bureau of Industry and Security, Department of Commerce (DOC).

Component. An integral constituent of a complete (end) item. It may consist of a part, assembly, or subassembly.

Container. Any portable device in which a materiel is stored, transported, disposed of, or otherwise handled, including those whose last content was a hazardous or an acutely hazardous material, waste, or substance.

Continental United States (CONUS). Territory, including the adjacent territorial waters, located within the North American continent between Canada and Mexico (comprises 48 States and the District of Columbia).

Controlled substances. (1) Any narcotic, depressant, stimulant, or hallucinogenic drug or any other drug or other substance or immediate precursor included in 21 U.S.C. 801. Exempted chemical preparations and mixtures and excluded substances are listed in 21 CFR part 1308.

(2) Any other drug or substance that the United States Attorney General determines to be subject to control in accordance with 21 CFR part 1308.

(3) Any other drug or substance that, by international treaty, convention, or protocol, is to be controlled by the United States.

Commercial off the shelf (COTS) software. Software that is available through lease or purchase in the commercial market. Included in COTS are the operating system software that runs on the information technology equipment and other significant software purchased with a license that supports system or customer requirements.

Counterfeit. A counterfeit part is one whose identity has been deliberately altered, misrepresented, or is offered as an unauthorized product substitution.

Defective property. An item, part, or component that does not meet military, Federal, or commercial specifications as required by military procurement contracts because of unserviceability, finite life, or product quality deficiency and is determined to be unsafe for use. Defective property may be dangerous to public health or safety by virtue of latent defects. These defects are identified by technical inspection methods; or condemned by maintenance or other authorized activities as a result of destructive and nondestructive test methods such as magnetic particle, liquid penetrant, or radiographic testing, which reveal defects not apparent from normal visual inspection methods.

Defense Logistics Agency Disposition Services Automated Information System (DAISY). An automated property accounting management data system designed to process property through the necessary disposal steps and account for excess, surplus, and foreign excess personal property (FEPP) from receipt to final disposal.

Demilitarization. The act of eliminating the functional capabilities and inherent military design features from DoD personal property. Methods and degree range from removal and destruction of critical features to total destruction by cutting, crushing, shredding, melting, burning, etc. DEMIL is required to prevent property from being used for its originally intended purpose and to prevent the release of inherent design information that could be used against the United States. DEMIL applies to material in both serviceable and unserviceable condition.

Denied areas. Those countries or entities that the Department of State (DoS), DOC, or Treasury have determined to be prohibited or sanctioned for the purpose of export, sale, transfer, or resale of items controlled on the United States munitions list (USML) or commerce control list property. A consolidated list of prohibited entities or destinations for

which transfers may be limited or barred, may be found at: *http://export.gov/ecr/eg_main_023148.asp.*

Disposal. End-of-life tasks or actions for residual materials resulting from demilitarization or disposition operations.

Disposition. The process of reusing, recycling, converting, redistributing, transferring, donating, selling, demilitarizing, treating, destroying, or fulfilling other end of life tasks or actions for DoD property. Does not include real (real estate) property.

Defense Logistics Agency (DLA) Disposition Services. The organization provides DoD with worldwide reuse, recycling and disposal solutions that focus on efficiency, cost avoidance and compliance.

DLA Disposition Services site. The DLA Disposition Services office that has accountability for and control over disposable property. May be managed in part by a commercial contractor. The term is applicable whether the disposal facility is on a commercial site or a Government installation and applies to both Government and contractor employees performing the disposal mission.

DoD Activity Address Code (DoDAAC). A 6-digit code assigned by the Defense Automatic Addressing Service to provide a standardized address code system for identifying activities and for use in transmission of supply and logistics information that supports the movement of property.

DoD Item Unique Identification (IUID) Registry. The DoD data repository that receives input from both industry and Government sources and provides storage of, and access to, data that identifies and describes tangible Government personal property.

Donation. The act of providing surplus personal property at no charge to a qualified donation recipient, as allocated by the General Services Administration (GSA).

Donation recipient. Any of the following entities that receive federal surplus personal property through a State agencies for surplus property (SASP):

(1) A Service educational activity (SEA).

(2) A public agency that uses surplus personal property to carry out or promote one or more public purposes. (Public airports are an exception and are only considered donation recipients when they elect to receive surplus property through a SASP, but not when they elect to receive surplus property through the Federal Aviation Administration (FAA).)

(3) An eligible nonprofit tax-exempt educational or public health institution (including a provider of assistance to homeless or impoverished families or individuals).

(4) A State or local government agency, or a nonprofit organization or institution, that receives funds appropriated for a program for older individuals.

Educational institution. An approved, accredited, or licensed public or nonprofit institution or facility, entity, or organization conducting educational programs, including research for any such programs, such as a childcare center, school, college, university, school for the mentally handicapped, school for the physically handicapped, or an educational radio or television station.

Excess personal property. (1) *Domestic excess.* Government personal property that the United States and its territories and possessions, applicable to areas covered by GSA (*i.e.,* the 50 States, District of Columbia, Puerto Rico, American Samoa, Guam, Northern Mariana Islands, the Federated States of Micronesia, the Marshall Islands, Palau, and the U.S. Virgin Islands), consider excess to the needs and mission requirements of the United States.

(2) *DoD Component excess.* Items of DoD Component owned property that are not required for their needs and the discharge of their responsibilities as determined by the head of the Service or Agency.

(3) *Foreign excess personal property (FEPP).* U.S.-owned excess personal property that is located outside the zone of interior (ZI). This property becomes surplus and is eligible for donation and sale as described in § 273.7.

Exchange. Replace personal property by trade or trade-in with the supplier of the replacement property. To exchange non-excess, non-surplus personal property and apply the exchange allowance or proceeds of sale in whole or in part payment for the acquisition of similar property. For example, the replacement of a historical artifact with another historical artifact by trade; or to exchange an item of historical property or goods for services based on the fair market value of the artifact.

Federal civilian agency (FCA). Any non-defense executive agency (*e.g.* DoS, Department of Homeland Security) or any establishment in the legislative or judicial branch of the U.S. Government (USG) (except the Senate, the House of Representatives, and the Architect of the Capitol and any activities under his or her direction).

FEPP. See excess personal property.

Firearm. Any weapon (including a starter gun) that will or is designed to or may readily be converted to expel a projectile by the action of an explosive; the frame or receiver of any such weapon; any firearm muffler or firearm silencer; or any destructive device. The term does not include an antique firearm.

Flight safety critical air parts (FSCAP). Any aircraft part, assembly, or installation containing a critical characteristic whose failure, malfunction, or absence could cause a catastrophic failure resulting in loss or serious damage to the aircraft or an uncommanded engine shutdown, resulting in an unsafe condition.

Foreign purchased property. Property paid for by foreign countries, but where ownership is retained by the United States.

Friendly foreign government. For purposes of trade security controls (TSC), governments of countries other than those designated as denied areas.

Generating activity (''generator''). The activity that declares personal property excess to its needs, *e.g.* DoD installations, activities, contractors, or FCAs.

Government-furnished material (GFM). Property provided by the U.S. Government for the purpose of being incorporated into or attached to a deliverable end item or that will be consumed or expended in performing a contract. Government-furnished materiel includes assemblies, components, parts, raw and process material, and small tools and supplies that may be consumed in normal use in performing a contract. Government-furnished materiel does not include material provided to contractors on a cash-sale basis nor does it include military property, which are government-owned components, contractor acquired property (as specified in the contract), government furnished equipment, or major end items being repaired by commercial contractors for return to the government.

GSAXcess®. A totally web-enabled platform that eligible customers use to access functions of GSAXcess® for reporting, searching, and selecting property. This includes the entry site for the Federal Excess Personal Property Utilization Program and the Federal Surplus Personal Property Donation Program operated by the GSA.

Historical artifact. Items (including books, manuscripts, works of art, drawings, plans, and models) identified by a museum director or curator as significant to the history of that department, acquired from approved sources, and suitable for display in a

military museum. Generally, such determinations are based on the item's association with an important person, event, or place; because of traditional association with an important person, event, or place; because of traditional association with a military organization; or because it is a representative example of military equipment or represents a significant technological contribution to military science or equipment.

Hazardous material (HM). (1) In the United States, any material that is capable of posing an unreasonable risk to health, safety, and property during transportation. All HM appears in the HM Table at 49 CFR 172.101.

(2) Overseas, HM is defined in the applicable final governing standards or overseas environmental baseline guidance document, or host nation laws and regulations.

Hazardous property (HP). (1) A composite term used to describe DoD excess property, surplus property, and FEPP, which may be hazardous to human health, human safety, or the environment. Various Federal, State, and local safety and environmental laws regulate the use and disposal of hazardous property.

(2) In more technical terms, HP includes property having one or more of the following characteristics:

(i) Has a flashpoint below 200 degrees Fahrenheit (93 degrees Celsius) closed cup, or is subject to spontaneous heating or is subject to polymerization with release of large amounts of energy when handled, stored, and shipped without adequate control.

(ii) Has a threshold limit value equal to or below 1,000 parts per million (ppm) for gases and vapors, below 500 milligram per cubic meter (mg/m^3) for fumes, and equal to or less than 30 million particles per cubic foot (mppcf) or 10 mg/m^3 for dusts (less than or equal to 2.0 fibers/cc greater than 5 micrometers in length for fibrous materials).

(iii) Causes 50 percent fatalities to test animals when a single oral dose is administered in doses of less than 500 mg per kilogram of test animal weight.

(iv) Is a flammable solid as defined in 49 CFR 173.124, or is an oxidizer as defined in 49 CFR 173.127, or is a strong oxidizing or reducing agent with a half cell potential in acid solution of greater than +1.0 volt as specified in Latimer's table on the oxidation-reduction potential.

(v) Causes first-degree burns to skin in short-time exposure, or is systematically toxic by skin contact.

(vi) May produce dust, gases, fumes, vapors, mists, or smoke with one or more of the above characteristics in the course of normal operations.

(vii) Produces sensitizing or irritating effects.

(viii) Is radioactive.

(ix) Has special characteristics which, in the opinion of the manufacturer, could cause harm to personnel if used or stored improperly.

(x) Is hazardous in accordance with Occupational Health and Safety Administration, 29 CFR part 1910.

(xi) Is hazardous in accordance with 29 CFR part 1910.

(xii) Is regulated by the EPA in accordance with 40 CFR parts 260 through 280.

Hazardous waste (HW). An item that is regulated pursuant to 42 U.S.C. 6901 or by State regulation as an HW. HW is defined at 40 CFR part 261. From a practical standpoint, if an EPA or state HW code can be assigned, the item is a HW. Overseas, HW is defined in the applicable final governing standards or overseas environmental baseline guidance document, or host nation laws and regulations.

Holding agency. The Federal agency that is accountable for, and generally has possession of, the property involved.

Hold harmless. A promise to pay any costs or claims which may result from an agreement.

Information technology. Any equipment or interconnected system or subsystem of equipment that is used in the automatic acquisition, storage, manipulation, management, movement, control, display, switching, interchange, transmission or reception of data or information by the DoD Component. Includes computers, ancillary equipment, software, firmware, and similar procedures, services (including support services), and related sources. Does not include any equipment that is acquired by a Federal contractor incidental to a Federal contract. Equipment is ''used'' by a DoD Component if the equipment is used by the DoD Component directly or is used by a contractor under a contract with the DoD Component that:

(1) Requires the use of such equipment.

(2) Requires the use to a significant extent of such equipment in the performance of a service or the furnishing of a product.

Installation. A military facility together with its buildings, building equipment, and subsidiary facilities such as piers, spurs, access roads, and beacons.

International organizations. For TSC purposes, this term includes: Columbo Plan Council for Technical Cooperation in South and Southeast Asia; European Atomic Energy Community; Indus Basin Development; International Atomic Energy; International Red Cross; NATO; Organization of American States; Pan American Health Organization; United Nations; UN Children's Fund; UN Development Program; UN Educational, Scientific, and Cultural Organization; UN High Commissioner for Refugees Programs; UN Relief and Works Agency for Palestine Refugees in the Near East; World Health Organization; and other international organizations approved by a U.S. diplomatic mission.

Interrogation. A communication between two or more ICPs, other DoD activities, and U.S. Government agencies to determine the current availability of an item or suitable substitute for a needed item before procurement or repair.

Interservice. Action by one Military Department or Defense Agency ICP to provide materiel and directly related services to another Military Department or Defense Agency ICP (either on a recurring or nonrecurring basis).

Inventory adjustments. Changes made in inventory quantities and values resulting from inventory recounts and validations.

Inventory control point (ICP). An organizational unit or activity within the DoD supply system that is assigned the primary responsibility for the materiel management of a group of items either for a particular Military Department or for the DoD as a whole. In addition to materiel manager functions, an ICP may perform other logistics functions in support of a particular Military Department or for a particular end item (*e.g.,* centralized computation of retail requirements levels and engineering tasks associated with weapon system components).

Item unique identification (IUID). A system of establishing globally widespread unique identifiers on items of supply within the DoD, which serves to distinguish a discrete entity or relationship from other like and unlike entities or relationships. AIT is used to capture and communicate IUID information.

Line item. A single line entry on a reporting form or sale document that indicates a quantity of property located at any one activity having the same description, condition code, and unit cost.

Line item value (for reporting and other accounting and approval purposes). Quantity of a line item multiplied by the standard price.

Marketing. The function of directing the flow of surplus and FEPP to the buyer, encompassing all related aspects

of merchandising, market research, sale promotion, advertising, publicity, and selling.

Material potentially presenting an explosive hazard (MPPEH). Material owned or controlled by the Department of Defense that, prior to determination of its explosives safety status, potentially contains explosives or munitions (*e.g.,* munitions containers and packaging material; munitions debris remaining after munitions use, demilitarization, or disposal; and range-related debris) or potentially contains a high enough concentration of explosives that the material presents an explosive hazard (*e.g.,* equipment, drainage systems, holding tanks, piping, or ventilation ducts that were associated with munitions production, demilitarization, or disposal operations). Excluded from MPPEH are munitions within the DoD-established munitions management system and other items that may present explosion hazards (*e.g.,* gasoline cans and compressed gas cylinders) that are not munitions and are not intended for use as munitions.

Metalworking machinery. A category of plant equipment consisting of power driven nonportable machines in Federal Supply Classification Code (four digits) (FSC) 3411 through 3419 and 3441 through 3449, which are used or capable of use in the manufacture of supplies or equipment, or in the performance of services, or for any administrative or general plant purpose.

Munitions list items (MLI). Any item contained on the U.S. Munitions List (USML) in 22 CFR part 121. Defense articles, associated technical data (including software), and defense services recorded or stored in any physical form, controlled by 22 CFR parts 120 through 130. 22 CFR part 121, which contains the USML, is administered by the DoS Directorate of Defense Trade Controls.

Museum, DoD or Service. An appropriated fund entity that is a permanent activity with a historical collection, open to both the military and civilian public at regularly scheduled hours, and is in the care of a professional qualified staff that performs curatorial and related historical duties full time.

Mutilation. A process that renders materiel unfit for its originally intended purposes by cutting, tearing, scratching, crushing, breaking, punching, shearing, burning, neutralizing, etc.

Non-appropriated fund (NAF). Funds generated by DoD military and civilian personnel and their dependents and used to augment funds appropriated by Congress to provide a comprehensive, morale building, welfare, religious, educational, and recreational program, designed to improve the well-being of military and civilian personnel and their dependents.

NAF property. Property purchased with NAFs, by religious activities or non-appropriated morale welfare or recreational activities, post exchanges, ships stores, officer and noncommissioned officer clubs, and similar activities. Such property is not Federal property.

Narcotics. See controlled substances.

National stock number (NSN). The 13-digit stock number replacing the 11-digit federal stock number. It consists of the 4-digit federal supply classification code and the 9-digit national item identification number. The national item identification number consists of a 2-digit National Codification Bureau number designating the central cataloging office (whether North Atlantic Treaty Organization or other friendly country) that assigned the number and a 7-digit (xxx–xxxx) nonsignificant number. Arrange the number as follows: 9999–00–999–9999.

Nonprofit institution. An institution or organization, no part of the net earnings of which inures or may lawfully inure to the benefit of any private shareholder or individual, and which has been held to be tax exempt under the provisions of 26 U.S.C. 501, also known as the Internal Revenue Code of 1986.

Nonsalable materiel. Materiel that has no reutilization, transfer, donation, or sale value as determined by the DLA Disposition Services site, but is not otherwise restricted from disposal by U.S. law or Federal or military regulations.

Obsolete combat materiel. Military equipment once used in a primarily combat role that has been phased out of operational use; if replaced, the replacement items are of a more current design or capability.

Ordnance. Explosives, chemicals, pyrotechnics, and similar stores, *e.g.,* bombs, guns and ammunition, flares, smoke, or napalm.

ppm. Unit of concentration by volume of a specific substance.

Personal property. Property except real property. Excludes records of the Federal Government, battleships, cruisers, aircraft carriers, destroyers, and submarines.

Pilferable materiel. Materiel having a ready resale value or application to personal possession, which is especially subject to theft.

Plant equipment. Personal property of a capital nature (including equipment, machine tools, test equipment, furniture, vehicles, and accessory and auxiliary items) for use in manufacturing supplies, in performing services, or for any administrative or general plant purpose. It does not include special tooling or special test equipment.

Precious metals. Gold, silver, and the platinum group metals (platinum, palladium, iridium, rhodium, osmium, and ruthenium).

Precious Metals Recovery Program (PMRP). A DoD program for identification, accumulation, recovery, and refinement of precious metals from excess and surplus end items, scrap, hypo solution, and other precious metal bearing materiel for authorized internal purposes or as GFM.

Pre-receipt. Documentation processed prior to physically transferring or turning the property into a DLA Disposition Services site.

Privacy Act property. Any document or other information about an individual maintained by the agency, whether collected or grouped, including but not limited to, information regarding education, financial transactions, medical history, criminal or employment history, or other personal information containing the name or other personal identification number, symbol, etc., assigned to such individual.

Privately owned personal property. Personal effects of DoD personnel (military or civilian) that are not, nor will ever become, Government property unless the owner (or heirs, next of kin, or legal representative of the owner) executes a written and signed release document unconditionally giving the U.S. Government all right, title, and interest in the privately owned property.

Public agency. Any State, political subdivision thereof, including any unit of local government or economic development district; or any department, agency, instrumentality thereof, including instrumentalities created by compact or other agreement between States or political subdivisions, multi-jurisdictional substate districts established by or under State law; or any Indian tribe, band, group, pueblo, or community located on a State reservation. (See § 273.8 regarding donations made through State agencies.)

Qualified recycling programs (QRP). Organized operations that require concerted efforts to divert or recover scrap or waste, as well as efforts to identify, segregate, and maintain the integrity of recyclable materiel to maintain or enhance its marketability. If administered by a DoD Component other than DLA, a QRP includes adherence to a control process

providing accountability for all materials processed through program operations.

Reclamation. A cost avoidance or savings measure to recover useful (serviceable) end items, repair parts, components, or assemblies from one or more principal end items of equipment or assemblies (usually supply condition codes (SCCs) listed in DLM 4000.25–2 as SCC H for unserviceable (condemned) materiel, SCC P for unserviceable (reclamation) materiel, and SCC R for suspended (reclaimed items, awaiting condition determination) materiel) for the purpose of restoration to use through replacement or repair of one or more unserviceable, but repairable principal end items of equipment or assemblies (usually SCCs listed in DLM 4000.25–2 as SCC E for unserviceable (limited restoration) materiel, SCC F for unserviceable (reparable) materiel, and SCC G for unserviceable (incomplete) materiel). Reclamation is preferable prior to disposition (*e.g.,* DLA Disposition Services site turn-in), but end items or assemblies may be withdrawn from DLA Disposition Services sites for such reclamation purposes.

Reutilization. The act of re-issuing FEPP and excess property to DoD Components. Also includes qualified special programs (*e.g.,* Law Enforcement Agency (LEA), Humanitarian Assistance Program, Military Affiliate Radio System (MARS)) pursuant to applicable enabling statutes.

Salvage. Personal property that has some value in excess of its basic material content, but is in such condition that it has no reasonable prospect of use as a unit for the purpose for which it was originally intended, and its repair or rehabilitation for use as a unit is impracticable.

State agencies for surplus property (SASP). The agency designated under State law to receive Federal surplus personal property for distribution to eligible donation recipients within the States as provided for in 40 U.S.C. 549.

Supply condition codes (SCC). Code used to classify materiel in terms of readiness for issue and use or to identify action underway to change the status of materiel. These codes are assigned by the Military Departments or Defense Agencies. DLA Disposition Services may change a SCC if there is an appearance of an improperly assigned code and the property is of a non-technical nature. If change is not appropriate or property is of a technical nature, DLA Disposition Services sites may challenge a suspicious SCC.

Scrap. Recyclable waste and discarded materials derived from items that have been rendered useless beyond repair, rehabilitation, or restoration such that the item's original identity, utility, form, fit and function have been destroyed. Items can be classified as scrap if processed by cutting, tearing, crushing, mangling, shredding, or melting. Intact or recognizable USML or CCL items, components, and parts are not scrap. 41 CFR 102–36.40 provides additional information on scrap.

Screening. The process of physically inspecting property or reviewing lists or reports of property to determine whether it is usable or needed.

Service educational activity (SEA). Any educational activity that meets specified criteria and is formally designated by the Department of Defense as being of special interest to the Military Services. Includes educational activities such as maritime academies or military, naval, or Air Force preparatory schools, junior colleges, and institutes; senior high school-hosted Junior Reserve Officer Training Corps; and nationally organized youth groups. The primary purpose of such entities is to offer courses of instruction devoted to the military arts and sciences.

Sensitive items. Materiel that requires a high degree of protection and control due to statutory requirements or regulations, such as narcotics and drug abuse items; precious metals; items of high value; items that are highly technical, or of a hazardous nature; non-nuclear missiles, rockets, and explosives; small arms, ammunition and explosives, and demolition material.

Small arms/light weapons. Man-portable weapons made or modified to military specifications for use as lethal instruments of war that expel a shot, bullet, or projectile by action of an explosive. Small arms are broadly categorized as those weapons intended for use by individual members of armed or security forces. They include handguns; rifles and carbines; sub-machine guns; and light machine guns. Light weapons are broadly categorized as those weapons designed for use by two or three members of armed or security forces serving as a crew, although some may be used by a single person. They include heavy machine guns; hand-held under-barrel and mounted grenade launchers; portable anti-aircraft guns; portable anti-tank guns; recoilless rifles; man-portable launchers of missile and rocket systems; and mortars.

Standard price. The price customers are charged for a DoD managed item (excluding subsistence), which remains constant throughout a fiscal year. The standard price is based on various factors which include the latest acquisition price of the item plus surcharges or cost recovery elements for transportation, inventory loss, obsolescence, maintenance, depreciation, and supply operations.

State or local government. A State, territory, or possession of the United States, the District of Columbia, American Samoa, Guam, Puerto Rico, Commonwealth of Northern Mariana Islands, the U.S. Virgin Islands, and any political subdivision or instrumentality thereof.

Surplus personal property. Excess personal property no longer required by the Federal agencies, as determined by the Administrator of General Services. Applies to surplus personal property in the United States, American Samoa, Guam, Puerto Rico, the Commonwealth of the Northern Mariana Islands, and the U.S. Virgin Islands.

Transfer. The act of providing FEPP and excess personal property to Federal civilian agencies (FCAs) as stipulated in the FMR. Property is allocated by the GSA. When a line item is less than $10,000, an FCA may coordinate allocation to another FCA directly.

Trash. Post-consumer refuse, waste and food by-products such as litter, rubbish, cooked grease, bones, fats, and meat trimmings.

Trade security controls (TSC). Policy and procedures, in accordance with DoD Instruction 2030.08, designed to prevent the sale or shipment of USG materiel to any person, organization, or country whose interests are unfriendly or hostile to those of the United States and to ensure that the disposal of DoD personal property is performed in compliance with U.S. export control laws and regulations.

Unique item identifier (UII). A set of data elements marked on an item that is globally unique and unambiguous. The term includes a concatenated UII or a DoD-recognized unique identification equivalent.

Uniform Materiel Movement and Issue Priority System (UMMIPS). System to ensure that requirements are processed in accordance with the mission of the requiring activity and the urgency of need, and to establish maximum uniform order and materiel movement standard.

Unsalable materiel. Materiel for which sale or other disposal is prohibited by U.S. law or Federal or military regulations.

Usable property. Commercial and military type property other than scrap and waste.

Veterans' organization. An organization composed of honorably discharged soldiers, sailors, airmen, and marines, which is established as a veterans' organization and recognized as such by the U.S. Department of Veterans Affairs.

Zone of interior (ZI). The United States and its territories and possessions, applicable to areas covered by GSA and where excess property is considered domestic excess. Includes the 50 States, District of Columbia, Puerto Rico, American Samoa, Guam, Northern Mariana Islands, the Federated States of Micronesia, the Marshall Islands, Palau, and the U.S. Virgin Islands.

§ 273.4 Policy.

It is DoD policy consistent with 41 CFR chapters 101 and 102 that excess DoD property must be screened and redistributed among the DoD Components, and reported as excess to the GSA. Pursuant to 40 U.S.C. 701, DoD will efficiently and economically dispose DoD FEPP.

§ 273.5 Responsibilities.

(a) The Assistant Secretary of Defense for Logistics and Materiel Readiness (ASD(L&MR)), under the authority, direction, and control of the USD(AT&L), and in accordance with DoD Directive 5134.12:

(1) Develops DoD materiel disposition policies, including policies for FEPP.

(2) Oversees the effective implementation of the DoD materiel disposition program.

(3) Approves policy changes as appropriate to support contingency operations.

(4) Approves national organizations for special interest consideration as SEAs, and approve categories of property considered appropriate, usable, and necessary for transfer to SEAs.

(b) The Director, Defense Logistics Agency (DLA), under the authority, direction, and control of the Under Secretary of Defense for Acquisition, Technology, and Logistics, through the Assistant Secretary of Defense for Logistics and Materiel Readiness (ASD(L&MR)), and in addition to the responsibilities in paragraph (c) of this section:

(1) Provides agency-level command and control and administers the worldwide Defense Materiel Disposition Program.

(2) Implements guidance issued by the ASD(L&MR) or other organizational elements of the OSD and establishes system concepts and requirements, resource management, program guidance, budgeting and funding, training and career development, management review and analysis, internal control measures, and crime prevention for the Defense Materiel Disposition Program.

(3) Chairs the Disposal Policy Working Group (DPWG).

(4) Provides direction to the DLA Disposition Services on implementing the worldwide defense materiel disposition program.

(5) Provides direction to the DLA inventory control points (ICPs) on the cataloging of items in the Federal Logistics Information System (FLIS) as outlined in DoD 4100.39–M, ''Federal Logistics Information System (FLIS) Procedures Manual-Glossary and Volumes 1–16'' (available at *http://www.dtic.mil/whs/directives/corres/html/410039m.html*). This is done to prevent the unauthorized disposition or release of items within DoD, other federal civilian agencies, or release into commerce.

(6) Promotes maximum reuse of FEPP, excess, and surplus property. Pursues all possible avenues to sponsor or endorse reuse of excess DoD property and preclude unnecessary purchases.

(7) Directs the DLA Disposition Services communications with the DoD Components regarding changes in service delivery processes or plans that will affect disposal support provided. In overseas locations, these communications will include geographic Combatant Commanders, U.S. Chiefs of Mission, and the in-country security assistance offices.

(8) Accommodates contingency operation requirements. Directs the DLA support team to determine any needed deviations from standard disposal processing guidance and communicates approved temporary changes to the Military Departments and DLA Disposition Services.

(9) Ensures maximum compatibility between documentation, procedures, codes, and formats used in materiel disposition systems and the Military Departments' supply systems.

(10) Programs, budgets, funds, accounts, allocates and controls personnel, spaces, and other resources for its respective activities.

(11) Annually provides to GSA a report of property transferred to non-federal recipients in accordance with 41 CFR 102–36.295.

(12) Assumes the worldwide disposal of all DoD HP except for those categories specifically designated to remain the responsibility of the Military Department or Defense Agency as described in DoD Manual 4160.21, Volume 4.

(13) Ensures property disposal training courses are available (*e.g.*, at DLA Training Center) for all personnel associated with the disposal program.

(14) Ensures DLA Disposition Services follows the DoD disposal hierarchy with landfill disposal as a last resort.

(c) The DoD Components Heads:

(1) Recommend Defense Materiel Disposition Program policy changes to the ASD(L&MR).

(2) Recommend Defense Materiel Disposition Program procedural changes to the Director, DLA, and provide information copies to the ASD(L&MR).

(3) Assist the Director, DLA, upon request, to resolve matters of mutual concern.

(4) Treat the disposal of DoD property as an integral part of DoD Supply Chain Management; ensure that disposal actions and costs are a part of each stage of the supply chain management of items and that disposal of property is a planned event at all levels of their organizations.

(5) Provide the Director, DLA, with mutually agreed-upon data necessary to administer the Defense Materiel Disposition Program.

(6) Participate in the DoD PMRP and promote maximum reutilization of FEPP, excess, and surplus property and fine precious metals for internal use or as GFM.

(7) Nominate to the ASD(L&MR) national organizations for special interest consideration as SEAs; approve schools (non-national organizations) as SEAs; and recommend to the ASD(L&MR) categories of property considered appropriate, usable, and necessary for transfer to SEAs.

(8) Provide administrative and logistics support, including appropriate facilities, for the operations of tenant and related off-site DLA Disposition Services field activities under inter-Service support agreements (ISSAs).

(9) For property not explicitly identified in this part, follow Service-unique regulations to dispose of and maintain accountability of property. Ensure all accountable records associated with the disposal of FEPP, excess, and surplus property are established and updated to reflect supply status and ensure audit ability in accordance with DoD Instruction 5000.64, ''Accountability and Management of DoD Equipment and Other Accountable Property'' (available at *http://www.dtic.mil/whs/directives/corres/pdf/500064p.pdf*). This requirement also applies to modified processes that may be developed for contingency operations.

(10) Ensure completion of property disposition (reutilization and marketing) training courses, as appropriate.

(11) Administer reclamation programs and accomplish reclamation from excess materiel.

(12) Establish and administer disposal accounts, as jointly agreed to by DLA and the Military Departments, to support the demilitarization (DEMIL) and reclamation functions performed by the Military Departments.

(13) Dispose of surplus merchant vessels or vessels of 1,500 gross tons or more, capable of conversion to merchant use, through the Federal Maritime Administration, U.S. Department of Transportation, by forwarding a ''Report of Excess Personal Property'' Standard Form 120 to GSA, in accordance with the procedures in 41 CFR chapters 101 and 102. For vessels explicitly excluded by 41 CFR chapters 101 and 102, follow procedures in DoD 4160.28–M, Volumes 1–3, ''Defense Demilitarization: Program Administration, Demilitarization Coding, Procedural Guidance'' (available at *http://www.dtic.mil/whs/directives/corres/pdf/416028m_vol1.pdf, http://www.dtic.mil/whs/directives/corres/pdf/416028m_vol2.pdf, http://www.dtic.mil/whs/directives/corres/pdf/416028m_vol3.pdf*), *i.e.*, battleships, cruisers, aircraft carriers, destroyers, or submarines.

(14) Dispose of HP specifically designated as requiring DoD Component processing.

(15) Request DLA Disposition Services provide sales services, as needed, for recyclable marketable materials generated as a result of resource recovery programs through the DoD Component QRP in accordance with the procedures in § 273.7.

(16) Consider public donation if applicable before landfill disposal and monitor, with DLA Disposition Services Site personnel, all property sent to landfills to ensure no economically salable or recyclable property is discarded.

(17) Report, accurately identify on approved turn in documents, and turn in all authorized scrap generations to servicing DLA Disposition Services sites.

(18) Update the DoD IUID Registry upon the materiel disposition of uniquely identified items in accordance with the procedures in § 273.9.

(19) Improve disposal policies, training, and procedural implementation among the DoD Components and Federal civilian agencies through membership on the DPWG.

§ 273.6 Procedures.

(a) *Personal Property Disposition.* The general guidelines and procedures for property disposition are:

(1) 41 CFR chapters 101 and 102 implements 40 U.S.C. subtitle I and section 101 which established the Personal Property Disposition Program. 41 CFR chapter 101 and other laws and regulations apply to the disposition of FEPP, excess, and surplus property. In the event of conflicting guidance, 41 CFR chapters 101 and 102 takes precedence. 41 CFR chapter 102 is the successor regulation to 41 CFR chapter 101, the ''Federal Property Management Regulation''. It updates regulatory policies of 41 CFR chapter 101.

(2) All references to ''days'' are calendar days unless otherwise specified.

(3) The Department of Defense provides guidance for budgeting for the disposal of excess, surplus, and FEPP property through DoD 7000.14–R, ''Department of Defense Financial Management Regulations (FMRs): Volume 12, 'Special Accounts Funds and Programs'; Chapter 7, 'Financial Liability for Government Property Lost, Damaged, Destroyed, or Stolen' '' (*http://comptroller.defense.gov/fmr/current/12/12_07.pdf*), with updates via program budget decisions. The Service level billing is based on the services turn-in percentage of the Disposition Services workload. As an example, if the Army constitutes 40 percent of the workload the Army will pay 40 percent of the Disposition Services Service-level bill.

(i) Billings are addressed to each Military Department, Defense Agency, and FCA.

(ii) Billing for disposition of excess property depends on decisions made between DLA and the customer: the Military Department, Defense Agency, those sponsoring DoD-related organizations (*e.g.*, Civil Air Patrol, MARS) or FCA.

(b) *Scope and Relevancy.* (1) In conjunction with DoD 4160.28–M Volumes 1–3, the provisions of this part apply to service providers, whether they are working at a government facility or at a commercial site, and to contractors to the extent it is stipulated in the performance work statement of the contracts. DoD 4160.28–M and 10 U.S.C. 2576 contain additional specific guidance for property identified as MLI or CCLI.

(2) The procedures in this subpart will be used to the extent possible in all contingency operations. As appropriate, the ASD(L&MR) will modify policy guidance to support the mission requirements and operational tempo of contingency operations.

(3) This subpart does not govern the disposal of the property described in paragraphs (b)(3)(i), (ii), and (iii) of this section. However, once property in these categories has been altered to remove the inherently sensitive characteristics, it may be processed through a DLA Disposition Services site using an appropriate FSC code for the remaining components.

(i) *Items Under Management Control of the Defense Threat Reduction Agency in Federal Supply Group (FSG) 11.* These items include Department of Energy special design and quality controlled items and all DoD items designed specifically for use on or with nuclear weapons. These items are identified by manufacturers' codes 57991, 67991, 77991, and 87991 in the DLA Logistics Information Service FLIS. These items will be processed in accordance with Air Force Instruction 21–204, ''Nuclear Weapons Maintenance Procedures'' (available at *http://static.e-publishing.af.mil/production/1/af_a4_7/publication/afi21-204/afi21-204.pdf*).

(ii) *Cryptologic and Cryptographic Materiel.* This materiel must be processed in accordance with Committee on National Security Systems Instruction 4008, ''Program for the Management and Use of National Reserve Information Assurance Security Equipment'' (available at *https://www.cnss.gov/Assets/pdf/CNSSI-4008.pdf*).

(iii) *Naval Nuclear Propulsion Plant Materiel.* This materiel must be processed in accordance with Office of the Chief of Naval Operations Instruction (OPNAVINST) N9210.3, ''Safeguarding of Naval Nuclear Propulsion Information (NNPI)'' (available at *http:/doni.daps.dla.mil/Directives/09000%20General%20Ship%20Design%20and%20Support/09-200%20Propulsion%20Plants%20Support/N9210.3%20(Unclas%20Portion).pdf*) and 45 Manual NAVSEA S9213–45–Man–000, ''Naval Nuclear Material Management Manual.''

(c) *Objectives.* The objectives of the Defense Materiel Disposition Program are to:

(1) Provide standardized disposition management guidance for DoD excess property and FEPP (including scrap) and HP, by using efficient internal and external processes. The expected outcome includes protecting national security interests, minimizing environmental mishaps, satisfying valid needs by extended use of property,

permitting authorized donations, obtaining optimum monetary return to the U.S. Government, and minimizing abandonment or destruction (A/D) of property.

(2) Migrate from legacy transactions with 80 record position formats applicable to military standard system procedures (*e.g.*, Defense Logistics Manual (DLM) 4000.25–1, ''Military Standard Requisitioning and Issue Procedures (MILSTRIP)'' (available at *http://www2.dla.mil/j-6/dlmso/elibrary/Manuals/DLM/MILSTRIP/MILSTRIP.pdf*) and DLM 4000.25–2, ''Military Standard Transaction Reporting and Accounting Procedures (MILSTRAP)'' (available at *http://www2.dla.mil/j-6/dlmso/elibrary/Manuals/DLM/MILSTRAP/MILSTRAP.pdf*) to variable length DLMS transactions as described in DLM 4000.25, ''Defense Logistics Management System (DLMS)'' (available at *http://www2.dla.mil/j-6/dlmso/elibrary/Manuals/DLM/DLM_4000.25_DLMS_Manual_Combined.pdf*) (American National Standards Institute Accredited Standards Committee (ANSI ASC) X12 or equivalent XML schema) to track items throughout the supply chain life cycle. Implementation must be consistent with DoD Directive 8320.02, ''Data Sharing in a Net Centric Department of Defense'' (available at *http://www.dtic.mil/whs/directives/corres/pdf/832002p.pdf*).

(3) Ensure cost-effective disposal of precious metals bearing scrap and end items for the replenishment of valuable resources through the DoD PMRP.

(4) Ensure personal property and related subcomponents are not declared excess and disposed of prior to determining the need for economic recovery.

(5) Encourage Military Departments and Defense Agencies to:

(i) Comply with the spirit and intent of Executive Order 12862, ''Setting Customer Service Standards.''

(ii) Set results-oriented goals, such as delivering customer value that results in improvement of overall Military Department performance.

(iii) Serve the tax payer's interests by ensuring tax money is used wisely and by being responsive and reliable in all dealings with the public.

(d) *Foreign Liaison.* (1) Authority for granting visits by foreign nationals representing foreign governments rests with the International Programs Division (J–347) at DLA. Prospective official foreign visitors should submit requests 30 days in advance through their embassy in accordance with procedures in DoD Directive 5230.20, ''Visits and Assignments of Foreign Nationals'' (available at *http://www.dtic.mil/whs/directives/corres/pdf/523020p.pdf*). These requests may require a security clearance from the host Military Department. DLA processes the requests, and will provide written authority to primary-level field activity commanders or DLA Disposition Services site chiefs. Unclassified visits by foreign nationals can be approved for inspections prior to acquiring property through security assistance programs or other programs authorized by statute.

(2) A commander of a DoD activity may authorize foreign nationals and representatives of foreign governments or international organizations to visit a DLA Disposition Services site, except for those foreign nationals and representatives from foreign countries designated as denied areas in the International Traffic in Arms Regulations (ITAR) in 22 CFR parts 120 through 130 and the EAR in 15 CFR parts 730 through 774.

(3) Visits by foreign nationals for public sales will be at the discretion of the host installation commander in accordance with U.S. export control laws and regulations, the ITAR in 22 CFR parts 120 through 130 and the EAR in 15 CFR parts 730 through 774.

(4) All requests for unclassified information, not previously approved for public release will be referred to the appropriate public affairs office. This includes requests submitted by representatives of foreign governments or representatives of international organizations.

(5) Requests from foreign nationals or representatives from foreign governments of denied areas will be referred to the appropriate security office.

(6) Release of MLI technical data or CCLI technology will be in accordance with DoD 4100.39–M, DoD 4160.28–M Volumes 1–3, 10 U.S.C. 2576, 22 CFR parts 120 to 130, and 15 CFR parts 730 to 774, DoD Instruction 2040.02, and DoD Instruction 2030.08.

(e) *Training.* Personnel with Materiel Disposition Program responsibilities (DLA Disposition Services employees, ICP integrated materiel managers (IMMs), Reservists, etc.) as well as those DoD-related and non-DoD organizations disposing of excess, surplus, FEPP, and scrap through the Department of Defense, require applicable training in defense materiel disposition policies, procedures, and related technical areas such as safety, environmental protection, DEMIL, TSC, accounting and accountability, administration, or management of those activities. Required training will be accomplished according to DoD 4160.28–M Volumes 1–3 and DoD Instruction 2030.08, and applicable DoD, DLA, and Military Department training issuances. In addition to formal training, the DLA Disposition Services Web site (*https://www.dispositionservices.dla.mil*) provides guidance on various topics related to materiel disposition.

(f) *DoD Components.* The DoD Components:

(1) Provide administrative and logistics support, including appropriate facilities for the segregation of material according to the established ISSAs.

(i) Establish disposal facilities at suitable locations, separate from host installation active stocks. These areas should permit proper materiel segregation and be convenient to road networks and railroad sidings.

(ii) Approve all facility improvement projects. Identify in the ISSA reimbursable and non-reimbursable host maintenance and repair support, not exceeding that prescribed by regulations of the host activity.

(iii) Fence or otherwise protect the disposal yard to ensure that materiel is safeguarded against theft or pilferage. Security matters identified in ISSAs are covered by security regulations of the DoD Components.

(iv) Provide information security support to DLA Disposition Services field activities through ISSAs, including the retrieval, secure storage, and subsequent determination of the appropriate disposition of classified property found in disposal assets.

(2) Properly containerize and ensure all property turned in to DLA Disposition Services sites is safe to handle and non-leaking to ensure environmental compliance during transport to the DLA Disposition Services site and storage during the disposal process. Drain all fluids from unserviceable vehicles prior to release to disposal and treat fluids according to environmental requirements in accordance with the procedures in Enclosure 3 of DoD Manual 4160.21, Volume 4, ''Defense Materiel Disposition Manual: Instructions for Hazardous Property and Other Special Processing Materiel''.

(3) Ensure HW storage facilities meet all applicable environmental standards and requirements, including 40 CFR parts 262, 264, and 265.

(4) Provide funds for disposal of HP failing reutilization, transfer, donation or sale (RTDS), or if the HP is not eligible for RTDS, that it is disposed of on a DLA disposal service contract following the procedures in Office of the Chief of Naval Operations Instruction N9210.3 with exceptions for funding of

items such as conventional ammunition. Funding for disposal by the Military Department or Defense Agency also applies in instances when non-regulated waste requires special handling for disposal via disposal service contract, or when special services are requested on the disposal service contract.

(5) Comply with the Defense DEMIL Program in accordance with DoD Instruction 4160.28 and DoD 4160.28–M Volumes 1–3.

(i) Provide proper instructions for DEMIL ''F'' property to the DLA Disposition Services site at the time of physical turn-in or immediately following electronic turn-in in accordance with procedures in Enclosure 5 of DoD Manual 4160.21, Volume 2 and Enclosure 3 of DoD Manual 4160.21, Volume 4 and the procedures on the Army's Integrated Logistics Support Center Web site *https://tulsa.tacom.army.mil/DEMIL*.

(ii) Ship small arms serialized weapons and serialized parts to the Anniston, Alabama, DEMIL Center, as identified on the DLA Disposition Services Web site (*https://www.dispositionservices.dla.mil*). Contact the Anniston center for shipment instructions. All activities generating serialized weapons and serialized weapons parts must report a ''ship'' transaction, using the appropriate DLA Disposition Services DEMIL Center DoDAAC, to the DoD Small Arms/Light Weapons Serialization Program registry.

(6) Implement DoD QRP, as directed by DoD Instruction 4715.4, ''Pollution Prevention'' (available at *http://www.dtic.mil/whs/directives/corres/pdf/471504p.pdf*). Establish QRPs to divert or recover scrap or waste from the waste streams, as well as to identify, collect, properly segregate and maintain the integrity of recyclable materials in a way that will maintain or enhance their marketability. Indicate on the turn-in documents that QRP material is identified as such with funds to be deposited to the appropriate budget clearing account.

(7) Implement TSC measures in accordance with DoD Instruction 2030.08 for USML and CCL items and comply with applicable export control regulations and laws.

(g) *DLA Disposition Services.* The DLA Disposition Services will:

(1) Provide Military Departments and Defense Agencies with disposition solutions and best value support for the efficient and timely RTDS or disposal of excess, surplus, and FEPP property. This includes all required training and guidance on programs affecting disposition practices.

(2) Provide visibility and promote maximum reuse of DLA Disposition Services-managed inventory assets. Implement transfer and donation policies and procedures consistent with GSA regulations.

(3) Provide tailored disposal support to the DoD warfighter during contingency operations, as approved by the ASD(L&MR).

(i) Work with the Military Departments to receive and dispose of property in the most efficient manner. If standard accountability practices are not practical, alternative processes may be established on a temporary basis. However, as time or conditions permit, prescribed processes will be established and appropriate additions, deletions, and adjustments to the official accountable record will be completed.

(ii) Provide comprehensive disposal services supporting customer-unique needs based on mutually developed service agreements. DLA Disposition Services, along with DLA, will work with customers of all levels, *e.g.*, generators, major commands, and Services, to define expectations and establish service delivery strategies.

(4) Use the most appropriate sales method to obtain optimum return on investment for all DoD surplus property sold. Respond to inquiries, process disputes, protests, and claims pertaining to disposable property sales.

(5) Implement quality control programs for the Defense Materiel Disposition Program to assure optimum reutilization; proper DEMIL; use of environmentally sound disposal practices; implementation of TSC measures for MLI and CCLI.

(6) Implement TSC in accordance with DoD Instruction 2030.08 for USML and CCL items and comply with applicable export control regulations and laws.

(7) Monitor DLA Disposition Services site PMRP operations and provide support to DoD Components and participating federal agencies. Manage the recovery operations of the PMRP.

(8) Prepare and distribute reports for disposition.

(9) Serve as the office of primary responsibility for environmentally regulated and HP as detailed in DoD Manual 4160.21, Volume 4.

(10) Comply with and implement the provisions of DoD Instruction 4160.28, DoD 4160.28–M Volumes 1–3, and DoD Instruction 2030.08 in the execution of DLA Disposition Services worldwide. Coordinate procedural waivers or deviations for approval by the DoD DEMIL Program Office or DoD TSC Office in DLA–HQ (J–334). Forward policy waivers or deviations from the DoD DEMIL Program Office or DoD TSC Office to the USD(AT&L) or USD(P) respectively for approval.

(11) Monitor property accountability and approve adjustments or corrections to property accounts for assigned DLA Disposition Services sites.

(12) Comply with implementing guidance relative to relationships with Combatant Commanders as prescribed in DoD Directive 5105.22, ''Defense Logistics Agency (DLA)'' (available at *http://www.dtic.mil/whs/directives/corres/pdf/510522p.pdf*).

(13) Support disposal of Military Assistance Program property and other foreign-owned property in accordance with DoD 5105.38–M and § 273.7 of this subpart.

(14) Provide reutilization, donation, and marketing assistance and disposal service to customers.

(15) Maintain liaison with generating activities to determine most efficient method of acceptance (receipt in place vs. physical turn-in), determine mutually agreed-upon schedules for property receipts, and execute memorandums of understanding (MOUs) for receipt-in-place transactions.

(16) Process excess property, surplus property, FEPP, nonsalable materiel, and other authorized turn-ins from generating activities.

(17) Inspect and accumulate physical receipts of property; verify identity, by UII or IUID when applicable, and quantity. DLA Disposition Services sites need not verify quantities where units of issues are: Lot, assortment, board foot, cubic foot, foot, inch, length, meter, square foot, square yard, and yard. These units of issue are impractical and economically unfeasible.

(18) Establish and maintain visibility of accountable property records for excess, surplus, and FEPP property.

(19) Provide or arrange adequate covered storage to protect received property from the elements, maintain its value and condition, and reduce handling. Store property to prevent contamination or mixing, ensure proper identification and segregation (bins or areas are prominently marked, labeled, tagged, or otherwise readily identifiable with the property locator record), and allow inspection.

(20) Fence or otherwise protect the disposal yard to ensure materiel is safeguarded against theft or pilferage. DLA Disposition Services are generally a tenant operation on a DoD installation that generates disposal property. The DLA Disposition Services must comply with the security matters identified in ISSAs established with the DoD

Component regarding security regulations.

(21) Provide HW storage, as appropriate. Ensure HW storage facilities meet all applicable environmental standards and requirements, including those specified in 40 CFR part 264.

(22) Prepare ISSAs. Coordinate with the local installation to resolve matters of mutual concern.

(23) Provide information and assistance to those who are processing precious metals-bearing property into DoD PMRP.

(24) Ensure periodic inventories are conducted, accountable property records updated, and required inventory adjustment documents are prepared and processed.

(25) Implement reutilization, transfer, or donation (RTD) of surplus property. Promote maximum RTD of FEPP, excess property, and surplus property. Process authorized RTD requests. Ensure accountable records are updated in accordance with DoD Instruction 5000.64.

(26) Provide assistance to all authorized screeners, donees, and other interested persons.

(27) Facilitate the sale of property not reutilized, transferred, or donated, and appropriate for release into commerce.

(28) Deposit sale proceeds and other funds received, including storage charges and transfer monies to the appropriate accounts.

(29) Manage the DoD scrap recycling program (including precious metals recovery) and related financial records.

(30) Assist host installations in executing their QRPs in accordance with 10 U.S.C. 2577 and deliver sales revenues from eligible personal property to defray the costs incurred by operating and improving recycling programs, financing pollution abatement and environmental programs, funding energy conservation improvements, improving occupational, safety, and health programs, and funding morale, welfare, and recreation programs.

(31) Ensure DEMIL, including small arms serialized weapons and serialized parts is accomplished in accordance with DoD Instruction 4160.28 and DLA Disposition Services internal direction. Provide shipment locations and instructions to generating activities, as requested.

(32) Document handling and receipt of serialized weapons in accordance with the procedures in Defense Logistics Agency Instruction (DLAI) 1104, ''Control of Small Arms by Serial Number'' (available at *http://www.dla.mil/issuances/Documents_1/i1104.pdf*) for the control of small arms by serial number.

(33) Update the DoD IUID Registry upon the materiel disposition of uniquely identified items in accordance with the procedures in § 273.9.

(h) *ICP Manager.* The ICP Manager is responsible for the materiel management of a group of items either for a particular Military Department or for the DoD as a whole. For the Defense Materiel Disposition Program, the ICP manager will:

(1) Ensure managed items are properly cataloged in the FLIS, in accordance with DoD 4100.39–M. To prevent unauthorized disposition or release within DoD, other Federal civilian agencies, or release into commerce, include required data elements such as UII (when applicable), accurate codes for DEMIL, controlled inventory items, precious metals, shelf life items, and critical items (critical safety items (CSI) or flight safety critical aircraft parts), or other applicable data elements.

(2) Prepare complete instructions when property is assigned DEMIL Code ''F,'' in accordance with life-cycle management requirements in Enclosure 5 of DoD 4160.28–M Volume 2. Additionally, load the instruction in the DoD DEMIL ''F'' Instruction repository hosted by the Army's Integrated Logistics Support Center Web site at *https://tulsa.tacom.army.mil/*.

(3) Review DLA Disposition Services assets and orders, as appropriate, prior to initiating new purchases.

(4) Process other ICP interrogations or orders for requirements assigned a UMMIPS priority designator:

(i) Falling within Issue Priority Group 1 (Priorities 01—03).

(ii) In accordance with the procedures in DLM 4000.25–1.

(iii) Considering on-hand assets to the same extent as would be done to satisfy their own service orders.

(5) Prepare data, records for accountability, and provide disposition recommendations as prescribed here and in DoD Instruction 5000.64 in order to maintain backup material for audit review.

(6) Annually provide DLA Disposition Services with updates to points of contact on the DoD DEMIL program Web site *https://demil.osd.mil/* for operational matters, such as reutilization, donation, DEMIL, precious metals, HP, and CSIs.

(7) Arrange for DEMIL of those items not authorized for DLA Disposition Services site DEMIL processing.

(8) Submit available technical data needed to prepare specialized offers and reclamation requirements, when requested.

(9) Identify items requiring reclamation and advise Military Department and Defense Agency ICPs or IMMs of items with reclamation potential.

(10) Prepare and forward reclamation transactions for the interservice interchange of data for component parts with reclamation potential.

(11) Process reclamation notifications and data interchange transactions of other ICPs.

§ 273.7 Excess DoD property and scrap disposal processing.

(a) *General.* (1) Military Departments and Defense Agencies will declare DoD property excess and use the DoD in-transit control system (ICS) as required by DoD Instruction 5000.64 and DLM 4000.25–2.

(2) Generating activities are encouraged to retain physical custody until disposition instructions are provided to reduce processing costs; *e.g.,* packaging, crating, handling, and transportation (PCH&T).

(3) Disposal of wholesale excess DoD property CONUS stocks from DLA Depot recycling control points (RCPs) is automated. This property does not require transport to a DLA Disposition Services site. Authorized excess DoD property is transferred between the RCP account and the DLA Disposition Services account (SC4402). The following FSGs, FSCs, SCCs, and DEMIL codes are ineligible for RCP:

(i) FSGs: 10, 11, 12, 13, 14, 18, 26, 68, 80, 87, 88, 89, 91 and 94.

(ii) FSCs: 2350, 3690, 4470, 4920, 4927, 6505, 6508, 6750, and 8120.

(iii) SCCs: H.

(iv) DEMIL Codes: G and P.

(b) *Property and scrap accepted and excluded.* (1) DLA Disposition Services must accept and dispose of all authorized DoD-generated excess, surplus, FEPP, scrap, and other personal property with the exclusions in paragraph (e) of this section.

(2) Property not disposed of through RTDS will be processed for disposal under an HW contract, except as specified elsewhere. For example, HP will be processed on HW disposal service contracts. Other property will be downgraded to scrap, demilitarized, processed for A/D, or disposed of through a DLA Disposition Services service contract.

(3) DLA Disposition Services sites minimize processing delays as much as possible. In the event a site is unable to physically accept the property at the desired time and location due to workload, generating activities may

retain the property for processing in-place, seek another DLA Disposition Services site, or hold the property until the DLA Disposition Services site is able to receive the property.

(4) DLA Disposition Services sites:

(i) Accept and process nonsalable materiel that has no reutilization, transfer, donation, or sale value but is not otherwise restricted from disposal by U.S. law or Federal or military regulations.

(ii) Ensure that disposition is by the most economical and practical method; for example, donation in lieu of A/D or through a service contract that meets minimum legal requirements for disposal of the specific types of property.

(5) DLA Disposition Services sites may not accept (either physically or on its account) and no reutilization or sale service will be given for:

(i) Radioactive waste, items, devices, or materiel (all materiel that is radioactive).

(ii) Unsalable materiel of a non-hazardous nature. This includes materiel for which sale or disposal is prohibited by U.S. law or federal or military regulation (*e.g.,* inspection approval stamps and devices, COTS software) unless the license agreement does not prohibit RTDS.

(iii) Property designated for disposal by the Military Departments as identified in DoD Manual 4160.21, Volume 4.

(iv) Classified material, except that which is addressed by paragraph (b)(5)(v) of this section.

(v) Nuclear weapons-related materiel.

(vi) Classified and unclassified information systems security material (cryptological (CRYPTO) or communications security (COMSEC)). Disposal of FSCs 5810 and 5811 are the responsibility of the Military Departments and may not be transferred to DLA Disposition Services in their original configuration as specified in DoD 4160.28–M Volumes 1–3.

(vii) Property containing information covered by 5 U.S.C. 552a, also known as the Privacy Act of 1974.

(6) DoD Components will manage the collection and disposal of installation refuse and trash. If refuse and trash, when properly segregated, possesses RTDS potential, disposition may be accomplished via DLA Disposition Services, recycling provisions of refuse collection contracts, in-house refuse operations, or QRPs as appropriate.

(7) The DLA Disposition Services site operating as a tenant on an installation will notify the host activity when unauthorized shipments are received at the DLA Disposition Services site (including off-site shipments) of radioactive items, classified material, nuclear weapons-related materiel, and classified and unclassified information systems security material (CRYPTO/COMSEC). The host activity will be responsible for retrieving and securing any radioactive items, classified items and unclassified information systems security material (CRYPTO/COMSEC) immediately upon request of the DLA Disposition Services site.

(8) DLA Disposition Services sites will not accept scrap accumulations that are contaminated or commingled with:

(i) MPPEH.

(ii) MLI that require DEMIL (DEMIL Codes C, D, E and F) and MLI that require mutilation (DEMIL Code B). MLI with DEMIL Code G and P are not authorized for acceptance by DLA Disposition Services in their original state.

(iii) CCLI that has not undergone mutilation to the point of scrap as defined in DoD Instruction 2030.08.

(iv) HP FSCs.

(9) Contaminated scrap should be turned in as HW.

(c) *Scrap segregation and identification.* (1) Separating material at the source simplifies scrap segregation and reduces handling. Commingling material may reduce or, in some instances, destroy the value of the scrap.

(2) Generating activities are responsible for initial identification and segregation. The major basic material or content will be used in the item nomenclature block of the DTID.

(3) Scrap will be segregated to ensure only authorized items are in a scrap pile.

(4) DLA Disposition Services sites will provide guidance and, where possible, containers for use by scrap generators at the source.

(5) The generating activity collecting the scrap or waste will maintain proper segregation of the material and determine a point at which no further material will be added. When scrap piles are being built by the DLA Disposition Services site, the same principles apply. Scrap generated from explosive and incendiary items and chemical ammunition is dangerous and will not be commingled with other types of property.

(d) *Documentation for disposal through DLA Disposition Services.* (1) Use DoD automated information systems to the extent practical to prepare documentation for excess, surplus, or scrap DoD property or FEPP. This method of submitting information is preferred, particularly for turn-in of HW. In addition to submitting the information through automated information systems, hard copies must be produced and maintained with the items during the disposal processes.

(2) The generator will provide to the DLA Disposition Services site an original and three hard copies of a DD Form 1348–1A, ''Issue Release/Receipt Document,'' or DD Form 1348–2, ''Issue Release/Receipt Document with Address Label'' (available at *http://www.dtic.mil/whs/directives/infomgt/forms/formsprogram.htm.*) The DTID must include a valid DoDAAC as authorized in Volume 6 of DLM 4000.25, ''Department of Defense Activity Address Code (DoDAAC) Directory (Activity Address Code Sequence)'' (available at *http://www2.dla.mil/j-6/dlmso/elibrary/Manuals/DLM/V6/Volume6.pdf*). All further references to DD Form 1348–1A, which also include DD Form 1348–2, will be referred to in this subpart as a DTID. Table 1 of this section provides guidance on preparation of the DD Form 1348 series documents. For scrap transfers, see paragraph (f) of this section.

TABLE 1—TRANSFERS OF USABLE PROPERTY TO DLA DISPOSITION SERVICES SITES (SINGLE LINE ITEM TURN INS) USING DD FORMS 1348–1A/2

Field legend	Record position	Entry and instructions
Document Identifier (DI)	1–3	A5J/940R. Use information on the source document to perpetuate the archived DI. For locally determined excesses generated at a base, post, camp, or station, assign a DI code as determined by shipping activity procedures.
Routing Identifier	4–6	Enter the record indicator (RI) of the shipping activity or leave blank when the shipping activity is not assigned an RI.
Media and Status	7	Leave blank.

TABLE 1—TRANSFERS OF USABLE PROPERTY TO DLA DISPOSITION SERVICES SITES (SINGLE LINE ITEM TURN INS) USING DD FORMS 1348–1A/2—Continued

Field legend	Record position	Entry and instructions
Stock or Part Number	8–22	See block 25.
Unit of Issue	23–24	Enter the unit of issue of the stock or part number being turned in.
Disposal Quantity	25–29	Enter the quantity being turned in to disposal activity. See block 26.
Document Number	30–43	See block 24.
Alpha Suffix	44	Leave blank (Exception: Use if DTID consists of multiple documents because the 5-digit quantity field (Record Positions 24–29) is insufficient.) See block 24.
Supplementary Address	45–50	Enter DoDAAC of predesignated consignee DLA Disposition Services Site.
A DoDAAC is the key component for using the DLA Disposition Services property accounting disposal system to either turn in or order excess property to and from DLA Disposition Services. The code is required for all DoD activities, contractors, and FCAs to order, receive, ship, identify custody of government property, or reflect identification in a specified military standard logistics system. The code must be approved by the Military Departments, Defense Agencies, and FCA authoritative organization and be officially registered in the DoD activity address file. The DoDAAC system provides identification codes, plain text addresses, and selected data characteristics of organizational activities needed to order, mark, prepare shipping documents, bills, etc., and only recognizes active DoDAACs. FCAs are only authorized to turn excess property in to DLA Disposition Services for disposal if they have officially authorized an Economy Act Order for reimbursement of transaction billing charges.		
Signal	51	This code is used to designate the bill-to and ship-to (or ship-from in the case of DI code FT_and FD_records) activities. Codes B, C, and L apply to HM/HW transfers.
Fund	52–53	For HM and waste turn-ins, enter the fund code from Military Standard Billing System (MILSBILLS) designating the funds to be charged. For non-military activities who are not users of MILSBILLS, (*e.g.*, FCAs or NAFs) using an activity address code), enter "XP."
Distribution	54	Use the information on the source document to perpetuate the archived data or leave blank.
Retention Quantity	55–61	Enter the quantity to be retained in inventory or leave quantity blank.
Precious Metals	62	Enter applicable code from Appendix AP2.23 of DLM 4000.25–1.
Automated Data Processing Equipment Identification.	63	Enter applicable code from AP2.24 of DLM 4000.25–1.
Disposal Authority	64	Enter applicable code from DLM 4000.25–1 Appendix AP2.21. (Mandatory) (FCAs use DAC "F"—not shown in appendix.)
Demilitarization Code	65	Enter the Web-Enabled FLIS or Federal Logistics Data (FEDLOG) recorded DEMIL code of record. For LSNs, Navy item control numbers, or Army control numbers assign DEMIL code in accordance with current Volume 2 of DoD 4160.28–M (Mandatory).
Reclamation	66	Enter code "Y" if reclamation was performed prior to release to a DLA Disposition Services site. Enter "R" if reclamation is to be performed after turn in to DLA Disposition Services site. Enter code "N" if reclamation is not required.
Routing Identifier	67–69	Generate from disposal release order.
Identifier Ownership	70	Enter applicable code or leave blank.
SCC	71	Enter applicable code from DLM 4000.25–2.
Management	72	Enter information from source document to perpetuate archived data or leave blank. If block 71 (SCC) is Q and the management code is blank, DLA Disposition Services will mutilate the property upon receipt.
Criticality Code	73	Enter criticality code documented in FLIS for the items in accordance with DoD 4100.39–M which indicates when an item is technically critical, by reason of tolerance, fit, application, nuclear hardness properties, or other characteristics that affects the identification of the item.
Unit Price	74–80	Enter the unit price for the NSN or part number in record positions 8–22.

Block Entries	
1	Enter the extended value of the transaction.
2	Enter the shipping point identified by DoDAAC; if reduced printing is used, the clear address may be entered in addition to the DoDAAC.
3	Enter the consignee DLA Disposition Services site by DoDAAC. This will be the predesignated DLA Disposition Services site and will be entered by the shipping activity; if reduced printing is used, the in the clear address may be entered in addition to the DoDAAC.
4	Insert HM or HW, if applicable.
5	Enter the date of document preparation, if required by the shipper.
6	Enter the national motor freight classification, if required by the shipper.
7	Enter the freight rate, if required by the shipper.
8	Enter coded cargo data, if required by the shipper.

Block Entries	
9	Enter applicable controlled inventory item code (CIIC), which describes the security or pilferage classification of the shipment from DoD 4100.39–M.
10	Enter the quantity actually received by the DLA Disposition Services site, if different from positions 25–29.
11	Enter the number of units of issue in a package, if required by the shipper.
12	Enter the unit weight applicable to the unit of issue, if required by the shipper.
13	Enter the unit cube applicable to the unit of issue, if required by the shipper.
14	Enter the uniform freight classification, if required by the shipper.
15	Enter the FLIS or FEDLOG recorded shelf-life code in block 15, if appropriate; otherwise, leave blank.
16	Enter in the clear freight classification nomenclature, if required by the shipper.
17	Enter the item nomenclature. For non-NSN items, enter as much descriptive information as possible. Specified additive data or certification from the generating source for specific types of property should be entered.
18	Enter type of container, if required by the shipper.
19	Enter number of containers that makes up the shipment, if required by the shipper.
20	Enter total weight of shipment, if required by the shipper.
21	Enter total cube of shipment, if required by the shipper.
22	Received by (for DLA Disposition Services site) signature of person receiving the materiel.
23	Date received (for DLA Disposition Services site) date materiel was received and signed for.
24	Document number. Generate from source document. DTID consists of 6-digit DoDAAC + 1-digit last number of year, 3-digit Julian Date + 4-digit generator-assigned serial number. This cannot be the same document number that was used to receive the materiel. For locally determined excesses generated at base, post, camp, or station, assign a document number as determined by Service or agency procedures. Leave suffix code blank unless needed to indicate additional documents to show complete quantity. Generating activities and ordering activities and their contractors must have a valid DoDAAC, as defined in DoD 5105.38–M to use DLA Disposition Services.
25	NSN—Enter the stock or part number being turned-in. For subsistence items, enter the type of pack in record position 21. If an NSN is not used, FSC, part number, noun or nomenclature, where appropriate, to build an LSN.
26	Leave blank. Reserved for DLA Disposition Services Site use.
27	This block may contain additional data including bar coding for internal DLA Disposition Services use, generator certifications (e.g., inert certificate) or fund citation, FSCAP criticality code, etc. Enter data in this block as required by the shipping activity or the DLA Disposition Services Site receiving the materiel. When data is entered in this block, it will be clearly identified. For HM and waste turn ins, enter the DoDAAC of the bill to office, the contract line item number (CLIN) for the item, and the total cost of the disposal, (that is, CLIN cost times quantity in pounds equals cost of disposal).

(3) Generating activities may use the DLA Disposition Services web-based program electronic turn-in document (ETID) for submitting the required information electronically. ETID accommodates generators that do not have service-unique automated capabilities. ETID access and guidance are located on the DLA Disposition Services Web site. Generating activities requiring ETID access must apply for a user ID and password.

(4) In addition to the data required by DLM 4000.25–1, the DTID must clearly indicate:

(i) The reimbursable category (such as foreign purchased, NAF, FCA), including the reimbursement fund citation, or an appropriate indicator that reimbursement is required (*e.g.,* purchased with NAF or Disposal Authority Code ''F'' for FCAs). DTIDs without reimbursement data will be processed as non-reimbursable.

(ii) The value and a list of component parts removed from major end items or a copy of the limited technical inspection showing the nature and extent of repair required.

(iii) One of the SCCs listed in DLM 4000.25–2 as determined by the generator.

(5) DoD Components will turn in usable property with line item designations.

(i) To the extent possible, usable property will be turned in as individual line items with their assigned and valid NSN and UII (when applicable). Exceptions include property turned in as generator batchlots (see criteria in paragraph (g)(5)(ii) of this section); furniture turned in as a group on a single form; and locally purchased property without an NSN.

(ii) Property may be turned in without a valid NSN when the materiel cannot be identified to a valid NSN in FEDLOG (*e.g.,* locally purchased property). Prior to assigning an LSN, generating activities will match the part number or bar code number from the property against the DLA Logistics Information Service Universal Directory of Commercial Items Cross Reference Inquiry.

(iii) Generating activities will assign an LSN if a part number or barcode is not available; the property is lost, abandoned, or unclaimed privately owned personal property; or the property is confiscated or captured enemy materiel. In Block 25 of the DTID, annotate the FSC, NATO codification bureau code, if available, and identify the noun, nomenclature, or part number.

(iv) Due to national security concerns, the FSCs listed in Table 2 of this section that are clearly MLI or CCLI require a higher degree of documentation. When these items are not assigned an NSN, the DTID must include the appropriate FSC; the valid part number and manufacturer's name; nomenclature that accurately describes the item; the end item application; and a clear text statement explaining why the NSN is not included (*e.g.,* locally purchased item, found on post, lost, abandoned, privately owned property). This information may be annotated directly on the DTID or securely attached to the DTID.

TABLE 2—FEDERAL STOCK CLASSES REQUIRING TURN-IN BY VALID NSN

GROUP 10	GROUP 12	GROUP 58
ALL FSCs	FSC 2305	FSC 5810**
	FSC 2355	FSC 5811**
GROUP 11	MLI or CCLI 2350	FSC 5820
ALL FSCs		FSC 5821
	GROUP 28	FSC 5825
GROUP 12	FSC 2840	FSC 5826
ALL FSCs	FSC 2845	FSC 5840
		FSC 5841
GROUP 13	*GROUP 29*	FSC 5845
ALL FSCs	FSC 2915	FSC 5846
		FSC 5850
GROUP 14	*GROUP 36*	FSC 5855
ALL FSCs	FSC 3690	FSC 5860
GROUP 15	*GROUP 42*	*GROUP 59*
FSC 1560	FSC 4230	FSC 5963
		FSC 5985
GROUP 16	*GROUP 44*	FSC 5998
FSC 1670	FSC 4470*	FSC 5999
GROUP 17	*GROUP 49*	*GROUP 66*
FSC 1710	FSC 4921	FSC 6615
FSC 1720	FSC 4923	
	FSC 4925	*GROUP 69*
GROUP 18	FSC 4927	FSC 6920
FSC 1810	FSC 4931	FSC 6930
FSC 1820	FSC 4933	FSC 6940
FSC 1830	FSC 4935	
FSC 1840	FSC 4960	*GROUP 84*
		FSC 8470
GROUP 19		FSC 8475
FSC 1905		

* Disposal of originally configured Navy assigned FSC 4470 items is the responsibility of the U.S. Navy.

** Disposal of FSC 5810/5811 equipment with a CIIC of 9 and that is classified (CIICs D, E, and F) or designated CCI is the responsibility of the owning Military Department and will not be received by DLA Disposition Services sites in its original configuration.

(v) The DTID for any property turned in by LSN without an assigned DEMIL code must include a required clear text DEMIL statement, based on information in DoD 4160.28–M Volumes 1–3. Generating activities may request assistance of a DLA Disposition Services site, DLA, or the integrated manager for the FSC to determine the appropriate statement. DLA Disposition Services sites will assist generating activities in developing the clear text DEMIL statement and assignment of the appropriate DEMIL code. If assistance is not requested or not used, DLA Disposition Services sites may reject the turn-in of materiel which does not meet established criteria.

(6) Scrap DTIDs will include:

(i) DI code.

(ii) Unit of issue (pounds or kilograms).

(iii) Quantity (total weight (estimated or actual)).

(iv) DTID number.

(v) Precious metals indicator code.

(vi) Disposal authority code.

(vii) Basic material content (Block 17).

(viii) Reimbursement data, if applicable.

(7) For HP documentation, see DoD Manual 4160.21, Volume 4.

(8) The generating activities will complete documentation for in-transit control of property (excluding scrap (SCC S)), waste, NAF, lost, abandoned, or unclaimed, privately owned, and FCA property) in accordance with DoD 4160.28–M Volume 3, for shipments or transfers to DLA Disposition Services sites of property with a total acquisition value of $800 or greater and all property designated as pilferable or sensitive identified by an NSN or part number. The ICS document tracks property from the time of release by generating activity (regardless whether the property is shipped to the DLA Disposition Services site or retained by the generating activity) until the DLA Disposition Services site accepts accountability. The generating activities will update the records to reflect the change in accountability and custody.

(9) DoD Components will identify defective items, parts, and components containing latent defects.

(i) *General information*—(A) *Category 1 (CAT 1) defective or counterfeit property.* (*1*) Is identified as military or Federal Government specification property intended for use in safety critical areas of systems, as determined by the user and reported to the item manager.

(*2*) Does not meet commercial specifications.

(*3*) If used, would create a public health or safety concern; RTDS as usable property is prohibited.

(*4*) Must be mutilated by the generating activity according to specific instructions provided by the item manager.

(B) *Category 2 (CAT 2) defective property.* (*1*) Does not meet military or Federal Government specifications, but may meet commercial specifications.

(*2*) Cannot be used for its intended military purpose and must not be redistributed within the Department of Defense, as directed by the item manager.

(*3*) May be used for commercial purposes and may be transferred, donated, or sold as usable property.

(*4*) If sold, requires special terms and conditions warning purchasers that the property is CAT 2 defective and is not acceptable for resale back to the Department of Defense.

(ii) *ICP requirements.* (A) ICPs will list defective property with the Government-Industry Data Exchange Program (GIDEP). GIDEP is located at *http://www.gidep.org/.*

(B) The DLA Disposition Services Safe Alert or Latent Defect (SALD) program contains additional disposal processing information for defective property and can be viewed at *http://www.dispositionservices.dla.mil/.*

(iii) *Sales requirements.* (A) If the property has been rejected as defective due to non-conformance with U.S. Government specifications, it may be authorized for sale with a statement as to the specific reason for its rejection. DLA Disposition Services will ensure that U.S. Government identification, such as contract numbers, specification numbers, NSN, and any other printing that would identify the item with the U.S. Government is removed or obliterated. A statement to this effect will be included in the sales offering, as a condition of sale. Terms or conditions in sale offerings will warn purchasers that the property is CAT 2 defective and is not acceptable for resale to the Department of Defense.

(B) Return copies of the DTID from the DLA Disposition Services site. Unless generating activities provide written notification to DLA Disposition Services sites that electronic receipt confirmations are acceptable, DLA Disposition Services sites will provide final receipt documentation for each DTID. Generating activities can use the DLA Disposition Services property accounting system to query transactions status.

(e) *Property custody determinations*—(1) *Physical custody retention.* (i) Generating activities should consider retaining physical custody of property declared as excess to reduce handling and preclude transportation costs.

(ii) An MOU will be established between the servicing DLA Disposition Services site and the generating activity. Custodial and accountability responsibilities will be identified in the MOU. DLA Disposition Services sites will not take accountability until the MOU is executed and signed at the approval levels identified in the MOU.

(iii) Inspection(s) will be completed by the DLA Disposition Services site, where appropriate. If not accomplished by the DLA Disposition Services site, a mutually agreeable disposal condition code will be assigned.

(iv) Generating activities are responsible for all expenses incurred before acceptance of accountability by a DLA Disposition Services site. At the point of DLA Disposition Services accountability acceptance (not in conditional acceptance time frame as described in paragraph (g)(2) of this section), expenses (*e.g.,* PCH&T of non-hazardous excess, surplus, and FEPP) are borne by DLA Disposition Services.

Exceptions may be negotiated by a DoD Component or federal agency representative at a level commensurate with DLA Disposition Services Director (Senior Executive Service level).

(v) The DLA Disposition Services site will provide barcode labels to the generating activity to affix on the property. The labels will contain the DTID number, DEMIL code, and federal condition code. The label will be positioned to clearly indicate that the property accountability has passed to DLA Disposition Services (*e.g.,* ''on DLA Disposition Services Site Inventory''). Property should be consolidated and protected in a designated area. The activity with physical custody is responsible for the property's care and protection until it is disposed of or moved to a DLA Disposition Services site.

(2) *Turn-ins.* When the generating activity decides to transport property to the DLA Disposition Services site, the care and custody of the property will be borne by the DLA Disposition Services site at the point of physical receipt.

(f) *Transferring usable property and scrap to a DLA Disposition Services site.* (1) Generating activities will comply with this part, DLM 4000.25–1, and their Service or agency retention and disposal policies and procedures when preparing property for transfer for disposal. The generating service will maintain accountable records of accountable property, in accordance with DoD Instruction 5000.64, until formally relieved of accountability by DLA Disposition Services.

(2) Generating activities will schedule all transfers (receipt in-place or physical) through advanced notification (*i.e.,* use of a listing or automated DTIDs.)

(3) Usable property will, to the extent possible, be transferred as individual line items with their assigned valid NSN and UII (when applicable). Exceptions include property turned in as generator batchlots, furniture turned in as a group on a ''tally-in'' form, and locally purchased property without an NSN.

(4) Scrap, properly identified with supply class by basic material content and segregated, must be transferred to a DLA Disposition Services site using a DTID.

(5) If the deficiency prohibits further DoD use, the materiel will remain in SCC Q, and owners will direct transfer of the materiel to DLA Disposition Services sites following the guidance in paragraph (d)(9) of this section. Improperly documented, unauthorized source, defective, non-repairable, and time-expired aviation CSI/FSCAP materiel that is not mutilated by the holding activity will be directed to the DLA Disposition Services site in SCC Q with management code S. All such materiel will be mutilated. The ICP/IMM should identify to the DLA Disposition Services any unique instructions for disposal requiring specific methods or information regarding hazardous material, waste, or property contained in the item. When transferring such aviation CSI/FSCAP to a DLA Disposition Services site, the generating activity DTID must clearly state in block 17 that the part is defective, non-reparable, time-expired, or otherwise deficient and that mutilation is required.

(6) Property capable of spilling or leaking may not be transferred to a DLA Disposition Services site in open, broken, or leaking containers. All property will be non-leaking and safe to handle.

(7) For physical transfers, generating activities will be responsible for movement of the property or scrap to the nearest DLA Disposition Services location.

(8) DEMIL instructions are to be provided by the ICP or IMM. DEMIL F items must have a valid and verifiable NSN. LSNs with DEMIL F are not valid. DLA Disposition Services sites will not accept DEMIL F property without the proper instructions.

(9) DTIDs that do not meet the requirements in paragraph (e) of this section will be rejected and returned to the Military Departments.

(10) To obtain DEMIL F instructions, please visit the Army's Integrated Logistics Support Center Web site at *https://tulsa.tacom.army.mil/DEMIL.*

(g) *Receipt of property and scrap*—(1) *During transfer.* (i) DLA Disposition Services sites are responsible for ensuring proper receipt, classification, processing, safeguarding, storing, and subsequent shipping of all property and scrap. This includes property to be accounted for as items and properly segregated scrap and waste with RTDS value, and materiel destined for disposal.

(ii) DLA Disposition Services sites will assist, when requested, in tracing property when an in-transit control follow-up has been received by the generating or shipping activity.

(iii) DLA Disposition Services sites will maintain close liaison with generating activities to ensure:

(A) Informational guidance on disposal transfers is given to generating activities.

(B) A DLA Disposition Services site's receiving capability and the volume of property to be transferred is taken into consideration for turn-in scheduling. Property inspections will be performed in-place if more advantageous due to the characteristics of the property, as determined by DLA Disposition Services.

(C) Assistance is provided to generating activities, as needed, to assure proper segregation of scrap and HW material before transfer. If the weight generated, market conditions, or local trade practices warrant, further scrap segregation will be made.

(D) All property (except unsalable materiel that is precluded from sale by law), including scrap and refuse or trash with a RTDS value, is processed as set forth in this part and will not be disposed of by dumping in landfills. If the DLA Disposition Services site has knowledge of salable materiel being dumped in a sanitary fill, the DLA Disposition Services site chief will notify the installation commander regarding the matter.

(E) Property received is protected to prevent damage from unnecessary exposure to the elements. Property transferred as condemned may still be usable, and its preservation may benefit the Defense Materiel Disposal Program.

(*1*) Instances of improper handling of government property will be brought to the attention of the generating activity or installation commander for remedial action.

(*2*) Recurrent instances of improper care or handling will be documented for referral to DLA and the disposal focal points of the Military Departments and Defense Agencies.

(iv) The generating activity will assure all property and scrap is properly identified, including special handling requirements, and that automated information system or manually prepared documentation contains the required number of copies and appropriate information for property received in place or physically accepted.

(A) To the maximum extent possible, DLA Disposition Services sites will validate items during pre-receipt processes with documentation preparation and receipt processes with the physical transfer of the property.

(*1*) The generator's representative (if present) should assist with validation. Whether received in place or at a DLA Disposition Services site, a receipt copy of the DTID will be provided to the generator's representative at that time.

(*2*) If the turn-in is not accompanied by the generator's representative, the official receipt documentation will be provided in the most efficient method available; *e.g.,* through an electronic listing of items received, an actual copy of an annotated DTID or an electronic

return of an annotated DTID through a Web based document management system.

(*3*) For turn-ins accompanied by a generator representative, a conditional receipt copy will be provided at the time of delivery. DLA Disposition Services sites will initial in block 22 and date block 23 of the DTID. This copy constitutes conditional acceptance and becomes the official receipt unless property is rejected on a supply discrepancy report within 15 workdays.

(B) Validation will consist of verifying property description and quantity, and assuring an authorized and appropriate SCC was assigned by the generating activity. DLA Disposition Services sites and generating activities will work together to validate and verify requirements and obtain appropriate certifications, etc., when property is received in place versus physically transported to a DLA Disposition Services site. The MOU, discussed in § 273.6, will be used for securing and documenting these requirements.

(C) DLA Disposition Services site personnel may exercise discretionary authority to change and challenge SCCs (except for items in SCC Q, which will be downgraded to scrap and mutilated).

(D) For items in the general hardware, clothing, tools, furniture, and other nontechnical FSCs, DLA Disposition Services sites are authorized to use their best knowledge, judgment, and discretion to change and assign the appropriate SCC when determined, through physical inspection and examination, or where an obvious error in condition coding exists. DLA Disposition Services sites are responsible for any SCC changes they make and will document the change on the DTID.

(E) For specialized items such as avionics, or items that require test, measurement, or diagnostic to determine serviceability, DLA Disposition Services site should challenge the generating activity SCC assignment if it appears incorrect. Items in original pack and unopened containers that are coded condemned or unserviceable should be viewed with guarded skepticism and challenged back to the generating activity.

(v) Appropriate actions will be taken for discrepancies detected during pre-receipt or receipt:

(A) If property is to be physically received and the generating activity's representative is present, accountability and physical custody of the property will normally remain with the generator until reconciled. DLA Disposition Services sites, at their discretion, may retain physical custody until reconciled.

(B) Discrepancies noted during the receiving process, which may be discovered after electronic or hard copy documentation is received, will be processed in accordance with DLAI 4140.55/AR 735–11–2/Secretary of the Navy Instruction (SECNAVINST) 4355.18A/Air Force Joint Manual (AFJM) 23–215, ''Reporting of Supply Discrepancies'' (available at *http://www.dla.mil/issuances/Documents_1/i4140.55%20(Joint%20Pub%20-%206%20Aug%202001).pdf.*

(C) DLA Disposition Services will barcode the property for identification purposes. Barcoding should include use of any UII or IUID in place when applicable.

(2) *Conditional and accountable acceptance distinction.* Conditional and accountable acceptances are separate actions.

(i) Conditional acceptance occurs when a generating activity representative accompanies a transfer. DLA Disposition Services sites will provide a conditional receipt copy at time of physical delivery. Conditional acceptance becomes official and final acceptance receipt unless property is officially rejected by the DLA Disposition Services site within 15 workdays.

(ii) Accountable acceptance becomes final when verification of accurate property description, valid condition code assignment, correct quantity, and UII (when applicable) is completed by the DLA Disposition Services site. Physical inspections will be conducted, as appropriate.

(iii) During the conditional acceptance processing, if the property is physically transferred to the DLA Disposition Services site and an inventory discrepancy surfaces, the DLA Disposition Services site will research and provide a report of the lost, damaged, or destroyed property in accordance with procedures in DoD 7000.14–R Volume 12, Chapter 7. If the property remains at the generating activity site for receipt-in-place and an inventory discrepancy surfaces, the generating activity will research and provide a report of the lost, damaged, or destroyed property in accordance with procedures in DoD 7000.14–R Volume 12, Chapter 7. The accountable organization will amend the accountable property records as appropriate upon completion of the property loss investigation.

(3) *Document acceptance.* DLA Disposition Services sites will use a full signature for receipts in block 22 of the DTID. The conditional acceptance date will be entered in block 23. DLA Disposition Services sites will also use this date for the accountable record receipt transaction.

(4) *Returning receipts.* DLA Disposition Services sites will return one hard copy on physical transfers, including generator-prepared batchlots, if required by the generating activity. DLA Disposition Services will make return receipts available to generators via a Web based document management system. Generating activities may access this system via the DLA Disposition Services Web site and search, view, and download copies of turn-in documentation. DLA Disposition Services personnel should work with generating activities to encourage the use of a Web-based document management system and eliminate hard copy return receipts.

(i) For property physically received by a DLA Disposition Services site, generating activities will be provided a receipt copy upon delivery.

(A) These receipts are considered conditional acceptance of accountability, pending completion of DLA Disposition Services site inspection and verification of the turn-in. If no follow-up report is received by the generating activity within 15 workdays, the provisional copy becomes the official receipt document, and the DLA Disposition Services Site assumes full accountability.

(B) If the receipt is not recorded in a Web based document management system within 30 days, the provisional copy becomes the official receipt copy and the DLA Disposition Services Site assumes full accountability.

(C) If a discrepancy is found, DLA Disposition Services sites may contact the generating activity and attempt resolution. If required, the guidance shown in paragraph (g)(2)(iii) of this section will be used for inventory discrepancies.

(D) When acceptance is not possible, a reject notice will be provided to the generating activity within 7 workdays. Return receipts are available to generators via a Web based document management system.

(ii) For turn-ins made by commercial carrier, parcel post, etc., DLA Disposition Services sites will provide receipt copies no later than 5 workdays after delivery. These receipts are considered conditional acceptance of accountability pending completion of DLA Disposition Services site inspection and verification of the turn-in. If a discrepancy is found, DLA Disposition Services sites may contact and attempt resolution. When acceptance is not possible, a reject notice will be provided to the generating activity within 7 workdays.

(5) *DLA Disposition Services site batchlots.* (i) Consistent with the DoD ICS and in accordance with DLA Disposition Services operating guidance, DLA Disposition Services sites may batchlot property after receipt:

(A) Batchlot property with an extended line item value of $800 or less, in SCCs A–H.

(B) Batchlot property that does not contain pilferable or sensitive materiel.

(ii) Property assigned DEMIL code ''A'' in the critical or non-critical FSG/FSCs, excluding FSCs 5985, 5998, and 5999, is eligible for batchlotting.

(iii) DLA Disposition Services sites may batchlot property requiring the same type of special processing, *e.g.,* reimbursable property, same FSC.

(iv) DLA Disposition Services sites may batchlot clothing and textile products with infrared or spectral reflectance with a DEMIL code of ''E,'' but the batchlots require a certification on the DTID (see Figure 1 of this section).

Figure 1. Infrared/Spectral Reflectance Batchlots Certification

"I certify that the clothing and textile items within this batchlot do not contain any items that have been designated as chemical or biological protective clothing or masks."

_____	_____
Signature	Date
_____	_____
Name (Print/Type)	Title
_____	_____
Activity/Unit	Grade/Rank

(v) DLA Disposition Services sites will exclude from batchlotting:

(A) Chemical, biological, radiological, and nuclear (CBRN) property and clothing (FSG 83 and 84); lab equipment such as centrifuges, biological incubators, micromilling machines, biological safety cabinets and laboratory evaporators; (FSG 66), camouflage clothing and individual equipment.

(B) Low dollar property with high potential for RTDS.

(C) Property defined as a special case in Enclosure 3 of DoD Manual 4160.21, Volume 4 that requires special receipt and handling requirements that cannot be met at time of receipt.

(D) DEMIL required items identified in DoD 4160.28–M Volumes 1–3, DEMIL codes B, Q, and property in critical FSCs in DEMIL codes C, D, E, F, G, and P. Property in FSCs 5935, 5996, and 5999 will not be batchlotted regardless of DEMIL code.

(E) Property requiring inert certification.

(F) Small arms or light weapons.

(G) Lasers.

(H) Radioactive materiels (*e.g.,* gauges, meters, watches) not eligible for turn-in.

(I) Chemical, biological, radiological, nuclear—defense (CBRN–D) equipment—These items are DEMIL F and instructions have to be followed for disposition and are NOT turned in to DLA disposition.

(J) Items with a CIIC. Items determined to be pilferable or sensitive in accordance with Volume 6 of DLM 4000.25 and DLA Regulation 4145.11/AR 740.7/Navy Supply System Command Instruction (NAVSUPINST) 4440.146C/Marine Corps Order (MCO) 4450.11, ''Safeguarding of DLA Sensitive Inventory Items, Controlled Substances, and Pilferable Items of Supply'' (available at *http://www.dla.mil/issuances/Documents_1/r4145.11.pdf*).

(K) HP.

(L) Metalworking machinery and former industrial plant equipment.

(M) Grade 8 fasteners and machine bolts in FSCs 5305 and 5306. Do not batchlot these items if they appear on the SALD list.

(N) Property in SCC A with a total extended value, per DTID, of $50 or more, as shown in Table 3 of this section.

TABLE 3—FSCS IN SCC A > OR = $50 EXCLUDED FROM BATCHLOTTING

FSC	Description
2910	Engine Fuel System Component, Non-Aircraft.
2920	Engine Electrical System Components, Non-Aircraft.
2940	Engine Air and Oil Filters, Strainers and Cleaners, Non-Aircraft.
2990	Miscellaneous Engine Accessories, Non-Aircraft.
3030	Belting, Drive Belts, Fan Belts, and Accessories.
4730	Fittings and Specialties; Hose, Pipe, and Tube.
5660	Fencing, Fences and Gates and Components.
5895	Miscellaneous Communication Equipment.
5910	Capacitors.
5935	Connectors, Electrical.
5940	Lugs, Terminals and Terminal Strips.
5961	Semi-Conductor Devices and Associated Hardware.

TABLE 3—FSCS IN SCC A > OR = $50 EXCLUDED FROM BATCHLOTTING—Continued

FSC	Description
6530	Hospital Furniture, Equipment, Utensils and Supplies.
6680	Liquid/Gas Flow, Liquid Level/Mechanical Motion Measuring Instruments.
7105	Household Furniture.
7195	Miscellaneous Furniture and Fixtures.
9999	Miscellaneous Items (cannot conceivably be classified anywhere else).

(vi) Notwithstanding the information in paragraph (g)(5)(v) of this section, RTD customers may order individual items from a batchlot. DLA Disposition Services sites will honor these requests. Otherwise, items will not be removed from batchlots.

(vii) DLA Disposition Services sites are responsible for ensuring official receipt copies are returned accessible to generating activities (electronically or hard copy). They must provide tracing assistance for any DTID receipt copy not received by the generating activity.

(h) *Identification, barcoding, and storage requirements.* (1) Usable property, transferred to a DLA Disposition Services site or received in original location, must be clearly identified with barcode labels. The labels will be affixed to property from time of receipt (physically or receipt-in-place) until final removal and will correspond with accountability records. For property stored at DLA Disposition Services sites, signs will be placed appropriately to identify property status (RTD, DEMIL, etc.) and to minimize confusion to customers.

(2) Scrap transferred to a DLA Disposition Services site or received in original location will be accumulated and segregated to prevent commingling basic material content.

(i) For use in providing the basic material content information, scrap will be identified using the standard waste and scrap classification code (SCL) contained in the DAISY codes and terms pocket reference located at the DLA Disposition Services Web page (*https://www.dispositionservices.dla.mil/publications/index.shtml*). The pocket reference is formatted alphabetically.

(ii) Barcoded labels are not required for scrap accumulations. However, both the generating activity and DLA Disposition Services accounting records must correspond with the scrap identifications and weights. DLA Disposition Services must use the SCL in its DAISY accounting records.

(iii) During storage, DLA Disposition Services will place appropriate signs to identify types of scrap and maximize visibility to customers.

(i) *Accounting for property at the DLA Disposition Services site.* (1) Correct accounting for all excess property, surplus property, and FEPP by both the Military Departments and DLA Disposition Services sites is critical. Non-compliance can result in property being misappropriated with potentially severe consequences. Proper accounting impacts resourcing (money, equipment, and personnel) decisions.

(2) Accountability records will be maintained in auditable condition, allow property to be traced from receipt to final disposition and cleared from the ICS, when appropriate. DLA Disposition Services' accountability system will incorporate the requirements of DoD Directive 8320.02, 15 CFR parts 730 through 799, and DLA Regulation 7500.1, ''Accountability and Responsibility for Government Property in the Possession of the Defense Logistics Agency,'' (DLA Regulation 7500.1 is available at: *http://www.dla.mil/issuances/.*

(3) If a contingency operation requires a deviation from standard accountability practices, Military Departments and DLA Disposition Services sites will maintain spreadsheets, listings, or the most appropriate method of temporary accountable records. When the contingency operation reaches a point where prescribed accountability practices can be resumed, the temporary documents will be used for establishing, updating, or adjusting official accountability records (both Military Departments and DLA Disposition Services sites) as applicable.

(4) DLA Disposition Services' property accountability records will be maintained in sufficient detail to support required sales proceeds reimbursements.

(i) Materiel with different fund citation appropriations may be combined in sale lots; however, DLA Disposition Services accountability systems will retain individual disbursement information to allow appropriate reimbursements to local or departmental accounts, as designated by DoD 7000.14–R, Department of Defense Financial Management Regulations (FMRs): Volume 11a, ''Reimbursable Operations, Policy and Procedures''; Chapter 5, ''Disposition of Proceeds from Department of Defense Sales of Surplus Personal Property'', (available at *http://comptroller.defense.gov/fmr/current/11a/Volume_11a.pdf*).

(ii) Non-reimbursable scrap may be physically combined with other scrap when considered advantageous; however, accountability records will be maintained to substantiate pro-rating of the proceeds.

(5) Usable and scrap determination and accounting are calculated as follows:

(i) When property not requiring DEMIL is assigned SCCs F, G, or H, the DLA Disposition Services site may determine property has scrap value only and classify and process as ''scrap upon receipt.''

(ii) Personal property assigned other SCCs, which the DLA Disposition Services site determines to only have basic materiel content value, may be downgraded to scrap after the end-of-screening date (ESD) and completion of any required DEMIL.

(iii) DLA Disposition Services sites will minimize changing or challenging SCCs and downgrades upon receipt.

(iv) When an item has been offered on a competitive sale and no bid has been received, or bids received are less than the scrap value of the item, the property may be downgraded to scrap and re-offered for sale as scrap. This includes property returned to a DLA Disposition Services site from a joint commercial sales partner that has been confirmed as mis-described or as containing only basic material content value. Similar items received within a 12-month period that have a history of being nonsalable may be downgraded to scrap at ESD.

(v) When a DLA Disposition Services site determines obsolete printed materials have no RTD potential and only scrap market value, these items will be downgraded to scrap upon receipt.

(vi) When end items are turned in as scrap and are reclaimed or disassembled for their usable components, the DLA Disposition Services site's records will be adjusted to reflect the acquisition cost (estimated, if not known) of the components removed.

(6) Scrap accounting is calculated by weight.

(i) Estimated weight may be used for receiving scrap if scales are not available or if weighing is impractical. Disposition of scrap for sale or demanufacturing must be weighed to provide accurate accounting and reconciliation with the DLA Disposition Services accountable record.

(ii) The acceptable degree of accuracy of estimation is 25 percent for property processed by the ton, and 10 percent for property processed by the pound. Overages and shortages discovered on release of property that exceed allowable tolerances will be adjusted.

(iii) High value scrap must be weighed at the time of receipt.

(j) *Calibration and maintenance of weigh scales.* (1) DoD activities, including DLA Disposition Services sites with scales used for receipts and disposition of scrap, will ensure weigh scales under their jurisdiction are maintained, repaired, and calibrated annually or more often if required by State or local laws.

(2) Activities with scales will maintain a log or record of visits by qualified inspectors showing the date of the visit and, where appropriate, action taken to correct the accuracy of the scales. A signed copy of the inspector's findings will be maintained. The activity is responsible for obtaining the services of a qualified scale inspector and requesting repair when needed.

(k) *Physical inventory accuracy.* (1) DLA Disposition Services sites will conduct physical inventories. At a minimum, a sample inventory will be conducted at each DLA Disposition Services site annually. Inventory accuracy of at least 90 percent will be maintained for all usable property, except DEMIL required property, HP, and pilferable or sensitive property. Discrepancies will be corrected in accordance with paragraph (l) of this section. If sample inventories for usable property are less than 90 percent accurate, a wall-to-wall inventory will be conducted.

(2) Physical inventories for DEMIL required property, HP, and pilferable or sensitive property will be conducted at least annually. Inventory accuracy of 100 percent will be maintained. If less than 100 percent accuracy, DLA Disposition Services site will report the discrepancies in accordance with procedures in DoD 7000.14–R.

(3) Usable property remaining on the DLA Disposition Services site account in excess of 6 months will be inventoried on a monthly basis and certified.

(4) Inventory discrepancies will be researched as part of the inventory process and corrections documented as inventory adjustments.

(5) DLA Disposition Services will provide the DLA Disposition Services sites with direction for maintaining and reconciling scrap accumulations and accountable records. Reconciliation will be performed at least monthly.

(l) *Inventory discrepancies and adjustments*—(1) *Errors before acceptance.* Item identification, quantity, condition, or price data errors discovered before official acceptance of accountability will be resolved and corrected during receipt.

(2) *Errors after acceptance.* Discrepancies discovered after acceptance of accountability; that is, differences between recorded balances and quantities on hand, will be processed as inventory adjustments. Inventory adjustment procedures are contained in DoD 7000.14–R, Volume 12, Chapter 7.

(3) *Property not in DLA Disposition Services site custody.* (i) When property for which a DLA Disposition Services site has assumed accountability, but not physical custody, becomes lost, damaged, or destroyed, the custodial activity will investigate the discrepancy and provide its findings to the DLA Disposition Services site.

(ii) The DLA Disposition Services site will provide the custodial activity with requested item identification number, such as NSN, DTID number, or UII (when applicable) or copies of pertinent documentation for the lost, damaged, or destroyed item.

(A) If the custodial activity determines the discrepancy is due to a record keeping error, it will fully document the error and inform the DLA Disposition Services site to prepare an inventory adjustment.

(B) If the discrepancy is not due to a record keeping error, the custodial activity must prepare a DD Form 200, ''Financial Liability Investigation of Property Loss,'' in accordance with criteria contained in DoD 7000.14–R, Volume 12, Chapter 7.

(iii) Within 30 days after notification of the loss of the property, the custodial activity must provide the DLA Disposition Services site a completed copy of the DD Form 200 as supportive documentation for the DLA Disposition Services site to process an inventory adjustment.

(m) *Property disposition*—(1) *Packing, crating, and handling (PC&H).* PC&H for DoD orders will be arranged by the DLA Disposition Services site in most cases. When property is received in place, the generating activity will prepare the property for shipment. DLA Disposition Services will submit payment for these services according to the established ISSA or by DLA Disposition Services military interdepartmental purchase request.

(2) *Transportation.* DLA Disposition Services will directly fund transportation costs associated with reutilized property on each transaction. However, these costs are recouped as part of the Service-level annual billings for all associated disposition costs incurred by the services including all transportation costs during the year. That is, individual DoD units do not pay for reutilization transportation on each individual transaction, but their Military Service is billed on an annual basis.

(n) *Audits*—(1) *Outside command involvement.* When it is necessary to obtain or confirm data on materiel transferred to or from disposal accounts, and this involves crossing command lines between DoD Components, the policy in DoD Instruction 7600.02, ''Audit Policies'' (available at *http://www.dtic.mil/whs/directives/corres/pdf/760002p.pdf*) will apply.

(2) *Joint Service/DLA Directives used during audits.* The DoD Components will maintain a clear audit trail of the documentation for the disposition of property in accordance with their internal issuances for audits. The internal issuances that govern Army, Navy, and Air Force are:

(i) AR 36–2, ''Audit Services in the Department of the Army'' (available at *http://www.apd.army.mil/pdffiles/r36_2.pdf*).

(ii) SECNAVINST 7510.7F.

(iii) Air Force Policy Directive 65–3, ''Internal Auditing'' (available at *http://static.e-publishing.af.mil/production/1/saf_fm/publication/afpd65-3/afpd65-3.pdf*).

§ 273.8 Donations, loans, and exchanges.

(a) *Authority and scope*—(1) *FMR.* Provisions for donation of surplus personal property are provided in accordance with 41 CFR part 102–37.

(2) *Other regulations.* (i) 10 U.S.C. 2576a permits the Secretary of Defense to transfer certain property for use for State and local law enforcement agencies. Notwithstanding 41 CFR chapters 101 and 102, donations may be made only as authorized by law; under separate statutes, the Secretaries of the Military Departments may donate certain excess materiel to authorized recipients; through GSA, the Department of Defense may donate surplus property to authorized donees. Donations are subordinate to federal agency needs, but take precedence over sale or A/D. This section also contains guidance and procedures pertaining to

loans or exchanges, providing specific instructions to authorized donees.

(ii) 42 U.S.C. chapter 68 authorizes federal assistance to States, local government, and relief organizations based on a declaration of emergency or major disaster.

(iii) 10 U.S.C. 2557, 2572, 2576, and 5576a establishes the procedures for organizations participating in surplus personal property donation programs, specifically the organizations discussed in this section.

(3) *Agreements.* Technology transfer projects and 10 U.S.C. 2194 address educational partnership agreements.

(b) *Compliance with nondiscrimination statutes requirements.* (1) All of the donation programs covered by this section must comply with:

(i) 42 U.S.C. 2000a, also known as Title VI of the Civil Rights Act of 1964.

(ii) 20 U.S.C. 1681, also known as Title IX of the Education Amendments of 1972.

(iii) 29 U.S.C. 701 also known as the Rehabilitation Act of 1973.

(iv) 42 U.S.C. 6101 also known as the Age Discrimination Act of 1973.

(2) Any complaints alleging violations of these acts or inquiries concerning the applicability to the programs covered in this section will be handled by elevating issues through the appropriate chains of command and agency-to-agency dialog.

(c) *Donations of surplus personal property*—(1) *General.* (i) Surplus property is allocated by GSA considering the factors listed in 41 CFR chapters 101 and 102.

(ii) GSAXcess® is available for State agencies for surplus property (SASPs) and donees, when authorized, to search for and select property for donation. Screening is accomplished during the timeframes specified in § 273.15.

(iii) Upon allocation, GSAXcess® will generate the SF 123, ''Transfer Order Surplus Personal Property'' to the agency for approval and return. DoD orders for DLA Disposition Services assets with a UMMIPS Priority Designator within Issue Priority Group 1 (Priorities 01–03), and non-mission capable supply (NMCS) orders will be submitted to DLA Disposition Services as an exception. DLA Disposition Services will immediately fill these orders and notify the GSA area property officer for the Front End Data System record adjustment. Priorities 4–15 orders received during this timeframe will not be honored.

(2) *Accessing GSAXcess®.* GSAXcess® screening requires an access code from GSA. To learn about GSAXcess® and obtain access code information, see *https://gsaxcess.gov/.*

(3) *Release of Government liability.* On a case-by-case basis, ''hold harmless'' clauses to protect the United States may be used, depending on the types and quantities of property. Such provisions must be written in coordination with appropriate DoD Component legal counsel.

(4) *Reporting.* DLA will provide GSA a report of property transferred to non-federal recipients. The report:

(i) Will be submitted to GSA through the GSA on-line Personal Property Reporting Tool within 90 calendar days after the close of each fiscal year. The Personal Property Reporting Tool is located at *https://gsa.inl.gov/property.* If for any reason the report is delayed, the organization who possesses the property should contact the GSA Personal Property Asset Management (MTA), 1800 F Street NW., Washington, DC 20405, with an explanation of the delay. The report must cover personal property disposed during the fiscal year in all areas within the 50 United States, the District of Columbia, Puerto Rico, American Samoa, Guam, the Northern Mariana Islands, the Federated States of Micronesia, the Marshall Islands, Palau, and the U.S. Virgin Islands. Negative reports are required.

(ii) Must reference Interagency Report Control Number 0154–GSA–AN and contain:

(A) Name of the non-Federal recipient.

(B) Zip code of the recipient.

(C) Explanation as to the type of recipient (*e.g.,* contractor, grantee, cooperative, Stevenson-Wydler recipient, licensee, permittee).

(D) Appropriate 2-digit FSC group.

(E) Total original acquisition cost of all personal property furnished to each recipient.

(F) Appropriate comments as necessary.

(G) IUID or UII equivalent.

(5) *Donation restrictions.* (i) All surplus property (including property held by working capital funds established under 10 U.S.C. 2208 or in similar funds) is available for donation to eligible recipients, in accordance with authorizing laws, except for property in the categories in paragraphs (c)(5)(i)(A) through (M) of this section:

(A) Agricultural commodities, food, and cotton or woolen goods determined from time to time by the Secretary of Agriculture to be commodities requiring special handling with respect to price support or stabilization.

(B) Controlled substances.

(C) Foreign purchased property (as identified in DoD 5105.38–M).

(D) Naval vessels of the following categories: Battleships, cruisers, aircraft carriers, destroyers, and submarines.

(E) NAF property.

(F) MLI, except in compliance with DoD Instruction 4160.28, DoD 4160.28–M Volumes 1–3, and DoD Instruction 2030.08.

(G) CCLI, except in compliance with 15 CFR parts 730 through 774 and DoD Instruction 2030.08.

(H) Property acquired with trust funds (*e.g.,* social security trust funds).

(I) Records of the Federal Government.

(J) Vessels of 1,500 gross tons or more, excluding specified Naval combat vessels, which the Maritime Administration determines to be merchant vessels or capable of conversion to merchant use (as defined in 41 CFR chapters 101 and 102).

(K) Items as may be specified from time to time by the GSA Office of Government-wide Policy.

(L) Property that requires reimbursement upon transfer (such as abandoned or other unclaimed property that is found on premises owned or leased by the Government).

(M) Hazardous waste.

(N) Other Hazardous property and hazardous materials not otherwise identified in the categories in paragraphs (c)(5)(i)(A) through (M) of this section that is not serviceable, for example supply condition codes (SCCs) listed in DLM 4000.25–2 as SCC E for unserviceable (limited restoration) materiel, SCC F for unserviceable (reparable) materiel, and SCC G for unserviceable (incomplete) materiel, SCC H for unserviceable (condemned) materiel, SCC P for unserviceable (reclamation) materiel.

(ii) Certain items require special processing for donations (in accordance with the requirements in DoD 5105.38–M. DoD Manual 4160.21, Volume 4 provides the procedures.

(6) *Returnable DoD property.* (i) As restrictions are imposed on certain commodities, the Department of Defense, through GSA, will request a return of these items and provide guidance.

(ii) Known restrictions require written certification and signature by the recipient at the time of removal.

(7) *Allocating surplus property.* GSA directly allocates property to:

(i) *FAA.* Public airports are managed through the FAA.

(A) The FAA Administrator has the responsibility for selecting property determined to be either:

(*1*) Essential, suitable, or desirable for the development, improvement, operation, or maintenance of a public airport, as defined in 49 U.S.C. 47102.

(*2*) Reasonably necessary to fulfill the immediate and foreseeable future needs of the grantee for the development, improvement, operation, or maintenance of a public airport.

(*3*) Needed to develop sources of revenue from non-aviation businesses at a public airport.

(B) Public airports will secure advance approval of donations by obtaining signatures of the applicable FAA airport branch chief and by the GSA regional office on the order (SF 123).

(ii) United States Agency for International Development.

(iii) *SASPs.* (A) SASPs are responsible for determining eligibility of applicants; fairly and equitably distributing donated property to eligible donees within their State; assuring donees comply with donation terms and conditions; and when requested by donee, arranging for or providing shipment of property from the federal holding agency, *e.g.,* DLA Disposition Services sites, directly to the recipients.

(B) The SASP donates property to public and eligible nonprofit organizations. Types of eligible recipients are:

(*1*) Medical institutions, hospitals, clinics, and health centers.

(*2*) Drug abuse and alcohol centers.

(*3*) Providers of assistance to homeless individuals.

(*4*) Providers of assistance to impoverished families and individuals.

(*5*) Schools, colleges, and universities.

(*6*) Schools for the mentally and physically disabled.

(*7*) Child care centers.

(*8*) Radio and television stations licensed by the Federal Communications Commission as educational radio or television stations.

(*9*) Museums attended by the public.

(*10*) Libraries providing the resident public (community, district, State, or region) with free access.

(*11*) State and local government agencies, or nonprofit organizations or institutions. 42 U.S.C. 3015 and 3020 authorizes donations of surplus property to State and local government agencies, or nonprofit organizations or institutions that receive federal funding to conduct programs for older individuals.

(*12*) States and territories.

(*13*) *SEAs.* The Deputy Secretary of Defense is authorized to designate new SEAs. Table 4 of this section includes the list of approved SEAs. SEA nominations from the Military Departments or Defense Agencies should be forwarded to the Office of the Assistant Secretary of Defense for Logistics and Materiel Readiness, 3500 Defense Pentagon, Washington, DC 20301–3500

(*14*) Educational activities that are of special interest to the Military Services may receive surplus DoD property in accordance with 41 CFR chapter 101.

TABLE 4—SEA NATIONAL OFFICES

American National Red Cross, 17th and D Streets NW., Washington, DC 20006.	Armed Services YMCA of the USA, 6225 Brandon Avenue, Suite 215, Springfield, VA 22150–2510.
Big Brothers/Big Sisters of America, 230 North 13th Street, Philadelphia, PA 19107.	Boys and Girls Clubs of America, 771 First Avenue, New York, NY 10017.
Boy Scouts of America, 1325 Walnut Hill Lane, Irving, TX 75038–3096.	Camp Fire, Inc., 4601 Madison Avenue, Kansas City, MO 64112–1278.
The Center for Excellence In Education, 7710 Old Springhouse Road, McLean, VA 22102.	Girl Scouts of America, 420 5th Avenue, New York, NY 10018–2702.
Little League Baseball, Inc., Williamsport, PA 17701	National Association for Equal Opportunity In Higher Education, 2243 Wisconsin Avenue, NW Washington, DC 20007.
National Ski Patrol System, Inc., 133 South Van Gordon Street, Suite 100, Lakewood, CO 80228.	U.S. Naval Sea Cadet Corps, 2300 Wilson Boulevard, Arlington, VA 22201.
United Service Organizations, Inc., 601 Indiana Avenue, Washington, DC 20004.	United States Olympic Committee, 1 Olympic Plaza, Colorado Springs, CO 80909–5760.
National Director, Young Marines of the Marine Corps, P.O. Box 70735, Southwest Station, Washington, DC 20024–0735.	President—Board of Directors Marine Cadets of America, USN & MC Reserve Center, Fort Nathan Hale Park, New Haven, CT 06512–3694.
Corporation for the Promotion of Rifle Practice and Firearms Safety, Erie Industrial Park, Building 650, P.O. Box 576, Port Clinton, OH 43452.	Marine Corps League, P.O. Box 3070, Merrifield, VA 22116.

(C) High schools that host a Junior Reserve Officer Training Corps (JROTC) Unit or a National Defense Cadet Corps Unit, Naval Honor Schools, and State Maritime Academies should contact their sponsoring Military Department regarding donations.

(D) SEAs must maintain separate records that include:

(*1*) Documentation verifying that the activity has been designated as eligible by the Department of Defense to receive surplus DoD property.

(*2*) A statement designating one or more donee representatives to act for the SEA in acquiring property.

(*3*) A listing of the types of property that are needed or have been authorized by the Department of Defense for use in the SEA program.

(8) *Identification of screeners.* (i) SASP personnel or donee personnel representing a SASP must have a valid screener-identification card (GSA Optional Form 92, screener's identification, or other suitable identification approved by GSA) before screening and selecting property at holding agencies. However, SASP or donee personnel do not need a screener ID card to inspect or remove property previously set aside or approved by GSA for transfer.

(ii) Screeners, having identified themselves and indicated the purpose of their visit, will sign the Visitor or Vehicle Register and be allowed to complete donation screening only.

(9) *Screening and ordering procedures for DLA Disposition Services property.* (i) Section 273.15(c) outlines the screening timeframes for ZI surplus and FEPP that has reached the surplus release date.

(ii) When a prospective donee contacts a DLA Disposition Services site or military installation regarding possible acquisition of surplus property, the individual or organization will be advised to contact the applicable SASP for determination of eligibility and procedures to be followed. The DLA Disposition Services sites will assist interested parties regarding availability of surplus property.

(iii) SASP contacts may be located on the GSA Web site at *http://www.gsa.gov/portal/content/100851.*

(iv) Prospective donees must go to GSAXcess® to gain access, shop, and select property.

(A) Once GSA allocates property, the SASP will receive an SF 123. The donee should then sign and return the SF 123 to the appropriate GSA office.

(B) GSA will then approve the SF 123 by signature, return the SF 123 to the SASP, and notify DLA Disposition Services with an electronic order.

(v) Procedures for return of surplus FEPP to the United States for ultimate donation are covered in Enclosure 4 of DoD Manual 4160.21, Volume 2.

(vi) DLA Disposition Services sites will require recipients of HM to sign a certification statement as shown in Figure 2 of this section.

Figure 2. Certification of HM Recipients

"I (we) hereby certify that the donee has knowledge and understanding of the hazardous nature of the property hereby donated and will comply with all applicable federal, State, and local laws, ordinances and regulations with respect to the care, handling, storage, shipment, and disposal of the HM. The donee agrees and certifies that the U.S. Government will not be liable for the personal injuries to, disabilities of or death of the donee or the donee's employees, or any other person arising from or incident to the donation of the HM or its final disposition. Additionally, the donee agrees and certifies to hold the U.S.
Government harmless from any and all debts, liabilities, judgments, costs, demands, suits, actions, or claims of any nature arising from or incident to the donation of the HM, its use, or final disposition."
_____ Signature _____ Date
_____ Name (Print/Type) _____ Title _____ Activity/Unit _____ Grade/Rank _____ Phone Number

(A) After allocation and approval, if the customer no longer wants or needs the property, the customer is required to notify the SASP, GSA, and the DLA Disposition Services site.

(B) GSA may reallocate the property if there is an existing request by another potential recipient. If the property is reallocated, cancellation of the existing request will be transmitted by GSA and another transmission to DLA Disposition Services is required.

(C) If the property is not reallocated, GSA must cancel the existing MRO.

(10) *Customer removal of ordered property.* (i) All transportation arrangements and costs are the responsibility of the SASP or designated donee. The DLA Disposition Services site may not act as agent packager or shipper. Until release, each holding activity is responsible for the care and handling of its property.

(ii) The SASP or designated donee will only pay for direct costs of care and handling incurred in the actual packing, crating, preparation for shipment, and loading. The price will be the actual or carefully estimated costs incurred by DoD traffic management activities for labor, material, or services used in donating the property.

(iii) Advance payment for care and handling costs will normally be required; however, State and local governmental units may be exempted from this requirement and authorized to make payment within 60 days from date of receipt of property. Advance payment may be required in any case where prompt payment after billing has been unsatisfactory.

(iv) Donees must schedule removal of property with the DLA Disposition Services site. Upon arrival, the individual must provide identification and must sign the DLA Disposition Services Visitor or Vehicle Register, indicating the purpose of the visit.

(v) The individual must provide an approved SF123 as authorization for removal.

(vi) DLA Disposition Services sites will release surplus property to authorized donees upon receipt of a properly completed and approved SF 123 or MRO.

(d) *Special donations (gifts), loans, and exchanges outside the FMR*—(1) *Compliance.* The DoD Components:

(i) Comply with the specific governing statute for the type of property and ensure the limitations of the governing statute are observed. In accordance with 10 U.S.C. 2572 and DoD issuances, the Secretary of a Military Department or the Secretary of the Treasury is permitted to donate, lend, or exchange, as applicable, without expense to the United States, books, manuscripts, works of art, historical artifacts,

drawings, plans, models and condemned or obsolete combat materiel that are not needed by the Military Services.

(ii) Establish supplementary procedures governing loans, donations, and exchanges.

(iii) May donate, loan or exchange items as identified in paragraph (d)(1) of this section, if the special donation, loan, or exchange action occurs prior to transfer to DLA Disposition Services for disposition. It is not authorized after property has been officially declared excess and transferred to DLA Disposition Services.

(iv) May exchange assets for:

(A) Similar items;

(B) Conservation supplies, equipment, facilities, or systems;

(C) Search, salvage, or transportation services;

(D) Restoration, conservation or preservation services; or

(E) Educational programs when it directly benefits the historical collection of the DoD Components.

(v) May not make an exchange unless the monetary value of the property transferred or services provided to the United States under the exchange is not less than the value of the property transferred by the United States. The Secretary concerned may waive this limitation in the case of an exchange for property in which the Secretary determines the item to be received by the United States will significantly enhance the historical collection of the property administered by the Secretary.

(vi) Will not incur costs in connection with loans or gifts. However, the DoD Component concerned may, without cost to the recipient, DEMIL, prepare, and transport within the CONUS items authorized for donation to a recognized war veterans' association in accordance with DoD 4160.28–M Volumes 1–3 if the DoD Component determines this can be accomplished as a training mission, without additional expenditures for the unit involved.

(vii) Will maintain official records of all DoD materiel loaned including physical inventory, record reconciliation, and management reporting specified in the inventory management procedures in DoD Manual 4140.01, ''DoD Supply Chain Materiel Management Procedures'' (available at *http://www.dtic.mil/whs/directives/corres/pdf/414001m/414001m_vol01.pdf*). Verify yearly that property is being used for approved purposes, is being maintained and protected according to the agreement, and that the recipient organization still desires to retain the property. The DoD Component may perform this annual check by any method that provides reasonable assurance the recipient organization is fulfilling its responsibilities. DoD Components may request assistance from qualified DoD organizations.

(2) *Organizations authorized to receive loans and donations.* (i) A municipal corporation.

(ii) A soldiers' monument association.

(iii) An incorporated museum or memorial that is operated by a historical society, a historical institution of a State or foreign nation, or a nonprofit military aviation heritage foundation or association incorporated in a State.

(iv) An incorporated museum that is operated and maintained for educational purposes only and the charter of which denies it the right to operate for profit.

(v) A post of the Veterans of Foreign Wars of the United States or the American Legion or a unit of any other recognized war veterans' association.

(vi) A local or national unit of any war veterans' association of a foreign nation recognized by the national government of that nation (or by the government of one of the principal political subdivisions of that nation).

(vii) A post of the Sons of Veterans Reserve.

(3) *Requirements for veterans' organizations.* To qualify, veterans' organizations must be:

(i) Sponsored by a Military Department.

(ii) Evaluated based on its size, purpose, the type and scope of services it renders to veterans, and composed of honorably discharged American soldiers, sailors, airmen, marines, or coastguardsmen.

(4) *Requirements for museums.* To qualify, museums must:

(i) Meet State (or equivalent foreign national) criteria for not-for-profit museums.

(ii) Have an existing facility suitable for the display and protection of the type of property desired for loan or donation. If the requester has a facility under construction that will meet those requirements, interim eligibility may be granted.

(iii) Have a professional staff that can care for and accept responsibility for the loaned or donated property.

(iv) Have assets that, in the determination of the loaning or donating service, indicate the capability of the loaner and the borrower to provide the required care and security of historical property.

(5) *Eligibility determination.* The DoD Components will determine the eligibility of organizations for gifts and loans. The DoD Components may establish eligibility requirements dependent upon the unique nature of the specific historical item; however, the minimum requirements are:

(i) Limit donations, loans, or exchanges to property stipulated by 10 U.S.C. 2557, 2572, 2576, and 2576a. Except for relevant records for aircraft and associated engines and equipment (unless authorized under DoD 4160.28–M Volumes 1–3 and DoD Instruction 2030.08), government records may not be released.

(ii) Approve the loan, donation, or exchange; process requests for variations from the original agreement; and maintain official records of all donation, loan, and exchange agreements. The approval of exchanges may be delegated at the discretion of the Secretary concerned, and is encouraged for low-dollar transactions.

(iii) Establish controls for determining compliance by the recipient organization with the display, security, and usage criteria provided in the loan and donation agreements.

(iv) Provide disposition instructions to the recipient organization when loaned or donated property is no longer needed or authorized for continued use.

(v) Establish conditions for making donations, loans, or exchanges.

(vi) Establish a process (*e.g.*, a council or other means suitable to the loan and donation organization) to review and approve proposed exchanges incorporating legal and financial review independent of the museum involved. Personnel directly involved in museum operations will not act as sole approving authority for any exchange transactions.

(vii) Ensure that correspondence regarding loans, donations, or exchanges is signed by individuals authorized to obligate their organization.

(viii) Ensure appropriate DEMIL of the property as prescribed in DoD 4160.28–M Volumes 1–3 before release. If standard DEMIL criteria cannot be applied without destroying the display value, specific DEMIL actions (such as aircraft structural cuts) may be delayed. The recipient organization must agree to assume responsibility for the property DEMIL action, at no cost to the Government, when the item is no longer desired or authorized for display purposes. The recipient organization may also return the property to the Government via the donating Military Department for full DEMIL action.

(ix) Loan, donate, or exchange property on an ''as is, where is'' basis and ensure that the recipient organization agrees to pay all costs incident to preparation, handling, and movement of the property. Military Department contact points for the loan,

donation, or exchange of property are at Table 5 of this section.

(A) Property may not be repaired, modified, or changed at government expense over and above normal preparation for handling and movement, even if reimbursement is offered for services rendered.

(B) Property may not be moved at government expense to a recipient's location or to another location closer to the recipient to prevent or lessen the recipient organization's processing or transportation costs.

(C) No charge will be made for the property itself, but all physical processing of the property for the loan or donation will be the responsibility of the recipient organization. The recipient organization will pay all applicable charges before release of the property.

TABLE 5—MILITARY DEPARTMENT CONTACT POINTS FOR LOAN, DONATION, OR EXCHANGE OF PROPERTY

ARMY: (all commodities)
Commander
U.S. Army Tank Automotive and Armament Command
ATTN: AMSTA–IM–OER
Warren, MI 48397–5000
E-mail: *donations@cc.tacom.mil*
Telephone: 1–800–325–2920 extension 48469

NAVY:
Navy and Marine Corps aircraft, air launched missiles, aircraft engines, and aviation related property:
Commanding Officer
NAVSUP Weapon Systems Support
ATTN: Code–03432–06
700 Robbins Ave.
Philadelphia, PA 19111–5098

Obsolete or condemned Navy vessels for donation as memorials; Navy major caliber guns and ordnance; and shipboard materiel:
Commander
ATTN: NAVSEA–OOD, NC
Naval Sea Systems Command
2531 Jefferson Davis Highway
Arlington, VA 22242–5160

AIR FORCE:
Air Force aircraft, missiles or any other items authorized for donation for display purposes to a museum recipient:
NMUSAF/MUX
1100 Spaatz St.
Wright-Patterson AFB, OH 45433–7102

The USAF Museum operates a loan program only. Donations are not offered.

Any other Air Force item authorized for donation for display purposes (to recipients other than a museum):
HQ AFMC/A4RM
4375 Chidlaw Rd., Building 262
Wright-Patterson AFB, OH 45433–5006

MARINE CORPS:
Marine Corps assault amphibian vehicles (to recipients other than a museum):
Commandant of the Marine Corps
ATTN: LPC–2
HQ U.S. Marine Corps
3000 Marine Corps, Pentagon, RM 2E211
Washington, DC 20350

Marine Corps historical property (all other inquiries):
Commandant of the Marine Corps
ATTN: History and Museum Division (HD)
Marine Corps Historical Center
1254 Charles Morris Street SE
Washington Navy Yard, DC 20374–5040

U.S. Coast Guard
For U.S. Coast Guard historical assets contact COMDT (CG–09224) at mail stop 7031:
Commandant (CG–09224)
U.S. Coast Guard Headquarters, Douglas A. Munro Building
2703 Martin Luther King Jr. Ave., South East, Stop 7031
Washington, DC 20593–7031

For all other assets contact Commandant (CG–844) at mail stop 7618:
Commandant (CG–844)
U.S. Coast Guard Headquarters, Douglas A. Munro Building
2703 Martin Luther King Jr. Avenue, South East, Stop 7618
Washington, DC 20593–7618

(x) Record assets on property accountability records before they are loaned, donated, or exchanged.

(xi) Coordinate with the DoS before a donation, loan, or exchange is formalized with a foreign museum.

(xii) Ensure an official authorized to obligate the organization signs a certificate of assurance, as shown at Figure 3 of this section.

BILLING CODE 5001–06–P

Figure 3. Sample Certificate of Assurance

For Military Department Use

hereinafter called "Applicant-Recipient" (name of applicant)

Hereby agrees that in compliance with section 2001a of Title 42, USC, section I of Title 40, U.S.C., as amended, and section 701 *et seq.* of Title 29, U.S.C., as amended, no person will, on the ground of race, color, national origin, sex, or handicap, be excluded from participation in, be denied the benefits of, or be otherwise subjected to discrimination under any program or activity for which the Applicant-Recipient receives a donation from the _____ _____ and applicable Military Department.

Hereby

Gives assurance that it will immediately take any measures necessary to effectuate this agreement.

This agreement will continue in effect during the time the Applicant-Recipient retains ownership, possession, or control of the donated property. Further, the Applicant-Recipient agrees and assures that its successors or assigns will be required to give an assurance similar to this assurance as a condition precedent to acquiring any right, title, or interest in and to any of the property donated herein.

This assurance is given in consideration of and for the purpose of obtaining donation of federally owned property pursuant to [cite applicable statute] consisting of the following items:

[Quantity and description of donated property. Use additional sheet if space is not adequate]

The Applicant-Recipient recognizes and agrees that such Federal donation will be made in reliance on the representations and agreements made in this assurance, and that the United States will have the right to seek judicial enforcement of this assurance.

This assurance is binding on the Applicant-Recipient, its successors, transferees, and assignees, and the person or persons whose signature appears below are authorized to sign this assurance on behalf of the Applicant-Recipient.

By

President, Chairman of the Board, or comparable authorized official
Address:

(xiii) Ensure proper documentation is finalized in accordance with DoD 4160.28–M Volumes 1–3 before the release of any property to an authorized recipient.

(A) Use the standard loan agreement in the format prescribed by Figure 4 of this section or a similar document providing the same data for accomplishing property loans.

Figure 4. Sample Standard Loan Agreement

For Military Department Use

By this agreement, made as of [insert date] between the United States of America, hereinafter called "the Government," represented by [insert name and title of government representative] and _____, called "the Borrower" incorporated and operating under the laws of the State of _____ and located at _____; and, pursuant to section 2572 of Title 10, U.S.C., the government hereby loans to _____ the following property: _____for the period commencing [insert date] and ending [insert date] with an option for annual renewal.

The Borrower has applied in writing by letter dated [insert date]for the loan of the above property, and hereby agrees to accept it on an "as is where is" basis, to be responsible for all arrangements and to assume and pay all costs, charges and expenses incident to the loan of this property, including the cost of preparation for transportation from _____ to _____, of disassembly, packing, crating, handling, transportation, and other actions incidental to the movement of the loaned property to the Borrower's location, [location of property (destination)].

The Borrower will obtain no interest in the loaned property by reason of this agreement and title will remain in the lender at all times.

The Borrower agrees to use the loaned property in a careful and prudent manner, not, without prior permission of the government, to modify it in any way which would alter the original form, design, or the historical significance of said property, to perform routine maintenance so as not reflect discredit on the government, and to display and protect it according to the instructions set forth in Table [#], incorporated herewith and made part of the loan agreement.

The Borrower agrees to accept physical custody of the property within [period of time], after execution of this agreement, to receipt to the government for said property on assuming custody of it to place it on exhibit within [period of time] , and to report annually to the Government on the condition and location of the property.

The Borrower agrees not to use the loaned property as security for any loan, not to sell, lease, rent, lend, or exchange the property for monetary gain or otherwise under any circumstances without the prior written approval of the lender.

The Borrower agrees to indemnify, hold harmless, and defend the Government from and against all claims, demands, action, liabilities, judgments, costs, and attorney's fees, arising out of claims on account of, or in any manner predicated upon personal injury, death, or property damage caused by or resulting from possession or use of the loaned property.

The Borrower agrees to allow the authorized Department of Defense representatives access to the Borrower's records and facilities to assure accuracy of information provided by the Borrower and compliance with the terms of this loan agreement.

The Borrower agrees to return said property to the government on termination of this loan agreement or earlier, if it is determined that the property is not required, at no expense to the government.

The failure of the Borrower to observe any of the conditions set forth in the loan agreement and the Table (s) thereto will be sufficient cause of the Government to repossess the loaned property. Repossession of all or any part of the loaned property by the government will be made at no cost or expense to the government; the Borrower will defray all maintenance, freight, storage, crating, handling, transportation, and other charges attributable to such repossession.

The [insert "donee" or "borrower" as applicable depending upon the document type, i.e., conditional deed or gift of standard loan agreement, respectively] certifies they have read, understand and acknowledge that concealing a material fact and /or making a fraudulent statement in dealing with the Federal government may constitute a violation of section 1001 of Title 18, U.S.C.

Executed on behalf of the government this _____day of_____, 20_____, at_____.

United States of America:

By

Title

Agency:

Address:

The Borrower, through its authorized representative hereby accepts delivery of the loaned property subject to the terms and conditions contained in the loan agreement set forth above.

Executed on behalf of the Borrower, this_____day of_____, 20_____,

At

Name of Borrower Organization

By

Title

Address:

Figure 5. Sample Conditional Deed of Gift

For Military Department Use

This agreement made as of_____ between the UNITED STATES OF AMERICA (hereinafter called the "government" or the "donor") represented by_____(hereinafter called "the donee" operating under the laws of the State of_____ located at_____.

WITNESS:

The Secretary is authorized by section 2572 of Title 10 U.S.C. to transfer by gift or loan, without expense to the United States and on terms prescribed by the Secretary, any obsolete combat property not needed by the Department. The donee is eligible under the terms of section 2572 of Title 10 U.S.C.

The donee has applied in writing by letter dated [insert date] for a _____ and has agreed to assume and pay all costs, charges, and expenses incident to the donation including the cost of any required DEMIL and of preparation for transportation to_____.

The Government agrees (a) to release [item name] (b) to notify the donee of the available date sufficiently in advance thereof to enable the donee to make necessary arrangements for acceptance.

The donee agrees to accept it on an "as is where is" basis and be responsible for all arrangements and costs involved in its movement. The donee will, at no cost to the Government, arrange and pay for disassembly, packing, crating, handling, transportation, and other actions as necessary for the movement of the donated property to the donee's location.

The donee will use the donated property in a careful and prudent manner, and will maintain it and make such repairs to it as are necessary to keep it in a clean and safe condition so that its appearance and use will not discredit the donee. Display instructions are set forth in Table [#] and are incorporated and made part of this conditional deed of gift. The donee also agrees to not use the donated property as security for any loan, nor sell, lease, rent, exchange the property for monetary gain or otherwise, under any circumstances without the prior approval of the donor.

The donee will indemnify, hold harmless, and defend the government from and against all claims, demands, action, liabilities, judgments, costs, and attorney's fees, arising out of claimed on account of, or in any manner predicated upon personal injury, death, or property damage caused by or resulting from possession or use of the donated property.

The donee agrees to allow the authorized representatives of the government access to the donee's records and facilities to assure accuracy of information provided the donor and compliance with the terms of this conditional deed of gift.

Title is transferred on special condition that the [item name] will not be transferred or otherwise disposed of (including re-donation) without the written consent of the donor. If disposition by any method (including re-donation) without consent of the donor is attempted, title to the property is subject to forfeiture and the government may require return of the property by the donee or may repossess the property from whomever may have possession thereof and the donee will bear all expense of return and repossession as well as all storage costs.

Upon the failure of the donee to observe any of the conditions set forth in the conditional deed of gift and Table thereto, title to the donated property will revert to and vest in the donor. Repossession of all or any part of the donated property by the donor will be at no cost or expense to the donor, and the donee will pay all maintenance freight, transportation, and other charges attributable to such possession.

When the _____is no longer needed by the donee, disposition instructions will be requested from the donor. All costs of disposition will be borne by the donee.

The [insert "donee" or "borrower" as applicable depending upon the document type, i.e., conditional deed or gift of standard loan agreement, respectively] certifies they have read, understand and acknowledge that concealing a material fact or making a fraudulent statement in dealing with the Federal Government may constitute a violation of section 1001 of Title 18 U.S.C.

Subject to the conditions set forth above, title to the property will vest in the donee upon receipt of written acceptance hereof the above.

Executed on behalf of the government this_____day of_____, 20____, at_____.

United States of America

By

Title:
Agency:
Address:

The donee, through its authorized representative hereby accepts title to and delivery of the donated property subject to the conditions in the deed of gift set forth above.
Executed on behalf of the donee, this_____day of_____, 20_____, at _____.

Name of donee organization By Title: Address

(C) Accomplish property exchanges made under this authority by use of the exchange agreement in the format prescribed in Figure 6 of this section or a similar document providing the same data. Items may not be exchanged until a determination is made that the item is not needed for operational requirements by another Military Department. If the council or similar staff review process considers it unlikely the item in question will be needed by another Military Department, screening may be omitted. A museum of one Military Department may not acquire for the purpose of exchanging historical items being screened by another Military Department museum.

Figure 6. Sample Exchange Agreement

For Military Department Use

It is mutually agreed by and between the [Service Name] Museum, [insert address] (hereinafter "Museum") and [insert name] Museum, [insert address] (hereinafter "Exchanger"), as follows:

Items to be exchanged by the museum: The Museum will provide to the Exchanger the following items:

[insert description, stock number, serial number, etc]

Items to be exchanged:

[insert description, stock number, serial number, etc]

Authority: This exchange is made under the authority of section 2572 of Title 10 U.S.C.

Delivery:

The items to be received by or services provided to the Museum from the Exchanger will be delivered or provided at the Exchanger's sole expense to [insert location].
They will be delivered or provided in one shipment all at the same time unless the Museum agrees otherwise in writing. They will be delivered or provided within 90 days of the date this agreement is signed. Title to the items to be received by the Museum will pass to the Museum at the time and point of delivery only upon written acceptance by an authorized representative of the Museum.

The items to be exchanged by the Museum to the Exchanger are currently located at [insert location address]. They are provided on an "as is, where is, with all faults" basis and there are no warranties expressed or implied. The Museum specifically provides no warranty or other assurance as to the condition or serviceability of the property. All items offered in exchange by the Museum are subject to a radiation survey and the removal of radioactive components as well as equipment DEMIL prior to release.

They will not be released to the Exchanger until acceptance by the Museum according to the above paragraph.

Condition of items provided by the museum: The items to be exchanged by the Museum are offered to the Exchanger as is, where is, with all faults. The Museum provides no warranty or other assurance as to the condition or serviceability of the property.

Condition of items provided by exchange: The items to be exchanged are certified to be original and authentic by the exchanger, to be in good condition with no significant damage or deterioration, or other hidden faults which would jeopardize their long-term preservation or their use by the Museum for display or study.

Consummation of agreement: This agreement will be considered consummated upon delivery and acceptance by both parties of all items to be provided.

Release of liability: In consideration of this mutual exchange, the Exchanger agrees that it will hold the United States, its agencies, officers, employees, agents, and contractors harmless, indemnify, and defend them against any and all suits, actions, and claims of any kind whatsoever, including attorney fees, which may arise from or be the result of this exchange or the items.

Warranty of title: In the case of the items provided by the Exchanger, the Exchanger hereby warrants that it has title to the items and that there are no liens or encumbrances whatever against the said items. The Exchanger will provide to the Museum documentary proof of ownership in a manner and of a fashion satisfactory to the Director of the Museum prior to delivery.

Notices: All notices between the parties will be in writing and sent to the following addresses:

For the Museum: [insert Museum name and address]

For the Exchanger: [insert Museum name and address]

- The Exchanger will neither assign nor otherwise transfer this Agreement without the written prior agreement of the Director of the Museum.

In witness whereof, the parties or their authorized representatives have hereunto signed their names on the date indicated.

For the U.S. [insert Service museum name]

[insert signature, typed name]

Name and title date

Witnessed by

Name

Date

For the exchanger:

[insert signature, typed name]

Witnessed by

(xiv) Avoid stockpiling condemned or obsolete combat materiel in anticipation of future exchanges. Items that cannot be exchanged within a 2-year period should be processed for disposal.

(xv) Notify exchange recipients that the Department of Defense cannot certify aircraft, components, or parts as airworthy. Aircraft, components, or parts must be certified by the FAA as airworthy before being returned to flight usage. If available, logbooks and maintenance records for FSCAP must accompany the aircraft and FSCAP. If such documentation is not available, or if the aircraft or FSCAP have been crash-damaged or similarly compromised, the aircraft, components, or parts may not be exchanged, unless the FSCAP parts have been removed from the aircraft or component prior to the exchange. Waivers to this FSCAP documentation requirement may be considered on a case-by-case basis and are restricted to ''display only'' property (not parts); waivers will apply only to the exchange of the whole aircraft, aircraft engines, and aircraft components. The exchange agreement must explicitly cite the lack of documentation.

(xvi) Consider any adverse market impact that may result from the exchange of certain items. The Military Department should consult with outside organizations for market impact advice, as appropriate.

(xvii) Elect to donate property without conditions; for example, when the administrative costs to the Military Department to perform yearly checks would exceed the value of the property. Unconditional donations are restricted to books, manuscripts, works of art, drawings, plans and models, and historical artifacts valued at less than $10,000 that do not require DEMIL (see Figure 7 of this section).

Figure 7. Sample Unconditional Deed of Gift

For Military Department Use

This agreement is made between the United States of America (hereinafter called the "government" or the "donor") and the _____ (hereinafter called "the donee") operating under the laws of the State of _____located _____.

1. The government is authorized by section 2572 of Title 10, U.S.C. to transfer by gift or loan, not to exceed $10,000 of section 2572 of Title 10, U.S.C., without expense to the United States and on terms prescribed by the Secretary, any documents and historical artifacts, excluding any condemned and obsolete combat materiel not needed by the Department. The donee is eligible under the terms of section 2572 of Title 10, U.S.C.

2. The donee has applied in writing by letter dated [insert date] and has agreed to assume and pay all costs, charges, and expenses incident to the donation including the cost of any required demilitarization and of preparation for transportation.

3. The government agrees to release [insert item description] and to notify the donee of the available date sufficiently in advance thereof to enable the donee to make necessary arrangements for acceptance.

4. By this deed of gift the donor transfers title, conveys and assigns free and clear of all encumbrances, to the donee.

5. The donee agrees to accept it on an "as is where is" basis and be responsible for all arrangements and costs involved in its removal. The donee will, at no cost to the donor, arrange and pay for disassembly, packing, crating, handling, transportation, and other actions as necessary for the removal of the donated property to the donee's location.

6. The donor certifies that the donation is unsafe for operational use and is only suitable for static display. Any use of the donated property is fully and completely the responsibility of the donee.

7. The donee will indemnify, save harmless, and defend the donor from and against all claims, demands, action, liabilities, judgments, costs, and attorney's fees, arising out of claims on account of, or in any manner predicated upon personal injury, death, or property damage caused by or resulting from possession or use of the donated property.

8. Subject to the conditions set forth above, title to the property will vest in the donee upon receipt of written acceptance hereof from the donee.

Executed on behalf of the donor, this _____day of _____, 20_____.

At

United States of America

By

Title:

Agency

Address

The donee, through its authorized representative hereby accepts title to and delivery of the donated property subject to the conditions in the deed of gift set forth above.

Executed on behalf of the donee, this _____ day of _____, 20____, _____.

At

Name of donee organization

By

Title

Address State Agencies/Surplus Property. This will list the State Agencies in alphabetical order with contact information.

BILLING CODE 5001–06–C

(6) *Military departments loans of bedding.* Consistent with 10 U.S.C. 2557, the Secretary of a Military Department may provide bedding in support of homeless shelters that are operated by entities other than the Department of Defense. Bedding may be provided to the extent that the Secretary determines the donation will not interfere with military requirements.

(7) *Army loans to veterans' organizations.* (i) The Department of the Army, in accordance with 10 U.S.C. 4683, may loan to recognized veterans' organizations (or local units of national veterans' organizations recognized by the U.S. Department of Veterans Affairs) obsolete or condemned rifles or cartridge belts for use by that unit for ceremonial purposes. Rifle loans to any one post, local unit, or municipality are limited by statute to not more than 10 rifles.

(ii) The Secretary of the Army, in accordance with 10 U.S.C. 4683 and Service-unique regulations prescribed by the Secretary, may conditionally lend or donate excess M–1 rifles (not more than 15), slings, and cartridge belts to any eligible organization for use by that organization for funeral ceremonies of a member or former member of the Military Services, and for other ceremonial purposes. If the loaned or donated properties under paragraph (d)(8)(i) of this section are to be used by the eligible organizations for funeral ceremonies of a member or former member of the Military Services, the Secretary may issue and deliver the rifles, together with the necessary accoutrements and blank ammunition, without charge.

(8) *Navy loans and donations.* (i) The Secretary of the Navy, in accordance with 10 U.S.C. 7545, may donate or loan captured, condemned, or obsolete ordnance materiel, books, manuscripts, works of art, drawings, plans, models, trophies and flags, and other condemned or obsolete materiel, as well as materiel of historical interest. The Secretary of the Navy may donate this material to any State, territory, commonwealth, or possession of the United States and political subdivision or municipal corporation thereof, the District of Columbia, libraries, historical societies, and educational institutions whose graduates or students were in World War I or World War II.

(A) Loans and donations made under this authority will be subject to the same guidelines for donations in accordance with 10 U.S.C. 2572.

(B) If materiel to be loaned or donated is of historic interest, the application will be forwarded through the Navy Curator.

(C) Donations made under this authority must first be referred to the Congress.

(D) Donations and loans made under 10 U.S.C. 7545 will be made with a conditional deed of gift (see Figure 5 of this section for sample wording).

(ii) In accordance with 10 U.S.C. 7306, the Secretary of the Navy, with approval of Congress, may donate obsolete, condemned, or captured Navy ships, boats, and small landing craft to the States, territories, or possessions of the United States, and political subdivisions or municipal corporations thereof, the District of Columbia, or to associations or corporations whose charter or articles of agreement denies them the right to operate for profit. The Navy restricts the use of donated vessels

for use in static display purposes only (*i.e.*, as memorials or museums).

(A) Applications for ships, boats, and small landing craft will be submitted to the Commander, Naval Sea Systems Command (NSEA 00DG), 2531 Jefferson Davis Highway, Arlington, VA 22240–5160.

(B) Before submission of an application, the applicant must locate obsolete, condemned, or captured Navy ships, boats, and small landing craft which are available for transfer.

(iii) Each application will contain:

(A) Type of vessel desired, or in the case of combatant vessels, the official Navy identification of the vessel desired.

(B) Statement of the proposed use to be made of the vessel and where it will be located.

(C) Statement describing and confirming availability of a berthing site and the facilities and personnel to maintain the vessel.

(D) Statement that the applicant agrees to maintain the vessel, at its own expense, in a condition satisfactory to the Department of the Navy, in accordance with instructions that the Department may issue, and that no expense will result to the United States as a consequence of such terms and conditions prescribed by the Department of the Navy.

(E) Statement that the applicant agrees to take delivery of the vessel ''as is, where is'' at its berthing site and to pay all charges incident to such delivery, including without limitation preparation of the vessel for removal or tow, towing, insurance, and berthing or other installation at the applicant's site.

(F) Statement of financial resources currently available to the applicant to pay the costs required to be assumed by a donee. The statement should include a summary of sources, annual income, and annual expenditures exclusive of the estimated costs attributable to the requested vessel to permit an evaluation of funds available for upkeep of the vessel. In the event the applicant will rely on commitments of donated services and materials for maintenance and use of the vessel, such commitments must be described in detail.

(G) Statement that the applicant agrees that it will return the vessel, if and when requested to do so by the Department of the Navy, during a national emergency, and will not, without the written consent of the Department, use the vessel other than as stated in the application or destroy, transfer, or otherwise dispose of the vessel.

(H) If the applicant asserts it is a corporation or association whose charter or articles of agreement denies it the right to operate for profit, their application must also contain a copy of the organization's bylaws and either:

(*1*) A properly authenticated copy of the charter.

(*2*) Certificate of incorporation.

(*3*) Articles of agreement made either by:

(*i*) The Secretary of State or other appropriate officials of the State under the laws where the applicant is incorporated.

(*ii*) Organized or other appropriate public official having custody of such charter, certificate or articles.

(I) If the applicant is not incorporated, their application must also include the citation of the law and a certified copy of the association's charter stating it is empowered to hold property and to be bound by the acts of the proposed signatories to the donation agreement.

(J) If the applicant is not a State, territory, or possession of the United States, a political subdivision or municipal corporation thereof, or the District of Columbia, the application must also include a copy of a determination by the Internal Revenue Service that the applicant is exempt from tax under the Internal Revenue Code.

(K) A notarized copy of the resolution or other action of its governing board or membership authorizing the person signing the application to represent the organization and to sign on its behalf to acquire a vessel.

(L) A signed copy of the assurance of compliance.

(M) A statement that the vessel will be used as a static display only as a memorial or museum and no system aboard the vessel will be activated or permitted to be activated for the purpose of navigation or movement under its own power.

(N) A statement that the galley will not be activated for serving meals.

(iv) Upon receipt, the Navy will determine the eligibility of the applicant to receive a vessel by donation. If eligible, the formal application will be processed and notice of intention to donate presented to the Congress as required by 10 U.S.C. 7306, provided the applicant has presented evidence satisfactory to the government that the applicant has adequate financial means to accomplish all of the obligations required under a donation contract. The Navy will have authority to donate only after the application has been before the Congress for a period of 60 days of continuous session without adverse action by the Congress in accordance with 10 U.S.C. 7306.

(v) All vessels, boats, and service craft, donated in accordance with 10 U.S.C. 7306, will be used as static displays only for use as memorials and cannot be activated for the purpose of navigation or movement under its own power. Donations of vessels under any other authority of this section are subject to certain inspection and certification requirements. Applicants for vessels or service craft will be advised in writing by the office taking action on the applications that, should their request be approved and before operation of the vessel or service craft, one of the following stipulations will apply:

(A) The donee agrees that if the vessel is 65 feet in length or less, it may not be operated without a valid certificate of inspection issued by the U.S. Coast Guard, while carrying more than six passengers, as defined in 46 U.S.C. 2101(21)(B).

(B) The donee agrees that if the vessel is more than 65 feet in length, it may not be operated without a valid certificate of inspection issued by the U.S. Coast Guard.

(vi) In accordance with 10 U.S.C. 7546 and subject to the approval of the Navy Museum Curator, the nameplate or any small article of a negligible or sentimental value from a ship may be loaned or donated to any individual who sponsored that ship provided that such loan or donation will be at no expense to the Navy.

(9) *Donation of excess chapel property.* In accordance with 10 U.S.C. 2580, the Secretary of a Military Department may donate excess personal property to religious organizations (as described in 26 U.S.C. 501), for the purposes of assisting such organizations in restoring or replacing property of the organization that has been damaged or destroyed as a result of arson or terrorism. The property authorized for donation will be limited to ecclesiastical equipment, furnishings and supplies that fall within FSC 9925, and furniture.

(10) *Disposition after use of special donations (gifts), loans, and exchanges.* (i) The requirements of the recipient organization are:

(A) For materiel no longer desired or authorized for continued use by a recipient organization, the Military Department will advise the recipient organization if it wants to repossess the property. Regardless of the determination made, care will be taken to ensure the recipient organization fulfills its responsibility to finalize the disposition action at no cost to the government.

Repossession of the property will be governed by the property's historical significance, its potential for use in behalf of other requests, or its estimated sale value, if sold by the Department of Defense. Repossession of property will be documented; copies of the documentation will be retained by the donee and lender.

(B) Based on type of property, its location, etc., it is not always feasible to require the physical movement of the property to the nearest DLA Disposition Services site. In these cases, the owning Military Department may elect to work with DLA Disposition Services for receipt and sale in-place, when economically feasible.

(ii) Return of property donated to the Navy is subject to the approval of the Curator for the Department of the Navy. Any article, materiel, or equipment, including silver service, loaned or donated to the naval service by any State, group, or organization may be returned to the lender or donee in accordance with 10 U.S.C. 7546. When the owner cannot be located after a reasonable search, or if, after being offered the property, the owner states in writing that the return of the property is not desired, the property will be disposed of in the same manner as other surplus property.

(e) *Disaster assistance for States.* 42 U.S.C. chapter 68 allows for disaster assistance to States.

(1) 42 U.S.C. chapter 68, also known and referred to in this rule as ''The Stafford Act'' authorizes federal assistance to States, local governments, and relief organizations. Upon declaration by the President of an emergency or a major disaster, the Stafford Act is usually invoked upon notification to Federal agencies and States by the Federal Emergency Management Agency (FEMA).

(2) Excess personal property may be loaned to State and local governments for use or distribution for emergency or major disaster assistance purposes. Such uses may include the restoration of public facilities that have been damaged as well as the essential rehabilitation of individuals in need of major disaster assistance. Federal assistance under the Stafford Act is terminated upon notice to the governor of the State by the FEMA Associate Director, or at the expiration of time periods prescribed in FEMA regulations, whichever occurs first.

(f) *Academic institutions and non-profit organizations.* Educational partnership (or other) agreements may be established for the loan or donation of property.

(1) Under an educational partnership (or other) agreement, and consistent with 10 U.S.C. 2194, the Secretary of Defense authorized the director of each defense laboratory to enter into one or more educational partnership agreements with U.S. educational institutions for the purpose of encouraging and enhancing study in scientific disciplines at all levels of education. The educational institutions will be local educational agencies, colleges, universities, and any other nonprofit institutions that are dedicated to improving science, mathematics, and engineering education. The point of contact is the DoD Technology Transfer Program Manager, Suite 1401 Two Skyline Place, 5203 Leesburg Pike, Falls Church, VA 22041–3466.

(2) In accordance with 15 U.S.C. 3710(i), the director of a DoD laboratory may directly transfer (donate) laboratory (*e.g.*, scientific, research) equipment that is excess to the needs of that laboratory to public and private schools and nonprofit institutions in the U.S. ZI.

(3) Determinations of property suitable for donation will be made by the head of the laboratory. Property will be screened within the DoD laboratory and scientific community prior to release.

(4) Laboratories should be aware that some property might be environmentally regulated and, if exported, may require a U.S. DoS or Commerce export license, including certain circumstances where exports to foreign parties take place in the U.S. Moreover, some property may require DEMIL. Standard eligibility criteria must be ensured and a screening process for determining trade and security control risk are mandatory.

§ 273.9 Through-life traceability of uniquely identified items.

(a) *Authority and scope*—(1) *Property accountability.* The accountability of property will be enabled by IUID for identification, tracking, and management in accordance with DoD Instruction 5000.64 and DoD Directive 8320.03, ''Unique Identification (UID) Standards for a Net-Centric Department of Defense'' (*http://www.acq.osd.mil/dpap/UID/attachments/832003p1-20070420.pdf*). DoD Component heads post changes to the property records for all transactions as required (*e.g.*, loan, loss, damage, disposal, inventory adjustments, item modification, transfer, sale) pursuant to DoD Instruction 5000.64.

(2) *IUID.* IUID provides a standards-based approach to establish a UII encoded in a machine-readable two-dimensional data matrix barcode that serves to distinguish a discrete item from other items. Qualifying items as defined by DoD Instruction 8320.04, ''Item Unique Identification (IUID) Standards for Tangible Personal Property'' (*http://www.dtic.mil/whs/directives/corres/pdf/832004p.pdf*) will be marked with a two-dimensional Data Matrix barcode in accordance with Military Standard 130N, ''Department of Defense Standard Practice Identification Marking of U.S. Military Property'' (available at *http://www.acq.osd.mil/dpap/pdi/uid/docs/mil-std130N_ch1.pdf*) and registered in the IUID Registry.

(3) *Identification marking of U.S. military property.* Military Standard 130N provides the item marking criteria for development of specific marking requirements and methods for identification of items of military property produced, stocked, stored, and issued by or for the DoD. It also provides the criteria and data content for both free text and machine-readable information applications of item identification two-dimensional data matrix marking and includes the IUID requirements of DoD Instruction 8320.04.

(4) *Registration of UIIs.* Enclosure 3 of DoD Instruction 8320.04 provides procedures for the registration of UIIs in the DoD IUID Registry.

(b) *Updating the DoD IUID Registry*—(1) *Obtaining user access.* Authorized Government users may add items, update, and add events to existing items. Generating activities and DLA Disposal Services can register for access by following the instructions for the Business Partner Network Support Environment Registration System at *https://iuid.logisticsinformationservice.dla.mil/BRS.*

(2) *Life-cycle events for materiel disposition.* When an item leaves DoD inventory, its status, or life-cycle event, must be changed in the DoD IUID. A drop-down menu in the registry contains the possible life-cycle events: Abandoned, consumed, destroyed by accident, destroyed by combat, donated, exchanged—repair, exchanged—sold, exchanged—warranty, expended—experimental/target, expended—normal use, leased, loaned, lost, reintroduced, retired, scrapped, sold—foreign government, sold—historic, sold—nongovernment, sold—other federal, sold—state/local, and stolen.

(3) *Updating procedures.* When an item that is marked with a UII enters the materiel disposition process through a transfer between Components or if the item leaves DoD inventory, an update to the IUID Registry is required. Procedures for performing required

updates to the IUID Registry can be found in the IUID registry user manual available at *https://iuid.logisticsinformationservice.dla.mil*.

Subpart B—Reutilization, Transfer, and Sale of Property

§ 273.10 Purpose.

(a) This part is composed of several subparts, each containing its own purpose. In accordance with the authority in DoD Directive 5134.12, ''Assistant Secretary of Defense for Logistics and Materiel Readiness (ASD(L&MR)),'' DoD Instruction 4140.01, ''DoD Supply Chain Materiel Management Policy,'' and DoD Instruction 4160.28, ''DoD Demilitarization (DEMIL) Program,'' this part establishes the sequence of processes for the disposition of personal property of the DoD Components.

(b) This subpart:

(1) Implements policy for reutilization, transfer, excess property screening, and issue of surplus property and foreign excess personal property (FEPP), scrap generated from qualified recycling programs (QRPs), and non-QRP scrap.

(2) Provides guidance for removing excess material through security assistance programs and foreign military sales (FMS).

(3) Provides detailed instructions for the sale of surplus property and FEPP, scrap generated from QRPs, and non-QRP scrap.

§ 273.11 Applicability.

(a) This subpart applies to the Office of the Secretary of Defense, the Military Departments, the Office of the Chairman of the Joint Chiefs of Staff and the Joint Staff, the Combatant Commands, the Office of the Inspector General of the Department of Defense, the Defense Agencies, the DoD Field Activities, and all other organizational entities within the Department of Defense (hereinafter referred to collectively as the ''DoD Components'').

(b) 41 CFR chapters 101 and 102, also known as the Federal Property Management Regulation and Federal Management Regulation (FPMR and FMR), and 40 U.S.C. subtitle I, also known as the Federal Property and Administrative Services, take precedence over this part if a procedural conflict exists.

§ 273.12 Definitions.

Unless otherwise noted, these terms and their definitions are for the purpose of this subpart:

Abandonment and destruction (A/D). A method for handling property that:

(1) Is abandoned and a diligent effort to determine the owner is unsuccessful.

(2) Is uneconomical to repair or the estimated costs of the continued care and handling of the property exceeds the estimated proceeds of sale.

(3) Has an estimated cost of disposal by A/D that is less than the net sales cost.

Accountability. The obligation imposed by law, lawful order, or regulation accepted by a person for keeping accurate records to ensure control of property, documents, or funds with or without possession of the property. The person who is accountable is concerned with control, while the person who has possession is responsible for custody, care, and safekeeping.

Accountable officer. The individual responsible for acquiring and maintaining DoD items of supply (physical property and records), approving property orders (including reutilization of excess property requests), and authenticating materiel release orders (MROs). Comparative terms are: Army Supply Support Accountable Officer, Navy Accountable Officer, Air Force Accountable Officer/Chief of Supply Materiel Support Division, Marine Corps Unit Supply Officer.

Acquisition cost. The amount paid for property, including transportation costs, net any trade and cash discounts. Also see standard price.

Ammunition. Generic term related mainly to articles of military application consisting of all kinds of bombs, grenades, rockets, mines, projectiles, and other similar devices or contrivances.

Batchlot. The physical grouping of individual receipts of low-dollar-value property. The physical grouping consolidates multiple disposal turn-in documents (DTIDs) under a single cover DTID. The objective of batchlotting is to reduce the time and costs related to physical handling and administrative processes required for receiving items individually. The cover DTID establishes accountability in the accountable record, and individual line items lose their identity.

Bid. A response to an offer to sell, that, if accepted, would bind the bidder to the terms and conditions of the contract (including the bid price).

Bidder. Any entity that is responding to or has responded to an offer to sell.

Commerce control list (CCL) items (formerly known as strategic list item). Commodities and associated technical data (including software) subject to export controls in accordance with Export Administration Regulations (EAR) in 15 CFR parts 730 through 774. The EAR contains the CCL and is administered by the Bureau of Industry and Security, DOC.

Component. An integral constituent of a complete (end) item. It may consist of a part, assembly, or subassembly.

Contractor inventory. (1) Any property acquired by and in the possession of a contractor or subcontractor (including Government-furnished property) under a contract, terms of which vest title in the U.S. Government (USG) and in excess of the amounts needed to complete full performance under the entire contract.

(2) Any property for which the USG is obligated to or has an option to take over under any type of contract resulting from changes in the specifications or plans or termination of such contract (or subcontract) before completion of the work, for the convenience of or at the option of the USG.

Continental United States (CONUS). Territory, including the adjacent territorial waters, located within the North American continent between Canada and Mexico (comprises 48 States and the District of Columbia).

Demilitarization (DEMIL) Code A. DEMIL not required.

DEMIL. The act of eliminating the functional capabilities and inherent military design features from DoD personal property. Methods and degree range from removal and destruction of critical features to total destruction by cutting, crushing, shredding, melting, burning, etc. DEMIL is required to prevent property from being used for its originally intended purpose and to prevent the release of inherent design information that could be used against the United States. DEMIL applies to material in both serviceable and unserviceable condition.

Denied areas. Those countries or entities that the Department of State (DoS), Department of Commerce (DOC), or Treasury have determined to be prohibited or sanctioned for the purpose of export, sale, transfer, or resale of items controlled on the United States munitions list (USML) or CCL. A consolidated list of prohibited entities or destinations for which transfers may be limited or barred, may be found at: *http://export.gov/ecr/eg_main_023148.asp*.

Disposal. End-of-life tasks or actions for residual materials resulting from demilitarization or disposition operations.

Disposition. The process of reusing, recycling, converting, redistributing, transferring, donating, selling, demilitarizing, treating, destroying, or

fulfilling other end of life tasks or actions for DoD property. Does not include real (real estate) property.

Diversion. Includes collection, separation, and processing of material for use as raw material in the manufacture of goods sold or distributed in commerce or the reuse of material as substitutes for goods made of virgin material.

Defense Logistics Agency (DLA) Disposition Services. The organization provides DoD with worldwide reuse, recycling and disposal solutions that focus on efficiency, cost avoidance and compliance.

DLA Disposition Services site. The DLA Disposition Services office that has accountability for and control over disposable property. May be managed in part by a commercial contractor. The term is applicable whether the disposal facility is on a commercial site or a Government installation and applies to both Government and contractor employees performing the disposal mission.

DoD Activity Address Code (DoDAAC). A 6-digit code assigned by the Defense Automatic Addressing System (DAAS) to provide a standardized address code system for identifying activities and for use in transmission of supply and logistics information that supports the movement of property.

DoD Item Unique Identification (IUID) Registry. The DoD data repository that receives input from both industry and Government sources and provides storage of, and access to, data that identifies and describes tangible Government personal property.

Donation. The act of providing surplus personal property at no charge to a qualified donation recipient, as allocated by the General Services Administration (GSA).

Educational institution. An approved, accredited, or licensed public or nonprofit institution or facility, entity, or organization conducting educational programs, including research for any such programs, such as a childcare center, school, college, university, school for the mentally handicapped, school for the physically handicapped, or an educational radio or television station.

End of screening date. The date when formal reutilization, transfer, and donation screening time expires.

Estimated fair market value. The selling agency's best estimate of what the property would be sold for if offered for public sale.

Excess personal property. (1) *Domestic excess.* Personal property that the United States and its territories and possessions, applicable to areas covered by GSA (*i.e.,* the 50 States, District of Columbia, Puerto Rico, American Samoa, Guam, Northern Mariana Islands, the Federated States of Micronesia, the Marshall Islands, Palau, and the U.S. Virgin Islands), consider excess to the needs and mission requirements of the United States.

(2) *DoD Component excess.* Items of DoD Component owned property that are not required for their needs and the discharge of their responsibilities as determined by the head of the Service or Agency.

(3) *Foreign excess personal property (FEPP).* U.S.-owned excess personal property that is located outside the ZI. This property becomes surplus and is eligible for donation and sale as described in § 273.15(b).

Federal civilian agency (FCA). Any non-defense executive agency (*e.g.* DoS, Department of Homeland Security) or any establishment in the legislative or judicial branch of the USG (except the Senate, the House of Representatives, and the Architect of the Capitol and any activities under his or her direction).

Federal condition code. A two-digit code consisting of an alphabet supply condition code in the first digit, and a numeric or alphabet disposal condition code (DCC) in the second digit. A combination of the supply condition code and the DCC, which most accurately describes the materiel's physical condition.

(1) *Disposal condition code (DCC).* Codes assigned by the DLA Disposition Services site based upon inspection of materiel at time of receipt.

(2) *Supply condition codes.* Codes used to classify materiel in terms of readiness for issue and use or to identify action underway to change the status of materiel. These codes are assigned by the DoD Components. DLA Disposition Services may change a supply condition code if the code was assigned improperly and the property is of a non-technical nature. If change is not appropriate or property is of a technical nature, DLA Disposition Services sites may challenge a suspicious supply condition code.

FEPP. See excess personal property.

Foreign military sales (FMS). A process through which eligible foreign governments and international organizations may purchase defense articles and services from the USG. A government-to-government agreement, documented in accordance with DoD 5105.38–M.

Foreign purchased property. Property paid for by foreign countries, but where ownership is retained by the United States.

Generating activity (''generator''). The activity that declares personal property excess to its needs.

Government furnished equipment. An item of special tooling, special test equipment, or equipment, in the possession of, or directly acquired by, the Government and subsequently furnished to the contractor for the performance of a contract.

Government furnished materiel. Property provided by the U.S. Government for the purpose of being incorporated into or attached to a deliverable end item or that will be consumed or expended in performing a contract. Government-furnished materiel includes assemblies, components, parts, raw and process material, and small tools and supplies that may be consumed in normal use in performing a contract. Government-furnished materiel does not include material provided to contractors on a cash-sale basis nor does it include military property, which are government-owned components, contractor acquired property, government furnished equipment, or major end items being repaired by commercial contractors for return to the government.

GSAXcess®. A totally web-enabled platform that eligible customers use to access functions of GSAXcess® for reporting, searching, and selecting property. This includes the entry site for the Federal Excess Personal Property Utilization Program and the Federal Surplus Personal Property Donation Program operated by the GSA.

Hazardous property (HP). A composite term to describe DoD excess property, surplus property, and FEPP, which may be hazardous to human health, human safety, or the environment. Various Federal, State, and local safety and environmental laws regulate the use and disposal of HP. In more technical terms, HP includes property having one or more of the following characteristics:

(1) Has a flashpoint below 200 °F (93 °C) closed cup, or is subject to spontaneous heating or is subject to polymerization with release of large amounts of energy when handled, stored, and shipped without adequate control.

(2) Has a threshold limit value equal to or below 1,000 parts per million for gases and vapors, below 500 milligrams per cubic meter (mg/m^3) for fumes, and equal to or less than 30 million particles per cubic foot or 10 mg/m^3 for dusts (less than or equal to 2.0 fibers per cubic centimeter greater than 5 micrometers in length for fibrous materials).

(3) Causes 50 percent fatalities to test animals when a single oral dose is administered in doses of less than 500 mg per kilogram of test animal weight.

(4) Is a flammable solid as defined in 49 CFR 173.124, or is an oxidizer as defined in 49 CFR 173.127, or is a strong oxidizing or reducing agent with a half cell potential in acid solution of greater than +1.0 volt as specified in Latimer's table on the oxidation-reduction potential.

(5) Causes first-degree burns to skin in short-time exposure or is systematically toxic by skin contact.

(6) May produce dust, gases, fumes, vapors, mists, or smoke with one or more of the characteristics in the course of normal operations.

(7) Produces sensitizing or irritating effects.

(8) Is radioactive.

(9) Has special characteristics which, in the opinion of the manufacturer, could cause harm to personnel if used or stored improperly.

(10) Is hazardous in accordance with 29 CFR part 1910, also known as the Occupational Safety and Health Standards.

(11) Is hazardous in accordance with 49 CFR parts 171 through 179.

(12) Is regulated by the Environmental Protection Agency in accordance with 40 CFR parts 260 through 280.

Hazardous waste (HW). An item that is regulated pursuant to 42 U.S.C. 6901 or by State regulation as an HW. HW is defined at 40 CFR part 261. From a practical standpoint, if an EPA or state HW code can be assigned, the item is a HW. Overseas, HW is defined in the applicable final governing standards or overseas environmental baseline guidance document, or host nation laws and regulations.

Identical bid. Bids for the same item of property having the same total price.

Industrial scrap. Consists of short ends, machinings, spoiled materials, and similar residue generated by an industrial-funded activity.

Information technology. Any equipment or interconnected system or subsystem of equipment that is used in the automatic acquisition, storage, manipulation, management, movement, control, display, switching, interchange, transmission or reception of data or information by the DoD Component. Includes computers, ancillary equipment, software, firmware, and similar procedures, services (including support services), and related sources. Does not include any equipment that is acquired by a Federal contractor incidental to a Federal contract. Equipment is ''used'' by a DoD Component if the equipment is used by the DoD Component directly or is used by a contractor under a contract with the DoD Component that:

(1) Requires the use of such equipment.

(2) Requires the use to a significant extent of such equipment in the performance of a service or the furnishing of a product.

Installation. A military facility together with its buildings, building equipment, and subsidiary facilities such as piers, spurs, access roads, and beacons.

International organizations. For trade security control purposes, this term includes: Columbo Plan Council for Technical Cooperation in South and Southeast Asia; European Atomic Energy Community; Indus Basin Development; International Atomic Energy; International Red Cross; NATO; Organization of American States; Pan American Health Organization; United Nations (UN); UN Children's Fund; UN Development Program; UN Educational, Scientific, and Cultural Organization; UN High Commissioner for Refugees Programs; UN Relief and Works Agency for Palestine Refugees in the Near East; World Health Organization; and other international organizations approved by a U.S. diplomatic mission.

Interservice. Action by one Military Department or Defense Agency ICP to provide materiel and directly related services to another Military Department or Defense Agency ICP (either on a recurring or nonrecurring basis).

Inventory adjustments. Changes made in inventory quantities and values resulting from inventory recounts and validations.

Inventory control point (ICP). An organizational unit or activity within the DoD supply system that is assigned the primary responsibility for the materiel management of a group of items either for a particular Military Department or for the DoD as a whole. In addition to materiel manager functions, an ICP may perform other logistics functions in support of a particular Military Department or for a particular end item (*e.g.,* centralized computation of retail requirements levels and engineering tasks associated with weapon system components).

Item unique identification (IUID). A system of establishing globally widespread unique identifiers on items of supply within the DoD, which serves to distinguish a discrete entity or relationship from other like and unlike entities or relationships. Automatic identification technology is used to capture and communicate IUID information.

Law enforcement agencies (LEAs). Government agencies whose primary function is the enforcement of applicable Federal, State, and local laws, and whose compensated law enforcement officers have powers of arrest and apprehension.

Local screening. The onsite review of excess, surplus, and FEPP for reutilization, transfer, and donation.

MAP property. U.S. security assistance property provided under 22 U.S.C.2151, also known as the Foreign Assistance Act, generally on a non-reimbursable basis.

Marketing. The function of directing the flow of surplus and FEPP to the buyer, encompassing all related aspects of merchandising, market research, sale promotion, advertising, publicity, and selling.

Material potentially presenting an explosive hazard (MPPEH). Material owned or controlled by the Department of Defense that, prior to determination of its explosives safety status, potentially contains explosives or munitions (*e.g.,* munitions containers and packaging material; munitions debris remaining after munitions use, demilitarization, or disposal; and range-related debris) or potentially contains a high enough concentration of explosives that the material presents an explosive hazard (*e.g.,* equipment, drainage systems, holding tanks, piping, or ventilation ducts that were associated with munitions production, demilitarization, or disposal operations). Excluded from MPPEH are munitions within the DoD-established munitions management system and other items that may present explosion hazards (*e.g.,* gasoline cans and compressed gas cylinders) that are not munitions and are not intended for use as munitions.

Munitions list item (MLI). Any item contained on the USML in 22 CFR part 121. Defense articles, associated technical data (including software), and defense services recorded or stored in any physical form, controlled by 22 CFR parts 120 through 130. 22 CFR part 121, which contains the USML, is administered by the DoS Directorate of Defense Trade Controls.

Museum, DoD or Service. An appropriated fund entity that is a permanent activity with a historical collection, open to both the military and civilian public at regularly scheduled hours, and is in the care of a professional qualified staff that performs curatorial and related historical duties full time.

Mutilation. A process that renders materiel unfit for its originally intended purposes by cutting, tearing, scratching,

crushing, breaking, punching, shearing, burning, neutralizing, etc.

Non-appropriated funds (NAF). Funds generated by DoD military and civilian personnel and their dependents and used to augment funds appropriated by Congress to provide a comprehensive, morale building, welfare, religious, educational, and recreational program, designed to improve the well-being of military and civilian personnel and their dependents.

NAF property. Property purchased with NAFs, by religious activities or non-appropriated morale welfare or recreational activities, post exchanges, ships stores, officer and noncommissioned officer clubs, and similar activities. Such property is not Federal property.

Nonprofit institution. An institution or organization, no part of the net earnings of which inures or may lawfully inure to the benefit of any private shareholder or individual, and which has been held to be tax exempt under the provisions of 26 U.S.C. 501, also known as the Internal Revenue Code of 1986.

National stock number (NSN). The 13-digit stock number replacing the 11-digit federal stock number. It consists of the 4-digit federal supply classification code and the 9-digit national item identification number. The national item identification number consists of a 2-digit National Codification Bureau number designating the central cataloging office (whether North Atlantic Treaty Organization or other friendly country) that assigned the number and a 7-digit (xxx-xxxx) nonsignificant number. Arrange the number as follows: 9999–00–999–9999.

Personal property. Property except real property. Excludes records of the Federal Government, battleships, cruisers, aircraft carriers, destroyers, and submarines.

Precious metals recovery program (PMRP). A DoD program for identification, accumulation, recovery, and refinement of precious metals (PM) from excess and surplus end items, scrap, hypo solution, and other PM bearing materiel for authorized internal purposes or as Government furnished materiel.

Precious metals (PM). Gold, silver, and the platinum group metals (platinum, palladium, iridium, rhodium, osmium, and ruthenium).

Privately owned personal property. Personal effects of DoD personnel (military or civilian) that are not, nor will ever become, government property unless the owner (or heirs, next of kin, or legal representative of the owner) executes a written and signed release document unconditionally giving the USG all right, title, and interest in the privately owned property.

Qualified recycling programs (QRP). Organized operations that require concerted efforts to divert or recover scrap or waste, as well as efforts to identify, segregate, and maintain the integrity of recyclable materiel to maintain or enhance its marketability. If administered by a DoD Component, a QRP includes adherence to a control process providing accountability for all materials processed through program operations.

Radioactive material. Any material or combination of materials that spontaneously emits ionizing radiation and which is subject to regulation as radioactive or nuclear material under any Federal law or regulation.

Reclamation. A cost avoidance or savings measure to recover useful (serviceable) end items, repair parts, components, or assemblies from one or more principal end items of equipment or assemblies (usually Supply condition codes (SCCs), H, P, and R) for the purpose of restoration to use through replacement or repair of one or more unserviceable, but repairable principal end item of equipment or assemblies (usually SCCs E, F, and G). Reclamation is preferable prior to disposition (*e.g.,* DLA Disposition Services site turn-in), but end items or assemblies may be withdrawn from DLA Disposition Services site for reclamation purposes.

Responsibility criteria. The situations outlined in 41 CFR chapter 102 that require some certifications from buyers; either that the buyer knows they need to take care of the property because of its characteristics, or because the buyer must meet certain professional or licensing criteria.

Responsive bid. A bid that meets all the terms, conditions, and specifications necessary.

Reutilization. The act of re-issuing FEPP and excess property to DoD Components. Also includes qualified special programs (*e.g.,* LEA, Humanitarian Assistance Program (HAP), Military Affiliate Radio System (MARS)) pursuant to applicable enabling statutes.

Reutilization screening. The act of reviewing, either by automated or physical means, available FEPP, excess or surplus personal property to meet known or anticipated requirements.

Sales contract. An agreement between two parties, binding upon both, to transfer title of specified property for a consideration.

Sales contracting officer (SCO). An individual who has been duly appointed and granted the authority conferred by law according to the procedures in this part to sell surplus and FEPP by any of the authorized and prescribed methods of sale. Also referred to as the SAR.

Scrap. Recyclable waste and discarded materials derived from items that have been rendered useless beyond repair, rehabilitation, or restoration such that the item's original identity, utility, form, fit and function have been destroyed. Items can be classified as scrap if processed by cutting, tearing, crushing, mangling, shredding, or melting. Intact or recognizable USML or CCL items, components, and parts are not scrap. 41 CFR 102–36.40 provides additional information on scrap.

Screening. The process of physically inspecting property or reviewing lists or reports of property to determine whether it is usable or needed.

Screening period. The period in which excess and surplus personal property is made available for reutilization, transfer, or surplus donation to eligible recipients.

Security assistance. A group of programs, authorized by law, that allows the transfer of military articles and services to friendly foreign governments.

Small arms and light weapons. Man-portable weapons made or modified to military specifications for use as lethal instruments of war that expel a shot, bullet, or projectile by action of an explosive. Small arms are broadly categorized as those weapons intended for use by individual members of armed or security forces. They include handguns; rifles and carbines; sub-machine guns; and light machine guns. Light weapons are broadly categorized as those weapons designed for use by two or three members of armed or security forces serving as a crew, although some may be used by a single person. They include heavy machine guns; hand-held under-barrel and mounted grenade launchers; portable anti-aircraft guns; portable anti-tank guns; recoilless rifles; man-portable launchers of missile and rocket systems; and mortars.

Solid waste. Includes garbage, refuse, and other discarded materials, including solid waste materials resulting from industrial, commercial, and agricultural operations, and from community activities. Includes solids, liquid, semi-solid or contained gaseous material which is discarded and not otherwise excluded by statute or regulation. Mining and agricultural solid wastes, hazardous wastes (HW), sludge, construction and demolition wastes, and infectious wastes are not included in this category.

Special programs. Programs specified by legislative approval, such as FMS, LEAs and fire fighters, identified on DLA Disposition Services Web site (*https://www.dispositionservices.dla.mil/rtd03/miscprograms.shtml*).

State agency for surplus property (SASP). The agency designated under State law to receive Federal surplus personal property for distribution to eligible donation recipients within the States as provided for in 40 U.S.C. 549.

State or local government. A State, territory, or possession of the United States, the District of Columbia, and any political subdivision or instrumentality thereof.

Transfer. The act of providing FEPP and excess personal property to FCAs as stipulated in the FMR. Property is allocated by the GSA.

Transfer order. Document (SF 122 and SF 123) issued by DLA Disposition Services or the headquarters or regional office of GSA directing issue of excess personal property.

Trade security control (TSCs). Policy and procedures, in accordance with DoD Instruction 2030.08, designed to prevent the sale or shipment of USG materiel to any person, organization, or country whose interests are unfriendly or hostile to those of the United States and to ensure that the disposal of DoD personal property is performed in compliance with U.S. export control laws and regulations.

Unique item identifier (UII). A set of data elements marked on an item that is globally unique and unambiguous. The term includes a concatenated UII or a DoD recognized unique identification equivalent.

Usable property. Commercial and military type property other than scrap and waste.

Wash-post. A methodology for transfer of accountability to the DLA Disposition Services site whereby the DLA Disposition Services site only accepts accountability at the time they also document a release from the account, through reutilization, transfer, donation, sales, or disposal.

Zone of interior *(ZI).* The United States and its territories and possessions, applicable to areas covered by GSA and where excess property is considered domestic excess. Includes the 50 States, District of Columbia, Puerto Rico, American Samoa, Guam, Northern Mariana Islands, the Federated States of Micronesia, the Marshall Islands, Palau, and the U.S. Virgin Islands.

§ 273.13 Policy.

It is DoD policy consistent with 41 CFR chapters 101 and 102 that excess DoD property must be screened and redistributed among the DoD Components, and reported as excess to the GSA. Pursuant to 40 U.S.C. 701, DoD will efficiently and economically dispose DoD FEPP.

§ 273.14 Responsibilities.

(a) The Assistant Secretary of Defense for Logistics and Materiel Readiness (ASD(L&MR)), under the authority, direction, and control of the USD(AT&L), and in accordance with DoD Directive 5134.12:

(1) Develops DoD materiel disposition policies, including policies for FEPP.

(2) Oversees the effective implementation of the DoD materiel disposition program.

(3) Approves changes to FEPP procedures as appropriate to support contingency operations.

(b) The Director, Defense Logistics Agency (DLA), under the authority, direction, and control of the Under Secretary of Defense for Acquisition, Technology, and Logistics, through the Assistant Secretary of Defense for Logistics and Materiel Readiness (ASD(L&MR)):

(1) Administers the worldwide Defense Materiel Disposition Program for the reutilization, transfer, screening, issue, and sale of FEPP, excess, and surplus personal property.

(2) Implements guidance issued by the ASD(L&MR) or other organizational elements of the OSD and establishes system concepts and requirements, resource management, program guidance, budgeting and funding, training and career development, management review and analysis, internal control measures, and crime prevention for the Defense Materiel Disposition Program.

(c) The DoD Component Heads:

(1) Implement the procedures prescribed in this subpart and ensure that supplemental guidance and procedures are in accordance with 41 CFR chapters 101 and 102.

(2) Reutilize, transfer, screen, issue and sell FEPP, excess and surplus personal property according to the procedures in § 273.15(a) and (c).

(3) Treat the disposal of DoD property as an integral part of DoD Supply Chain Management; ensure that disposal actions and costs are a part of ''end-to-end'' management of items and that disposal of property is a planned event at all levels of their organizations.

(4) Furnish the Director, DLA, with mutually agreed-upon data necessary to administer the Defense Materiel Disposition Program.

(5) Provide administrative and logistics support, including appropriate facilities, for the operations of tenant and related off-site DLA Disposition Services field activities under inter-Service support agreements (ISSAs).

(6) Dispose HP specifically designated as requiring Military Department processing.

(7) Request DLA Disposition Services provide sales services, as needed, for recyclable marketable materials generated as a result of resource recovery programs.

(8) Monitor, with DLA Disposition Services Site personnel, all property sent to landfills to ensure no economically salable property is discarded.

(9) Report, accurately identify on approved turn in documents, and turn in all authorized scrap generations to servicing DLA Disposition Services Sites.

(10) Authorize installation commanders, as appropriate, to sell directly recyclable and other QRP materials, or to consign them to the DLA Disposition Services for sale.

§ 273.15 Procedures.

(a) *Sale of surplus and FEPP, scrap generated from QRPS, and non-QRP scrap*—(1) *Authority and scope*—(i) *FPMR and FMR.* The provisions of this section are pursuant to 41 CFR chapters 101 and 102, also known as the FPMR and FMR, respectively.

(ii) *Additional guidance.* (A) Policy and procedures for the control of MLIs and Commerce Control List items (CCLIs) are contained in DoD Instruction 4160.28, DoD 4160.28–M Volumes 1–3, DoD Instruction 4140.62, ''Materiel Potentially Presenting an Explosive Hazard'' (available at *http://www.dtic.mil/whs/directives/corres/pdf/414062p.pdf*) and incorporated in the provisions of DoD Instruction 2030.08.

(B) 31 U.S.C. 3711–3720E provides an additional statutory requirement applicable to the sale of personal property.

(C) 48 CFR part 33 provide additional guidance on handling disputes from the sale of personal property.

(D) 48 CFR subpart 9.4 of the Federal Acquisition Regulation (FAR), current edition, provides direction on the debarment or suspension of individuals or entities.

(E) Sales of FEPP, although briefly addressed in the FMR, are managed by the agency head and must be in compliance with foreign policy of the United States and the terms and conditions of any applicable host-nation agreement. For additional information on processing FEPP, see Enclosure 4 to DoD Manual 4160.21, Volume 2.

(F) DoD Directive 3230.3, ''DoD Support for Commercial Space Launch Activities'' (available at *http://www.dtic.mil/whs/directives/corres/pdf/323003p.pdf*) allows the sale of dedicated expendable launch vehicle (ELV) equipment directly to commercial ELV vendors in consultation with the Secretary of Transportation.

(2) *Exclusions.* This subpart does not govern the sale of property that is regulated by the laws or agencies identified in paragraphs (a)(2)(i) through (iv) of this section. The information in paragraphs (a)(2)(i) through (iv) is included for the DoD Components to reference when commodities in their possession become excess and disposal requires compliance with this part.

(i) The Strategic and Critical Materials Stock Piling Act (50 U.S.C. 98 *et seq.*) provides for the acquisition, disposal (sale) and retention of stocks of certain strategic and critical materials and encourages the conservation and development of sources of such materials within the United States. These materials when acquired and stored constitute and are collectively known as the National Defense Stockpile (NDS) or the ''stockpile.''

(ii) The Department of Transportation Maritime Administration has jurisdiction over the disposal of vessels of 1,500 gross tons or more that the Secretary of Transportation determines to be merchant vessels or capable of conversion to merchant use, excluding specified combatant vessels.

(iii) Under the provisions of 10 U.S.C. 2576, the Secretary of Defense may sell designated items (such as pistols, revolvers, shotguns, rifles of a caliber not exceeding .30, ammunition for such firearms, and other appropriate equipment) to State and local law enforcement, firefighting, homeland security, and emergency management agencies, at fair market value if the designated items:

(A) Have been determined to be surplus property.

(B) Are certified as being necessary and suitable for the operation and exclusive use of such agency by the Governor (or such State official as he or she may designate) of the State in which such agency is located.

(C) Do not include used gas masks and any protective body armor.

(iv) DLA Disposition Services provides a sales service to the DoD pursuant to the exchange or sale according to the procedures in DoD Manual 4140.01 that implement the authority in 41 CFR part 102–39; however, general and specific provisions through this method of sale are not addressed in this subpart. More information may be obtained from the DLA Disposition Services Exchange Sale Web site at *http://www.dispositionservices.dla.mil/sales/typesale.shtml.*

(3) *Sales of surplus property, FEPP, scrap generated by QRPs, and other scrap.* (i) DLA Disposition Services is the primary agency for managing surplus and FEPP sales, to include some sales of scrap generated from Military Department QRPs and non-QRP scrap.

(ii) DoD Components are responsible for disposing of surplus property, FEPP, scrap generated by QRPs, and other scrap through sales to the general public and State and local governments by a warranted contracting officer (CO) through execution of an awarded contract.

(iii) The Military Departments are authorized to sell eligible scrap generated from their respective QRPs and non-excess property eligible for exchange or sale without the involvement of DLA Disposition Services in accordance with their internal operating guidance, DoD Manual 4140.01, and 41 CFR chapters 101 and 102.

(iv) DoD Components advertise excess and surplus personal property for sale only after all prescribed screening actions are taken, unless screening is not required. See DoD Manual 4160.21 Volume 4 for exempt items.

(v) Sales actions include planning, merchandising, pre-award reviews, bid evaluation and award, contract administration, proceeds receipt and disbursement, and releasing the property.

(vi) Information on surplus and FEPP sales can be obtained from the DLA Customer Contact Center, accessible 24 hours a day, 7 days a week on the DLA Disposition Services Government Sales Web site at *https://www.dispositionservices.dla.mil/sales/index.shtml.*

(vii) Within the CONUS, DLA Disposition Services has partnered with a commercial firm to sell usable, non-hazardous surplus demilitarization (DEMIL) Code A and safe to sell Q property that is not reutilized, transferred, or donated. The commercial venture partner schedules and holds sales of property released to it by DLA Disposition Services. DLA Disposition Services has partnered with a commercial firm to sell scrap property. The scrap venture partner schedules and holds sales of scrap property released to it by DLA Disposition Services.

(viii) DLA Disposition Services conducts the balance of surplus and FEPP sales. This includes hazardous and chemical sales and DEMIL- and mutilation-required property and scrap sales in controlled property groups.

(A) DoD Components implement controls to mitigate security risks associated with the release or disposition of DEMIL Code B MLI and DEMIL Code Q CCLI that are sensitive for reasons of national security. Certain categories of DEMIL Q items that pose no risk to national security will be available for reutilization, transfer, or donation (RTD) and sales following normal procedures. However, only FEPP with DEMIL Code A (no export license requirements except to denied areas) may be sold in foreign countries that are not denied areas, in accordance with 15 CFR parts 730 through 774. DEMIL B and DEMIL Q items, including those posing no risk to national security are not permitted for sale.

(*1*) DEMIL B and sensitive DEMIL Q property can only be reutilized by authorized DoD Components, and approved Special Programs (FMS, law enforcement agencies (LEAs) and fire fighters).

(*2*) After DLA Disposition Services conducts initial screening, serviceable DEMIL B and sensitive DEMIL Q property will be transferred to a long term storage (LTS) facility and will remain available for reutilization screening by DoD and approved Special Programs customers.

(*3*) LTS property can be screened electronically on the DLA Disposition Services Web site at *https://www.DispositionServices.dla.mil/asset/govegeo1.html.* No physical screening is permitted at the LTS facility.

(B) DoD Components may offer for sale any property designated as unsafe for use as originally intended, with mutilation as a condition of sale. DoD Components incorporate the method and degree of mutilation into the sales offering, as required by an official notification of the safety defects. The sales offering must include a condition of sale stipulating that title of the property cannot pass from the Government to the purchaser until DoD representatives have certified and verified the mutilation has been satisfactorily accomplished and have documented this certification.

(C) SCC Q materiel with Management Code S (as defined in DLM 4000.25–1 is hazardous to public health, safety, or national security. If sold, it must require mutilation as a condition of sale. Property assigned SCC Q with Management Code O may be offered for sale without mutilation as a condition of sale, but the seller must ensure that all sales include a restrictive resale provision. In addition, any sales

offerings must indicate that the restrictive resale provision is to be perpetuated to all future sales to deter reentry of the materiel to the DoD supply system.

(D) Hazardous property may be offered for sale with appropriate terms and conditions. Prior to award, DoD Components conduct a pre-award review to determine whether the prospective purchaser meets the responsibility criteria in 41 CFR chapter 102. The prospective purchaser must display the ability to comply with applicable laws and regulations before the DoD Components can make an award.

(E) Only FEPP with DEMIL Code A (no export control requirements except to denied areas) may be offered for sale in foreign countries that are not denied areas in accordance with 15 CFR parts 730 through 774 and with additional DoD guidance in DoD 4160.28–M Volumes 1–3. The sales offering must include terms and conditions relating to taxes and duties, import stipulations, and compliance with international and local laws and regulations. See Enclosure 4 to DoD Manual 4160.21, Volume 2 for additional information.

(F) Other types of sales offerings for property requiring special handling must include applicable terms and conditions.

(ix) All persons or organizations are entitled to purchase property offered by DLA Disposition Services except for:

(A) Anyone under contract to conduct a specific sale, their agents or employees, and immediate members of their households.

(B) DoD military and civilian personnel and military and civilian personnel of the United States Coast Guard (USCG) whose duties include any functional or supervisory responsibilities for or within the Defense Materiel Disposition Program, their agents, employees, and immediate members of their households.

(C) Any persons or organizations intending to ship FEPP, excess and surplus personal property to denied areas. See *http://pmddtc.state.gov/embargoed_csuountries/index.html* or *https://demil.osd.mil/* or *http://treas.gov/offices/enforcement/ofac/programs* for additional information on shipments to denied areas.

(D) Persons under 18 years of age.

(E) Individuals or firms who are ineligible to be awarded government contracts due to suspension or debarment. See the GSA Excluded Parties List at *http://epls.gov* or *https://demil.osd.mil/* or *http://treas.gov/offices/enforcement/ofac/sdn/* or *http://bis.doc.gov/complianceandenforcement/liststocheck.htm.*

(F) Persons or entities who wish to purchase MLI or CCLI who do not meet the requirements to receive an end user certificate (EUC) as specified in 22 U.S.C. 2778 *et seq.*, also known as the Arms Export Control Act, and the implementing regulations 22 CFR parts 120 through 130, also known as the International Traffic In Arms Regulations and 15 CFR parts 730 through 774, also known as the Export Administration Regulations. Information on demilitarized materiel is provided at *https://demil.osd.mil/.* A consolidated list of prohibited entities or destinations may be found at *http://export.gov/ecr/eg_main_023148.asp.*

(x) Disposable assets (FEPP, scrap, NAF property, disposable (MAP property, etc.) may not be sold directly or indirectly to denied areas or any other areas designated by DoD 4160.28–M Volumes 1–3.

(xi) DoD Components will update the DoD IUID Registry when an item of personal property with a UII is declared FEPP, excess and surplus personal property and is subject to reutilization, transfer, or sale. The procedures required to update the DoD IUID Registry are in § 273.9.

(4) *Responsibilities in selling personal property*—(i) *Selling agencies.* Selling agencies:

(A) Determine whether to sell as the holding agency or request another agency to sell on behalf of the holding agency.

(B) Ensure the sale complies with the provisions of 40 U.S.C. 549, and any other applicable laws.

(C) Issue internal guidance for utilizing methods of sale stipulated in subchapter B of 41 CFR chapter 102, and promote uniformity of sales procedures.

(D) Obtain appropriate authorization to conduct sales of certain property or under certain conditions (*e.g.*, approval by the agency head to use the negotiation method of sale).

(E) Ensure that all sales are made after publicly advertising for bids, except as provided for negotiated sales in 41 CFR 102–38.100 through 102–38.125.

(F) Document the required terms and conditions of each sale, including but not limited to those terms and conditions specified in 41 CFR 102–38.75.

(G) Sell personal property upon such terms and conditions as the head of the agency deems appropriate to promote fairness, openness, and timeliness. Standard Government forms (*e.g.*, the Standard Form (SF) 114 series, ''Sale of Government Property'') are no longer mandatory, but may be used to document terms and conditions of the sale.

(H) Assure that only representatives designated in writing by the selling agency as selling agent representatives (SARs) are appointed to approve the sale and bind the United States in a written contractual sales agreement. The DLA Disposition Services equivalent of SARs are SCOs. The selling agency determines the requirements for approval (*e.g.*, select the monetary thresholds for awarding sales contracts).

(I) Adequately train SARs in regulatory requirements and limitations of authority. Ensure SARs are cognizant in identifying and referring matters relating to fraud, bribery, or criminal collusion to the proper authorities in accordance with 41CFR 102–38.50 and 102–38.225.

(J) Obtain approvals as necessary prior to award of the property (*e.g.*, an approval by the Attorney General of the United States to award property with a fair market value of $3 million or more or if it involves a patent, process, technique, or invention) as specified in 41 CFR 102–38.325.

(K) Be accountable for the care, handling, and associated costs of the personal property prior to its removal by the buyer.

(L) Reconcile property and financial records to reflect the final disposition.

(M) Make the property available to FCAs when a bona fide need exists and when no like items are located elsewhere prior to transfer of title to the property, to the maximum extent practicable.

(N) Subject small quantities of low dollar value property in poor condition to the A/D Economy Formula (see Enclosure 3 to DoD Manual 4160.21, Volume 2). If there is no reasonable prospect of disposing of the property by sale (including a scrap sale), dispose of the property with the A/D processes.

(O) Ensure that the DoD IUID Registry is updated for DoD personal property items marked with a UII in accordance with § 273.6.

(ii) *Sales conducted by DLA Disposition Services.* As the major selling agency for the Department of Defense and an approved GSA Personal Property Sales Center, DLA Disposition Services must, in compliance with requirements in paragraph (a)(4)(i) of this section:

(A) Carefully consider all factors and determine the best method of sale for personal property utilizing identification, segregation, merchandising, advertising, bid evaluation, and award principles to protect the integrity of the sales process.

(B) Utilize any publicly accessible electronic media for providing information regarding upcoming sales, invitations for bid (including sales terms and conditions), acceptance of bids, and bid results.

(C) Provide direction to the DLA Disposition Services site through its internal operating procedures and automated systems.

(D) Verify that personal property items marked with a UII and offered for sale have been updated in the DoD IUID Registry.

(iii) *Authorized methods of sale*—(A) *General.* Sale of personal property is authorized in 41 CFR part 102–38 by the methods of sale identified in paragraphs (a)(4)(iii)(A)(*1*) through (*4*) of this section. (See § 273.12 for definitions.)

(*1*) Sealed bid.

(*2*) Spot bid.

(*3*) Auction.

(*4*) Negotiated sale. Criteria for negotiated sales include:

(*i*) The estimated fair market value is not in excess of $15,000 and the sale is considered to be in the best interest of the USG. Large quantities of materiel were not divided nor disposed through multiple sales in order to avoid these requirements.

(*ii*) For FEPP, the estimated fair market value is less than $250,000; sale is managed by DLA Disposition Services and authorized by DLA Disposition Services Director or designee.

(*iii*) Disposal is to a State, territory, possession, political subdivision thereof, or tax-supported agency therein, and the estimated fair market value of the property and other satisfactory terms of disposal are obtained by negotiation.

(*iv*) Bid prices after advertising are not reasonable and re-advertising would serve no useful purpose.

(*v*) Public exigency does not permit delay, such as that caused by the time required to advertise a sale (*e.g.*, disposal of perishable food or other property that may spoil or deteriorate rapidly).

(*vi*) The sale promotes public health, safety, or national security.

(*vii*) The sale is in the public interest in a national emergency declared by the President or Congress. This authority may be used only with specific lots of property or for categories determined by the GSA Administrator for a designated period but not more than 3 months.

(*viii*) Selling the property competitively (sealed bid) would have an adverse impact on the national economy, provided that the estimated fair market value of the property and other satisfactory terms of disposal can be obtained by negotiation (*e.g.*, sale of large quantities of an agricultural product that impacts domestic markets).

(*ix*) The sale is otherwise authorized by 41 CFR chapter 102 or other law.

(*5*) Negotiated fixed price.

(*i*) The head of the selling agency or designee must determine and document that this method of sale serves the best interest of the government.

(*ii*) This type of sale must include appropriate terms and conditions; must be publicized consistent with the nature and value of the property involved; and be awarded on a first-come, first-served basis.

(B) *Sales of surplus, foreign excess, and other categories of property.* Within the constraints of the FMR-authorized methods of sale in paragraphs (a)(4)(iii)(A)(*1*) through (*5*) of this section, the types of sales that may be conducted for surplus, foreign excess, and other categories of property sold in the DoD Defense Materiel Disposition Program are:

(*1*) One-time sales for disposal of property already generated. Actual deliveries may comprise several release transactions.

(*2*) Term sales for the disposal of property generated over a period of time and in quantities that can be reasonably estimated for a specific period of time or are offered with minimum and maximum quantity provisions.

(iv) *Negotiated sales reporting.* Negotiated sales reports are required by GSA within 60 calendar days after the close of each fiscal year. DoD Components include in the report a listing and description of all negotiated sales with an estimated fair market value in excess of $5,000. For each sale negotiated, the report must provide:

(A) A description of the property.

(B) The acquisition cost and date. If not known, an estimate of the acquisition cost, identified as such.

(C) The estimated fair market value, including the date of the estimate and name of the estimator.

(D) The name and address of purchaser.

(E) The date of sale.

(F) The gross and net sales proceeds.

(G) A justification for conducting the negotiated sale.

(v) *GSA or DoD-authorized retail method of sale.* Sales of small quantity, consumer-oriented property at negotiated, auction, or bid prices that are conducted on a first-come; first-served; and as-is, where-is basis are considered retail sales. Credit or debit cards are the only authorized payment methods. Property having a fair market value exceeding $15,000 is subject to the limitations applicable to negotiated sales of surplus personal property.

(A) Retail sales of surplus, FEPP, and abandoned privately owned property may be conducted whenever such a program can effectively and economically be used to supplement other methods of sale. Retail sales must be approved in writing at an agency level on a case-by-case basis, and the approval must specify the quantities and types of property and time period covered. These authorizations are limited to specific situations and types of property for which deviation can be fully justified. In addition:

(*1*) All items must undergo screening, as appropriate, before being offered for retail sale.

(*2*) Each item being sold must have a fair market value of less than $15,000.

(*3*) All property received as items, if offered for sale by retail, must be sold as items and not by weight or lot, with the exception of scrap authorized for retail sale.

(*4*) Prices established must reflect the estimated fair market value of the property and must be publicized to the extent consistent with the nature and value of the property.

(*5*) Retail sales are limited to the Federal Supply Classification Codes (FSCs), according to the DEMIL code assigned and GSA approval, which are in 41 CFR chapter 102.

(*6*) Property must be DEMIL Code A and have a DEMIL Integrity Code 1, 7, or 9.

(*7*) The retail selling price of the property, based on the condition, may not be set below the price it would bring from a commercial vendor.

(B) Approval in accordance with 41 CFR chapters 101 and 102 is required to sell scrap by the retail sale method.

(C) Only trained cashiers are authorized to collect and deposit proceeds received from a retail sale. Retail sales are open to the public and all USG personnel except:

(*1*) DoD military and civilian personnel and contractors and military and civilian personnel and contractors of the USCG whose duties at the installation where the property is sold include any functional or supervisory responsibility for or within the DoD Materiel Disposition Program.

(*2*) An agent, employee, or immediate member of the household of personnel in paragraph (a)(4)(v)(C)(*1*) of this section.

(vi) *Market impact.* (A) DoD Components will give careful consideration to the adverse market impact that may result from the untimely sale of large quantities of certain surplus items. Where applicable, the selling agency or partner organizations consult with organizations

associated with the commodity proposed for sale to obtain advice on the market impact.

(B) Property reporting and sale schedules are developed to ensure expeditious property disposal, maximum competition, maximum sale proceeds, good public relations, and uniform workload.

(C) The selling agency will provide advance notice of all proposed or scheduled competitive bid sales (except negotiated) of surplus usable property. This includes property:

(*1*) Located in the 50 United States, the District of Columbia, Puerto Rico, American Samoa, Guam, the Federated States of Micronesia, the Northern Mariana Islands, Palau, and the U.S. Virgin Islands.

(*2*) With a total acquisition cost of $250,000 or more per sale.

(*3*) With a minimum potential return of $5,000 per sale of scrap and recyclable material.

(D) Submit the advance notice to: U.S. Department of Commerce, Office of Export Enforcement, High Point Plaza, 4415 West Harrison Street, Suite 530, Hillside, IL 60162.

(5) *Advertising to promote free and open competition.* DoD Components will:

(i) Bring property offered for sale to the attention of the buying public by free publicity and paid advertising.

(ii) Make every effort to obtain maximum free publicity through sites such as a Government-wide point of entry, *https://www.fedbizopps.gov*.

(iii) Employ the amount of paid advertising commensurate with the type and value of property being sold.

(iv) Distribute sale offerings to prospective purchasers before the first day of the inspection period.

(6) *Pre-sale activities*—(i) *Preparation and distribution of sale offerings*—(A) Include in the offer to sell sale date and time, method of sale, description of the property being offered, selling agency, location of property, time and place for receipt of bids, acceptable forms of bid deposits and payments, and general and special terms and conditions of sale. DLA Disposition Services sale offerings are available on the DLA Disposition Services Web site (*www.dispositionservices.dla.mil*).

(B) Establish a sales offering file that contains information about the property offered for sale from initiation to bid opening (*e.g.*, sale catalog, withdrawals prior to bid opening, agreements with holding activities).

(C) Prepare sale offerings to provide prospective purchasers with general information and instructions.

(D) Include in each offering the specific conditions of sale, the contents of which are determined by the selling agency. The SF 114 series may be used to document the terms and conditions of a sale, but their use is not mandatory. Conditions of sale include, but are not limited to:

(*1*) Inspection results.

(*2*) Condition and location of property.

(*3*) Eligibility of bidders.

(*4*) Consideration of bids.

(*5*) Bid deposits and payments.

(*6*) Submission of bids.

(*7*) Bid price determination.

(*8*) Legal title of ownership.

(*9*) Delivery, loading, and removal of property.

(*10*) Default, returns, or refunds.

(*11*) Modifications, withdrawals, or late bids.

(*12*) Requirements to comply with applicable laws and regulations.

(*13*) Certificate of independent price determination.

(*14*) Covenant against contingent fees.

(*15*) Limitation of government liability.

(*16*) Award of contract.

(E) DEMIL-required MLI property may not be sold unless DEMIL has been accomplished or it is offered for sale with DEMIL as a condition of sale. Incorporate the method and degree of DEMIL into the sales offering.

(*1*) If DEMIL is a condition of sale, the sales offering must include a condition of sale stipulating that title of the property will not pass from the government to the purchaser until the property has been satisfactorily DEMIL and has been certified and verified in accordance with DoD 4160.28–M Volumes 1–3.

(*2*) The sales offering must also include a requirement for the bidder to provide an EUC to the selling agency specifying the intended use and disposition of the property. The sales offering will also include an agreement by the buyer that they will obtain appropriate export authorizations from the Departments of Commerce or State prior to any export of the item. DLA Disposition Services uses DLA Form 1822, ''End-Use Certificate.'' The EUC must be processed through designated approval channels prior to award of the property to the prospective customer.

(*3*) The EUC for scrap mutilation residue must be incorporated into the sales offering for all MLI and CCLI property, including mutilation residue that may still be classified as DEMIL Code B or Q.

(ii) *Inspections.* Each sales offering will include an electronic or physical inspection period of at least 7 calendar days before the bid opening.

(iii) *Bid deposits.* The selling agency may incorporate a requirement for bidders to provide or post a bid deposit or a bid deposit bond in lieu of cash or other acceptable forms of deposit to protect the government's interest.

(iv) *PM bid deposits.* PM offerings will include a 20 percent bid deposit. A deposit bond may be used in lieu of cash or other acceptable form of deposit when permitted by the sales offering. If awarded, the bid deposit will be applied to the total contract price. Unsuccessful bid deposits will be returned. Bid deposit bonds will be returned to the bidder when no longer needed to secure the property.

(v) *Payments.* (A) Selling agencies will implement a payment policy, pursuant to 41 CFR chapter 102 that protects the government against fraud.

(B) Acceptable forms of payment include but are not limited to:

(*1*) Guaranteed negotiable instruments made payable to or endorsed to the U.S. Treasury in any form (*e.g.*, cashier's check, certified check, traveler's check, bank draft, or postal or telegraphic money order).

(*2*) Canadian postal money orders designed for payment in the United States must state specifically that they are payable in U.S. dollars in the United States.

(*3*) Electronic funds transfer. Special instructions are available through the DLA Disposition Services Web site and must be followed if this option is chosen.

(*4*) Credit or debit cards.

(*5*) Combinations of payment methods in paragraphs (a)(6)(v)(B)(*1*) through (*5*) of this section.

(*6*) Other acceptable forms of payment include:

(*i*) Uncertified personal or company check for amounts over $25.00 accompanied by an irrevocable commercial letter of credit issued by a U.S. bank, payable to the Treasurer of the United States or to the selling agency. The check may not exceed the amount of the letter of credit. Each letter of credit must be an original or clearly state on its face that reproductions of the original document may be considered as an original document, and clearly state that requests for payment will be honored at any time they are presented by the selling agency. Selling agents will reject letters of credit with an expiration date. In addition, the minimum criteria required for acceptance of letters of credit are to state clearly that it is a commercial letter of credit (it need not say it is irrevocable, but it cannot say it is revocable); be on bank stationery; state the maximum amount guaranteed; state the name and

address of the company or individual submitting the bid; state the sales offering number and opening date; and be signed by the issuer (authorized signature of bank official).

(*ii*) Uncertified personal or company checks in the amount of $25.00 or less when submitted for ancillary charges (*e.g.,* debt payment, storage charge, liquidated damages, interest).

(*iii*) Any form of payment received from a NAF instrumentality or a State or local government.

(*7*) Acceptable country currencies and information on exchange rates used must be provided in the sales offering and be incorporated into the sales offering. Generally, the exchange rate for receipt of monies or payments in designated currencies is established on the date of the deposit, which is generally the date of receipt.

(*8*) FEPP buyers must pay in U.S. dollars or the equivalent in foreign currency that is readily convertible into U.S. dollars. Where U.S. dollars are not available, the acceptance of foreign currency is authorized subject to these conditions:

(*i*) Payments exceeding the equivalent of $5,000 U.S. in individual sale transactions (that is, for the total of all items offered in a single sale, not for individual items included in a sale) may be accepted only after obtaining prior approval from the Defense Finance and Accounting Service (DFAS). When required, DFAS will submit the requests through the chain of command to DoS and Department of Treasury for approval. In countries where a considerable amount of FEPP may be available for sale and it may be necessary to accept foreign currency, the selling agency will request from DFAS an annual authorization, on a calendar year basis, to accept foreign currency.

(*ii*) Payments of up to the equivalent of $5,000 U.S. for individual transactions, at the rate of exchange applicable to the USG, may be accepted without further consultation if assurance has been obtained through the local DoS representative that such currency may be used in payment of any or all USG expenditures in the country whose currency is accepted. This provision is applicable only when annual authorizations have not been received; it is not feasible to sell for U.S. dollars or to ship the property to a country (other than the United States, except where property is a type authorized for return) where it may be sold for U.S. dollars or a freely convertible foreign currency; the currency is not that of a country whose assets in the United States are blocked by Department of Treasury regulations; the currency is that of a country with which the United States maintains diplomatic relations; and foreign currency accepted need not be the currency of the country of sale if the currency offered is otherwise acceptable to DoS and Department of Treasury and can be accepted pursuant to U.S. and host government agreements governing the sale of FEPP. In this connection, the sales offerings will indicate the foreign currencies that will be accepted for a particular sale.

(vi) *Transfer of title.* Selling agencies must document the transfer of title of the property from the government to the purchaser:

(A) By providing to the purchaser a bill of sale.

(B) By notification within a contract clause stipulating when the transfer is affected. For instance:

(*1*) Upon removal from the exact location specified in the sales offering.

(*2*) Upon certification and signature by the government that all required demilitarization has been accomplished in accordance with DoD Instruction 4160.28.

(C) By providing certifications required from the buyer prior to a transfer of title. An SF 97, ''Certificate of Release of a Motor Vehicle,'' (available at *http://www.gsa.gov/forms*) is required for the sale of vehicles. Selling agencies must provide internal guidance on how the transfer will occur and what documentation is required.

(vii) *Defaults.* If a purchaser breaches a contract by failure to make payment within the time allowed or by failure to remove the property as required, or breaches other contractual provisions, the purchaser is in default. The selling agency representative will give the purchaser a written notice of default and a period of time to cure the default.

(A) If the purchaser fails to cure the default, the selling agency is entitled to collect or retain liquidated damages as specified in the sales offer or contract.

(B) If a bid deposit was required and the bidder secured the deposit with a deposit bond, the selling agency must issue the notice of default to the bidder and the surety company.

(viii) *Disputes.* All sales offers will include the disputes clause contained in 48 CFR 52.233–1 of the FAR.

(7) *Bidder eligibility criteria.* (i) As a rule, selling agencies may accept bids from any person, representative, or agent from any entity. To be considered eligible for award of a sales contract, the bidder must be of legal age and not be debarred, suspended, or indebted to the USG, or from a denied area. Any exceptions must be authorized by the selling agency head, who has determined that there is a compelling reason to make the award. A list of parties excluded from federal procurement and non-procurement programs can be obtained on the GSA Excluded Parties List System Web site at *http://epls.gov* or the OSD DEMIL Web site at *https://demil.osd.mil/*.

(ii) Personal property may be sold to a federal employee whose agency does not prohibit the employees from purchasing such property. Unless allowed by a federal or agency regulation, employees having non-public information regarding property offered for sale may not participate in that sale. This applies to an immediate member of the employee's household.

(8) *Suspension and debarment of bidders.* (i) 41 CFR 102–38.170, 31 U.S.C. 6101 note, Executive Order 12549, ''Debarment and Suspension'' (February 18, 1986), and Executive Order 12689, ''Debarment and Suspension'' (August 16, 1989) provide the authority for the suspension or debarment of bidders or contractors purchasing personal property from the government. The selling agent must follow the procedures described in 48 CFR subpart 9.4 of the FAR to debar or suspend a person or entity from the purchase of personal property. The debarring official for DLA Disposition Services sales is the DLA Special Assistant for Contracting Integrity.

(ii) Appointed SARs and SCOs will:

(A) Prepare recommendations for suspension or debarment from the sale of Federal property and acquisition contracts.

(B) Forward them to their respective servicing legal offices.

(C) Prepare reports recommending suspension or debarment using the procedures described in 48 CFR subpart 209.4 of the Defense FAR Supplement, current edition, in all cases where purchasers are recommended for suspension or debarment.

(iii) In addition to applicable guidance in 48 CFR subpart 9.4 and 48 CFR 45.602–1, 52.233–1, and 14.407 of the FAR and 48 CFR subpart 209.4 of the Defense FAR Supplement, current edition, contractors who are suspended, debarred, or proposed for debarment are also excluded from conducting business with the government as agents or representatives of another contractor. Firms or individuals who submit bids on sale solicitations on behalf of suspended or debarred contractors, or who in any other manner conduct business with the government as agents or representatives of suspended or debarred contractors, may be treated as affiliates as described in 48 CFR 9.403

of the FAR, and may be suspended or debarred.

(iv) Parties who violate trade security control (TSC) policies may be recommended for debarment or suspension.

(9) *Indebted bidders and purchasers.* (i) No awards may be made to bidders indebted to the government. Selling agencies will coordinate with DFAS to determine if a bidder is indebted to DoD and maintain local listings containing bidder name, address, sales contract information, amount of indebtedness, and date indebted.

(ii) Circumstances where the SAR or SCO must initiate action include:

(A) At bid opening. Bidders can bid if they cure the debt prior to the opening.

(B) As the result of monies owed the contractor as a refund.

(C) As a result of monies received for bid deposit.

(D) As a result of failure to make payment for overages, ancillary charges, etc.

(E) As a result of affiliation with suspended bidder.

(iii) Checks received for debts will be deposited immediately and the bidder will not be notified until the check has cleared its bank. Cash or negotiable instruments will be deposited immediately.

(iv) SARs or SCOs will contact the bidder and advise that the monies have been deposited to offset the specific indebtedness.

(v) If a SAR or SCO suspects affiliation, the SAR or SCO will contact the bidder and advise that the monies have been deposited according to the procedures in 31 U.S.C. 3711–3720E for the collection of debts owed to the United States.

(10) *Bid evaluation*—(i) *Responsive bids and responsible bidders.* (A) Only responsive bids (as defined in the § 273.12) may be considered for award.

(B) Bidders do not have to use authorized bid forms. The bid may be considered when the bidder agrees to all of the terms and conditions and acknowledges that the offer may result in a binding contract award.

(C) The selling agency must determine that the bidder is a responsible person or represents a responsible entity.

(ii) *Late bids.* The selling agency will consider late bids for award if the bid was delivered in a timely fashion to the address specified in the sales offering but did not reach the official designated to accept the bid by the bid opening time due to a government delay.

(iii) *Bid modification or withdrawal.* (A) A bidder may modify or withdraw its bid prior to the start of the bid opening. After the start of the sale, the bidder will not be allowed to modify or withdraw its bid.

(B) The selling agency representative may consider late bid modifications to an otherwise successful bid at any time, but only when it makes the terms of the bid more favorable to the government.

(iv) *Mistakes in bids prior to award.* (A) The administrative procedures for handling mistakes in bids (prior to or after award) are contained in 41 CFR 102–38.260, which utilizes the processes of 48 CFR 14.407 of the FAR for federal property sales.

(B) The selling agency head or designee may delegate the authority to make administrative decisions regarding mistakes in bid to a central authority or alternate. This delegation may not be re-delegated by the authority or alternate.

(C) A signed copy of the administrative determination must be included in the contract file and provided to the Government Accountability Office, when requested.

(v) *Bid rejections.* In the event a bid is rejected, the next most advantageous bid may be considered. If an entire sales offering is rejected, all items within that sale may be reoffered on another sale.

(vi) *Identical bids.* If there are multiple high bids of the same amount, the SAR or SCO must consider other factors of the sale (*e.g.*, payment arrangements, estimated removal time) that would make one offer more advantageous to the government. Otherwise, the SAR or SCO may use random tie breakers to avoid expense of reselling or reoffering the property.

(vii) *Suspected collusion.* The SAR or SCO must refer any suspicion of collusion to the agency's Office of the Inspector General or the Department of Justice (DOJ) through its legal counsel.

(viii) *Protests.* Protests by bidders regarding validity of determinations made on the sale of personal property may be submitted to the DLA Disposition Services Comptroller General or comptroller general for the selling agent.

(11) *Awarding sales contracts*—(i) *Selling agents.* SARs or SCOs will:

(A) Be appointed by agency heads or their designees to act as selling agents for the USG.

(B) Enter into and administer contracts for the sale of government property pursuant to the provisions of 40 U.S.C. 101 *et seq.* and other applicable statutes and regulations.

(C) Award and distribute contracts to responsible bidders whose bids conform to the sales offering and are the most advantageous to the government.

(D) Be authorized to reject bids in accordance with paragraph (a)(10)(v) of this section.

(E) Sign under the title of ''Sales Agency Representative'' or ''Sales Contracting Officer.''

(F) Sign all contracting documentation on behalf of the USG.

(G) Be responsible for the proper distribution of sales proceeds.

(ii) *Approvals required for sales and awards.* (A) Selling agencies will designate the dollar limitations of authority of their appointed SARs or SCOs. DLA Disposition Services SCOs may make awards of contracts on sales of usable property having a fair market value of less than $100,000. Except for antitrust advice limitations, awards of scrap property do not require approval by higher authority.

(B) Selling agencies will notify the U.S. Attorney General whenever an award is proposed for personal property with an estimated fair market value of $3 million or more or if the sale involves a patent, process, technique, or invention per 41 CFR 102–38.325. Selling agencies will otherwise comply with all requirements of 41 CFR chapter 102 including but not limited to the prohibition to dispose any such item until confirmation from the U.S. Attorney General that the proposed transaction would not violate antitrust laws.

(C) The head of a selling agency or designee must approve all negotiated sales of personal property. Selling agencies must submit explanatory statements for each sale by negotiation of any personal property with an estimated fair market value in excess of $15,000 through GSA to the House and Senate Oversight Committee to obtain approval for the sale in accordance with 40 U.S.C. 549.

(iii) *Processing mistakes in bid after award, claims, disputes, and appeals.* Keeping the interests of the government in the forefront, SARs or SCOs will process these actions expeditiously and fairly, in accordance with established internal and external regulations and laws. SARs or SCOs will respond to each issue pertaining to mistakes in bids, claims, disputes, or appeals until it is resolved and provide a written final decision to the claimant or adjudicating agency, as appropriate, until the issue is closed. Retain any decisions made or actions taken in regard to these issues as official records, as required by agency or higher authority directives.

(12) *Notification process for dissemination of awards information.* (i) The selling agency may only disclose bid results after the award of any item or lot of property has been made. No

information other than names may be disclosed regarding the bidder(s).

(ii) Bids are disclosed as they are submitted on spot bids or auctions.

(13) *Contract administration.* Selling agencies will prescribe contract administration procedures for the various methods of sale, to include procedures for:

(i) Disseminating award information.

(ii) Billing.

(iii) Default and liquidation.

(iv) Establishing contract folders, including file maintenance and disposition.

(A) Contract administration files will consist of a sale folder, financial folder, individual contract folder(s), and an unsuccessful bids folder for each sale.

(B) Selling agencies will develop procedures for maintaining, completing, reviewing, and auditing these files. All pertinent documentation, including EUC, licenses, pre-award reviews, etc., must be included in the files.

(C) Documentation found in these files may be subject to 5 U.S.C. 552, also known as the Freedom of Information Act. All Privacy Act, privileged, exempt, classified, For Official Use Only, or sensitive information must be obliterated prior to release to the public.

(v) Collection and distribution of sales proceeds.

(vi) Ensuring all requirements of the contract (*e.g.*, non-payment, required licenses) are met prior to releasing the property.

(vii) Making modifications to contracts resulting from changes to the original contract.

(viii) Handling public requests for information.

(ix) Timely review and closure of each contract.

(x) Timely review and closure of each sale.

(14) *Cashier functions and SAR or SCO responsibilities.* (i) Cashiers must be duly trained in the handling and processing of monies collected as payment on sales.

(ii) Cashiers must credit sales proceeds in accordance with chapter 5 of Volume 11A of DoD 7000.14–R, ''Department of Defense Financial Management Regulations (FMRs)'' (available at *http://comptroller.defense.gov/fmr/current/11a/11a_05.pdf*).

(15) *Inquiries regarding suspended or debarred bidders.* Refer all inquiries regarding suspended or debarred bidders to the office effecting the action.

(16) *Release requirements following sales.* (i) Removal of property is subject to general and special conditions of sale and the loading table as set forth in the sale offering and resulting contract.

(ii) Prior to releasing sold property, assigned personnel will:

(A) Verify the sale items to be delivered or shipped to purchasers against the sale documents to prevent theft, fraud, or inappropriate release of property.

(B) When DLA Disposition Services is managing the sale and where an in-place receipt memorandum of understanding (MOU) has been executed, installation commanders will provide, by letter designation and upon request from DLA Disposition Services site, the names, telephone numbers, and titles of those non-DLA Disposition Services site personnel authorized to release property located at their activities. As changes occur, installation commanders will provide additions, deletions, and revisions in writing to DLA Disposition Services.

(C) Weigh property sold by weight at the time of delivery to the purchaser.

(D) Count or measure property sold by unit at the time of delivery.

(iii) Purchasers are required to pay, before delivery, the purchase price of item(s) to be removed, based upon the quantity or weight as set forth in the sale offering, except for term sales. If prepayment of an overage quantity is not practicable or possible, payment will be due upon issuance of a statement of account after release of property. Sales of property to State and local governments do not require payment prior to removal. The DLA Disposition Services contract with its sales partners does not require payment prior to delivery of property to State and local governments only.

(17) *Withdrawal from sale.* (i) Property that has been physically inspected, determined to be usable or needed, and thereby has survived screening is eligible for sale and may be requested to satisfy valid requirements within limitations specified in this paragraph. Generally, property past the screening cycle may not be withdrawn from sale. However, circumstances may require the withdrawal of property from sale to satisfy valid needs within the Department of Defense or FCAs. Donation recipients are not eligible to withdraw property from the sale unless they can provide DLA Disposition Services with documentation that an error was made by DLA Disposition Services and they should have been issued the property or the property was never available for electronic screening in GSA personal property database GSAXcess®.

(ii) In many instances, the property remains at a DLA Disposition Services site after the title has been transferred. This property is ineligible for withdrawal to satisfy DoD needs. If the DoD Component intends to pursue purchasing the property from the commercial partner, transactions must be handled between the partner and the DoD Component without intervention from the DLA Disposition Services.

(iii) Pursuant to 41 CFR chapter 102, due to the potential for adverse public relations, every effort will be made to keep withdrawals from sales to a minimum. These efforts will include searching for assets elsewhere in the disposal process. Exceptions to this policy will be implemented only when all efforts to otherwise satisfy a valid need have been exhausted and the withdrawal action is determined to be cost effective and in the best interest of the government. DoD Component heads will ensure that withdrawal authority is stringently controlled and applied.

(iv) Make requests to the selling agency by the most expeditious means. With the exception of ICP or IMM and NMCS orders, requests will provide full justification including a statement that the property is needed to satisfy a valid requirement.

(v) Withdrawals may not be processed subject to property inspection for acceptability. Inspect property before requesting withdrawal.

(vi) Orders submitted by ICPs or IMMs do not require justification statements before award.

(vii) With the exception of ICPs and IMMs, minimum written information required in the package for withdrawal requests includes:

(A) Detailed justification as to why the property is required, including how the property will be used; such as applicability of materiel to active weapons systems.

(B) Mission impact statement from a support, procurement, and funding standpoint if property is not withdrawn from sale (*e.g.*, the effect on operational readiness requirements within a specified period of time).

(C) A summary of efforts made to find assets meeting the requirement from other sources, including consideration of substitute items.

(viii) When the DLA Office of Investigations, TSC Assessment Office, determines that property was incorrectly described, and that TSC or DEMIL requirements are applicable, property will either be withdrawn or a provision made to accomplish TSC or DEMIL, as appropriate. The TSC Assessment Office may request withdrawal of property and suspend further action regarding the property until the matter is resolved in accordance with the procedures in DoD Instruction 2030.08.

(ix) As property moves through the sales cycle, constraints are placed on requests for withdrawals from sale.

(A) The area manager can approve requests for withdrawal during the period between the end of screening and the date the property is referred to DLA Disposition Services for sale cataloging or until a delivery order is signed by the commercial venture partner. The area manager can also approve withdrawals prior to bid opening for items on authorized local sales.

(B) DLA Disposition Services can approve withdrawal requests from date of referral until the property is awarded. DLA Disposition Services can also return requests for withdrawal after award that do not include the required written information.

(x) DLA approval, with DLA legal concurrence, is required on any withdrawal request after the award but before removal.

(xi) When title has passed to the purchaser, the requestor must work directly with the purchaser. This includes commercial venture property. The SAR or SCO will provide contract information when requested.

(18) *Reporting requirement.* (i) In accordance with 10 U.S.C. 2583, the Secretary of Defense will prepare an annual report identifying each public sale conducted (including property offered for sale and property awarded) by a DoD Component of military items that are controlled on the U.S. Munitions List pursuant to 22 U.S.C. 121 and assigned a DEMIL Code of B in accordance with DoD 4160.28–M Volumes 1–3. For each sale, the report will specify:

(A) The date of the sale.

(B) The DoD Component conducting the sale.

(C) The manner in which the sale was conducted (method of sale).

(D) Description of the military items that were sold or offered for sale.

(E) The purchaser of each item, if awarded.

(F) The stated end-use of each item sold.

(ii) The report is submitted not later than March 31 of each year. The Secretary of Defense is required to submit to the Committee on Armed Services of the House of Representatives and the Committee on Armed Services of the Senate the report required by this section for the preceding fiscal year. DLA Disposition Services includes shipments made during the reporting period to its business partner.

(19) *Special program sales*—(i) *Resource recovery and recycling program.* (A) All DoD installations worldwide will have recycling programs as required by DoD Instruction 4715.4 with goals for recycling as outlined in Executive Order 13514.

(*1*) Pursuant to 10 U.S.C. 2577 and 48 CFR subpart 209.4 of the DFARS, each installation worldwide will have or be associated with a QRP or recycling program available to the installation to appropriately dispose of all recyclable materials for all activities. This includes all DoD facilities not on a military installation, tenant, leased, and government owned-contractor operated (GOCO) space.

(*2*) Installations having several recycling programs will incorporate them into the single installation QRP if possible, however a separate recycling program may be established to appropriately dispose of recyclable materials that cannot be recycled through the QRP.

(*3*) Each DoD Component will designate a coordinator for each QRP and ensure the GOCO facilities participate in QRP.

(B) Recyclable material includes material diverted from the solid waste stream and the beneficial use of such material. It is beneficial to use waste material as a substitute for a virgin material in a manufacturing process, as a fuel, or as a secondary material. Examples of material that can be recycled through QRP are provided in Table 1 of this section and those that cannot be recycled through QRP are provided in Table 2 of this section, both from the complete list in DoD Instruction 4715.4.

(C) Continually review each QRP to identify material appropriate for waste stream diversion, explore recycling methods, and identify potential markets. Additional recyclable material includes not only material generating profit, but material whose diversion from the waste stream generate a savings to the Department of Defense in disposal costs, or when diversion is required by State or local law or regulation. Material generated from non-appropriated or personal funds (*e.g.*, post consumer wastes from installation housing, and installation concessions) may be included.

TABLE 1—EXAMPLES OF MATERIAL THAT CAN BE RECYCLED THROUGH QRP

EXAMPLES OF MATERIAL THAT CAN BE RECYCLED THROUGH QRP	
1	Typical recyclable material found in the municipal solid waste stream (glass, plastic, aluminum, newspaper, cardboard, etc.).
2	Scrap metal from non-defense working capital fund activities.
3	Expended small arms cartridge cases that are 50-caliber (12.7 mm) and smaller not suitable for reloading that have been mutilated or otherwise rendered unusable and gleanings made unusable for military firing *e.g.*, crushed, shredded, annealed, or otherwise rendered unusable as originally intended prior to recycling in accordance with DoD Instruction 4715.4, except overseas.
4	Storage and beverage containers (metal, glass, and plastic).
5	Office paper (high-quality, bond, computer, mixed, telephone books, and **Federal Registers**).
6	Commissary store cardboard and exchange store wastes (cardboard), if the commissary or exchange chooses to use the QRP.
7	Scrap wood and unusable pallets.
8	Rags and textile wastes that have not been contaminated with hazardous material or HW.
9	Automotive and light truck-type tires.
10	Used motor oil.
11	Food wastes from dining facilities.
12	Office-type furniture that is broken or too costly to repair.
13	Donated privately owned personal property.

TABLE 2—EXAMPLES OF MATERIAL THAT CANNOT BE RECYCLED THROUGH QRP

EXAMPLES OF MATERIAL THAT CANNOT BE RECYCLED THROUGH QRP	
1	PM-bearing scrap.
2	Scrap metal generated from a defense working capital fund activity.

TABLE 2—EXAMPLES OF MATERIAL THAT CANNOT BE RECYCLED THROUGH QRP—Continued

3	Items, such as MLI indicated in item 10. of this table, that must be demilitarized (DEMIL) at any time during their life cycle, except for small arms and light weapons brass and gleanings as described in item 3. of Table 1.
4	Hazardous materials and waste.
5	Material that can be reused by the government for their original purpose without special processing. These items may or may not be MLI or CCLI.
6	Repairable items (*e.g.*, used vehicles, vehicle or machine parts).
7	Unopened containers of oil, paints, or solvents.
8	Fuels (uncontaminated and contaminated).
9	MLI or CCLI (Only DEMIL Code A items may be candidates for recycling.).
10	Printed circuit boards containing hazardous materials.
11	Items required to be mutilated prior to sale or release to the public.
12	Ammunition cans, unless certified as MPPEH Designated as Safe in accordance with DoD 4160.28–M Volumes 1–3 and DoDI 4140.62.
13	Usable pallets, unless DLA Disposition Services states otherwise.
14	Electrical and electronic components (These may be MLI or CCLI eligible only for Electronics Demanufacturing and DEMIL or mutilation.).

(D) Installation commanders authorized by their DoD Component head, as appropriate, may sell directly recyclable and other QRP materials, or consign them to the DLA Disposition Services for sale. If selling directly, installations will:

(*1*) Maintain operational records for annual reporting requirements, review, and program evaluation purposes.

(*2*) Manage processes, reports, and proceeds distribution in accordance with 41 CFR chapters 101 and 102 and DoD 7000.14–R.

(E) Excluded material is identified in Attachment 2 to DoD Instruction 4715.4, which provides a guide of eligible and ineligible materials.

(F) Although scrap recyclable materials do not require formal screening, those purchased with appropriated funds, as surplus property under the FPMR and FMR, are available to meet RTD requirements.

(G) When sold directly by the installation, use proceeds to reimburse the installation level costs incurred in operating the recycling program. After reimbursement of the costs incurred by the installation for operations (*e.g.*, operation and maintenance and overhead), installation commanders may use the remaining proceeds as authorized by DoD Instruction 4715.4.

(ii) *Commercial Space Launch Act (CSLA).* (A) The purpose of the CSLA, 51 U.S.C. Chapter 509, is to promote economic growth and entrepreneurial activity through the utilization of the space environment for peaceful purposes; encourage the private sector to provide launch vehicles and associated launch services; and to facilitate and encourage the acquisition (sale, lease, transaction in lieu of sale, or otherwise) by the private sector of launch property of the United States that is excess or otherwise not needed for public use, in consultation with Secretary of Transportation. Donation screening is not required prior to sale.

(B) The DoD Chief Information Officer (DoD CIO) has the primary responsibility for coordinating DoD issues or views with the Department of Treasury, other Executive department organizations, and the Congress on matters arising from private sector commercial space activities, particularly the operations of commercial ELVs and national security interests.

(C) The DLA Disposition Services is the primary office to conduct CSLA sales following the direction for pricing and disposition as specified in DoD Directive 3230.3 Sales will be by competitive bid to U.S. firms or persons having demonstrated action toward becoming a commercial launch provider. The DoD CIO and the Secretary of the U.S. Air Force (USAF) designated representative will support DLA Disposition Services, as necessary, in the sale or transfer of excess and surplus personal property to the private sector, including the identification of potential bidders and any special sales terms and conditions. The generating activity will assist, as necessary, in completing sales transactions.

(b) *Security assistance or FMS*—(1) *Statutory authority.* Authority for security assistance is provided primarily under 22 U.S.C. 2751 *et seq.* (also known as the Arms Export Control Act) and annual appropriation acts for foreign operations, export financing, and related programs.

(2) *Security assistance program requirements.* (i) Security assistance transfers are authorized under the premise that if these transfers are essential to the security and economic well-being of friendly governments and international organizations, they are equally vital to the security and economic well-being of the United States. Security assistance programs support U.S. national security and foreign policy objectives.

(ii) In coordination and cooperation with DOS, the Defense Security Cooperation Agency (DSCA) directs, administers, and provides overall procedural guidance for the execution of security cooperation and additional DoD programs in support of U.S. national security and foreign policy objectives; and promotes stable security relationships with friends and allies through military assistance, in accordance with DoD 5105.38–M.

(3) *Foreign purchased property.* Disposal initiatives and actions will be in accordance with DoD 5105.38–M or guidance provided by security assistance implementing agencies on a case-by-case basis.

(4) *FMS disposal process summary*—(i) *Defense disposal services.* (A) FEPP, excess, and surplus personal property may be made available to foreign countries and international organizations designated as eligible to purchase property or services in accordance with 22 U.S.C. 2151, 2321b, 2321j, 2443, 2751, and 2778 *et seq.* Such defense articles may be made available for sale under the FMS Program. Transactions under this authority are reimbursable.

(B) FMS transactions are completed by use of letters of offer and acceptance and the procedures specified in DoD 5105.38–M.

(ii) *Grant transfer of excess defense articles (EDAs).* 22 U.S.C. 2321j authorizes the U.S. Government to grant transfer of EDA to eligible foreign governments. For a transfer under this authority, DoD funds may not be used for packing, crating, handling, and transportation except under certain circumstances consistent with the guidance in 22 U.S.C. 2321j(e).

(iii) *FMS transportation.* (A) As a general rule, FMS customers are responsible for all transportation costs.

(*1*) The transportation costs can be written into the letters of agreement or the items can be shipped on a collect commercial basis. The implementing DoD Component or DLA Disposition Services will identify exceptions to this rule.

(*2*) Sensitive and some other FMS shipments may be made via the Defense Transportation System (DTS).

(*i*) Sensitive shipments not going through the DTS must be routed through a DoD-controlled port (Delivery Term Codes 8, B, or C). See Appendix E, paragraph H.1, Part II of the Defense Transportation Regulations 4500.9–R, ''Defense Transportation Regulations'', current edition (available at *http://www.transcom.mil/dtr/part-ii/dtr_part_ii_app_e.pdf*).

(*ii*) For these shipments, the implementing agency will provide separate instructions and funds citations. Transportation arrangements may be made by the supporting Transportation Office or DLA Disposition Services.

(B) Unless otherwise directed by the implementing agency or DLA Disposition Services FMS Office:

(*1*) Send small items collect via Federal Express or other parcel service to designated freight forwarder.

(*2*) Send less than truckload shipments collect via common carrier to designated freight forwarder.

(*3*) Prepare and send DD Form 1348–5, ''Notice of Availability/Shipment,'' for larger than truckload shipments to freight forwarder or other designated address. Upon receipt of DD Form 1348–5, the recipient will provide shipping instructions or advise of pick-up date. If shipping instructions are not received within 15 days after DD Form 1348–5 is issued, follow up with freight forwarder and notify DLA Disposition Services if they are the implementing agency.

(*4*) For sensitive Delivery Term Code 8 property, in accordance with Part II of the Defense Transportation Regulation 4500.9–R, and hazardous material property, the supporting transportation office must ensure that the property is released in accordance with all applicable regulatory requirements. The preferred option is to let the supporting transportation office accomplish notice of availability and property shipment processes.

(*5*) On rare occasions, property may be transferred on a no-fee basis. The implementing agency or DLA Disposition Services will provide appropriate instructions on a case-by-case basis.

(C) In accordance with 22 U.S.C. 2403, construction equipment, including but not limited to tractors, scrapers, loaders, graders, bulldozers, dump trucks, generators, and compressors are not considered EDA for purposes of this section.

(iv) *FMS eligibility.* Eligibility for FMS is listed in Table C4.T2 of DoD 5105.38–M. Eligibility to receive excess property as a grant pursuant to 22 U.S.C. 2151, 2321, 2751, 2778 *et seq.* is established by the DOS and provided to DSCA. DoD Components will follow the latest guidance from DSCA showing which countries are eligible under the various authorities.

(v) *Controlled assets.* (A) Foreign countries and international organizations may screen and request DLA Disposition Services assets during DLA Disposition Services reutilization screening periods.

(B) 10 U.S.C. 2562 prohibits the sale or transfer of fire equipment to foreign countries and international organizations until RTD has been accomplished. Fire equipment remaining after these periods may be made available to security assistance customers with a certification to DSCA that the property is not defective and has completed all required excess property processes.

(C) DSCA will provide guidance for the transfer of items.

(D) Pricing of FMS is governed by DoD 7000.14–R.

(c) *Reutilization or transfer, excess screening, and issue (includes donation of DLA Disposition Services assets)*—(1) *Authority and scope.* (i) The provisions of this section are based on the guidelines of 41 CFR chapters 101 and 102.

(ii) The scope of this section includes the RTD screening, ordering, issuing, and shipment of DoD FEPP, excess, and surplus personal property.

(A) These procedures apply to the Military Departments, FCAs, donees, eligible foreign governments and international agencies, and any other activities authorized to screen and order FEPP, excess, and surplus personal property.

(B) See § 273.8 for additional guidance on the DoD HAP, LEAs, DoD or Service museums, National Guard units, Senior Reserve Officer Training Corps (ROTC) units, morale, welfare, recreational activities (MWRAs), the MARS, Civil Air Patrol (CAP), and DoD contractors.

(C) See § 273.8 and paragraph (b) of this section for additional information on foreign governments and international organizations.

(2) *General.* (i) DoD policy, in accordance with 41 CFR chapters 101 and 102, is to reutilize DoD excess property and FEPP to the maximum extent feasible to fill existing needs before initiating new procurement or repair. All DoD activities will shop for available excess assets and review referrals for assets to satisfy valid needs. DLA Disposition Services provide asset referrals via front end screening to ICPs daily. See individual Military Department guidance regarding eligibility and authority to withdraw excess property from DLA Disposition Services.

(ii) Customers can electronically request specific NSNs for orders, whether DLA Disposition Services assets are available at the time the need arises. When an asset becomes available in the DLA Disposition Services inventory, an electronic notification will be sent to the customer for initiating an official order. See paragraph (c)(3)(vii) of this section for procedures on the automated want lists.

(iii) The UII mark, if applicable, will not be removed from a personal property item offered for RTD.

(3) *Screening for personal property*—(i) *Screening.* (A) DoD reutilization is accomplished electronically via MILSTRIP and DLA Transaction Services, through the DLA Disposition Services Web site.

(B) At the end of the DoD exclusive internal screening cycle, DoD excess property (excluding FEPP, scrap and HW) is transmitted to the GSAXcess®, and GSA assumes control of federal agency transfer and donation screening. The property remains in DLA Disposition Services accounts and can be viewed on their Web site.

(C) GSA federal screening is accomplished through the GSAXcess® platform that is a customer interface to the Federal Disposal System (FEDS). DoD personnel may shop in GSAXcess® at any time and search and select property from DoD and other FCAs. Transportation costs for other FCA property are borne by the DoD screener. DLA Disposition Services makes shipping arrangements for DoD orders in GSAXcess® and includes the transportation costs in the cost of the item.

(D) Enclosure 7 to DoD Manual 4160.21, Volume 2 and Enclosure 3 to DoD Manual 4160.21, Volume 4 provides additional information on screening for excess personal property by category.

(E) All references to days are calendar days unless otherwise specified.

(F) With electronic screening, physical tagging of property at a DLA Disposition Services site to place a ''hold'' until an order has been submitted is no longer authorized.

(G) DLA Disposition Services provides reasonable access to authorized personnel for inspection and removal of excess personal property.

(ii) *CONUS screening timeline for excess personal property*—(A) *Accumulation period.* DLA Disposition Services accumulates property throughout the week as it is inspected and added to the inventory system. As property is added to the inventory system, it is visible for ordering by DoD customers only. This accumulation period ends each Friday, prior to the start of the official 42 day screening timeline.

(B) *DoD and Special Programs screening Cycle (14 days).* DoD and the Special Programs identified in § 273.8 have exclusive ordering authority during the first 14 days of the screening timeline. DoD reutilization requirements have priority during this cycle, and property will not be issued to Special Programs until the end of this cycle.

(C) *FCA and donees screening cycle (21 days).* FCAs and GSA-authorized donees screen property in GSAXcess® during the following 21 days. FCA requirements have priority during this cycle, and property will not be issued to donees until the end of this cycle. During this cycle, DoD will search and select property in GSAXcess® rather than submit MILSTRIP orders, with the exception of priority designator (PD) 01–03 and NMCS requisitions. DoD customers will submit PD 01–03 and NMCS requisitions to DLA Disposition Services, who will immediately fill these orders and notify GSA to make the record adjustment in GSAXcess®.

(D) *GSA allocation to donees (5 days).* The following 5 days are set aside for GSA to allocate assets to fill donee requests. During this allocation period, no GSAXcess® ordering can be made.

(E) *Final reutilization/transfer/donation (RTD2) screening (2 days).* The final 2 days of screening are available to all RTD customers for any remaining property on a first come, first served basis.

(F) Table 3 of this section summarizes the priority of issue and the timelines associated with screening and issue of property.

TABLE 3—SUMMARY OF SCREENING AND ISSUE TIMELINES IN ORDER OF ISSUE PRIORITY

RTD Method	Eligibility	Screening period	Issuing period
Reutilization	DoD	Days 1–14	Days 1–42.
Reutilization	Special Programs	Days 1–14	Days 15–42.
Transfer	All Federal Agencies	Days 15–35	Days 15–42.
Donation	Authorized GSA Donees	Days 15–35	Days 36–42.
RTD2	All RTD Customers	Days 41–42	Days 41–42.
Sale	General Public	N/A	N/A.

(iii) *FEPP screening timeline.* (A) Screening timeline and procedures for FEPP will generally follow those listed in paragraph (c)(3)(ii) of this section.

(B) During contingency operations, the ASD(L&MR) may approve expedited screening timelines and changes to issue priorities.

(iv) *DoD screening methods.* (A) DoD reutilization screening is accomplished electronically via MILSTRIP and DLA Transaction Services through the DLA Disposition Services Web site. If the electronic method is unsuccessful, please fax the following on agency letterhead: Name, phone number, point of contact, internet provider (IP) address, and two signatures of authorized individuals to DLA Disposition Services Reutilization Office at fax commercial 269–961–7348 or DSN 661–7348.

(B) Local screening at the DLA Disposition Services sites is on-site (visual) viewing of excess property. Physical inspection of property may not be possible for assets at depot recycling control points (RCPs), receipts in-place, or remote locations.

(v) *GSAXcess® screening.* (A) Users must obtain an access code from GSA to screen through GSAXcess®. To learn about GSAXcess® and obtain access code information, see: *http://apps.fss.gsa.gov/Manuals/Feds_Users_guide.*

(B) DoD customers must obtain access from GSAXcess® to search and select property. The DoD Accountable (Supply) Property Officer must provide GSA a letter (on official letterhead) or email (from a ''.mil'' address) requesting access for their representatives and include addresses, phone numbers, email addresses, and DoDAAC of those authorized to select property from GSAXcess®. Customers may select items once the access is granted.

(C) DoD customers who only want to search for available property in GSAXcess® can also register for search only access at *www.gsaxcess.gov.*

(vi) *Screening exceptions.* Generally, property cannot be screened before it is entered on DLA Disposition Services site's accountable records. However, instances where screening prior to entry may be justified include:

(A) Property needed to fulfill emergency orders, (*e.g.,* PD 01–03, NMCS, disaster relief) and which may be processed as a ''wash-post'' transaction. The DLA Disposition Services site must be able to fully justify these actions and ensure a signed receipt copy of the DTID is returned to the generating activity.

(B) Backlog situations where usable property is in danger of being damaged by the elements due to a lack of adequate storage and an authorized customer is on location.

(vii) *Automated want lists.* (A) Customers may use the automated pre-receipt information to flag desired NSNs. Use of this tool does not guarantee the items will become available. If notified that the item is in the excess inventory, customers must use standard MILSTRIP order procedures. For more guidance, see *https://www.dispositionservices.dla.mil/rtd03/index.shtml.*

(B) Customers may submit automated searches for recurring NSNs through the DoD Property Search Web site at *https://www.dispositionservices.dla.mil/rtd03/index.shtml.* Results are emailed to the customer.

(C) Customers may also submit a ''Want List'' in GSAXcess®, which can help them locate excess property from civilian agencies.

(viii) *Specialized screening for ICPs.* (A) DLA Disposition Services will electronically report to designated ICPs those assets with valid NSNs meeting dollar value and condition code criteria established by each DoD Component. The notification will be sent electronically to the recorded DoD wholesale manager (ICP or IMM) concurrently with recording the excess in the DLA Disposition Services system for accounting for excess property in DoD. Component IMMs may view the NSNs they requested during the first 5 days of the accumulation period before the items become available to other DoD

activities. The ICPs must send their request to:

DLA Disposition Services, Hart-Dole-Inouye Federal Center, 74 North Washington Avenue, Suite 2429, Battle Creek, Michigan 49037.

(B) The DoD ICP or IMM will screen these notifications to determine if needs exist. DLA Disposition Services site excesses will be reutilized to satisfy known or projected buy and repair needs.

(C) Orders for property during the internal screening periods will be prepared according to MILSTRIP and submitted to DLA Disposition Services.

(ix) *Issues to and turn-ins by special programs and activities*—(A) *DoD HAP.* (*1*) The DoD HAP is authorized to dispose excess property through DoD DLA Disposition Services site channels.

(*2*) Providing non-lethal DoD excess personal property for humanitarian purposes is authorized pursuant to 10 U.S.C. 2557. Preparation and transportation of this property is carried out in accordance with 10 U.S.C. 2661. HAP allows DoD to make available, prepare, and transport non-lethal, excess DoD property for distribution by DOS for humanitarian reasons. The program is managed by the DSCA Office of Humanitarian Assistance and Demining.

(*3*) In most instances, property issues will be from DLA Disposition Services inventories. The most commonly requested types of property are medical equipment, field gear, tools, clothing, rations, light vehicles, construction, and engineering equipment. DLA Disposition Services sites will issue all property destined for the HAP, with the exception of drugs and biologicals (Federal Supply Classification Code (FSC) 6505), which may be issued directly by the Military Departments. HAP orders and issues will be documented on DD Form 1348–1A ''Issue Release/Receipt Document.''

(B) *LEAs.* In accordance with 10 U.S.C. 2576a, DLA has established an office to permit civil police authority to acquire excess DoD property, and the Web site *https://www.dispositionservices.dla.mil/rtd03/leso/index.shtml* provides information to assist with the process. LEAs can contact DLA Disposition Services at:

DLA Disposition Services, Hart-Dole-Inouye Federal Center, 74 North Washington Avenue, Suite 2429, Battle Creek, Michigan 49037, Toll free: 1–877–DLA–CALL, DSN: 661–7766, Commercial/FTS 269–961–7766.

(*1*) 10 U.S.C. 2576a authorizes the Secretary of Defense, in consultation with the Director, Office of National Drug Control Policy, and DOJ, to transfer excess DoD property, including small arms, light weapons, and ammunition, to federal and State LEAs, including counterdrug and counterterrorism activities. The federal program is known as the 1033 Program. The DLA Disposition Services has managerial responsibilities in support of such transfers and will establish business relationships with participating States by memorandum of agreement (MOA).

(*2*) LEAs will return sensitive or controlled DEMIL-required property originally ordered from DLA Disposition Services when no longer needed. DEMIL-required equipment that is the responsibility of the LEA must be demilitarized in accordance with DoD 4160.28–M Volumes 1–3. Due to constant changes and development of new technology, Table 4 of this section is only a partial list of NSNs that may contain radioactive components as identified for Army Navy (AN) night vision equipment codes in DoD 4160.28–M, Volume 2. These NSNs and many others should not be transferred to DLA Disposition Services sites. The turn-in activity will verify with the DLA Disposition Services site whether equipment contains radioactive components before turning in any night vision equipment.

TABLE 4—NSNS WITH RADIOACTIVE COMPONENTS

NSN No.	Radioactive component
5855–00–053–3142 ...	AN/TVS–4 (prototype)
5855–00–087–2942 ...	AN/PVS–1
5855–00–087–2947 ...	AN/PVS–2
5855–00–087–2974 ...	AN/PVS–1
5855–00–087–3114 ...	AN/TVS–2
5855–00–113–5680 ...	MX–8201
5855–00–156–4992 ...	AN/PVS–3A
5855–00–156–4993 ...	MX–8201A
5855–00–179–3708 ...	AN/PVS–2A
5855–00–179–3709 ...	MX–7833
5855–00–400–2619 ...	MX–7833A
5855–00–484–8638 ...	AN/TVS–2B
5855–00–688–9956 ...	AN/TVS–4
5855–00–688–9957 ...	AN/TVS–4
5855–00–760–3869 ...	AN/PVS–2B
5855–00–760–3870 ...	AN/TVS–4A
5855–00–791–3358 ...	AN/TVS–2A
5855–00–832–9223 ...	MX–7833
5855–00–832–9341 ...	AN/PVS–3
5855–00–906–0994 ...	AN/TVS–4
5855–00–911–1370 ...	AN/TVS–2
5855–01–093–3080 ...	AN/PAS–7A
5855–00–087–3144 ...	AN/TVS–2

(C) *DoD or service museums.* (*1*) Legal authority is provided by 10 U.S.C. 2572, which allows the loan, gift, or exchange of specified historic or obsolete or condemned military property. Approval authority for museum acquisitions from DLA Disposition Services sites expressly for the purpose of exchange must be granted by the activity having staff supervision over the museum. Approval authority includes:

(*i*) U.S. Army: Chief of Military History (DAMH–MD), 1099 14th Street NW., Washington, DC 20005–3402.

(*ii*) U.S. Navy: Curator for the Navy, Naval Historical Center, Building 108, Washington Navy Yard, Washington, DC 20374–0571.

(*iii*) U.S. Air Force: Director, National Museum of the United States Air Force, HQAFMC, 1100 Spaatz Street, Wright-Patterson AFB, Ohio 45433–7102.

(*iv*) U. S. Marine Corps: Marine Corps History Division, 3079 Moreel Avenue, Quantico, Virginia 22134.

(*v*) U.S. Coast Guard Coast Guard Historian, Commandant (CG–09224), U.S. Coast Guard Headquarters, Douglas a. Munro Building, 2703 Martin Luther King Jr. Avenue, South East Stop 7031, Washington, DC 20593–7031.

(*2*) The DoD or Military Department museums will use standard DoD processes to dispose excess property using DoDAACs.

(*3*) The DoD and Military Department museums may obtain property from DLA Disposition Services sites for use, display, or exchange. With the exception of historical artifacts, stockpiling of property obtained from DLA Disposition Services sources for future exchange is prohibited.

(*4*) The normal ordering procedures apply. The DD Form 1348–1A, in addition to routine information, will include:

(*i*) The museum's individual DoDAAC or the DoDAAC of the Service headquarters with central responsibility for historical property.

(*ii*) A statement if the property is to be used for display, exchange, or use (*e.g.,* property needed to maintain the museums' buildings and grounds, for day-to-day housekeeping operations, or to maintain displays).

(*iii*) Only DEMIL Code ''A'' property is requested. Examples of DEMIL Code A items suitable for housekeeping purposes by DoD museums may include: Federal Supply Classification Groups (FSGs) 52—hand tools; 53—hardware; 55—lumber; 56—construction materials; 61—electric wire; 62—lighting fixtures; 71—furniture; 72—furnishings; 75—office supplies; 79—cleaning equipment; 80—brushes and paints. Orders of property for exchange will reflect the DoDAAC of the DoD Military Department museums. An exception to this procedure applies to M151 series, M561, and M792 (Gamma Goat) vehicles. Although coded

as DEMIL Code A, exchange of the vehicles is prohibited.

(*5*) DLA Disposition Services sites will:

(*i*) Ensure DEMIL Code A property ordered by a museum for exchange purposes has no current challenges to that code. This applies to all items whether recorded in the DLA Logistic Information Service Federal Logistics Information System Master Item File or not, including scrap and captured military items. Excluded are the M151 series vehicles, hazardous property, and MLI and CCLI, which are not authorized for museum exchanges.

(*ii*) Ensure authorized property ordered by museums for exchange is released to the ordering museum personnel only. Identification of the individual is required. These personnel must be military or civilian employees of the museum, not volunteers or members of the museums' private supporting organizations.

(*6*) The DoD operating activities and Military Departments will:

(*i*) Maintain accountable records according to appropriate DoD and Service regulations of all items withdrawn from DLA Disposition Services sites, to include all materiel transactions, receipts from the DLA Disposition Services site, and transfer and exchange documents.

(*ii*) Provide to DLA Disposition Services a list of all the DoD museums and Service museums authorized to negotiate with DLA Disposition Services sites, including the name of the institution, address, telephone number, and the DoDAAC of the museum.

(D) *National Guard units.* (*1*) National Guard Units will use the standard DoD processes to dispose excess DoD property through the use of DoDAACs.

(*2*) Issues of excess DoD property and FEPP to National Guard units must be approved by the National Guard Bureau or the U.S. Property and Fiscal Officer (USP&FO), or their authorized representative, for the State in which the National Guard unit is located. Requests received from National Guard units that do not contain the signature of the USP&FO, their authorized representative, or the National Guard Bureau, will not be honored.

(E) *Senior ROTC units.* (*1*) Senior ROTCs will use standard DoD processes to dispose excess DoD property using DoDAACs.

(*2*) Military Departments' Senior ROTC units may obtain excess DoD property and FEPP from DLA Disposition Services sites to support supplemental proficiency training programs. Orders to DLA Disposition Services sites must be approved by the installation commander or designee, normally responsible for providing logistical support to the instructors group. Property will be issued to the accountable officer of the school concerned.

(F) *USCG.* As a recognized military service and a branch of the U.S. Armed Forces, and due to the association of the USCG to the U.S. Navy, DLA Disposition Services will accept USCG (DHS) excess property, USCG excess DoD property and FEPP for disposal. The principles outlined in paragraph (c)(3)(i) through (viii) of this section apply.

(*1*) USCG excess DoD property may be transferred to the nearest DLA Disposition Services site after internal USCG screening. Physical retention of the property by the USCG is preferred, especially if size or economics prevent physical transfer.

(*2*) Property physically turned in to the DLA Disposition Services site does not qualify for reimbursement.

(*3*) After the USCG completes all RTD screening for aircraft and vessels, DLA Disposition Services may provide sales services through an in-place MOU that outlines all USCG and DLA Disposition Services responsibilities.

(*4*) USCG aircraft may be transferred to the Aerospace Maintenance and Regeneration Group (AMARG), Davis-Monthan Air Force Base, Arizona, according to the ISSA between the USCG and the USAF.

(*5*) USCG orders must include a citation as to the USCG directive authorizing the unit to obtain the property listed on the order. In addition, the fund citation for transportation must be included on the DTID. Individual floating and shore units of the USCG may be delegated authority to order excess DoD property without Commandant, USCG approval. Indicate the delegating authority on all orders. The DLA Disposition Services site need not validate the authenticity of the authority, but only the fact that such authorization appears on the order.

(G) *U.S. Army Corps of Engineers (COE) civil works property.* (*1*) Based on the association of Civil Works with the U.S. Army, the COE will use Department of the Army DoDAACs to transfer personal property through DLA Disposition Services for disposal, including hazardous property through a service contract.

(*2*) COE civil works activities may order property through DLA Disposition Services as a DoD activity, using an assigned Army DoDAAC or as an FCA, using an address activity code through GSAXcess®.

(H) *MAP Property and Property for FMS.* DoD Directive 5105.22 and paragraph (b) of this section provide additional procedures for MAP property or for property that can be purchased by eligible organizations through FMS.

(*1*) Following the country decision to dispose through DLA Disposition Services, the country and Security Assistance Office will determine, in coordination with DLA Disposition Services, the proper disposal method (*e.g.*, DEMIL or mutilation requirements, security classification, reimbursement decisions).

(*2*) DLA Disposition Services, in coordination with the country and Security Assistance Office will make provision for in-country U.S. personnel, with assistance from local personnel, as appropriate, to act as DLA Disposition Services agent where turn-in by the generating activity and physical handling by the DLA Disposition Services site is impractical. In addition to MILSTRIP documentation requirements of DLM 4000.25–1, the generating activity will include the following data on the electronic turn-in document or DTID for MAP items.

(*i*) Country.

(*ii*) DTID number, to include at a minimum, in the first position, a service code (B, D, K, P, or T); in the second position, a country or activity code in accordance with DoD Directive 5230.20, and in the third position, the Julian date.

(*iii*) Identification of MAP Address Directory Security Assistance Offices initiating turn-in.

(*iv*) MAP account fund citation.

(*3*) Screen disposable MAP property for reutilization, FMS, and transfer to fill known federal needs. Process disposable MAP property surviving reutilization, FMS screening, and other transfers to sale.

(*4*) Process MAP property used for any purpose other than to meet approved DoD needs for RTD or sale on a reimbursable basis.

(*5*) The allocation of weapons, ammunition, flyable aircraft (rotary and fixed-wing) and selected property will be accomplished by DLA, as coordinated with the Office of Deputy Assistant Secretary of Defense for Supply Chain Integration.

(*6*) All other excess DoD property will be processed through DLA Disposition Services on a first-come, first-served basis.

(I) *DoD contractors and contractor inventory.* (*1*) The disposal of DoD contractor inventory is generally the contractor's responsibility in accordance with 48 CFR 45.602–1 of the Federal Acquisition Regulation, unless the

contract specifies that excess DoD property be returned to the government, as a result of a determination by the CO at contract expiration that DLA Disposition Services disposal would be in the best interests of the government. Property physically turned in to the DLA Disposition Services site does not qualify for reimbursement to the generating activity.

(*2*) If property is purchased and retained by a DoD contractor, net proceeds from the sale of the property will be deposited into the generating activity's suspense account.

(*3*) DLM 4000.25–1 permits the Military Department or Defense Agency management control activity (MCA) to withdraw or authorize the withdrawal of specified excess DoD property from DLA Disposition Services sites for use as government-furnished material or government-furnished equipment to support contractual requirements.

(*4*) Orders will be completed in accordance with Chapter 11 of DLM 4000.25–1 and include the DoDAAC assigned to the contractor. These orders must be processed by the MCA having cognizance of the applicable contract.

(*5*) Property ordered must be authorized and listed in the DoD contract(s) for which the property will be used, recorded in the ICP's MCA responsible for the contract, and the use of the ordered property approved by the CO or CO's representative (COR) for such contract(s). Each electronic or manual order (DD Form 1348–1A) must contain the signature and title of the CO or COR authorizing the withdrawal of excess DoD property from the disposal system. Each order must also contain the certification: ''For use under Contract No(s). ____.'' The certification should be signed by an authorized official and should indicate his or her official title.

(*6*) DLA Disposition Services sites cannot guarantee the property withdrawn meets minimum specifications and standards in terms of quality, condition, and safety.

(J) *NAF activities.* (*1*) Includes expense items and NAF resale goods procured by NAF activities such as military exchanges and MWRAs or Services, but excludes commissary store trust fund account equipment.

(*2*) DLA Disposition Services will not process property typically reclaimed from customers by the military exchanges such as used batteries, tires, oils, etc., as a part of their normal business. The NAF must process property in accordance with the guidance shown under Army and Air Force Exchange Service in DoD Manual 4160.21, Volume 4 for disposal of these assets.

(*3*) Acceptable types of property will be processed for federal screening only and are not eligible for donation. They are eligible for reutilization or transfer provided the generating NAF activities waive reimbursement or negotiate reimbursement with the ordering activity.

(*i*) The generating activity will provide a statement on the DTID that the property was purchased with NAF to obtain appropriate reimbursement. If the DTID does not contain this citation, the property will be processed as normal excess DoD property.

(*ii*) In addition to standard entries, documentation will contain the unit cost (in lieu of the Federal Logistics Data acquisition cost) recorded in the financial and accounting records of the NAF activity. DLA Disposition Services sites will use this value for inventory, reporting, reutilization, transfer, and sale purposes.

(*iii*) Reimbursement will be completed between the generating activity and the order for property reutilized or transferred. Sales proceeds will be deposited in accordance with Volume 11a, chapter 5 of DoD 7000.14–R (unless otherwise directed or superseded).

(*4*) DoD MWRAs or Services may order excess DoD property and FEPP through the MWRAs/Services that have a DoDAAC on file with the DAAS. Requests for small arms or light weapons must be ordered by servicing accountable officers only and be approved by the designated DoD focal point as identified in Table 4 of this subpart. See DoD Manual 4160.21 Volume 4 for guidelines on reutilization of small arms and light weapons.

(*5*) NAF property ordered by or through a servicing accountable officer will be used and accounted for the same as all procurements, according to applicable Military Department or Defense Agency procedures.

(*6*) Orders received by DLA Disposition Services sites directly from an MWRA or Military Department accountable officer will be for administrative and other purposes from which individuals will realize no direct benefits.

(*7*) Orders will contain the MWRA or Service account number, the signature of the MWRA or Service Accountable Officer, and a statement that the property obtained without reimbursement will be identified separately in accounting records from property for which reimbursement was made. The order will include the statement that, when such property is obtained without reimbursement is no longer needed, it will be turned in to the nearest DLA Disposition Services site and that no part of the proceeds from sale or other disposition will be returned to the MWRAs or Services. Perpetuate this information from the order in follow-on documentation.

(*8*) If the property is not reutilized, transferred, or sold, DLA Disposition Services will notify the NAF activity that accountability will revert to the NAF activity and further disposal processing will be the responsibility of the NAF activity. If the DLA Disposition Services site has taken physical custody, the NAF activity will be responsible for retrieving the property.

(K) *MARS.* (*1*) MARS is an appropriated fund activity that operates under the jurisdiction of the Military Departments and is an integral part of the DoD communication system. MARS units will use standard DoD processes to dispose excess DoD property using DoDAACs.

(*2*) The Military Departments responsible for MARS are authorized to order excess DoD property and FEPP through their respective accountable officers. The following ordering stipulations apply:

(*i*) Designation of accountable officers and representatives authorized to screen and obtain excess DoD property and FEPP at DLA Disposition Services sites is described in this section.

(*ii*) The property ordered is for immediate use by a MARS member or member station for its intended purpose; property may not be acquired for storage. When property requested is to be used for reclamation, written approval for such action must be obtained in advance from the Military Department MARS chief in coordination with the accountable officer. Property ordered for reclamation is limited to materiel in DCC X or S.

(*iii*) Excess DoD property and FEPP ordered from a DLA Disposition Services site for MARS may be shipped to a DoD activity or picked up at a DLA Disposition Services site by personnel who are appropriately identified and approved. Property ordered for reclamation is designated for local pickup only at the DLA Disposition Services site. Maintain accountability of residue in accordance with Military Department directives.

(*3*) The accountable officer will maintain accountability for all property acquired and issued to MARS members and MARS member stations. The property remains government property.

(*4*) When the property is no longer needed for use by the MARS, the accountable officer arranges for the equipment to be turned in to the nearest

DLA Disposition Services site, if economically feasible. If it is not economically feasible to turn in the property, the accountable officer will employ A/D procedures according to Enclosure 4 of DoD Manual 4160.21, Volume 2.

(*5*) The respective Military Department may limit MARS orders to selected FSCs.

(*6*) The release of property to MARS activities is governed by the following procedures:

(*i*) *Army MARS.* In CONUS, the authority to order and obtain excess DoD property and FEPP to fill valid requirements is vested in the accountable MARS Program Manager (MPM) appointed by the Chief, Army MARS. Outside the CONUS, the authority to order and obtain excess DoD property and FEPP for the Army MARS program is vested in the 5th Signal Command MARS Director (Europe); 1st Signal Brigade U.S. Army Information System Command (USAISC) (Korea); USAISC Japan; and USAISC Western Command (Hawaii). The MPM who is the accountable officer appointed by the Chief, Army MARS will originate and sign all orders. Process orders through the applicable accountable officer for MARS equipment.

(*ii*) *Navy/Marine Corps MARS (NAVMARCORMARS).* In CONUS, the authority to originate orders for excess DoD property and FEPP to fill valid requirements in the NAVMARCORMARS program is vested in the Chief, NAVMARCORMARS; Deputy Chief, NAVMARCORMARS; Directors of the 1st, 2nd, 3rd, 4th, 5th, and 7th MARS Regions; and the Officer in Charge, Headquarters Radio Station. All orders must be signed by the Chief, NAVMARCORMARS, or the Deputy Chief, NAVMARCORMARS. Process orders through the applicable accountable officer. Outside the CONUS, the authority to originate orders comes from Chief, NAVMARCORMARS; the Deputy Chief, NAVMARCORMARS; or a regional director or a specific designee of the Chief, NAVMARCORMARS. Process orders through the applicable accountable officer.

(*iii*) *USAF MARS.* The Office of the Chief, USAF MARS, and staff, active duty Installation MARS Directors (IMDs), and active MARS affiliates are authorized to screen and identify property for USAF MARS use. MARS affiliates are identified by a valid AF Form 3666, ''Military Affiliate Radio System Station License and Identification Card,'' signed by the Chief, USAF MARS. The IMD is appointed in writing by the installation commander or a designated representative; this appointment constitutes authority for screening and identification of property. Orders for property for MARS reutilization must be approved by the Chief, USAF MARS, or designated representative; this approval authority cannot be delegated. All approved orders will be processed through the USAF MARS Accountable Property Officer or designated alternate, who will initiate and sign a DD Form 1348–1A to authorize release of identified property. Authority to sign release documents will not be delegated. The accountable officer maintains current and valid identification of their MARS members to prevent unauthorized screening by MARS members or former members.

(L) *CAP.* (*1*) The CAP is the official auxiliary of the USAF and is eligible to receive excess DoD property and FEPP without reimbursement subject to the approval of the Headquarters USAF, CAP (HQ CAP–USAF). Title to the property is transferred to the CAP upon the condition that the property be used by the CAP to support valid mission requirements. Authority for the CAP members to screen and obtain excess DoD property will be in writing and signed by an authorized official of the CAP–USAF. HQ CAP–USAF retains the authority to approve and control the types and amounts of items obtained by the CAP.

(*2*) The CAP will remain accountable for all property acquired from the DoD disposal system and will maintain and safeguard the property from loss or damage. The CAP and its members are strictly prohibited from selling, donating, or bartering property previously obtained from the DoD disposal system under any circumstances.

(*3*) The CAP is not eligible to screen or receive AMARG aircraft reported by the Military Departments and other governmental agencies. If flyable non-AMARG category ''A'' aircraft made available for screening by an owning Military Department are selected for issue and approved by the HQ CAP–USAF to fulfill valid CAP mission needs, the following procedures apply:

(*i*) *Flyable aircraft.* The head of the owning Military Department will issue the aircraft to the accounts specified by the HQ CAP–USAF, ensuring that data plates and all available historical and modification records accompany the aircraft. The aircraft will be issued to the CAP upon condition that it be used by the CAP to support valid mission requirements. Prior to issuance, the appropriate CAP corporate officer (wing commander or higher) will execute a conditional gift agreement that specifies that the aircraft (parts, etc.) be issued and delivered to AMARG when it becomes excess to CAP's mission needs. When the aircraft is no longer needed by the CAP, or as otherwise directed by the HQ CAP–USAF, the CAP will make arrangements through the HQ CAP–USAF for issue and delivery of the aircraft, data plates, and historical and modification records to AMARG.

(*ii*) *Reclamation of parts.* If the HQ CAP–USAF elects to allow the CAP to use the aircraft for parts reclamation, the HQ CAP–USAF will contact the owning Military Department to make arrangements concerning reclamation of parts by the CAP. If the CAP declines to reclaim parts and components from the aircraft, the CAP will arrange through the HQ CAP–USAF for issue and delivery of the aircraft, data plates, and historical and modification records to AMARG.

(*iii*) *CAP aircraft.* All CAP aircraft delivered to AMARG will be reported to the GSA for use by FCAs and authorized donees. The CAP and its members are strictly prohibited from selling, donating, or bartering aircraft obtained from a Military Department under any circumstances.

(*4*) The CAP units will use assigned DoDAACs beginning in ''FG'' to transfer and order excess personal property.

(*5*) CAP members will identify themselves for pickup of property as stated in this section.

(M) *Federal Civilian Agencies (FCAs).* (*1*) These organizations include any non-defense executive agency or any member of the legislative or judicial branch of the government.

(*2*) The processes discussed in this section apply to FCAs transferring to and ordering excess DoD property from DLA Disposition Services sites.

(*3*) FCAs that want to use DLA Disposition Services for disposition management instead of GSA are required to review and follow instructions provided on the DLA Disposition Services Web site and to:

(*i*) Comply with 31 U.S.C. 1535 (also known as the Economy Act).

(*ii*) Initiate an Economy Act Order with DLA Disposition Services Comptroller for establishing financial transactions. Final acceptance of the Economy Act Order constitutes authority for FCAs to use DLA Disposition Services. The Economy Act Order must be renewed on October 1 of each year. DLA Disposition Services transaction activity billing (TAB) rates, sales rates, and actual disposal rates are used for billing FCAs. TAB rates are available on the DLA Disposition

Services Web site. DLA Disposition Services will bill and the FCA will pay all costs for services rendered. Billing documentation will include contract line item number, administrative, and services costs, and will be processed quarterly.

(*iii*) Ensure all laws and regulations are properly met prior to initiating a transfer transaction. Use DoD Instruction 4160.28; 41 CFR chapters 101 and 102; 48 CFR subpart 9.4 and 48 CFR 45.602–1, 52.233–1, and 14.407 of the FAR, current edition; and 5 U.S.C. 552, Volume 11a, Chapter 5 of DoD 7000.14–R, and Office of Management and Budget Circular A–76, ''Performance of Commercial Activities'' (available at *http://www.whitehouse.gov/omb/circulars_a076_a76_incl_tech_correction*) as governing documents.

(*iv*) Comply with DLM 4000.25–1, since in-transit control requirements are not applicable to FCA turn-ins.

(*v*) Comply with § 273.7(d), (e), and (f) for transferring excess DoD property, using DD Form 1348–1A or DD Form 1348–2, ''Issue Release/Receipt Document with Address Label,'' as DTIDs. Schedule turn-ins with the DLA Disposition Services site and assume responsibility for delivering usable and scrap property to DLA Disposition Services sites. Non-hazardous property may be received in-place using the standard DoD receipt in-place processes. Hazardous property cannot be physically accepted at the DLA Disposition Services site and will be processed in-place only, in accordance with paragraphs (c)(3)(viii)(M)(*3*)(*vi*) and (*vii*) of this section. Property will normally be turned in as individual line items; however, batchlotting by FSC of non-hazardous items with a combined acquisition value of up to $800 is permitted. Identify the transaction by using their officially assigned FCA activity address code (AAC). The first position of the AAC begins with 1 through 9. Annotate ''XP'' funding code in blocks 52 and 53 and a disposal authority code of ''F'' in position 64 of the DTID. Annotate the DLA Disposition Services Economy Act Order Assigned Number in block 27. Include appropriate hazardous property documents containing the required information found in Volume 4 of DoD 4160.21–M. Ensure that no radioactive material, waste, or other excluded hazardous property is turned in to the DLA Disposition Services site. Cover costs associated with substantiated sale contracts claims, if negligence or fault is established. Contact the appropriate DLA Disposition Services site for procedures to use when inventory discrepancies surface for property that the FCA is designated the custodian. The FCA will research and provide a report of the lost, damaged, or destroyed property. Procedures are contained in accordance with Volume 12, Chapter 7 of DoD 7000.14–R.

(*vi*) Work with DLA Disposition Services to obtain HW disposal contract support, pursuant to the provisions of the FAR; for hazardous property, FCAs will define disposal service requirements for HW disposal and provide a yearly estimate of HW streams that may be generated and placed on DLA Disposition Services disposal service contracts; cover costs associated with substantiated contracts claims, if negligence or fault is established; maintain physical custody of hazardous property; provide a designated FCA representative to act as a CO's technical representative during pickup of hazardous property, and identify who will be trained and authorized to release the property for shipment, including signing shipping documents according to the procedures provided in 49 CFR part 172, subpart H.

(*vii*) Comply with the following liability provisions. Should any DLA HW disposal contractors' actions on behalf of the FCA result in a notice of potential liability to DLA or the FCA under 42 U.S.C. 9601 *et seq.* (also known as the Comprehensive Environmental Response, Compensation and Liability Act), 42 U.S.C. 6901 *et seq.* (also known as the Resource Conservation and Recovery Act), or any other provision of federal or State law, immediate notification will be provided to DLA Disposition Services or the FCA. The FCA retains ultimate liability for hazardous property; FCAs will be responsible for environmental response costs attributable to their generated hazardous property. FCA is considered the generator for reporting purposes in accordance with 42 U.S.C. 6901 *et seq.* and 9601 *et seq.;* according to the terms of DLA Disposition Services HW disposal contracts, DLA Disposition Services disposal contractors are responsible for spills or leaks during the performance of their contracts, which result from the actions of the contractors' agents or employees; at no time will the DLA Disposition Services site dispose FCA excess DoD property or any provision of a HW contract for FCA property be interpreted or construed to require that funds be obligated or paid in violation of 31 U.S.C. 1341 or any other provisions of law.

(*4*) FCAs will:

(*i*) Work with DLA Disposition Services for DEMIL-required disposal support in accordance with the provisions of DoD Instruction 4160.28.

(*ii*) Reimburse DLA Disposition Services for A/D-related services.

(*iii*) Continue to turn in PM-bearing property at no charge in support of the DoD PMRP according to the procedures in Enclosure 5 to DoD Manual 4160.21, Volume 2. These transactions are accomplished through an ISSA.

(*iv*) Pay for all services rendered, according to established requirements and fees.

(*5*) Two months prior to the Economy Act Order's expiration, the FCA will notify the DLA Disposition Services Comptroller whether continued services are desired.

(*i*) If the Economy Act Order has not been re-established, DLA Disposition Services will continue to receive property for 60 days.

(*ii*) FCAs will continue payments until all property that was received within the fiscal year has been processed, even if the Economy Act Order has expired.

(*iii*) FCAs will pay at the rates established or re-established and maintain internal procedures to track DTIDs against billings for reconciliation.

(*6*) The policies in 41 CFR chapter 101 will be implemented when:

(*i*) An official Economy Act Order is finalized and the DLA Disposition Services Finance Office ensures that an officially assigned FCA AAC is in the DLA Disposition Services Accounting System. (This will indicate to DLA Disposition Services sites that receipt of excess property from the requesting FCA is authorized.)

(*ii*) A provisional copy or signed copy of a DD Form 1348–1A is the instant at which accountability for the FCA property (non-hazardous or hazardous) is transferred to a DLA Disposition Services site.

(*7*) If at any time any issue requires resolution, a team approach will be used at the turn-in activity and DLA Disposition Services site level. Disputes that cannot be resolved will be elevated to the next corresponding level of the FCA and the DLA Disposition Services. If necessary, alternative dispute resolution will be used.

(*8*) DLA Disposition Services sites will:

(*i*) Reserve the right to refuse any turn-in due to workload or resource constraints if support would seriously impair the DLA mission for the DoD.

(*ii*) Receive and screen FCA property using the same method used for excess DoD property, except property will not be made available to those special program organizations who, because of enabling legislation, may only obtain

excess DoD property; *e.g.*, HAP, law enforcement support offices, and SEAs.

(*9*) Sales proceeds, if any, will be deposited into the U.S. Treasury as miscellaneous receipts, unless otherwise specified by law. No reimbursement of proceeds will be made to the FCA. Contract claims resulting from the sale of federal property may be the responsibility of the FCA.

(*10*) For hazardous property, DLA Disposition Services will notify FCAs of any:

(*i*) New procedures pertaining to the disposal process or funding changes. HW contracts may be modified by mutual written consent of the parties. Modifications requiring resource changes may be given with enough advance notification for revisions or adjustments to be made during the budget formulation process and the hazardous disposal service contract process.

(*ii*) Proposed changes to administrative support costs at least 60 days in advance of a change.

(*11*) DLA Disposition Services will ensure DEMIL-required property and property that may require export controls are processed appropriately. Property requiring DEMIL may be shipped to an alternate location either by DLA Disposition Services or by an FCA. These charges are included in the TAB rates.

(*12*) FCAs desiring to order excess DoD property from DLA Disposition Services sites will follow the GSA procedures for acquiring property through GSAXcess®. Once excess DoD property is physically obtained from DLA Disposition Services, the property belongs to and must be disposed by the FCA. This includes property that is DEMIL or mutilation required. Turn-in of previously ordered property from the DLA Disposition Services will be accepted from only those FCAs that have established an Economy Act Order.

(*13*) FCAs may continue to participate in the DoD PMRP at no charge, in accordance with Enclosure 5 to DoD Manual 4160.21, Volume 2. These transactions are accomplished via an ISSA between DLA Disposition Services and FCAs.

(O) *U.S. Postal Service (USPS).* (*1*) USPS is not authorized to dispose excess DoD property through DLA Disposition Services without an FCA intragovernmental agreement.

(*2*) If such an agreement is executed:

(*i*) Items of a strictly postal nature, such as a carrier satchel embossed ''U.S. Mail,'' postal scales, or other equipment so similar in nature or design to official USPS equipment as to cause confusion may not be turned in to DLA Disposition Services sites, sold, or disposed to the general public until the USPS has been notified of the intended disposition and offered an opportunity to inspect the equipment. DLA Disposition Services sites will notify local post office inspectors of the existence of this property and arrange for its inspection if the USPS wants to prevent it from falling into the hands of unauthorized persons.

(*ii*) DoD purchased or owned postal equipment with official postal identification markings may be transferred to the USPS through DLA Disposition Services site processing, under the standard transfer policies in 41 CFR chapter 101. If transferred from DoD Components without going through an official DLA Disposition Services site, the DoD activity will negotiate with USPS for fair market reimbursement.

(*iii*) Property not transferred that contains markings that would tend to confuse this property with official USPS equipment will have the markings removed before release for DLA Disposition Services site processing.

(*iv*) Excess DoD postal equipment loaned to DoD Components by the USPS will be returned to the USPS.

(P) *American National Red Cross.* Property that was processed or donated by the American National Red Cross to a Military Department and becomes excess DoD property may not be disposed without notice to and consultation with the American National Red Cross. This property will be returned without reimbursement to the American National Red Cross upon request, if that organization pays packing and shipping costs.

(Q) *DoD Computers for Learning (CFL).* The DoD CFL program implements Executive Order 12999, ''Educational Technology: Ensuring Opportunity for All Children in the Next Century'' and enables DoD to transfer excess IT equipment to pre-kindergarten through grade 12 schools and educational non-profit organizations through a DLA Disposition Services Web-based program. The DLA Disposition Services program replaces the DoD Computers for School, Educational Institution Partnership Program that was overseen by the Defense Information Systems Agency.

(*1*) Eligible educational organizations serve pre-kindergarten through grade 12 students and are public, private, or parochial schools or educational nonprofits classified as tax-exempt under section 501c of the United States tax code. Schools and educational nonprofits must be located within the United States and its territories.

(*i*) Schools must register in the DLA Disposition Services Web-based CFL program and complete all point of contact and profile information.

(*ii*) Schools must ensure that IT equipment transferred will be used for student and faculty training to augment existing IT equipment, to strengthen their infrastructure, or for other academic-related programs.

(*iii*) All costs incurred in connection with the transfer of equipment through the CFL will be the responsibility of the school and include: Expenses in connection with the school's inspection of the IT equipment at DoD sites; cost of packing, crating, marking, and loading the equipment on the carrier's conveyance for transportation; and cost of transportation from DoD sites.

(*2*) DoD IT equipment FSG 70 with a DEMIL Code of A and DEMIL Code of Q with an Integrity Code of 6 that is located in CONUS and has been accepted to a DLA Disposition Services site's accountability records is eligible for transfer within DoD CFL once DoD screening is complete and the inventory is not requisitioned by DoD.

(*3*) IT equipment is available on an ''as-is'' basis, without warranties from DoD as to the condition of the equipment. Eligible equipment includes mainframes, minicomputers, microcomputers, modems, disk drives, printers, and items that are defined within the FSG 70 and are appropriate for use in CFL.

(*4*) After the DoD excess screening is completed, providing there are no DoD requests, DLA Disposition Services will:

(*i*) Make provisions for schools to receive information concerning DoD IT equipment that is available for transfer.

(*ii*) Notify the schools of available equipment that matches the profile submitted by the school.

(*iii*) ''Freeze'' the equipment when the school verifies a need so that other schools cannot be offered the same equipment.

(*iv*) Review, approve, and notify generating activities to transfer to a school by generating a MRO from DLA Disposition Services system for accounting for excess surplus property in DoD to decrement quantity and preclude transmission to the FEDS.

(*v*) While holding for transfer to schools, the following applies: 7-day accumulation (DoD can order anytime) and 14-day DoD screening (DoD can order anytime).

(*vi*) On day 14, if still available, DLA Disposition Services will freeze the property and create a MILSTRIP initiating a transfer to school

transaction. DLA Disposition Services will send MILSTRIP to the generating activity, who will arrange for the school to remove the item. Schools authorized a transfer are responsible for arranging the pickup or shipping of IT equipment.

(*vii*) The IT equipment not designated to schools during the DoD CFL timeframe will be transmitted to GSAXcess® for FCAs and donees.

(*viii*) Generating activities can specify a school for intended transfer once DLA Disposition Services has accountability of the equipment, through the DLA Disposition Services Web-based CFL program. From the DLA Disposition Services Home Page, the user may click on Property Search for Military, Federal, State, and Special Programs, then click on ''Computers for Learning.'' The CFL Program enables the generating activity to view the IT equipment that was turned in under their DoDAAC and then designate that equipment to approved schools. The generating activity has 7 days to make this selection; otherwise, the equipment can be viewed by any eligible educational activity.

(*ix*) Equipment not identified by a generating activity for a specific school will be made available to schools and educational non-profit organizations that are approved within CFL.

(*x*) The authorized school is responsible for coordinating with the generating activity for the removal of equipment.

(*xi*) The authorized school has 14 days after receipt of authorization to remove the equipment.

(*xii*) If the school does not remove the equipment within the 14 days, the generating activity will notify the DLA Disposition Services site of the non-removal.

(*xiii*) Upon receipt of notification, the DLA Disposition Services site will notify DLA Disposition Services to cancel the order.

(R) *Firefighter Transfer Program.* The DoD has authorized the U.S. Department of Agriculture Forestry Service (USDA FS) to manage DoD firefighting property transfers provided for in accordance with 10 U.S.C. 2576b. Title to all Firefighter Property Transfer Program property will pass to the State upon:

(*1*) The State taking possession of the equipment (such as removing or having the equipment removed from a DLA Disposition Services site).

(*2*) The State receiving a DD 1348, ''DoD Single Line Item Requisition System Document (Manual),'' or SF 97 or both for the equipment. The DD Form 1348 or SF 97 will indicate which property requires DEMIL (DEMIL Codes C, D, and F).

(*3*) The USDA FS will track all equipment requiring DEMIL until final disposition and require the State to ensure that such equipment is either transferred to another DoD agency authorized to receive it or is returned to a DLA Disposition Services site when no longer required. USDA FS will require the State coordinate any such transfers and returns with the Distribution Reutilization Policy Directorate at DLA prior to the transfer. The recipients are responsible for funding shipment or removal.

(x) *Expedited processing (EP).* (A) EP is the approved reduction of screening timeframes. In the zone of interior (ZI), EP may be used on a case-by-case basis. Situations where EP may be considered include backlog situations, potential deterioration from outside storage, or other compelling reasons.

(B) GSA is the approving authority for EP for non-DEMIL required property within the ZI. DLA Disposition Services is the approving authority for DEMIL-required property within the ZI.

(C) Current automation technology allows items going through EP to be visible on the DLA Disposition Services Web site and GSAXcess®.

(D) In contingency operations the supported Combatant Command has the authority to accelerate screening timelines based on mission requirements and operational tempo.

(xi) *Screener identification and authorization.* (A) Individuals visiting DLA Disposition Services sites to view, order, or remove property or for any other reason are required to provide proper identification as authorized representatives of a valid recipient activity.

(*1*) Upon arrival at the DLA Disposition Services site, the individuals will sign the vehicle or visitor register indicating the vehicle registration number and the purpose of their visit.

(*2*) Visitors representing donation recipients will only be allowed to complete the tasks identified under ''purpose of visit'' on the vehicle or visitor register.

(*3*) All screeners will specify the DoDAAC or AAC for which they are inspecting.

(B) DoD screeners will further identify themselves as authorized representatives of a DoD Component by means of a current employee or Military personnel identification issued by the DoD activity.

(C) FCA screeners will present current employee identification as valid authorization. This also applies to screeners representing mixed-ownership USG corporations.

(D) Non-federal screeners will present an authorization on the letterhead of the sponsoring activity, identifying the bearer and indicating the nature of the authorization. This letter of authorization will be updated at least annually or as changes occur.

(E) All SEA screeners will present a valid driver's license or other State-approved picture identification or the letter of authorization.

(F) DLA Disposition Services sites will refer problems in identifying screeners to the activity commander. For FCA and donation screeners, refer to the proper GSA regional office.

(xii) *Screening for property at DLA Disposition Services sites.* (A) DLA Disposition Services sites will assist customers interested in obtaining property by referring them to the DLA Disposition Services Web site or by providing guidance for physical inspection and location of property. Assistance may also include use of a customer-designated personal computer to screen assets worldwide and establish a pre-defined customer want list.

(B) When a prospective donation recipient contacts a DLA Disposition Services site or military installation regarding possible acquisition of surplus property, the individual or organization will be advised to contact the applicable SASP for determination of eligibility and procedures.

(4) *Orders for FEPP, excess, and surplus property from DLA Disposition Services and GSA*—(i) *General.* (A) DoD activities, FCAs, and other authorized activities are permitted to order DoD FEPP, excess, and surplus personal property based on the property status at the time the authorized screener identifies its availability from the DLA Disposition Services Web site. This property may be ordered through DLA Disposition Services or GSA.

(B) DLM 4000.25–1 requires orders for property on the DLA Disposition Services site's accountable records to be prepared on DD Forms 1348–1A or 1348–2. The use of the DLA Disposition Services Web site allows orders to be processed without hard copies of DD Forms 1348–1A or 1348–2. A separate order is required for each line item on a DLA Disposition Services site's inventory (except batchlots that are grouped together). The shopper will furnish the appropriate information either electronically or by hard copy.

(C) Orders for property in the GSA screening cycle will be submitted through GSAXcess®. Customers are required to complete and submit the SF 122 ''Transfer Order Excess Personal Property'' to GSA. GSA will then

transmit the order to DLA Disposition Services.

(D) DoD activities (other than MWRAs or Services, which are covered in § 273.6) must request Military Department or Defense Agency excess and FEPP through servicing accountable officers or their designated representatives.

(E) See § 273.6 for special guidance affecting USCG ordering.

(F) U.S. Army accountable supply officers should check with their finance accounting office prior to requesting items from DLA Disposition Services. Often, Army customers are billed internally for the items they have ordered from DLA Disposition Services.

(G) The following principles apply to acquiring property from these sources, including Federal regulations, which apply to the Department of Defense, special programs and activities, FCAs, and donees when acquiring excess or surplus personal property:

(*1*) There must be an authorized requirement.

(*2*) The cost of acquiring and maintaining the excess personal property (including packaging, shipping, pickup, and necessary repairs) does not exceed the cost of purchasing and maintaining new materiel and does not exceed the value of property requested.

(*3*) The sources of spare parts or repair and maintenance services to support the acquired item are readily accessible.

(*4*) The supply of excess parts acquired must not exceed the life expectancy of the equipment supported.

(*5*) The excess personal property will fulfill the required need with reasonable certainty without sacrificing mission or schedule.

(*6*) Excess personal property must NOT be acquired with the intent to sell or trade for other assets.

(*7*) DoD activities will request only that property that is authorized by the parent HQ or command. Activities may not request quantities of property exceeding authorized retention limits.

(H) The special screening programs will request only property that is authorized by the program or activity accountable officer or program manager, whichever is applicable. If the special screening programs want DLA Disposition Services site to verify the FSC has been authorized before release, the accountable officer or program manager must provide a current authorized FSC list to the DLA Disposition Services site. The removal agent must sign any certification required, acknowledging understanding of rules of disposal, prior to removal of the property.

(I) The Military Department accountable officer who designates DoD individuals to sign orders on their behalf must provide DLA Disposition Services sites with an electronic letter of authorization, identifying those individuals. The template for the letter is on the DLA Disposition Services Web site. It will include the full name, activity, DoDAAC, telephone number, address, and signature of the individuals authorized to sign and authenticate MROs. These individuals may be different from those who are the initial shoppers or those picking up the property.

(ii) *Emergency requests.* (A) Telephone requests during non-duty hours may be made by contacting the DLA Disposition Services staff duty officer (SDO) (DSN 661–4233; Commercial, 269–961–4233). Under these circumstances, the SDO will record the request and will contact the DLA Disposition Services program manager to initiate proper action.

(B) If a DoD activity has an emergency need for a surplus DoD item in the possession of a SASP, it may be requested from that SASP. The acquiring DoD activity must pay any costs of care, handling, and transportation that were incurred by the SASP in acquiring this property.

(C) For requests for property to fill training aid and target need orders, see ''Training Aids and Target Requirements'' in paragraph 147 of Enclosure 3 of DoD Manual 4160.21, Volume 4.

(iii) *Late orders.* (A) If a DoD order is received after the screening timeline has expired, the customer will provide justification as to the true necessity for the property requested, indicating why other comparable property in the DLA Disposition Services inventory does not satisfy the need. See paragraph (a) of this section for more guidance if the property needs to be withdrawn from sale.

(B) Orders for property received during the GSAXcess® screening period must be submitted according to GSA ordering procedures.

(iv) *Requests for small arms and light weapons.* Small arms and light weapons (see § 273.12) will be processed according to the guidance in DoD Manual 4160.21, Volume 4. Table 5 of this section contains a list of Military Department and Defense Agency designated control points authorized to initiate orders or through which orders must be routed for review and approval before issue can be effected.

TABLE 5—DOD DESIGNATED CONTROL POINTS FOR SMALL ARMS AND LIGHT WEAPONS ORDERING, REVIEWING, AND APPROVING

Service/Agency	Control point
Army	Director of Armament and Logistics Activity, Chemical Acquisition, ATTN: AMSTA–AC–ASI, Rock Island, IL 61299–7630, Telephone: DSN 793–7531, Commercial: (309) 782–7531.
Air Force	WR–ALC/GHGAM, 460 Richard Ray Blvd. Suite 221, Robins AFB, GA 31098–1640, Telephone: DSN 497–2877, Commercial: (478) 327–2877.
Marine Corps	Commandant of the Marine Corps, ATTN: LPC, Headquarters, U.S. Marine Corps, 3000 Marine Corps, Pentagon, RM 2E211, Washington, DC 20350, Telephone: DSN 225–8900, Commercial: (703) 695–8900.
Coast Guard	Commandant, ATTN: CG–7211, Commandant (CG–7211), U.S. Coast Guard HQ, Douglas A. Munro Bldg., 2703 Martin Luther King Jr. Ave. SE., Stop 7331, Washington, DC 20593–7331, (202) 372–2030.
National Security Agency	National Security Agency, Item Accounting Branch, ATTN: L112, Fort George Meade, MD 20755 6000.
Defense Intelligence Agency	Defense Intelligence Agency, ATTN: RLE 2, Washington, DC 20340 3205.
Defense Threat Reduction Agency	Headquarters, Defense Threat Reduction Agency, 8725 John J. Kingman Road MSC 6201, Fort Belvoir, VA 22060–6201, ATTN: BDLL, Telephone: DSN 427–0785, Commercial (703) 767–0785.

(5) *Condition of property ordered.* Orders authorized by DLA Disposition Services or GSA regional offices will be processed as expeditiously as possible and according to the Uniform Materiel

Movement and Issue Priority System priority on the requisition.

(i) DLA Disposition Services sites will determine the property requested is in as good a condition as it was during screening.

(ii) If the ordered property has materially deteriorated from screening or receipt to inspection for shipment, the DLA Disposition Services site will advise the customer before shipment. The shipment will be suspended pending agreement by the customer that the property will be accepted in its present condition.

(iii) Once ordered, and pending receipt of an approved transfer document or removal of the property, no parts may be removed without prior approval of DLA Disposition Services (for DoD orders) or GSA (for transfers and donations), and agreement by the customer that the property will be accepted in its altered condition.

(6) *Reimbursement requirements.* (i) The generating activity will identify reimbursement requirements on the DTID when transferring property to the DLA Disposition Services site. Although not specifically a DLA Disposition Services responsibility, DLA Disposition Services sites may contact the generating activity when they suspect the generator may be eligible for reimbursement but has not noted it on the DTID.

(ii) Issue of declared Military Department or Defense Agency FEPP, excess and surplus personal property to DoD users will be on a non-reimbursable basis except when the customer is prohibited by law from acquiring FEPP, excess and surplus property without reimbursement or where reimbursement is required by annotations on the receipt DTID. Issues to the USPS require fair-market value reimbursement.

(iii) The requester will transfer funds to the generating activity without DLA Disposition Services site involvement.

(iv) The DLA Disposition Services site will provide the name of the property requiring reimbursement when it is requested by the DoD or an FCA. The requesting activity and the generating activity must agree on the appropriate amount of funds, and how they will be transferred. When this is accomplished, the generating activity must give the DLA Disposition Services site a letter indicating what property is to be transferred and to whom. The DLA Disposition Services site will file a copy of this letter with the issue document to create an audit trail.

(v) Issues of DoD FEPP, excess, and surplus personal property, other than foreign purchased property and other property identified as reimbursable, will be at no cost to FCAs and to SASPs.

(A) Property purchased with working capital funds is not eligible for reimbursement in the transfer or donation program. GSA may direct transfers be made with reimbursement at fair market value.

(B) Public law may prohibit FCAs from obtaining certain property.

(C) FCAs, for the purpose of issue of excess property, include federal executive agencies other than the DoD; wholly owned government corporations; the Senate; the House of Representatives; the Architect of the Capitol and any activities under their direction; the municipal government of the District of Columbia; or non-federal agencies for whom GSA procures.

(vi) Foreign purchased property reimbursements will be at the acquisition value.

(vii) For special programs and activities, DLA Disposition Services sales to special account fund citations may be required in accordance with Volume 11a, Chapter 5 of DoD 7000.14–R. For DLA Disposition Services to provide timely and accurate reimbursements, the transportation account code address in DLA Transaction Services must be correct and current.

(A) In accordance with DoD 4160.28–M Volumes 1–3, all DoD MLI and Commerce Control List (CCL) personal property, whether located within or outside the United States, will be transferred in accordance with 22 CFR parts 120 through 130 and 15 CFR parts 730 through 774.

(*1*) DoD MLI or CCL personal property will not be transferred to any foreign person or entity without DoS or DOC approval, authorization, license, license exception, exemption, or other authorization for the transfer.

(*2*) Such property will not be transferred to prohibited or sanctioned entities or countries identified by the Departments of State, Commerce, and Treasury. A consolidated list of prohibited entities or destinations by these Departments may be found at *http://export.gov/ecr/eg_main_023148.asp*.

(*3*) Property will not be transferred to persons or entities from countries proscribed from trade under regulations maintained by the Office of Foreign Assets Control. The agency (*e.g.*, GSA or USAF CAP Program Manager) approving the transaction must determine recipient eligibility prior to issuing the requisition to DLA Disposition Services.

(*4*) If the agency approving the requisition cannot determine that a U.S. person or entity is involved with the property transaction, the recipient must obtain and provide the appropriate license or approval to the agency approving the transaction.

(*5*) Approving agencies must be involved in any subsequent re-transfer requests by the recipient. The recipient must request the agency's permission prior to taking any disposition action. If the approving agency authorizes the potential transfer, the recipient must then comply with 22 CFR parts 120 through 130, also known as the International Traffic in Arms Regulations (ITAR), or 15 CFR parts 730 through 780, also known as the Export Administration Regulations (EAR), as appropriate.

(B) For USML and CCL property, DLA Disposition Services sites will require recipients to sign a statement acknowledging their responsibility to comply with U.S. export laws and regarding regulations. The statement must be signed prior to the release of the property according to the DEMIL procedures in DoD 4160.28–M Volumes 1–3. If property is destined for export, the recipient must get appropriate export authorizations from the DoS or DOC in accordance with DoD Instruction 2030.08.

(C) DLA Disposition Services sites may issue DEMIL-required property to approved special programs or GSA eligibility-approved FCAs without DEMIL being accomplished.

(*1*) Prior to release from DoD control, DLA Disposition Services sites must obtain a written agreement (see Appendixes 1 and 2 of this section) from the requesting special program or FCA.

(*2*) This agreement acknowledges that the recipient will DEMIL the USML property in accordance with DoD 4160.28–M Volumes 1–3, when the property is no longer needed.

(*3*) The agreement further states that if the property is to be re-transferred, the recipient must obtain approval from its program manager (approving agency) and in coordination with the DoD DEMIL program manager prior to further disposition or before releasing the USML property outside their control. The representative of the recipient is required to sign the DEMIL agreement before release of any USML property.

(*4*) If the recipient requests DLA Disposition Services to perform final disposition, an MOA must be executed or in place with DLA Disposition Services for such services.

(*5*) The DLA Disposition Services site will provide a completed copy of the certification to the GSA and retain a copy with the issue documentation.

(D) DLA Disposition Services sites may transfer CCL (DEMIL Code Q) and non-DEMIL-required USML (DEMIL Code B) property that may have import and export controls to approved special programs or FCAs. Prior to release of such CCL and non-DEMIL-required USML property, the requesting special program or FCA must provide written notification to the DLA Disposition Services site (see Appendixes 3 and 4 of this section). This notification confirms recipient's understanding that export or import of the CCL or non-DEMIL-required USML property is regulated by the USG and in many cases cannot be transferred (exported, imported, sold, etc.) to a foreign person, entity or foreign country without valid USG license or other authorization.

(viii) GSA reviews and approves each order, each in its respective screening cycle (transfer or donation).

(7) *Shipment or pick-up elections by customers*—(i) *Criteria for non-RCP property.* (A) DLA Disposition Services will make arrangements for shipment of non-RCP property from Military Department orders unless notified by the DoD Component of the intent to physically pick up the property. DLA Disposition Services has been authorized to use ground services for the movement of reutilization property. The DLA Disposition Services Transportation Office will notify DLA Disposition Services sites of the authorized carrier.

(B) The DoD Component and special programs have 14 calendar days (15 days from the date on the order) to remove the non-RCP property ordered during the DoD screening cycles.

(C) Transfer (FCA) and donee (State agency) customers are always required to make their own pickup and shipment arrangements for non-RCP property orders and have 21 calendar days to remove non-RCP property ordered during the GSAXcess® screening cycle.

(D) Standard transportation or preferred pick up of the property requested by DoD customers who are allocated property by GSA apply.

(*1*) If DoD transfers customers order from the GSAXcess®, they also have 21 days to remove the non-RCP property.

(*2*) Customers required to pick up or arrange direct pickup must do so within the allotted standard removal time period unless it is extended by the DLA Disposition Services site chief. An example of justification for extended removal time would be as a result of a natural disaster (flood, snow, etc.). DLA Disposition Services site personnel may refuse MILSTRIPs or walk-in removals for customers who fail to pick up their property within the removal period and request cancellation of the order.

(ii) *Criteria for RCP property.* (A) DLA Disposition Services will arrange for shipment of RCP property from Military Department and special program orders.

(B) FCAs will designate the method of transportation for RCP property ordered using one of the following options:

(*1*) The FCA arrange with carriers of their choice to remove the property from a designated staging area at the depot; or

(*2*) The FCAs requests the DLA Disposition Services RCP Office to use an approved carrier under the DoD blanket purchase agreement awarded carrier for Domestic Express Small Package Service under the GSA Multiple Award Schedule for shipments of 150 pounds or less at *http://private.amc.af.mil/a4/domexpress/spsindex.html*. Use of this option for the smaller shipments requires a one-time notification to DLA Disposition Services of the preferred carrier and account number in the format.

(C) FCAs must arrange with the carriers of their choice for shipments in excess of 150 pounds.

(D) Donee (State agency) customers are always required to make their own pickup or shipment arrangements for RCP property orders from designated staging areas.

(8) *Packing, crating, and handling.* See § 273.7.

(9) *Shipment and removals (transportation).*—(i) *DoD and designated DoD-supported customers.* (A) Prudence in transportation services benefits the Military Departments, Defense Agencies, MARS, CAP, National Aeronautics and Space Administration (Space Shuttle Support), National Guard Units, Reserve Units, DoD contractor when approved by the CO, Senior ROTC, and MWRA/Services when ordered through the Military Department accountable officer and DLA Disposition Services.

(B) In cases where the cost of the transportation exceeds the acquisition value of the property, DLA Disposition Services sites will evaluate the commodity and its actual value; make a judgment as to its true condition and the priority of the order.

(*1*) The DLA Disposition Services site will contact the customer and provide the property's estimated value and transportation cost to ship the property.

(*2*) If a lower cost transportation mode is available, meets the requirements of the order, and the customer and DLA Disposition Services site agree, the DLA Disposition Services site will arrange for the alternate shipment mode. If it would not be cost effective to ship the property as requested, the customer will be asked to cancel the order.

(*3*) If the customer reconfirms the need for the property, the following certification information will be provided to a DLA Disposition Services site along with the customer reconfirmation statement found in Appendix 5 of this section. DoD activities must prepare, sign, and submit a justification statement for property where the transportation costs exceed 50 percent of the acquisition value of the property. The justification statement will be signed by the Property Book Officer or designated representative and will state:

(*i*) The purpose for which the item is to be used and whether the item is mission-essential to the operation of the requestor's activity.

(*ii*) Any additional information deemed necessary to show criticality of the requisition. The statement should be included with the DD Form 1348. Failure to provide a statement may result in the requisition being canceled.

(C) If the customer determines the shipment is not needed, the customer will initiate cancellation action according to the procedures in DLM 4000.25–1.

(D) The shipper will finance parcel post shipments between DoD agencies without reimbursement.

(ii) *Other customers (excluding transfer and donation customers).* (A) LEAs are responsible for removing or making arrangements for shipments.

(B) MWRAs not ordering property through a military accountable supply officer, DoD museums, academic institutions, and non-profit organizations for educational purposes, Senior ROTC units and FCAs must pay for transportation costs and must provide a fund citation prior to shipment or pick up of the property.

(C) Only one carrier is authorized per agency, and once the agency has designated a carrier, 30 days notice is required to change a carrier.

(D) FMS customers are responsible for most transportation costs associated with the movement of ordered property.

(*1*) The DLA Disposition Services FMS Office will identify exceptions to this rule. Transportation of sensitive and other critical FMS shipments will be coordinated between the DLA Disposition Services FMS Office, the purchasing country, and other DoD agencies, as required. For these shipments, the DLA Disposition Services FMS Office will provide separate instructions and fund citations.

(*2*) Transportation arrangements will be made by the DLA Disposition

Services site or by the supporting transportation office.

(E) HAP orders are shipped by DLA Disposition Services by surface to the central point using the most cost-effective mode (and must remain within the assigned theater). At no time will HAP property be shipped by air unless directed by DLA Disposition Services.

(10) *Shipment or denial notifications.* (i) DLA Disposition Services sites will use the guidance in DLM 4000.25–1 to prepare materiel release confirmations in response to MROs received from DLA Disposition Services.

(ii) When shipments are complete, DLA Disposition Services sites will furnish a copy of the shipping document to the customer. This document confirms shipment. The customer will notify the DLA Disposition Services site if the property is not received within a reasonable period of time. FCAs will only be provided a copy of the SF 122, with annotation of the transportation data, when arrangements for DLA Disposition Services sites to ship the property have been made in advance.

(iii) DLA Disposition Services sites will:

(A) Advise the customer if the property requested is no longer available or of acceptable condition.

(B) Document non-availability by a materiel release denial prepared in accordance with DLM 4000.25–1, if item(s) for an MRO are not available.

(C) Issue a letter for all other non-availability notifications, with a copy to GSA if they approved the order. The letter will contain the following data at a minimum:

(*1*) NSN.

(*2*) Order number.

(*3*) Quantity not available.

(11) *Customer removal of ordered property*—(i) *Identification requirements.* When a customer (DoD election to pick up property ordered from the DLA Disposition Services site or an FCA or donee) makes removal arrangements, the individuals removing the property must be properly identified. Coordinate with DLA Disposition Services prior to arrival to complete and transmit documents for identification.

(A) Upon arrival at the DLA Disposition Services site, the individuals will identify themselves, sign a DLA Disposition Services visitor and vehicle register and indicate on the register the DoDAAC represented (for DoD activities) or AAC represented (for non-DoD activities), and the purpose of the visit.

(B) Visitor and vehicle registers will be readily accessible (see paragraph (c) of this section).

(ii) *Documentation requirements.* (A) Customers will:

(*1*) Present an approved and authenticated DD Form 1348–1A, SF 122, or 123 ''Transfer Order Surplus Personal Property,'' as appropriate, for specific property. The accountable officer or authorized individual(s) listed in the previously provided authentication letter must sign the DD Form 1348–1A, SF 122, or SF 123.

(*2*) Provide designated carrier or removal agents with a copy of DD Form 1348–1A or SFs 122 or 123, as appropriate, indicating removal authority.

(*i*) DoD customers must have a hard copy of the electronically transmitted letter of authorization prior to removal, and an email response from DLA Disposition Services with verification of personnel authorized to remove property.

(*ii*) Transfer and donation customers must provide a completed letter of authorization to remove property to the DLA Disposition Services site prior to removal for verification purposes.

(B) DLA Disposition Services sites will:

(*1*) Ensure the visitor and vehicle register for each direct issue includes:

(*i*) Name of the individual receiving the property.

(*ii*) DoDAAC or AAC or physical location address.

(*iii*) Activity of the individual receiving the property.

(*2*) Ensure each customer is issued a badge when signing in.

(*3*) Ensure that DD Form 1348–1A or SF 122 or 123 is complete according to MILSTRIP and disposal requirements and is signed by the applicable accountable officer or authorized representative.

(*4*) For DoD walk-in customers, ensure a current letter is on file at the DLA Disposition Services site identifying the accountable officer and authorized individual(s) signing and approving the order.

(*5*) Fill the order.

(*6*) Provide any appropriate disclaimers or certifications of usage or disposal to the customer for signature prior to releasing the property.

(*7*) Furnish a copy of the completed shipping document to the respective accountable officer (record positions 30–35 of DD Form 1348–1A).

(*8*) If being removed by anyone other than the customer, verify that the carrier has valid documentation (a copy of DD Form 1348–1A or SFs 122 or 123, as appropriate) indicating removal authority. Arrange for completion of any disclaimers or certifications of usage or disposal with the customer, prior to releasing the property to the carrier.

(*9*) In case of doubt as to the validity of pickup representatives, DLA Disposition Services sites should contact the accountable officer who prepared the order for DoD activities, or DLA Disposition Services for activities authorized to order as DoD special programs, or the GSA regional office for other FCAs or donees.

Appendix 1 To § 273.15(c)

DEMIL Agreement for DEMIL-Required USML Property to FCAs (DEMIL Codes C, D, E, OR F)

BILLING CODE 5001–06–P

Figure 1. DEMIL Agreement for DEMIL-Required USML Property to FCAs
(Attach to the DD Form 1348-1A, Release Document)

A COPY OF THIS AGREEMENT MUST BE COMPLETED, SIGNED, AND DATED FOR EACH INDIVIDUAL DEMIL-REQUIRED LINE ITEM REQUESTED BY AN FCA RECIPIENT AND COORDINATED WITH GSA AND THE DOD DEMILITARIZATION PROGRAM OFFICE BEFORE REMOVAL OF SUCH PROPERTY FROM A DLA DISPOSITION SERVICES SITE.
DD Form 1348-1 Release Document Number:
NSN:
Quantity:
Noun Item Description:
DEMIL Code:
DEMIL Integrity Code:
DLA Disposition Services Site Location:
Federal Civilian Agency:
Complete Address:
Telephone Number:
E-mail Address:
The recipient agrees by date and signature at the bottom of this form that, upon completion of utilization property will be returned to DLA Disposition Services for required demilitarization as prescribed by the current edition of DoD 4160.28-M, Volume 1, "Defense Demilitarization: Program Administration," on a reimbursable basis. Recipient will request disposition instructions from DLA Disposition Services with copy to the DoD DEMIL Program Office at ddpo@osd.mil. DEMIL will be accomplished based on the assigned DEMIL Code for such property. All transfers of DEMIL-required USML are subject to a condition that prohibits further disposition including re-transfer, re-donations, trade, barter, exchange, lease, sale, import or export without prior written approval. If the recipient receives approval for further disposition of USML property from the GSA, in coordination with the DoD DEMIL Program Office, the DEMIL requirement will be perpetuated on the appropriate documentation.

For additional information relating to export/import, recipients may contact the DoD DEMIL Program Office for assistance (see https://www.demil.osd.mil/).

Once the approval has been received, the recipient further acknowledges and agrees that before any export or re-export of this property is attempted, they must contact the Directorate of Defense Trade Controls, Department of State (see http://www.pmddtc.state.gov/) to obtain the necessary export licensing approval or authorization.

_____ Typed Name and Title of Accountable Official _____ Signature Date

Appendix 2 To § 273.15(c)

DEMIL Agreement for DEMIL-Required USML Property to Special Programs (DEMIL Codes C, D, E, or F)

Figure 2. DEMIL Agreement for DEMIL-Required USML Property to Special Programs
(Attach to the DD Form 1348-1A, Release Document)

A COPY OF THIS AGREEMENT SHALL BE COMPLETED, SIGNED, AND DATED FOR EACH INDIVIDUAL DEMIL-REQUIRED LINE ITEM REQUESTED BY AN APPROVED SPECIAL PROGRAM RECIPIENT AND COORDINATED WITH THE DOD DEMILITARIZATION PROGRAM OFFICE BEFORE REMOVAL OF SUCH PROPERTY FROM A DLA DISPOSITION SERVICES SITE.
DD Form 1348-1 Release Document Number:
NSN:
Quantity:
Noun Item Description:
DEMIL Code:
DLA Disposition Services Site Location:
Federal Civilian Agency:
Complete Address:
Telephone Number:
E-mail Address:
The recipient agrees by date and signature at the bottom of this form that, upon completion of utilization property will be returned to DLA Disposition Services for required demilitarization as prescribed by the current edition of DoD 4160.28-M, Volume 1, "Defense Demilitarization: Program Administration," on a reimbursable basis. Recipient shall request disposition instructions from DLA Disposition Services with copy to the DoD DEMIL Program Office. DEMIL will be accomplished based on the assigned DEMIL Code for such property.

Figure 2. DEMIL Agreement for DEMIL-Required USML Property to Special Programs, Continued

Recipient shall request disposition instructions from DLA Disposition Services with copy to the DoD DEMIL Program Office at ddpo@osd.mil. DEMIL will be accomplished based on the assigned DEMIL Code for such property.

All transfers of DEMIL-required USML are subject to a condition that prohibits further disposition including re-transfer, re-donations, trade, barter, exchange, lease, sale, import or export without prior written approval. If the recipient receives approval for further disposition of USML property from the Special Program, in coordination with the DoD DEMIL Program Office, the DEMIL requirement will be perpetuated on the appropriate documentation.

For additional information relating to export/import, recipients may contact the DoD DEMIL Program Office for assistance (see https://www.demil.osd.mil/).

Once the approval has been received, the recipient further acknowledges and agrees that before any export or re-export of this property is attempted, they must contact the Directorate of Defense Trade Controls, Department of State (see http://www.pmddtc.state.gov/) to obtain any necessary export licensing approval or authorization.

_____

Typed Name and Title of Accountable Official

_____

Signature Date

Appendix 3 to § 273.15(c)

Notification for CCL and Non-DEMIL-Required USML Property to FCAS (DEMIL Codes B and Q)

Figure 3. Notification for CCL and Non-DEMIL-Required USML Property to FCAs
(Attach to the DD Form 1348-1A, Release Document)

A COPY OF THIS AGREEMENT IS TO BE COMPLETED, SIGNED, AND DATED FOR EACH INDIVIDUAL CCL AND NON-DEMIL-REQUIRED USML LINE ITEM REQUESTED BY AN APPROVED FCA BEFORE THE REMOVAL OF SUCH PROPERTY FROM A DLA DISPOSITION SERVICES SITE.

DD Form 1348-1 Release Document Number: _____
NSN: _____
Quantity: _____
Noun Item Description: _____
DEMIL Code: _____
DLA Disposition Services Site Location: _____
Federal Civilian Agency: _____
Complete Address: _____
Telephone Number: _____
E-mail Address: _____

Recipient is notified that the use, disposition, import, export, and re-export of non-DEMIL-required USML property is subject to provisions of DoD Instruction 2030.08, "Implementation of Trade Security Controls (TSC) for Transfers of DoD U.S. Munitions List (USML) and Commerce Control List (CCL) Personal Property to Parties Outside of DoD," and DoD Manual 4160.28-M, Volume 1 "Defense Demilitarization Manual: Program Administration."

CCL or non-DEMIL-required USML personal property released to parties outside DoD control are subject to applicable U.S. laws and regulations, including the Arms Export Control Act (parts 2778 et seq. of Title 22, U.S.C.) and the Export Administration Act of l979 (parts 1701 et seq of Title 50, U.S.C.); International Traffic in Arms Regulations (parts 12 et seq. of Title 22 CFR); Export Administration Regulations (parts 730-799 of Title 15, CFR), and the Espionage Act (parts 793 et seq. of Title 18 U.S.C.), which, among other things, prohibits:

- The making of false statements and concealment of any material information regarding the use or disposition, import, export, or re-export of the property; and

- Any use or disposition, import, export, or re-export of the property that is not authorized in accordance with the provisions of the cited laws and regulations.

Figure 3. Notification for CCL and Non-DEMIL-Required USML Property to FCAs, Continued

For additional information relating to export/import, recipients may contact the DoD DEMIL Program Office for assistance (http://www.demil.osd.mil/).

Once the approval has been received, the recipient further acknowledges and agrees that before any export or re-export of this property is attempted, they must contact the Directorate of Defense Trade Controls, Department of State (http://www.pmddtc.state.gov/), or the Bureau of Industry and Security at the Department of Commerce (http://www.bis.doc.gov/) to obtain the necessary export licensing authorization.

_____

Typed Name and Title of Accountable Official

_____ _____

Signature Date

Appendix 4 To § 273.15(c)

Notification for CCL and Non-DEMIL-Required USML Property to Special Programs (DEMIL Codes B and Q)

Figure 4. Notification for CCL and Non-DEMIL-Required USML Property to Special Programs
(Attach to the DD Form 1348-1A, Release Document)

A COPY OF THIS AGREEMENT IS TO BE COMPLETED, SIGNED, AND DATED FOR EACH INDIVIDUAL CCL AND NON-DEMIL-REQUIRED USML LINE ITEM REQUESTED BY AN APPROVED SPECIAL PROGRAM BEFORE THE REMOVAL OF SUCH PROPERTY FROM A DLA DISPOSITION SERVICES SITE.

DD Form 1348-1 Release Document Number: _____
NSN: _____
Quantity: _____
Noun Item Description: _____
DEMIL Code: _____
DLA Disposition Services Site Location:_____
Special Program Recipient: _____
Complete Address: _____
Telephone Number: _____
E-mail Address: _____

Recipient is notified that the use, disposition, import, export, and re-export of Commerce Control List (CCL) or non-DEMIL-required USML property is subject to provisions of DoD Directive 2030.8, "Implementation of Trade Security Controls (TSC) for Transfers of DoD U.S. Munitions List (USML) and CCL Personal Property to Parties Outside DoD Control." CCL or non-DEMIL-required USML personal property released to parties outside DoD control are subject to applicable U.S. laws and regulations, including the Arms Export Control Act (parts 2778 et seq. of Title 22, U.S.C.) and the Export Administration Act of 1979 (parts 1701 et seq. of Title 50, U.S.C.); International Traffic in Arms Regulations (parts 120 et seq. of Title 22, CFR); Export Administration Regulations (parts 730-799 of Title 15, CFR), and the Espionage Act (parts 793 et seq. of Title 18, U.S.C.), which, among other things, prohibits:

- The making of false statements and concealment of any material information regarding the use or disposition, import, export, or re-export of the property; and

- Any use or disposition, import, export, or re-export of the property that is not authorized in accordance with the provisions of the cited laws and regulations.

The recipient acknowledges that all subsequent dispositions of the items are prohibited without prior written approval of the program manager. The program manager will coordinate with the DoD Demilitarization Office or TSC Program Office, for guidance, as appropriate.

Figure 4. Notification for CCL and Non-DEMIL-Required USML Property to Special Programs, Continued

For additional information relating to export/import, recipients may contact the DoD DEMIL Program Office for assistance (https://www.demil.osd.mil/).

Once the approval has been received, the recipient further acknowledges and agrees that before any export or re-export of this property is attempted, they must contact the Directorate of Defense Trade Controls, Department of State (http://www.pmddtc.state.gov/) to obtain the necessary export licensing authorization.

_____

Typed Name and Title of Accountable Official

_____ _____

Signature Date

Appendix 5 to § 273.15(c)

Customer Reconfirmation

Figure 5. Customer Reconfirmation

I understand that the shipment of Order No. _____ is not cost effective to the Department of Defense; however, the requested property is still required as mission essential.	
Signature	Date
Name (Type/Print)	Title
Activity/Unit	Grade/Rank
Phone Number	

Dated: December 10, 2014.

Aaron Siegel,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 2014–29251 Filed 12–24–14; 8:45 am]

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Part III

Department of Agriculture

Rural Business-Cooperative Service
Rural Utilities Service

7 CFR Part 4280
Rural Energy for America Program; Final Rule

DEPARTMENT OF AGRICULTURE

Rural Business-Cooperative Service

Rural Utilities Service

7 CFR Part 4280

RIN 0570–AA76

Rural Energy for America Program

AGENCY: Rural Business-Cooperative Service and Rural Utilities Service, USDA.

ACTION: Final rule.

SUMMARY: The Rural Business-Cooperative Service (Agency) is publishing this final rule for the Rural Energy for America Program (REAP). This final rule modifies REAP based on comments received on the interim rule, which was published on April 14, 2011, and the proposed rule, which was published on April 12, 2013. The final rule establishes provisions for the grants and loan guarantees available for renewable energy systems (RES) and energy efficiency improvements (EEI) and for the grants available for energy audits and for renewable energy development assistance.

DATES: This final rule is effective February 12, 2015.

FOR FURTHER INFORMATION CONTACT: Kelley Oehler, Energy Branch, U.S. Department of Agriculture, 1400 Independence Avenue SW., Stop 3225, Washington, DC 20250–3201; telephone (202) 720–6819.

SUPPLEMENTARY INFORMATION:

Executive Summary

The Farm Security and Rural Investment Act of 2002 (FSRIA), established the renewable energy systems (RES) and energy efficiency improvements (EEI) program under Title IX, Section 9006, for making grants, loan guarantees, and direct loans to farmers and ranchers (agricultural producers) or rural small businesses to purchase renewable energy systems and make energy efficiency improvements.

Section 9001 of the Food, Conservation, and Energy Act of 2008 (2008 Farm Bill) amended Title IX of the FSRIA. Under the 2008 Farm Bill, Section 9007 of the amended FSRIA authorized the Agency to continue providing to agricultural producers and rural small businesses loan guarantees and grants for the development and construction of RES and EEI projects, but removed the ability to provide direct loans. The 2008 Farm Bill also expanded the types of RES technologies eligible for funding to include hydroelectric and ocean energy. Further, the 2008 Farm Bill authorizes the Agency to provide grants specifically for energy audits (EA), renewable energy development assistance (REDA), and RES feasibility studies. The 2008 Farm Bill also changed the name of the program to the Rural Energy for America Program (REAP).

REAP's authority is continued in the Agricultural Act of 2014 (2014 Farm Bill), with several specific changes: (1) Removing RES feasibility study grants, (2) removing the ability to provide assistance for flexible fuel pumps, adding councils as define in 16 U.S.C. 3451, to be an eligible applicant for EA and REDA grants, and (4) creating a three tier application process for RES and EEI projects.

REAP seeks to promote energy efficiency and renewable energy development for agricultural producers and rural small businesses by providing grants and guaranteed loans for eight different categories of renewable energy production (*e.g.,* wind, solar, anaerobic digestion, hydro, and geothermal) as well as for EEI.

Eligible applicants for RES and EEI financial assistance are agricultural producers and rural small businesses. For EA and REDA grants, eligible entities are units of a state tribal or local government; land-grant colleges and universities, and other institution of higher education; rural electric cooperatives; councils, as define in 16 U.S.C. 3451; public power entities; and instrumentalities of a state, tribal, or local government.

Purpose of the Regulatory Action

This final rule revises 7 CFR part 4280, subpart B to implement the provisions contained in the 2014 Farm Bill and addresses comments received on both the interim rule, published in the **Federal Register** on April 14, 2011, and the proposed rule, published in the **Federal Register** on April 12, 2013.

Summary of the Major Changes

For RES and EEI projects, the final rule implements a three-tier application process based on total project cost; reduces the technical reports requirements; removes pre-commercial technologies as eligible technologies; and modifies several scoring criteria for RES and EEI. For EA and REDA projects, the final rule removes the scoring criterion regarding contracting. The final rule also incorporates grant and guaranteed loan application deadline dates that allow the Agency to meet the statutory deadlines for funding the EA and REDA grants and RES and EEI grants of $20,000 or less.

Costs and Benefits

For a typical fiscal year, the Agency estimates that approximately 1,393 REAP awards will be made as follows: 487 RES awards, 884 EEI awards, and 22 EA/REDA awards. Of the RES awards, the vast majority are expected to be associated with solar, followed by wind and biomass projects. The awardees are expected to be mostly businesses, including sole proprietors, with relatively few state, local, and tribal government entities.

The Regulatory Impact Analysis (RIA) completed for this final rule calculates a net costs savings of approximately $10 million as the result of improvements in the implementation of the REAP program. The cost savings achieved by the rule are attributed to the decreased costs estimated for the changes in program implementation. In addition the reduction in burden meets the reporting requirements of the retrospective review report which provided a specific percentage reduction in application burden, specifically the time it takes to complete the narrative portion of the application, which was reduced from 40 hours in the baseline, down to 20 hours in the final rule, a 50 percent reduction.

Executive Order 12866

This final rule has been reviewed under Executive Order (EO) 12866 and has been determined to be economically significant by the Office of Management and Budget (OMB). The EO defines a ''significant regulatory action'' as one that is likely to result in a rule that may: (1) Have an annual effect on the economy of $100 million or more or adversely affect, in a material way, the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or state, local, or tribal governments or communities; (2) create a serious inconsistency or otherwise interfere with an action taken or planned by another agency; (3) materially alter the budgetary impact of entitlements, grants, user fees, or loan programs or the rights and obligations of recipients thereof; or (4) raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in this EO. The Agency conducted a benefit-cost analysis to fulfill the requirements of EO 12866.

Executive Order 13563

The agency has reviewed this regulation pursuant to EO 13563, issued on January 18, 2011 (76 FR 3281, January 21, 2011). EO 13563 is supplemental to and explicitly reaffirms

the principles, structures, and definitions governing regulatory review established in EO 12866. To the extent permitted by law, agencies are required by EO 13563 to: (1) Propose or adopt a regulation only upon a reasoned determination that its benefits justify its costs (recognizing that some benefits and costs are difficult to quantify); (2) tailor regulations to impose the least burden on society, consistent with obtaining regulatory objectives, taking into account, among other things, and to the extent practicable, the costs of cumulative regulations; (3) select, in choosing among alternative regulatory approaches, those approaches that maximize net benefits (including potential economic, environmental, public health and safety, and other advantages; distributive impacts; and equity); (4) to the extent feasible, specify performance objectives, rather than specifying the behavior or manner of compliance that regulated entities must adopt; and (5) identify and assess available alternatives to direct regulation, including providing economic incentives to encourage the desired behavior, such as user fees or marketable permits, or providing information upon which choices can be made by the public.

The Agency identified REAP as one of the Department's periodic retrospective review of regulations under Executive Order 13563, and has proposed a tiered application approach that reduces applicant burden for technical reports and streamlines the narrative portion of the application. Notably, there is an estimated 20 percent reduction in the number of hours it takes to complete a technical report for those applications for projects with total project costs of more than $80,000 to $200,000; the elimination of a technical report for those applications for projects with total project costs of $80,000 or less; and a 50 percent reduction in the number of hours it takes to complete the narrative portion of burden.

Unfunded Mandates Reform Act

Title II of the Unfunded Mandates Reform Act 1995 (UMRA), Public Law 104–4, establishes requirements for Federal agencies to assess the effects of their regulatory actions on state, local, and tribal governments and the private sector. Under section 202 of the UMRA, Rural Development generally must prepare a written statement, including a cost-benefit analysis, for proposed and final rules with ''Federal mandates'' that may result in expenditures to state, local, or tribal governments, in the aggregate, or to the private sector of $100 million or more in any one year. When such a statement is needed for a rule, section 205 of the UMRA generally requires Rural Development to identify and consider a reasonable number of regulatory alternatives and adopt the least costly, more cost-effective, or least burdensome alternative that achieves the objectives of the rule.

This final rule contains no Federal mandates (under the regulatory provisions of Title II of the UMRA) for state, local, and tribal governments or the private sector. Thus, this rule is not subject to the requirements of sections 202 and 205 of the UMRA.

Environmental Impact Statement

REAP has been operating since 2005 under 7 CFR part 4280, subpart B, and through the issuance of various Notices of Funds Availability (NOFA), including several notices issued in response to Title IX of the Food, Conservation, and Energy Act of 2008 (2008 Farm Bill). Under this program, the Agency conducts a National Environmental Policy Act (NEPA) review for each application received. To date, no significant environmental impacts have been reported, and Findings of No Significant Impact (FONSI) have been issued for each approved application. Taken collectively, the applications show no potential for significant adverse cumulative effects.

This document has been reviewed in accordance with 7 CFR part 1940, subpart G, ''Environmental Program.'' Rural Development has determined that this action does not constitute a major Federal action significantly affecting the quality of the human environment, and in accordance with NEPA of 1969, 42 U.S.C. 4321 *et. seq.,* an Environmental Impact Statement is not required. Grant applications will be reviewed individually to determine compliance with NEPA.

Executive Order 12988, Civil Justice Reform

This final rule has been reviewed under EO 12988, Civil Justice Reform. In accordance with this rule: (1) All state and local laws and regulations that are in conflict with this rule will be preempted; (2) no retroactive effect will be given to this rule; and (3) administrative proceedings in accordance with the regulations of the Department of Agriculture's National Appeals Division (7 CFR part 11) must be exhausted before bringing suit in court challenging action taken under this rule unless those regulations specifically allow bringing suit at an earlier time.

Executive Order 13132, Federalism

It has been determined, under EO 13132, Federalism, that this final rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment. The provisions contained in the rule will not have a substantial direct effect on states or their political subdivisions or on the distribution of power and responsibilities among the various government levels.

Regulatory Flexibility Act

The Regulatory Flexibility Act (5 U.S.C. 601–612) (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 an economically significant impact on a substantial number of small entities. Small entities include small businesses, small organizations, and small governmental jurisdictions.

In compliance with the RFA, Rural Development has determined that this action, while mostly affecting small entities, will not have a significant economic impact on a substantial number of these small entities. Rural Development made this determination based on the fact that this regulation only impacts those who choose to participate in the program. Small entity applicants will not be affected to a greater extent than large entity applicants.

Executive Order 13211, Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use

The regulatory impact analysis conducted for this final rule meets the requirements for EO 13211, which states that an agency undertaking regulatory actions related to energy supply, distribution, or use is to prepare a Statement of Energy Effects. This analysis finds that this rule will not have any adverse impacts on energy supply, distribution, or use.

Executive Order 12372, Intergovernmental Review of Federal Programs

This program is not subject to the provisions of EO 12372, which require intergovernmental consultation with state and local officials.

Executive Order 13175, Consultation and Coordination With Indian Tribes

This EO imposes requirements on Rural Development in the development

of regulatory policies that have tribal implications or preempt tribal laws. Rural Development has determined that this rule does not have a substantial direct effect on one or more Indian Tribe(s) or on either the relationship or the distribution of powers and responsibilities between the Federal Government and the Indian Tribes. Thus, this rule is not subject to the requirements of EO 13175.

However, in implementing changes to the program resulting from the 2008 Farm Bill, this program was included in the USDA Joint Agency Regional Consultations that consolidated the consultation efforts of 70 USDA rules from the 2008 Farm Bill. USDA Rural Development sent senior level agency staff to seven regional locations and engaged tribal leadership in each region to consult on a host of programmatic adjustments.

Upon completion of the consultation process, USDA Rural Development analyzed the feedback and incorporated input from the consultation into REAP. For example, with the intent to increase tribal participation in the program, the definition of a small business in this rule includes tribal business entities formed as Section 17 Corporations as determined by the Secretary of the Interior or other tribal business entities that have similar structures and relationships with their tribal governments as determined by USDA Rural Development.

Programs Affected

REAP is listed in the Catalog of Federal Domestic Assistance under Number 10.868.

Paperwork Reduction Act

The information collection requirements contained in this final rule have been submitted to the Office of Management and Budget (OMB) for review and approval.

E-Government Act Compliance

Rural Development is committed to complying with the E-Government Act, to promote the use of the Internet and other information technologies to provide increased opportunities for citizen access to Government information and services, and for other purposes. The rule allows electronic submission of applications through grants.gov. The Rural Development Web site contains information on all of Rural Development's programs, including regulations, fillable forms, and factsheets.

I. Background

Rural Development administers a multitude of programs, ranging from housing and community facilities to infrastructure and business development. Its mission is to increase economic opportunity and improve the quality of life in rural communities by providing leadership, infrastructure, venture capital, and technical support that can support rural communities, helping them to prosper.

To achieve its mission, Rural Development provides financial support (including direct loans, grants, loan guarantees, and direct payments) and technical assistance to help enhance the quality of life and provide support for economic development in rural areas. The 2008 Farm Bill contains several sections under which Rural Development provides financial assistance for the production and use of biofuels. This authority is continued in the Agricultural Act of 2014 (2014 Farm Bill).

In response to the Farm Security and Rural Investment Act of 2002 (FSRIA), which established the Renewable Energy Systems and Energy Efficiency Improvements Program under Title IX, Section 9006, the Agency promulgated a rule (70 FR 41264, July 18, 2005) under 7 CFR part 4280, subpart B) a program for making grants, loan guarantees, and direct loans to farmers and ranchers (agricultural producers) or rural small businesses to purchase RES and make EEI. Renewable energy sources eligible for funding included bioenergy, anaerobic digesters, geothermal electric, direct geothermal, solar, hydrogen, and wind.

Section 9001 of the 2008 Farm Bill amended Title IX of the FSRIA. Under the 2008 Farm Bill and Section 9007 of the amended FSRIA, the Agency is authorized to continue providing to agricultural producers and rural small businesses loan guarantees and grants for the development and construction of RES and EEI projects. In addition to the current set of renewable energy projects eligible for funding, the 2008 Farm Bill expanded the program to include two new renewable energy technologies: hydroelectric and ocean energy. Further, the 2008 Farm Bill authorized the Agency to provide grants specifically for energy audits, renewable energy development assistance, and feasibility studies. This expanded program is referred to as REAP, which continues the Agency's assistance for the adoption of both RES and EEI through Federal Government loan guarantees and grants. During the promulgation of this final rule, the 2014 Farm Bill was enacted and repealed the RES feasibility study component of REAP. This change has been incorporated into this final rule. In addition, the 2014 Farm Bill report language removed the ability to provide assistance for flexible fuel pumps, and the Bill added a provision to allow a council to be an eligible applicant for energy audit and renewable energy development assistance. Both of these changes have also been incorporated into this final rule. All comments regarding RES feasibility study grants and flexible fuel pumps will not be summarized or addressed. All references in the final rule to RES feasibility study grants and flexible fuel pumps have been removed.

After the 2008 Farm Bill, the Agency issued a series of **Federal Register** notices implementing the provisions in the 2008 Farm Bill for RES feasibility studies, energy audits, and renewable energy development assistance. For energy audits and renewable energy development assistance, these notices were published on March 11, 2009 (74 FR 10533), and May 27, 2010 (75 FR 29706).

On April 14, 2011 (76 FR 21110), the Agency published an interim final rule that established a consolidated REAP program by including each part of the program in a single subpart. Because the majority of the interim final rule was based on existing provisions that were at that time being implemented through the existing subpart for RES and EEI (7 CFR part 4280, subpart B) and the notices identified above, the Agency published the REAP regulation as an interim final rule, with the opportunity to comment.

On April 12, 2013 (78 FR 22044), the Agency published a proposed rule for REAP, which proposed a number of changes to the interim final rule.

The Agency requested comments on both the interim final rule and the proposed rule. All of the comments received are summarized in Section III of this preamble. Most of the proposed rule's provisions have been carried forward into subpart B of this final rule, although there have been several significant changes. A summary of major changes to the proposed rule are summarized below in Section II of this preamble.

II. Summary of Changes to the Proposed Rule

This section presents the major changes to the REAP April 12, 2013, proposed rule. Most of the changes were the result of the Agency's consideration of public comments on the proposed rule. As indicated above, the Agency is also making changes to the rule due to

statutory changes resulting from the enactment of the 2014 Farm Bill. Other changes, however, are being made even though the Agency did not receive comments on those provisions. The Agency is making these other changes as a result of the recent revocation of the USDA's 1971 Statement of Policy titled ''Public Participation in Rulemaking,'' FR Doc. 2013–25321. This revocation restores to USDA the discretion to use notice-and-comment rulemaking procedures when appropriate. Rather than making these other changes in a separate rulemaking, the Agency has elected to include them in this final rule. Unless otherwise indicated, rule citations refer to those in the final rule.

A. Definitions (§ 4280.103)

The following definition was added to the final rule:

Council. The definition was added because the 2014 Farm Bill allows a council, as define in 16 U.S.C. 3451, to be an eligible applicant for energy audit and renewable energy development assistance grants.

The following definitions were revised from what was published in the proposed rule:

Agricultural Producer. Clarified that the 50 percent of gross income must come from the products that are grown or raised.

Annual Receipts. Directly incorporates the definition found in Small Business Administration regulations.

Anaerobic Digester Project. Clarifies that the digester uses animal waste.

Commercially Available. The Agency added a second part to the definition such that a Renewable Energy System would be considered ''commercially available'' if the system has been certified by a recognized industry organization whose certification standards are acceptable to the Agency. In addition, the Agency clarified the definition to make clear that the provisions are applied equally to domestic and foreign systems.

Complete Application. Revised definition to encompass that an application must be complete enough for the Agency to determine technical merit, which is similar process to the existing rules methodology to determine technical merit.

Departmental Regulations. Removed 7 CFR part 3021, because the cross reference is no longer valid.

Eligible Project Costs. Reference REAP by name, instead of general term ''program.''

Energy Assessment. Added language to the definition for projects with total project costs of $80,000 or less that an individual or entity can conduct energy assessments and does not require the individual or entity to be ''independent.''

Feasibility Study. The term business was replaced with business operation, to clarify that it was not just a requirement for businesses but Ag producers as well.

Instrumentality. Removed the examples since the 2014 Farm Bill now includes a council as an eligible applicant.

Matching Funds. This definition was revised to clarify that matching funds are the additional funds required to complete the project that are required by 7 U.S.C. 8107, which are 75 percent of eligible project costs for grants and 25 percent of eligible project costs for guaranteed loans. Other funds provided that are in excess of the funds required by statute are not considered matching funds.

Refurbished. This definition was revised to add the requirement that refurbishment must take place in a ''commercial'' facility and that the refurbished equipment must come with a warranty that is approved by the Agency or its designee.

Retrofitting. The Agency made the definition more general by removing reference to renewable energy system and added a requirement that the retrofit does not affect the original warranty, if the warranty is still in existence.

Renewable Energy System. The definition is being modified in 7 CFR, part 4280 because the 2014 Farm Bill added the definition of ''renewable energy systems'' to the statute. The statutory definition of a ''renewable energy system'' is a system that produces a usable energy from a renewable energy source and may include distribution components necessary to move energy produced by such system to initial point of sale, but may not include a mechanism for dispensing energy at retail.

Simple Payback. A number of changes were made to this definition.

1. Replaced net income with earnings before interest, taxes, depreciation and amortization (EBITDA), which is financing measure of operating cash flow, based on data from the income statement.

2. Removed all tax credits, carbon credits, renewable energy credits, from the calculation.

3. Based on eligible project costs rather than total project costs.

4. For EEI projects and RES systems that reduce onsite energy use, calculation of historical energy used prior to the project implementation can now be calculated on a 12, 24, 36, 48, or 60 month basis at the applicant's discretion, versus the proposed rule which required applicants to use a 36 months.

5. For projects that reduce energy use, added ''or replace'' to identify that projects that replace energy will use this method to determine simple payback and removed the ability to include revenue from byproducts produced by the energy system. Also those RES project that replace over 100 percent of the energy used by the applicant will use the actual average price paid for the energy replaced, and the projected revenue received from energy sold in a typical year.

Small Business. Added an additional option to qualify as a small business using average net income and net worth, and reorganized the definition.

The following definitions were in the proposed rule but were removed from the final rule:

Blended Liquid Transportation Fuel. The definition was required to define flexible fuel pumps and the 2014 Farm Bill report language repealed the ability of the REAP to provide assistance for flexible fuel pumps, therefore the Agency is removing the definition.

Energy Analysis. As a result of this deletion, conforming changes were made throughout rule.

Flexible fuel pump. The 2014 Farm Bill report language repealed the ability of the REAP to provide assistance for flexible fuel pumps, therefore the Agency is removing the definition.

B. General Applicant, Application, and Funding Provisions (§ 4280.110)

The Agency clarified that a grant application for EA and REDA can be submitted at any time.

C. Notifications (§ 4280.111)

The final rule clarifies that once an application is determined to be ineligible no further processing of the application will occur. The Agency also relabeled paragraph (c) to ''Funding Determination'' rather than ''Disposition of applications.''

D. Project Eligibility (§ 4280.113)

The Agency added a provision to identify conditions under which a subsequent EEI, that improves or replaces an EEI project previously funded under REAP, is eligible for funding.

Based on comments, for agricultural producers with operations in non-rural areas, the Agency removed the italicized text in the following: ''the application can only be for renewable energy systems or energy efficiency

improvements on *integral* components *of or* that are directly related to the operation . . .'' so that it now reads: ''the application can only be for RES or EEI on components that are directly related to and their use and purpose is limited to the agricultural production operation . . .'' (see § 4280.113(d)). This same change was also made for project eligibility for Energy Audits grants, Renewable Energy Development Assistance grants, and RES/EEI guaranteed loans.

The Agency added provisions identifying how a renewable energy system project, in which a residence is closely associated with and shares an energy metering device with the rural small business or agricultural operation, would be eligible for funding (see § 4280.113(e)).

E. RES and EEI Grant Funding (§ 4280.114)

In determining items that qualify as an eligible project cost, the Agency removed the phrase ''integral component'' so that an item is an eligible project cost if it is ''directly related to and its use and purpose is limited to the RES or EEI.'' (see § 4280.114(c)).

The Agency also identified that a second meter will be considered eligible project costs for those applicants whose projects involve residences (see § 4280.114(c)(6)).

Lastly, the Agency revised ineligible project costs (§ 4280.114(d)) in the proposed rule by rephrasing ''guaranteeing of lease payments'' to ''lease payments'' and removing reference to ''guaranteeing loans made by other Federal agencies'' which is not applicable to RES and EEI grants, but only to RES and EEI guaranteed loans.

F. Determination of Technical Merit (§ 4280.116)

Under the final rule, the process and criteria that the Agency will use in determining whether a project has technical merit has been established in a new section (see § 4280.116).

G. Grant applications for RES and EEI Projects (§ 4280.117, § 4280.118, § 4280.119)

The Agency clarified the time frames associated with determining if the applicant meets the definition of Rural Small Business for Annual receipts and number of employees, and with determining if the applicant meets the definition of Agricultural Producer for gross income (Annual receipts). This change applies to all three tiers of grant applications and to guaranteed loan applications.

The Agency removed references to Form AD 2106, but included language in the application that requests applicant to provide ethnicity, race, and gender information. This information is optional and is not required for a Complete Application. This change was also made to the energy audit and renewable energy development assistance grants.

The Agency added provisions to technical reports that were not in the proposed rule to describe how the technology meets Commercially Available definition, and to include simple payback calculations for the project.

The Agency added language to the final rule to indicate what documentation is required to receive points for commitment of funds. This same change was also made for Energy Audits grants and Renewable Energy Development Assistance grants.

H. Scoring RES and EEI Grant Applications (§ 4280.120)

Environmental benefits criterion was modified to detail how points are awarded if an applicant can document a positive effect on any of the three impact areas: Resource conservation, public health, and the environment.

The Agency modified the second score criterion, ''Quantity of energy generated or saved per REAP dollar requested,'' by reducing the points allocated to 10 points. Due to this point reduction, the Agency has added back the scoring criterion from the existing rule ''Energy replaced, saved, or generated'' and allocated a maximum of 15 points to this criterion.

''Quantity of energy generated or saved per REAP dollar requested'' was further modified to use energy generated or saved over a 12 month period rather than 36 months that was required in the proposed rule, and the project will need to achieve 50,000 BTUs per REAP dollar requested rather than 25,000 to receive maximum point under this criterion.

Size of agricultural producer or rural small business was clarified to indicate that the calculation is made on the size of the applicant's agricultural operation or business concern as applicable. This change conforms to language used in Small Business Administration (SBA) regulations for small business determination.

The Agency has revised the ''readiness'' criterion (now referred to as ''Commitment of Funds'') to reflect a sliding scale for those applications that can show commitment of more than 50 percent matching funds and other funds.

Previous grantees and borrowers criterion was revised to increase points for applicants who have not received previous assistance.

Simple payback was revised to increase the maximum number of years for RES project payback by 5 years, raising it from 20 to 25.

Under the State Director and Administrator priority points, the Agency added three new categories for consideration in awarding points: (1) The applicant is a member of an unserved or under-served population, (2) furthers a Presidential initiative or a Secretary of Agriculture priority, and (3) the proposed project is located in an impoverished area, has experienced long-term population decline, or loss of employment. . . .

I. Selecting RES and EEI Grant Applications for Award (§ 4280.121)

Competition cycles for REAP applications were modified such that all RES/EEI grant applications, regardless of the amount of funding requested (which includes $20,000 or less), will compete in up to two competition cycles. RES/EEI grant applications requesting $20,000 or less will compete an additional three times for the $20,000 or less set aside, for a total of up to 5 competitions. Guaranteed loan-only applications will compete periodically, provided that the Agency receives a sufficient number of applications in order to maintain a competitive awards process.

All competitions dates may be modified by a **Federal Register** Notice (see § 4280.121 for RES/EEI grants).

The Agency clarified that an application received after the application submittal deadline can be considered for funding in the subsequent fiscal year if the applicant remains interested in the grant. This same change was also made for Energy Audits grants and Renewable Energy Development Assistance grants.

The Agency relabeled paragraph (e) from ''Disposition of ranked applications not funded'' to ''Handling of Ranked Applications Not Funded.''

J. Awarding and Administering RES and EEI Grants (§ 4280.122)

A change was made to indicate that commitments for matching funds and other funds are needed prior to closing the grant.

K. Servicing RES and EEI Grants (§ 4280.123)

Under programmatic changes the Agency revised the provision that requires prior approval (paragraph (b)(1)) to reflect that prior approval is

not required in cases where there is a decrease in project cost that does not have any negative affect on the long-term viability of the project. In these cases review and approval will be required prior to disbursement.

For transfer of ownership, the Agency added a requirement that the project is also operational.

For both RES and EEI reports, the Agency clarified that jobs reported, if any, are a direct result of the REAP funded project.

For EEI reports, the Agency removed reference to 36 months and refers to the time period as reported in the energy assessment or energy audit.

L. Construction Planning and Performing Development (§ 4280.124)

The Agency rephrased ''unnecessary experience and bonding requirements'' in the proposed rule to read ''unnecessary experience or excessive bonding requirements'' to better reflect Agency intent (see § 4280.124(a)(1)).

The final rule clarifies that any exception requested for surety must be in writing and will require Agency funding be disbursed after project is operational (see § 4280.124(a)(3)(v)).

The final rule eliminates the cross reference in the proposed rule to 7 CFR 1780.74 regarding contracts awarded prior to application and brought the applicable requirements into this section (see § 4280.124 (g)).

M. Guaranteed Loan Funding (§ 4280.129)

The Agency added provisions to allow refinancing in the final rule under certain conditions. The final rule also clarifies that eligible project costs include buildings and equipment acquisition when an existing renewable energy system is being financed with guaranteed loan funds.

N. Scoring RES and EEI Guaranteed Loan-Only Applications (§ 4280.135)

The final rule incorporates a periodic competition for guaranteed loan-only applications, provided that the Agency receives a sufficient number of applications in order to maintain a competitive awards process.

The final rule clarifies that all guaranteed loan-only applications that do not meet the minimum score will be competed in a National competition at end of the fiscal year.

The Agency removed reference to Form AD 2106, but included language in the application that requests applicant to provide ethnicity, race, and gender information. This information is optional and is not required for a Complete Application.

O. Application and Documentation (§ 4280.137)

The final rule corrects the reference in paragraph (b)(2)(v) from ''the applicant must submit an estimated appraisal'' to ''the lender must submit an estimated appraisal.''

P. Selecting RES and EEI Guaranteed Loan-Only Applications for Award (§ 4280.139)

The Agency changed quarterly competitions to periodic competitions in the final rule in order to improve access to capital and indicated that the final National competition would be the first business day of September. All competitions dates may be modified by a **Federal Register** Notice (see § 4280.139 for RES/EEI guaranteed loans).

The final rule relabels paragraph (c) from ''Disposition of ranked applications not funded'' to ''Handling of Ranked Applications Not Funded.''

Q. Technical Reports for Energy Efficiency Improvement Projects (Appendix A to Part 4280)

The final rule requires energy audit or energy assessment to use actual energy consumed for the building and equipment being evaluated for 12, 24, 36, 48, or 60 months at the applicant's discretion, versus all applicants being required to use 36 months. The technical report was also modified to require information for simple payback calculations to be submitted. Lastly, the Agency added requirements for an individual or entity to perform assessments if total project cost is $80,000 or less.

R. Technical Reports for Renewable Energy System (RES) Projects With Total Project Costs of Less Than $200,000, but More Than $80,000 (Appendix B to Part 4280)

The Agency clarified what needs to be included in ''Project description'' and ''Resource assessment.'' The required information for simple payback calculations was clarified.

III. Summary of Comments and Responses

The current REAP program was implemented through the interim final rule which was published in the **Federal Register** on April 14, 2011 (76 FR 21110), with a 60-day comment period that ended June 13, 2011. The proposed rule was published in the **Federal Register** on April 12, 2013 (78 FR 22044), with a 60-day comment period that ended June 11, 2013. Comments on the interim final rule were received from 32 commenters and comments on the proposed rule were received from 37 commenters. Combined, these commenters provided approximately 150 similar comments. Commenters included biorefinery owner/operators, community development groups, industry and trade associations, investment banking institutions, Rural Development personnel, and individuals. As a result of some of the comments, the Agency made changes in the rule. The Agency sincerely appreciates the time and effort of all commenters.

Responses to the comments on both the interim final rule and the proposed rule are discussed below. Comments made in response to requested comments found in the proposed rule are presented first, followed by comments on the interim final rule and the proposed rule grouped by category and rule section.

Requested Comments—a. Application Threshold for Projects With Total Project Costs of No More Than $200,000

Comment: One commenter stated that larger thresholds skew to favor larger projects. According to the commenter, most agricultural producers that the commenter works with in southern Oregon are working on solar projects that are much less expensive, generally involving 5 kilowatt (kW), which can now be installed for less than $5/watt, for cattle water or power production for remote locations. The commenter recommended that the threshold be reduced to $100,000 or less.

Response: The proposed rule contains two thresholds—$200,000 and $80,000. The commenter recommended a threshold of $100,000. The $80,000 threshold is sufficient to address the commenter's concern.

Requested Comments—b. Less Documentation for Applications for Projects With Total Project Costs of No More Than $80,000

Comment: Numerous commenters agreed with the Agency's decision to create a third category for projects totaling less than $80,000. The commenters stated that the current application for small projects is burdensome at 40 to 50 pages in length, and dissuades farmers and rural small businesses interested in small wind technologies from applying to the program. The commenters suggested developing a template that meets all the statutory requirements and one commenter submitted an alternative application for consideration. Many of the commenters endorsed the proposal to simplify the application process for projects in the $80,000 to $200,000 tier,

as it would presumably increase small wind energy participation in the REAP program.

One commenter, in contrast, did not support the three-tiered grant application system, stating that three-tiers lead to additional complexity for applicants and Agency staff. This commenter recommended that the Agency use a two-tiered system, incorporating the simplified application process outlined for projects under $80,000 for all projects $200,000 or less.

Response: The Agency thanks the commenters supporting the proposed three-tier application system. While the Agency agrees with the one commenter that a two-tier system would be simpler, the Agency finds that a three-tier system achieves a better balance in the information being requested to account for the differences in the level of technologies; that a two-tier system would either result in obtaining more information than is necessary for the smallest projects or not obtaining enough information on the larger projects.

With regard to the suggestion by one commenter to develop a template for applications for $80,000 or less, the Agency agrees that this would be useful and intends to pursue the development of such a template.

Requested Comments—c. Definition of Small Business

The Agency received comments on the definition of small business in both the interim final rule and the proposed rule. Both sets of comments are addressed below.

Comment: In commenting on the interim final rule, a number of commenters were concerned that the restrictions in the SBA standards for defining a small business were unduly limiting retailers, especially those with multiple facilities, from participating in REAP. The commenters were seeking, in general, either to eliminate the use of SBA size standard for determining REAP eligibility or to apply the SBA size standard at the individual business concern level rather than at the entire entity level, which includes accounting for affiliates.

Four commenters stated that an obstacle to using REAP that hits at the heart of rural America are the SBA size requirements. These requirements are based on average annual profits and/or number of employees, which prevent interested businesses from using this program. One commenter stated numerous farm cooperatives are unable to take advantage of REAP because they are owned by a parent company, have subsidiaries or affiliates at other locations, and do not qualify for the program because they come under the umbrella of a much larger entity, exceeding SBA eligibility requirements. The commenter encouraged USDA to allow these types of businesses to be judged as a stand-alone company when determining their eligibility based on SBA standards.

Another commenter urged the Agency to use an alternate consideration for small business that would allow a broader interpretation of the term ''small business'' by allowing each site to be treated as its own entity rather than requiring small business status to be determined at the entire-entity level. According to the commenter, multi-site locations rarely qualify as a small business.

Response: The Agency has determined that defining ''small business'' in accordance with how the SBA defines ''small business'' is not only reasonable, but helps provide consistency within the Federal Government. That being said, even SBA has several definitions for ''small business'' depending on the specific SBA program. In evaluating the various SBA programs, the Agency has decided to use the small business sized standards used by the SBA financial assistance programs, commonly referred to as the 7A and the SBA 504 programs, as found in 13 CFR 121.301(a) and (b).

As noted in the comment, commenters were seeking, in general, either to remove the cap or to apply the cap at the individual business concern level rather than at the entire entity level, which includes accounting for affiliates. The Agency disagrees with both suggestions, primarily because the Agency has determined that it would be inappropriate to adjust how a business is determined to be a small business relative to the restrictions found in these SBA definitions; that is, the Agency defers to SBA's expertise and years of experience in the specific metrics to use to define a ''small business.''

Further, with regard specifically to the recommendation to apply the income limitation to the individual business concern only, the Agency is concerned that either change would open the door for huge companies to obtain assistance by forming a secondary company that could apply for and receive REAP assistance. These companies would have resources not available to other small businesses and potentially have an unfair advantage when putting together an application for assistance.

With regard to removing the income limitation altogether, the statutory authority for the program requires the Agency to consider the applicant's small business status as an eligibility criterion and the Agency cannot do otherwise. Thus, the Agency has not adopted this suggestion in the final rule.

Comment: In commenting on the interim final rule, two commenters recommended revising the definition of small business to follow an Agency guideline or the broad guideline used by SBA, which only looks at net income and/or net worth, or some other standard guideline. According to the commenters, the small business size standards for each industry are so different that it makes it difficult to determine eligibility. Both commenters stated that, if there were one or two numbers to review in every case, it would be much easier and the Agency would be able to help more businesses.

Response: For the reasons stated in the responses to the previous two comments, the Agency has decided to use the small business sized standards used by the SBA financial assistance programs, commonly referred to as the 7A and the SBA 504 programs, as found in 13 CFR 121.301(a) and (b).

With regard to the suggestion to look at net income and/or net worth in determining the size of the applicant, the Agency agrees that this is appropriate. By incorporating reference to 13 CFR 121.301(b), the Agency is adding the tangible net worth and average net income of the business concern and its affiliates as an alternative set of metrics for determining whether the applicant is a small business.

Comment: One commenter suggested removing the limit on the size of the applicant all together given the intent of the program is to encourage energy savings and generation of renewable energy. According to the commenter, the SBA size standards are one of the most burdensome and inconsistent areas within REAP, particularly the determination of parent subsidiary and affiliate status and aggregation of this income has been a challenge. The commenter recommended that consideration be given to continue using SBA size standards thresholds as a cap for each business type, but not necessarily using the same process for defining the threshold.

As an alternative, the commenter recommended using only the income of the applicant entity when determining eligibility. The commenter also asked whether the small business component could be addressed only in scoring rather than in eligibility determination. The commenter pointed that by doing this it would open up the eligibility to any for profit business and would

simplify the application process (*e.g.,* no need to provide previous year's tax returns or look up North American Industry Classification System (NAICS) code).

Response: While the Agency acknowledges the potential benefits of the commenter's suggestion to remove the size restriction on the applicant, as noted in a previous response, the statutory authority for the program requires the Agency to consider the applicant's small business status as an eligibility criterion and the Agency cannot do otherwise.

In addition, the Agency does not agree with the commenter's alternative to use only the applicant's income for the reasons cited in a previous response and therefore has not adopted the commenter's suggestion in the final rule.

Finally, because it is a statutory requirement that a business applicant be a ''small business,'' the Agency cannot accommodate the commenter's suggestion to address the size of the business as a scoring criterion only. The Agency notes that the final rule, as found in the proposed rule, does award points based on business size relative to the SBA small business size standards.

Requested Comments—d. Maximum Grant Size for Renewable Energy System Feasibility Studies

The Agency received comments regarding the appropriate size for feasibility study grants, however the 2014 Farm Bill repealed the ability of REAP to make grants for feasibility studies, therefore the Agency will not summarize or address those comments.

Requested Comments—e. Using Average Annual Gallons of Renewable Fuel To Award Points for Flexible Fuel Pumps

The Agency received comments regarding the average annual gallons of renewable fuel for flexible fuel pumps, however the 2014 Farm Bill repealed the ability of the REAP to provide assistance for flexible fuel pumps, therefore the Agency will not summarize or address those comments.

Requested Comments—f. Using a Minimum 25 Percent Tangible Balance Sheet Equity in Lieu of Cash Equity Requirement

Comment: Two commenters expressed opposition to replacing the current cash equity requirement with a minimum of 25 percent tangible balance sheet equity (or a maximum debt-to-tangible net worth ratio of 3:1).

According to one commenter, the term ''net tangible balance sheet equity,'' which is used in the Business and Industry Guaranteed Loan (B&I) program, is not a typical lender used term and calculating this figure is confusing and does not provide any real useful information to the lender or the Agency. The present REAP rule allows the fair market value of equity to be used in the calculation of the equity requirements. If farmers are going to use REAP, they are going to meet the equity requirement by using current assets and their values as opposed to cash injection. The term ''land rich and cash poor'' applies to most farming operations at this time. On-farm renewable energy project applications will be reduced to miniscule amounts if we use the B&I equity requirement. If the future of the REAP program is the guaranteed loan, then the Agency should not be making it more difficult to potential applicants to meet the REAP requirements and that is precisely what such a change would do.

The other commenter stated the use of tangible balance sheet equity (TBSE) appears to be a source of confusion for some existing B&I lenders and borrowers and extending the requirement to REAP would only make this worse. The B&I program requires TBSE when the loan is closed. Given REAP closings are after projects are in service, a TBSE requirement could create significant challenges as the balance sheet will likely see equity changes (cash) used to fund the construction phase. The current process of capping projects at 75 percent and using cash injection into the project works well. Also, agricultural producers typically do not provide Generally Accepted Accounting Principles (GAAP)-based financials as are typical to business and required in the B&I program. This requirement would be an additional burden. The commenter pointed out that REAP loans are generally secured well as there is new equipment with no existing liens, and that RES projects typically have takeoff contracts or power purchase agreement's to ensure cash flow, plus added security with the use of commercially available technology. Given these circumstances, the commenter is unsure as to what, if any, benefit using TBSE would bring to the program. Unless the current cash requirement is not working or the default rate has been unfavorable, the commenter recommended leaving the cash requirement as is. The commenter also noted that the cash equity requirement works with the combination grant/loan application where the grant is used for the cash injection.

Response: The Agency agrees with the commenters. While a goal of the Agency is for REAP to be as consistent with the B&I program as possible, REAP's agricultural producer and rural small business constituents are poorly served by the use of the term ''net tangible balance sheet equity'' and it will not be used. The final rule requires equity to be cash equity.

Requested Comments—g. Options for Increasing Use of REAP Guaranteed Loans

Comment: One commenter recommended that the Agency allow for waivers of the 20 percent personal guarantee when mitigation factors are in place in order to encourage greater use of REAP guaranteed loans.

Response: The Agency proposed to revise REAP to follow the B&I program's provisions for personal and corporate guarantees, except as they apply to passive investors. The B&I provisions allow the Agency to waive the 20 percent requirement if the lender can document to the Agency's satisfaction that collateral, equity, cash flow, and profitability indicate an above-average ability to repay the loan (7 CFR 4279.149(a)). By doing so, the commenter's recommendation has been addressed and the final rule maintains the incorporation of these B&I provisions.

Comment: One commenter recommended removing the SBA threshold all together and mimic the B&I program eligibility.

Response: The Agency does not agree with the commenter's suggestion to follow the B&I program in lieu of the SBA threshold. The B&I program is not specific to small businesses. Aligning REAP with how the SBA defines ''small business'' rather than how the B&I program determines applicant eligibility is more appropriate. Further, aligning REAP with the B&I program would be statutorily inconsistent with the REAP requirement to provide assistance to small businesses. For these reasons, the Agency has not adopted the commenter's suggestion in the final rule.

Comment: One commenter recommended allowing refinancing of existing renewable energy projects, which is frequently inquired about. The commenter recommended that the Agency implement provisions that are equal to or less restrictive than those found in the current B&I program.

Response: The Agency agrees with the commenter that allowing refinancing of existing projects would encourage the use of REAP loan guarantees and has added provisions to allow such

refinancing in the final rule. These provisions, however, require certain conditions be met. First, the existing project to be refinanced must be part of an application for a new project; that is, an application that proposes only to refinance an existing project is not eligible. Second, the existing project being refinanced must be a project that would otherwise be eligible under REAP. Third, the cost of the refinancing must be less than 50 percent of the eligible project costs of the application. In applying these provisions, the existing debt may be either current debt with the lender applying for the guarantee or debt from another lender.

Comment: One commenter recommended allowing loan note guarantees to be issued up-front prior to complete system being installed and tested.

Response: For the reasons discussed in response to directed question i below, the Agency is not incorporating this recommendation in the final rule.

Comment: One commenter indicated quarterly competition is positive improvement from the current REAP program, but monthly funding cycles is better than quarterly.

Response: The Agency agrees that shorter periods for competing guaranteed loan applications will provide the best service to those applying for such applications. The Agency, therefore, has decided to compete guaranteed loan-only applications on a periodic basis, provided that the Agency receives a sufficient number of applications in order to maintain a competitive awards process, and has included this provision in the final rule.

Requested Comments—h. Frequency for Competing Guaranteed Loan-Only Applications

Comment: One commenter stated that, while quarterly competitions are a positive proposal to the existing regulation, allowing projects to compete on a monthly basis will be more consistent with the B&I program. The commenter also stated that continuous funding would also mirror SBA programs, which lenders are familiar with.

Response: As noted in the response to the previous comment, the Agency agrees that shorter periods for competing guaranteed loan applications will provide the best service to those applying for such applications and, therefore, has incorporated periodic competitions for guaranteed loan-only applications in the final rule, provided that the Agency receives a sufficient number of applications in order to maintain a competitive awards process.

Requested Comments—i. Issuance of REAP Loan Note Guarantee Prior to Construction for Technologies That Demonstrate Lower Risk to the Government

Comment: One commenter recommended allowing loan note guarantees to be issued up-front prior to complete system being installed and tested in order to encourage participation in the REAP loan guaranteed portion of the program.

Response: The Agency agrees with the commenter that issuing the loan note guarantee up-front prior to the complete system being installed and tested would encourage participation in the program. However, no substantive suggestions were provided by the commenter on how risk to the program could be mitigated. Further, the similar B&I program does not issue loan note guarantees up-front for energy projects primarily because of the inherent increased risk with doing so. Therefore, the Agency has decided not to allow the issuing of loan guarantees up-front under REAP.

Requested Comments—j. Development of Multi-Farm, Community Digester Projects Under the Rule

Comment: One commenter stated that a community digester may not qualify given the SBA size determination method if all entities incomes are aggregated. According to the commenter, looking at only the income or projected income or employees of newly formed entities may allow this type of project to be eligible.

The commenter also suggested that the Agency consider modifying the Administrator points to encourage community-based renewable or energy efficiency projects with justification being that more people will benefit with project funding.

Response: The Agency agrees with the commenter that more community digesters would qualify as eligible by not aggregating all of the entities' incomes. However, for the reasons stated earlier in a response concerning this issue, the Agency had determined that consistency with the application of SBA definitions of small business is important and that it is important to look at the financial position of all entities associated with a project. Therefore, the Agency has not revised the rule to incorporate the commenter's suggestion.

With regard to the commenter's suggestion to modify how Administrator priority points are awarded, the Agency is not persuaded that funding a single, large community-based project necessarily benefits more people than funding an equivalent number of smaller projects. Thus, the Agency has not revised the rule in response to this suggestion.

Requested Comments—k. Subcategorization of Energy Efficiency Improvements for Purposes of Determining Under-Representation When Awarding State Director or Administrator Priority Points and Whether Historical Data or the Current Pool of Applications Should Be Used in Determining Under-Representation.

Comment: One commenter did not support subdividing EEI projects to award under-represented project points. According to the commenter, this would lead to more political influenced awards from year-to-year versus supporting the true goal of energy savings, which these projects currently promote. According to the commenter, penalizing projects types that have formerly been completed also penalizes the applicant that was not an early innovator or just learned about the program, but still has a project that achieves energy savings. The commenter claims that the Agency's credibility with renewable energy technology awards has been hurt because grant writers/vendors do not know from year to year if their applications will be competitive as these priority points for under-represented technologies can be critical for renewable energy projects to receive funding.

With regard to the second part of the question, the commenter stated that, while using historical data is preferable over considering the annual pool of applications, allowing states to award points to encourage growth specific to their state is the preferred method.

Response: In the absence of input from other commenters on supporting a subdivision of EEI projects, the Agency has elected not to subdivide EEI projects for the purposes of determining whether a specific type of EEI project is under-represented when awarding discretionary points.

The Agency is not subdividing EEI projects for the purposes of determining under-represented technologies, therefore, the agency did not respond to the second part of the comment (historical versus pool of applications for the year) because it is not applicable.

General

Support for Program

Comment: Two commenters expressed general support for the

program, with one commenter stating that these programs will help jumpstart economic growth in alternative sectors in the United States.

Response: The Agency thanks the commenters for their support.

Consolidation of Rule

Comment: One commenter stated that consolidating each part of the program into a single subpart should be helpful in enhancing the REAP program's effectiveness in fostering the development of more anaerobic digesters.

Response: The Agency agrees that consolidating each part of the REAP program into a single subpart enhances the Agency's effectiveness in implementing REAP, to the benefit of all eligible technologies, including anaerobic digesters.

Comment: Two commenters expressed strong support for REAP from the dairy farmer perspective. One of the commenters stated that dairy farmers have a great opportunity to take advantage of multiple USDA programs to develop and construct anaerobic digester systems. The commenter appreciates the Secretary's commitment to these efforts as put forth in the dairy sustainability Memorandum of Understanding signed in late 2009. For example, dairy farmers may be able to utilize Environmental Quality Incentives Program (EQIP) through USDA's Natural Resource Conservation Service (NRCS) with REAP to develop an anaerobic digester system. The commenter recommended continuing to work to make certain these opportunities are developed and understood throughout the nation.

The commenter also supported the comments submitted by the Innovation Center for U.S. Dairy, especially the Center's recommendations for modifying the personal loan guarantee language could allow for a number of dairy farmers to secure the necessary finances to utilize REAP for anaerobic digester systems.

The other commenter expressed belief that REAP is critical for our nation's energy future and that opportunities abound for not only realizing the energy efficiencies on the farm, but also for dairy farmers to become producers of renewable energy.

Response: The Agency thanks the commenters for supporting REAP. Agency officials collaborate closely with REAP applicants via its state offices through an array of supporting entities; such as the Natural Resource Conservation Service (NRCS), the Farm Service Agency (FSA), and the Forest Service (FS), state, and private stakeholders; to leverage program funds to their maximum impact upon national and departmental priorities.

The Innovation Center for U.S. Dairy did not submit comments on the interim or proposed rule, so the Agency was unable to determine what the commenter was referring to beyond the comment on personal loan guarantee. The Agency notes that among the changes implemented by this rule is the incorporation of the personal and corporate guarantee requirements of the B&I program.

Rebate Program

Comment: In commenting on the interim final rule, one commenter stated that there should be a rebate program for micro wind and solar in order to facilitate greater use of the program by these technologies.

Response: The statutory authority of REAP requires the Agency to implement grants and loan guarantees. As such, the Agency is not authorized to use rebates in implementing REAP. In lieu of being able to implement a rebate program, the Agency is implementing a simplified application process for applications for projects with total project costs of $80,000 or less where funds are disbursed at project completion. This streamlined application process achieves many of the burden reductions that could be achieved under a direct rebate program.

EO 12372 Intergovernmental Review

Comment: One commenter noted that the preamble to the interim final rule states that intergovernmental consultation results are not reported because they are ''not required of this program.'' The commenter stated that he understands that certain field offices insist that the U.S. Fish and Wildlife Service be consulted on all wind projects, regardless of their size, following a memo from Rural Development in Washington. According to the commenter, for fiscal year 2011 this resulted in a severely compressed application deadline and dissuaded a number of qualified applicants. The commenter recommended that this situation be clarified, and that all wind projects of 100 kW, as a minimum, and under be allowed to proceed without such consultation. The commenter's preference would be exclusion for single turbine projects with heights up to 200 feet (ft).

Response: The consultations referred to by the commenter are in connection with the NEPA and not with EO 12372, Intergovernmental Review. The Agency consultations with U.S. Fish and Wildlife Service regarding proposed project installations are not governed by EO 12372, but are instead governed by NEPA and Agency environmental regulations published in 7 CFR 1940, part G. Projects must comply with all environmental requirements; including Federal, state, and local requirements. All applicants must comply with the environmental requirements applicable to their project, including having the environmental review completed prior to approval of the project. Funding a grant or providing a loan guarantee is a Federal action requiring compliance with the NEPA. NEPA clearance must be done before the Agency obligates money, versus before application, so NEPA requirements should not significantly impact the time needed to submit an application.

Demonstrated Financial Need

Comment: Four commenters supported the removal of the demonstrated financial need requirement. One commenter stated that the need to demonstrate financial need was one of the most onerous requirements of the program and that it is not called for in the current statute, is burdensome, and a significant obstacle to participation on very small projects. The other two commenters stated that the requirement was undefined and difficult to prove. Other commenters stated that the change should remain in the final regulation.

Response: The Agency thanks the commenters for their support. The final rule does not contain a ''demonstrated financial need'' requirement. Further Congress evidenced its intent that ''demonstrated financial need'' not be shown when the 2008 Farm Bill removed it as a requirement for this program.

Funded Technologies

Comment: Numerous commenters stated the 2002 Farm Bill and 2008 Farm Bill specifically sought to promote renewable energy development for agricultural producers and rural small businesses. The 2008 Farm Bill set aside 20 percent of REAP funds for small business- and farm-scale renewable energy technologies for grants of $20,000 or less. The commenters believe that the lengthy project cycles for small wind, burdensome REAP paperwork, and application process and lower success rates for small wind applications have resulted in increasingly poor program participation rates by small wind retailers.

During fiscal years 2009 through 2012, the average funding success rate across all REAP technologies was 67 percent, which resulted in 6,605 funded

projects out of 9,856 requests. Yet, during that same 4-year period, the average funding success rate for wind was 40 percent, which resulted in 376 funded projects out of 942 total requests. The percentage of REAP awards between fiscal years 2009 through 2021 for wind projects was just 6 percent. Agency data indicate that the low amount funded for wind projects has been even lower in recent years. The commenters suggested the numbers indicate that the REAP program, including the application process, is not accessible for farmers and small businesses interested in wind generation and there is a programmatic bias against small wind projects.

Response: While the Agency agrees with the figures presented by the commenters, the Agency disagrees that the program is not accessible to farmers and small businesses interested in wind generation. The Agency has made and is making modifications to the program to ensure all technologies, including wind, have an ability to compete for funding, which include:

- Scoring adjustment in simple payback awards full points at a 10-year payback period rather than a 4-year payback period. This increase in the payback period to receive full points has helped certain renewable energy system projects, including small wind projects.
- To the extent that any one RES technology is unrepresented or under-represented in REAP awards, the program allows State Directors and the Administrator to award discretionary points to such projects. In fiscal year 2012 and fiscal year 2013, these discretionary points were awarded to wind projects and resulted in a higher percentage being funded. In fiscal year 2011, only 19 percent of the wind applications received were funded, but in fiscal year 2012 and fiscal year 2013 45 percent and 56 percent, respectively, of the wind applications received were funded.

Multi-Farm Anaerobic Digester Projects

Comment: In commenting on the interim final rule, one commenter recommended that a separate procedure be provided for projects involving multiple farms. The commenter provided a detailed separate procedure for providing an alternative combination grant and loan procedures for multi-farm digester projects, which would differ from the current combination grant and guaranteed loan process, as follows:

- The grant portion should be available in the full amount of up to 25 percent of total costs of the activity, as authorized by REAP.
- The loan guarantee portion should be authorized for up to 75 percent of eligible project costs, less the amount of a grant, when:

(1) At least 15 percent of eligible project costs is committed as private equity, and

(2) A minimum 10-year contract has been executed for the end-use of the fuel.

- The loan guarantee should also be available to support restructuring of loan amortization.
- A project developer should be able to apply for a combined grant and loan guarantee on a rolling basis, or as soon as concept design and business plan are completed.
- Project review should not be based on competitive scoring, but would instead be expedited and measured against a set of fixed criteria.
- ''Hybrid'' project funding would be simultaneously available in the full amount offered by any separate program, whether USDA or Department of Energy (DOE) or other, and would not reduce the availability of the REAP grant.
- An interim procedure should be devised for ''shovel ready'' projects, to phase in their financing and construction over 2 years, beginning this summer. Some funding should be allocated from the fiscal year 2011 funds to finance the initiation of construction in fiscal year 2011 and a commitment of fiscal year 2012 funding be provided to finance the continuation and completion of construction next year. The current hard June 15 deadline for fiscal year 2011 should be modified to allow the submission of applications for the filing of interim applications under this new procedure.
- In the alternative, if a combination of full, 25 percent funding and a revised loan guarantee is to be made available for multi-digester projects under a competitive scoring procedure, the current hard June 15 deadline needs to be modified to enable submission of applications for funding in fiscal year 2011.

The commenter concluded by stating that, with greater, targeted funding and improved loan financing flexibility for these types of projects, the program's incentive value may be greatly leveraged so as to reach more farms and more sectors of the renewable energy marketplace.

Response: The Agency points out that multi-farm anaerobic (community) digester projects are eligible projects under the current process and disagrees with the commenter that a separate award procedure is needed for providing a combination grant and loan for multi-farm anaerobic digesters because the current award process is sufficient and allows such facilities to compete on an equitable basis with all other technologies. The Agency has implemented periodic guaranteed loan-only competitions in the rule to improve access to capital. Furthermore, to fully implement the recommendation made by the commenter would require the Agency to set aside funds specifically for multi-farm digesters. This is something that the Agency cannot do without specific statutory authority, which the Agency does not currently have. Finally, the Agency works to sustain a diverse portfolio of RES and EEI projects across every state. To develop a procedure specific to one technology would be counter to this goal for the program.

Comment: In commenting on the interim final rule, a number of commenters supported increased funding for multi-farm digesters. Some simply requested that the interim final rule be amended to allow multi-farm digester projects to be funded in an amount equal to a full 25 percent of project costs as authorized by REAP. According to one of the commenters, the up-front funding cap of $500,000 per digester for projects combining a loan guarantee with a grant is simply insufficient to drive the investment for a project of this scale, whereas funding of 25 percent of project costs approaches the necessary amount. Therefore, the commenter recommended changing the rule to allow this amount of funding.

Other commenters echoed similar concern and recommendations, explaining that the completion of the projects hinge largely on whether REAP funding can be made available at a level in the amount of 25 percent of project costs, or substantially more than the $750,000 currently authorized by the REAP funding rule and thus the cap of $750,000 must be raised, but would still need to conform to the 25 percent of project costs statutory limitation.

The commenters as a whole stressed the potential benefits of these changes to facilitate multi-farm digester projects. One of commenters noted that these projects take advantage of the economies of scale involved, where the only limitation on the number of farms that may be involved in this type of project is proximity to the host digester site and the associated costs of transporting the farm wastes and returned nutrient spread and bedding byproduct.

Another commenter noted that there are challenges in making digester technology cost effective for single, small farm operations and that it is hard

to envision broad-based application of single digester equipment on smaller dairy operations as are typically found in the eastern United States. This commenter stated that the community digester model provides a workable solution to this challenge by allowing multiple producers to supply their wastes collectively to a single, larger scale operation.

Still other commenters provided examples of projects currently being considered that would provide renewable natural gas as a substitute for #6 and #2 fuel oil in a co-generation plants at universities and extensive discussion of the potential overall benefits of the projects to the universities and local farming operations.

Response: As implemented in 2011, REAP has two maximum funding levels: a $500,000 limit for any one renewable energy project and a $750,000 limit to any one entity (for all projects funded under REAP). With regard to combined funding requests (those requests seeking both a grant and a loan guarantee) for RES, the maximum loan amount is $25 million and the maximum grant amount is $500,000. While the Agency acknowledges that certain projects, such as multi-farm digesters, may have significant funding requirements, the Agency seeks a program that not only supports a diversity of technologies, but provides funds to a large number of projects in all states to ensure a national-level program. Removing maximum funding levels would work counter to both of those goals (*e.g.,* very large projects could take a significant portion of the limited funds available thereby reducing the number of projects that could otherwise have been funded and in turn reduce the diversity of projects). Further, multi-farm projects are not prohibited from seeking a combined funding request, as long as the grant portion does not exceed $500,000. For these reasons, the Agency has retained these levels in the final rule.

Project Eligibility

Pre-Commercial Technology/ Commercially Available Definition

Two commenters expressed concern about removing pre-commercial technology for the rule.

One commenter stated that the rationale behind the removal of pre-commercial technology was difficult to understand. The stated reason is to avoid overlap with the Biorefinery Assistance guaranteed loan program. The Biorefinery Assistance program appears to focus primarily on biofuels, which presumably encompasses only a subset of projects that apply for REAP funding. If the Agency is seeking to avoid overlap with the Biorefinery Assistance program, it appears that there are more efficient and precise mechanisms, such as explicitly stating that biorefinery projects receiving loans from the Biorefinery Assistance program would be ineligible.

In pointing to the definition of pre-commercial technology (Technology that has emerged through the research and development process and has technical and economic potential for commercial application, but is not yet commercially available), the commenter pointed out that the definition is clearly broader than biorefinery projects, and making this category ineligible affects project types outside of what would also be relevant for the Biorefinery Assistance program.

As proposed, only commercially available technologies would be available for funding. The definition for commercially available (from the same document) begins with ''A system that has a proven operating history specific to the proposed application'' and contains other requirements such as ''an established warranty exists for parts, labor, and performance.'' While the definition for pre-commercial is fairly broad, the requirements for a technology to be considered ''commercially available'' are relatively restrictive. If the proposed rule change is accepted, then several new (but beyond pre-commercial) technologies could conceivably be made ineligible. Under a strict reading of the current definition of commercially available, products coming onto the market, such as an innovative wind turbine design or a new biodigester system, would be ineligible for REAP funding.

There may be an argument for removing pre-commercial technology from eligibility to ensure participating projects are likely to succeed, but the given rationale appears incongruent with the potential consequences.

The second commenter opposed eliminating the pre-commercial available technology from the rule because many projects do not qualify for the Biorefinery Assistance program and the removal will leave a void in the Agency's funding spectrum. This commenter stated that, if the Agency does their due diligence in the technical reviews to ensure sound projects are funded, the program can continue to foster innovative energy improvement and renewable energy projects.

In contrast to these two commenters, numerous commenters supported the removal of pre-commercial technologies as eligible projects from the REAP program and, at the same time, recommended that the Agency strengthen the definition of ''commercially available.'' Without the qualified examination of documentation supporting the claim of commercial availability by an organization such as National Renewable Energy Laboratory (NREL), the broad language (one commenter specifically identified ''operating history of 1 year, established design and installation procedures, professional service providers' familiarity with the system'') risks the reputation of the program by inviting the entry of questionable wind energy systems into REAP.

Commenters strongly recommended that the Agency require safety and performance standards certification to either American Wind Energy Association (AWEA) 9.1–2009 (for turbines >200m² rotor area, ~ 60 kW) or International Electrotechnical Commission (IEC) 61400–12–1 and IEC 61400–11 (2005 or future versions) by the Small Wind Certification Council, or other accredited certification body, for qualification as ''commercially available.'' One of the commenters specifically recommended that the Agency include in the definition of ''commercially available'' certification standards for all RES from an accredited certification body.

Response: As discussed below, the Agency is not including pre-commercial technologies as eligible for REAP funding in the final rule and has revised the definition of ''commercially available.''

With regard to the exclusion of pre-commercial technologies, the Agency acknowledges that the Agency's rationale presented in the preamble was incomplete. The Agency also acknowledges that eliminating the overlap with the Section 9003 program can be handled in several ways, as pointed out by the commenters. However, the Agency is concerned that including pre-commercial technologies within REAP continues to expose the Agency and taxpayer dollars to the risks associated with financing unproven technologies that do not meet the commercially available definition. Further, with the streamlining of applications, the Agency will be receiving less information to make technical merit determinations. To create another set of application requirements increases the complexity of the program at a time when the Agency is making a concerted effort to simplify it. Lastly, with regards conducting ''due diligence,'' the Agency is concerned that due diligence may be

insufficient to overcome the potential risks inherent with pre-commercial technologies, such as whether the technology can be successfully scaled-up to a commercial level.

Several commenters, in supporting the removal of pre-commercial technologies, recommended that the Agency strengthen the definition of ''commercially available'' by requiring review of applications by such entities as the National Renewable Energy Laboratory (NREL)and/or requiring certification of projects as being commercially available by an appropriate industry body or meeting certain industry standards. The Agency has and will continue to work with NREL and other recognized industry experts, as needed.

As described below, the Agency has revised the definition of ''commercially available'' by requiring the system have:

- ''Proven performance data'' in addition to a ''proven operating history'' and that there is at least one year of data demonstrating both the performance data and operating history; and
- An existing established warranty that is valid in the United States.

In addition, the Agency is adding the option of demonstrating that a system can be determined ''commercially available'' if it has been certified by a recognized industry organization whose certification standards are acceptable to the Agency. The Agency also revised the definition to clarify that the requirements apply equally to both domestic and foreign systems.

Finally, with regard to the suggestion that the Agency explicitly state that biorefinery projects receiving loans from the Biorefinery Assistance program would be ineligible for REAP, the Agency agrees with the commenter that this helps delineate the two programs. The Agency intends to address this suggestion in the Biorefinery Assistance program final rule.

In sum, the changes made in the final rule in response to this set of comments strengthen, clarify, and increase flexibility in demonstrating that a system is ''commercially available.''

Definitions (§ 4280.103)

Anaerobic Digester Product

Comment: One commenter recommended that the underlined text be added to the definition: ''Anaerobic digester project. A renewable energy system that uses animal waste and other organic substrates, via anaerobic digestion, to produce biomethane that is used to produce thermal or electrical energy or converted to a compressed gaseous or liquid state for direct use or for injection into natural gas transmission and distribution systems.'' According to the commenter, this change will increase the demand for renewable biogas produced by anaerobic digesters. It would allow anaerobic digester projects that inject renewable biogas into the natural gas, in addition to or instead of using the gas on-site. Anaerobic biogas producers can receive added value from the renewable quality of their biogas, even when that gas is not used on site but put into transmission; wind and solar generators sell the renewable quality of their electrons to firms far from where the electrons are consumed. Encouraging the wheeling of renewable biogas through the natural gas transmission system allows customers, including stationary fuel cell power plants and hydrogen production systems at fuel cell electric vehicle fueling stations, to take advantage of renewable fuel using the existing natural gas system.

Response: With regard to the suggestion that the definition be modified to include ''for direct use or for injection into natural gas transmission and distribution systems,'' the Agency disagrees that this is needed. The current definition does not exclude such uses and including the suggested language might unintentionally disqualify anaerobic digesters that the Agency would otherwise have funded. Therefore, the Agency has not included this suggested language in the final rule.

Annual Receipts

Comment: One commenter stated that income limitations should be defined using net income, not gross income.

Response: For the reasons stated earlier in our response to comments on the definition of ''small business,'' the Agency is using in the final rule the definitions of small business as found in SBA's provisions in 13 CFR 121.301(a) and (b). Having made this determination, the Agency defers to SBA's expertise and years of experience in the specific metrics to use to define a ''small business'' and, in the case of 13 CFR 121.301(b). The Agency notes that 13 CFR 121.301(b), is still in the process of being updated, but based on 15 U.S.C. Section 632(a)(5), SBA can determine a small business eligible, for development company programs and for 7(a) business loans by using average net income after taxes of less than $5 million and tangible net worth of less than $15 million in the preceding 2 years. Thus, the commenter's request has been accommodated.

Energy Analysis

Comment: Two commenters did not agree with adding the new definition of ''Energy Analysis.'' One commenter stated that the definition is ambiguous and does not provide a clear meaning as to what is expected, while the other commenter stated that it adds another level of confusion to the energy savings documentation requirement. According to the commenters, this new term varies little from the ''energy assessment'' definition, and will result in added confusion for potential applicants. The commenters also questioned whether this definition will provide the Agency with the necessary information for informed energy savings decisions.

Response: After considering these comments, the Agency has determined that it is unnecessary to have a separate definition for ''energy analysis'' and has eliminated the term from the final rule.

Energy Assessor

Comment: One commenter raised concerns with the ''energy assessor'' definition. The commenter questioned the credibility of using 3 years of experience and completion of five energy assessments or energy audits as a measure for a qualified consultant.

Response: The Agency has reviewed the proposed definition for ''energy assessor'' with knowledgeable federal professionals who indicated that the 3 years and five energy assessments or energy audits is a reasonable threshold to provide sufficient experience to perform energy assessments. Further, part of the definition of ''energy assessor'' is that the energy assessor is a ''Qualified Consultant.'' To be a ''qualified consultant,'' the individual or entity must possess ''the knowledge, expertise, and experience to perform the specific task required.'' In this case, the specific task required is performing an energy assessment. The purpose of the ''number of years of experience'' and the ''number of similar projects'' within the definition of ''energy assessor'' is to set a minimum benchmark to be applied across the various technologies included in REAP. Therefore, the Agency has not revised the rule in response to this comment.

Energy Audit

Comment: One commenter indicated that there are three types on energy audits: Level I, a walk through audit; Level II, a full audit; and Level III, a full investment grade audit. The commenter asked if walk through audits are sufficient for REAP. According to the commenter, full audits identify numerous energy conservation measures

(ECMs) and it is customary to recommend that a specialist make a detailed analysis of a particular aspect regarding an ECM. The commenter noted that most REAP projects do not focus on one particular piece of equipment. If this is indeed the case, the commenter recommended that the Agency prescribe what is acceptable for such measures as many utility rebate or state grant programs do.

Another commenter recommended that the Agency makes sure that the energy auditor performs the on-farm energy audit according to the American Society of Agricultural and Biological Engineers (ASABE) definitions.

Response: As defined in the rule, an ''energy audit'' is, in part, a ''comprehensive report that meets an Agency-approved standard.'' Rather than defining what level energy audits would be acceptable to the Agency in the rule, the Agency will include guidance on what is acceptable in the Agency's instructions for the rule so as to identify those industry-recognized energy audit standards that are acceptable for conducting energy audits under this program. The Agency notes that, while the Level II and Level III energy audits described by the commenter would constitute energy audits acceptable to the Agency, a walk through energy audit (Level I) may be acceptable depending on the work that is done and presented in the audit. To be accepted by the Agency, an energy audit must contain the information outlined in Section B of Appendix A to 7 CFR part 4280.

While the Agency agrees that an audit performed according to ASABE definitions is acceptable under REAP, not all audits need to be performed according to ASABE definitions in order for the audit to be acceptable to the Agency under REAP. As noted above, the Agency will include up-to-date guidance on what is acceptable in the Agency's instructions so as to further clarify that energy audits include industry recognized energy audit standards.

Energy Auditor

Comment: One commenter recommended that the Agency ensures that the energy auditor conducting on-farm energy audits is either a professional engineer or certified energy manager.

Response: The Agency disagrees with the commenter that the only entities qualified to perform energy audits under REAP are professional engineers and certified energy managers. The Agency has determined that a certified energy auditor; an individual with a 4 year engineering or architectural degree with at least 3 years of experience and who has completed at least five similar type energy audits; or an individual supervised by one of these individuals, has the sufficient experience for conducting energy audits under REAP and the Agency has not revised the rule in response to this comment.

Inspector

Comment: One commenter stated that the definition of ''inspector'' does not define how the inspector is qualified other than having 3 years of experience and completion of five energy assessments or energy audits. The commenter asked how the Agency arrived at five assessments or audits as a meaningful number and questioned whether five audits or assessments in 3 years makes an individual qualified.

Response: The Agency points out that in the proposed rule ''inspector'' is used in conjunction with the quality of the project work completed and not with energy audits or energy assessments. Nevertheless, the Agency disagrees with the commenter's assertion that the definition of ''inspector'' is solely defined by the number of years of experience and the number of projects. Part of the definition of ''inspector'' is that the inspector is a ''Qualified Consultant.'' To be a ''Qualified Consultant,'' the individual or entity must possess ''the knowledge, expertise, and experience to perform the specific task required.'' The purpose of the number of years of experience and number of similar projects within the definition of ''inspector'' is to set a minimum benchmark to be applied across the various technologies included in REAP. The Agency has not revised the rule in response to this comment.

Qualified Consultant

Comment: One commenter was concerned that requiring the Qualified Consultant be ''independent'' will have a negative effect on applications for small projects, which have the vendor perform the energy savings analysis, plus supply the equipment, and at times the project installation. The commenter pointed out that there are many small vendors in rural America who are qualified to provide the savings analysis as a service to their potential customers and this should not be discouraged. According to the commenter, this proposed definition would discourage this activity and harm small projects.

Response: The Agency agrees with the point being made by the commenter. However, neither the proposed rule nor the final rule require projects with total project costs of $80,000 or less to use an energy assessor, who must be a qualified consultant. As found in the definition of ''Energy Analysis'' in the proposed rule, the energy analysis could have been performed by an individual or entity with at least 3 years of experience and at least five energy assessments or energy audits for similar projects. In § 4280.103 of the final rule, while the Agency has removed the definition of energy analysis (for reasons discussed above), such an individual or entity can still be used to conduct energy assessments for projects with total project costs of $80,000 or less (as found in Section B of Appendix A to 7 CFR part 4280). As such, the final rule does not require the individual or entity to be ''independent.'' Thus, for these small projects, the vendor or installer of the RES or EEI may be sufficiently qualified to provide energy savings or energy replacement information.

To the extent, however, that the commenter is referring to projects with total project costs of more than $80,000, the Agency disagrees with the commenter and is keeping the requirement that the energy assessment is performed by an independent entity (as found in the definition of ''Qualified Consultant'').

Retrofitting

Comment: One commenter questioned why the term ''retrofitting'' applies only to RES. The commenter asked: ''Can't one retrofit an existing fan, motor, or lighting system?''

Response: The Agency agrees that the definition of ''retrofitting'' does not need to reference RES and has revised the definition accordingly.

Simple Payback

Comment: One commenter agreed with the proposed change to remove the adjustment of energy efficiency equipment based on the ratio of capacity when determining simple payback. According to the commenter, annualized energy savings is sufficient to ensure the goal of the program is being met.

Response: As in the proposed rule, determining simple payback under the final rule does not include adjusting the EEI based on the ratio of capacity. The Agency agrees with the commenter that annualized energy saving is sufficient to ensure the goal of the program is being met.

Comment: Two commenters disagreed with using 36 months of energy use data within the ''Simple Payback'' definition for EEI projects because the 36 month energy usage history requirement can be detrimental to certain applicants. According to the commenters, the

nature of some industries does not require the applicant to record 36 months of energy usage. The commenters further state that the penalty of ineligibility due to an applicant's inability to produce 36 months of energy usage history is too severe. One commenter recommended that the Agency either retain the current 12 month energy usage history criteria or use a 3-year average.

Response: In consideration of these comments, the Agency has decided not to implement the proposed rule's 36 month of energy usage, but instead allow the applicant a choice to use either the most recent 12 months or an average of 2, 3, 4, or 5 years to provide the baseline data. The ability to use more than just 12 months will provide a more accurate picture of historical data, but not put an undue burden on the applicant or auditor to compile the data on past energy use for all EEI applications.

Comment: One commenter encouraged the Agency to allow flexibility with the requirement that all utility bills be supplied with the audit/application. The commenter pointed out that agricultural producers and businesses have the records on file, which are submitted to their auditor to derive at overall energy consumption, and the Agency should only request actual bills if necessary. This controls the paperwork burden on applicants as well as the paper volume for Agency files.

Response: Neither the proposed rule nor the final rule requires applicants to submit their actual utility bills with either the energy audit or the application. The energy audit or energy assessment must present the information in the audit. The Agency agrees that applicants should keep such documentation in their files should the Agency request them as it reviews the energy audit and application.

Comment: One commenter pointed out that the simple payback calculation allows Production Tax Credits (PTCs) and Renewable Energy Credits (RECs) to be counted, but not Investment Tax Credits (ITCs) or state subsidies. The commenter stated that this makes little sense, because a subsidy is a subsidy in a payback calculation whether it is paid at once or over time. According to the commenter, not including ITCs discriminates against wind and solar projects under 100 kW because such projects qualify for Section 48 ITCs, rather than the Section 45 PTCs. The result is that the payback period of smaller projects is significantly exaggerated and their REAP scores are unfairly reduced.

To remedy this situation, the commenter recommended eliminating the scoring for micro-projects entirely and replacing it with a ''first come/first served'' award system once annual funding is determined. The commenter stated that this unfair payback accounting, at a minimum, must be equitably revised so that smaller distributed generation projects are not improperly penalized.

Response: The Agency must evaluate all projects against each other as required by the authorizing statute, and thus cannot implement a ''first-come, first-served'' approach, as suggested by the commenter, in making awards.

With regard to making changes to the calculation of simple payback, the Agency acknowledges that the simple payback calculation has been difficult to apply because of the differences in utility rates and incentives between state and regions. Rather than adding additional considerations (such as investment tax credits) to the calculation of simple payback, the Agency has decided to simplify its calculation by also removing from consideration in the calculation of net income all tax credits, carbon credits, and renewable energy credits. In addition to simplifying the calculation, this change allows the Agency to better evaluate each project on its own merits.

Comment: One commenter noted that the simple payback calculation does not allow one time incentives to be figured into the return on the project for simplicity purposes and to allow equitable scoring between EEI projects and renewable energy projects and stated that this is understandable. The commenter then stated that one incentive that should be considered in the simple payback definition is depreciation on RES. This incentive is received as an annual benefit to a grantee, who installs a renewable energy system. The Modified Accelerated Cost Recovery System (MACRS) shortens the useful life of renewable energy equipment to 5 years and is recorded for tax purposes. The total value of the system (in terms of upfront costs) will be taken out of gross income over the 5 year depreciation period allowed by MACRS. For example in the case of solar MACRS reduces the solar energy equipment owner's tax liability with a net result of them keeping more of the annual revenue produced. This is an annual benefit taken over a period of years and should be reflected in the simple payback calculation. The commenter pointed out that, as it stands now, the formula subtracts depreciation to arrive at average net income and then adds it back in essentially creating a ''wash'' for depreciation and not figuring in this valuable annual incentive in the payback calculation for REAP scoring purposes. This should be considered to provide a more realistic view of the simple payback on RES. According to the commenter, EEI projects have historically had advantages in scoring under REAP and by allowing annual depreciation (MACRS) under the formula this would allow a more level playing field for the two types of purposes under REAP.

Another commenter stated that tax credits and accelerated depreciation should be considered in the payback calculation if an accountant for the applicant can verify the company can benefit from them.

Response: Incorporating MARCS as an alternative deduction method would result in increasing the complexity of the rule and the burden to the applicant and the Agency. Further, using MARCS would be difficult to calculate for each project. Therefore, the Agency is not modifying the simple payback calculation as requested by the commenters.

Comment: Two commenters stated that the simple payback calculation should look at eligible project costs (EPC) instead of total project costs. Because the grant amount is based off of EPC, the commenter stated that it only makes sense that the scoring criteria look at the same amount.

Response: The Agency agrees with the commenter and has modified the definition of simple payback to use eligible project costs instead of total project costs.

Small Wind System

Comment: In commenting on the interim final rule, one commenter recommended eliminating the hub height limit of 120 ft. for small wind systems (used in various parts of the interim final rule), stating that the limitation to 100 kW is sufficient.

Response: The Agency proposed in the proposed rule to eliminate the distinction between small and large wind projects, and the Agency is not distinguishing between small and large wind projects in the final rule. Thus, this comment is not relevant to the rule.

Total Project Costs

Comment: In commenting on the interim final rule, one commenter recommended keeping the feasible study or energy audit cost included in the total project cost.

Response: The rule continues to include feasibility study and energy audit costs as part of a project's total project cost. However, the Agency

points out that these two costs are not included in calculating a project's eligible project costs. This change was made because the 2008 Farm Bill allowed grants specific to feasibility studies and energy audits available. While the 2014 Farm Bill has repealed the feasibility study grant the Agency has not made a change to eligible projects cost. Since the cost for these items have already been incurred at submission of the RES/EEI application and there is no bona-fide need for the grant to cover these costs.

Laws That Contain Other Compliance Requirement (§ 4280.108)

Environmental

Comment: One commenter agreed with changing ''will'' to ''may'' with regard to the Agency determining whether a project becomes ineligible when an applicant takes any actions or incurs any obligations that would either limit the range of alternatives to be considered or that would have an adverse effect on the environment prior to Agency completing the environmental review.

Response: The Agency thanks the commenter for supporting this change, which has been retained in the final rule.

Comment: One commenter recommended that the Agency consider allowing environmental reviews to be conditional upon award as necessary to compete for funding. The commenter provided two examples as to why the Agency should consider this.

Example A: A Small producer completing an irrigation efficiency project is required to spend $1,500 on an archeological survey to complete the environmental without a funding guarantee. Over 90 percent of the time the surveys are completed with no findings. Most producers withdraw applications versus completing the study.

Example 2: Applications comes in on deadline and Agency must process all applications as timely as possible. However, the environmental reviews are not always completed in time (given required 30 day comment period) in order to have such affected applications compete for funding. Many of these affected applications are renewable energy projects, which creates an unfair advantage to energy efficiency projects who are allowed to compete in all funding competitions.

Response: The Agency cannot accommodate the commenter's suggestion allowing environmental reviews be conditional upon award because the Agency is bound by Agency regulations, outside the purview of the REAP rule, to complete the necessary environmental review prior to the obligation of funds for a project. The Agency does note that the final rule incorporates provisions that allow all applications, both for renewable energy projects and EEI projects, to compete in the same number of funding cycles. Thus, while a RES application may not be competed in the same funding cycles as an EEI application submitted at the same time, the RES application is still eligible to compete in the same total number of funding cycles. This addresses the commenter's concern of EEI projects having an ''unfair'' advantage in being able to compete in all funding competitions.

Comment: One commenter stated that REAP should grant NEPA Categorical Exclusions for single wind turbine distributed generation projects up to, as a bare minimum, 100 kW and preferably for any single turbine up to 200 ft in height. Single small wind turbines have been installed at National Wildlife Refuges, National and State Parks, Audubon Preserves, schools, historical sites, tribal headquarters, and thousands of farms. No published study has identified small wind systems as having undesirable environmental impacts, such as noise or avian impacts. Available studies point to little or no impact from these small distributed installations. Medium scale wind turbine with heights up to 200 ft. (the Federal Aviation Administration determination threshold) have been installed at numerous sites and shown in pre-installation impact studies and post-installation monitoring to have little or no avian impacts. There should be a clear distinction between the environmental concerns for wind farm projects and the much smaller distributed generation projects.

The commenter recommended that, if this is not acceptable to the Agency, then the Agency should adopt the DOE NEPA Categorical Exclusions for wind turbines up to 20 kW (and solar up to 60 kW) to reduce the burden on small project applicants.

Response: With regard to the recommendation for a categorical exclusion for small wind and solar projects, it is outside the purview of this regulation to make such determinations. The Agency notes that it will pass this comment on to those within the Agency who perform the environmental assessments for REAP projects and make determinations as to whether these projects, or any other projects, should be categorically excluded. Thus, no changes have been made to this rule with regard to categorical exclusions.

Comment: One commenter pointed to the preamble to the proposed rule that states, in part: ''To date, no significant environmental impacts have been reported, and Finding of No Significant Impact (FONSI) have been issued for each approved application. Taken collectively, the applications show no potential for significant adverse cumulative effects.'' Given this, the commenter asked whether a programmatic assessment can be issued to limit the Agency's environmental reviews on REAP applications to only certain areas per technology type that need to be addressed in full to ensure potential impacts are mitigated. According to the commenter, such streamlining would decrease the time and potential cost burdens on applicants, plus reduce Agency staff time as historically the program has shown to have no significant adverse effects on the environment.

Response: The commenter is correct that all approved REAP projects have resulted in FONSIs. Programmatic assessments cannot assess the site specific impacts of an individual project and can be useful only for programmatic decisions by the Agency. All applicants must comply with the environmental requirements applicable to their project. Funding a grant or providing a loan guarantee is a Federal action requiring compliance with the NEPA. While small projects are likely to have fewer adverse environmental impacts than similar larger projects, USDA cannot predetermine that all projects will have limited impacts. USDA believes it is appropriate for environmental evaluations to be prepared on a project by project basis to analyze the nature and extent of a project's environmental impact. Thus, the Agency has not accommodated this suggestion.

The Agency notes that it will pass this comment on to those within the Agency who perform the environmental assessments for REAP projects.

General Applicant, Application, and Funding Provisions (§ 4280.110)

Project Completion

Comment: Two commenters are concerned that the 2 year deadline for project completion will put larger projects with longer durations in peril. One commenter asks how long a project could be extended, if the agency grants concurrence. In regard to small projects, one commenter suggested that the Agency utilize the Grant Agreement or the Letter of Conditions to make a statement that it has authority to de-obligate funds after a specified date. The commenter stated that this measure will reduce confusion for the applicants.

Response: The Agency acknowledges the commenters' concern over the two year period. Extensions to the two year

requirement can be granted with justifications by the approval official (see § 4280.110(i)(1)). Because there are many circumstances that may cause an extension to be required, the approval official has the authority to grant such extensions. The guidance recommended by the commenter to be included into the Letter of Conditions is acceptable and may be used to communicate the Agency's authority to de-obligate funds after a specified date.

Notifications (§ 4280.111)

Comment: One commenter stated that ''Disposition of Applications'' may be a conflicting Agency term to determine when applications can be destroyed. The commenter recommended using ''Funding Determinations'' instead.

Response: The Agency agrees with the commenter that using ''disposition of applications'' could be confusing. The Agency has revised the terminology in the final rule to read ''Handling of Ranked Applications Not Funded.''

RES/EEI Applicant Eligibility (§ 4280.112)

Applicant Eligibility

Comment: In commenting on the interim final rule, two commenters recommended maintaining eligibility for all agricultural producers, regardless of location. The commenters supported the Agency's action to remove the rural restriction for agricultural producers under all relevant REAP programs, stating that this action demonstrates support for REAP as a diverse program providing broad benefits to all agricultural producers across the country, which should remain a defining program goal.

This is a commendable action for a number of reasons. Foremost, the authorizing legislation never restricted REAP eligibility to only rural agricultural producers, just to rural small businesses. The exclusion had the effect of excluding many nursery and greenhouse growers, fruit and vegetable growers and other growers of specialty crops from participating in this program. Many of these sectors have their own unique energy needs and can benefit from implementing both energy efficiency as well as renewable energy improvements.

In addition, this change comports REAP with other USDA programs that serve all agricultural producers regardless of location. By this change the REAP program can have a greater reach in sectors across the country. The commenters urged USDA to maintain this policy of eligibility for all agricultural producers, regardless of location, in the Notice of Proposed Rulemaking for REAP.

Response: The Agency thanks the two commenters for their comments and the final rule does not take into account an agricultural producer's location in determination the agricultural producer's eligibility for REAP funding.

Dun and Bradstreet Data Universal Numbering System/System for Awards Management System/Central Contractor Registration

Since the 2011, applicants have been required to supply a Central Contractor Registration (CCR) number in order to be eligible. The CCR requirement was implemented through program notices published in the **Federal Register**. The CCR number has since been replaced with a System for Awards Management System (SAM) number, and applicants are now required to supply their SAM number with their application in order to be eligible. The proposed rule contains reference to the SAM number requirement. The Agency received comments on this requirement, whether commenting on the CCR or SAM number, as presented below.

Comment: Several commenters were concerned over the requirement to submit a Dun and Bradstreet Data Universal Numbering System (DUNS) number and a CCR/SAM number as a condition for being eligible for REAP funding.

According to one commenter, the process for requiring every applicant including individuals to obtain a DUNS number and register that number in SAM is very burdensome. In addition to the application burden, the commenter stated that the SAM system does not work properly at times, or provides delayed results or results are lost in cyberspace creating huge burdens for applicants and the Agency. This commenter further stated that individual, including sole proprietors, should not have to register with the CCR. According to the commenter, many of the program's applicants do not have Internet access or are unfamiliar with the Internet. According to the commenter, the process is burdensome and not user friendly, further complicating the program rather than simplifying it. Therefore, the commenter encouraged the Agency to remove the SAM requirement and rely on existing proven data systems already in use by the Agency to provide funding information. If this cannot be considered, the Agency needs to understand that SAM at times has some significant issues and it is not always feasible for borrowers to get the SAM number with expiration in a timely fashion. Agency staff should be allowed to document such cases in the running record, noting attempts made by the applicant, and provide waivers as needed in this event.

Two other commenters were concerned about the burden of the CCR requirement on small farmers and businesses. One of these commenters stated that the requirement for the CCR registration will create a hurdle as many of the farmers and small business people are not computer literate, or will find the process too complicated. This commenter, therefore, suggested that projects less than $50,000 be exempted from the CCR requirements. The commenter stated that in Washington State, there are not many applicants for less than $20,000 projects, and after completing the applications for them, he knows why. The commenter acknowledged that Agency staff have been very helpful in supporting applicants and that the commenter hopes the process can be streamlined.

Response: While the Agency shares the commenters' concerns, the DUNS and CCR/SAM requirement is a Federal-wide law. Effective October 1, 2010, changes were adopted to 2 CFR part 25 which required all grant applicants other than individuals who would use the grant for personal use (unrelated to any business or nonprofit organization they may own or operate in their name), to have a DUNS number and to be registered in the CCR database, which has since migrated to the SAM. The Agency will continue to work with all applicants to help ease the burden associated with meeting this Federal requirement.

Comment: One commenter recommended exempting micro wind and solar projects from being required to demonstrate that satisfactory sources of revenue in an amount sufficient to provide for the operation, management, maintenance, and debt service of the project are available for the life of the project (§ 4280.113(h)). According to the commenter, it is burdensome and unnecessary to require applicants to show that resources for operations and maintenance and debt service are available for the life of the project. First, it assumes that these costs will exceed the savings in electric bills and, second, it implies that rural businesses are ill equipped to make sound investment decisions. Because REAP grants are limited to 25 percent of project costs, the commenter recommended eliminating this requirement.

Response: The Agency disagrees with the commenter's recommendation. Regardless of an applicant's size, the Agency has determined that this

information is necessary to help ensure that it is making awards that are financially viable. It would be an imprudent use of taxpayer money to approve a project that cannot show that it is financially viable. Therefore, the Agency has not revised the rule in response to this comment.

Residential

Comment: In commenting on the interim final rule, two commenters suggested alternatives to the residential restriction on farms.

One commenter noted that the interim final rule allows excess electricity to be sold to the grid, but not to be used in a farm-related residence. This means the applicant can get some value for excess, but not maximum value. It also means that the utility makes a profit on selling excess electricity generated from the project even though they did not pay any of the capital costs. The commenter believes a better approach would be to remove the residential restriction on farms with only one meter or allow applicant certification of non-use for non-business purposes. Applicants would show and affirm as part of a simplified form that the farm operation uses more energy on an annual basis than the RES is projected to produce.

The other commenter supported the restriction of funding residential RES or EEI projects, but suggested allowing prorating project cost to the non-residential uses. According to this commenter, many agricultural producers wish to also power their homes on their farmsteads with RES and requiring a separate meter at additional costs discourages these applicants from applying. If we allowed them to size the system accordingly, interconnect to all load sources, but only provide funding for business portion of their load supported by appropriate documentation, both the applicant and the Agency would win.

Response: The Agency agrees with the commenters that there should be more flexibility to allow agricultural producers to submit applications for RES where the resulting power is shared between the farm operation and the farm residence. To this end, the final rule provides applicants with three options to qualify an RES project in which a residence is closely associated with and shares an energy metering devices with the agricultural operation:

- Install a second meter (or similar device) that results in all of the energy generated by the RES to be used for non-residential energy usage;
- Certify that any excess power generated will be sold to the grid and will not be used by the residence; or
- Demonstrate that 51 percent or greater of the energy to be generated will benefit the agricultural operation. If the farm residence uses more than 49 percent of the energy, however, this option would not apply.

Although not requested by the commenters, the Agency has concluded that rural small business seeking to purchase RES that would provide energy to the small business and the business' residence should be afforded the same options, provided the residence is located at the place of business, and the Agency has incorporated this in the final rule.

In addition, the Agency has revised the eligible project cost provisions to make clear as to what items associated with these options qualify as eligible project costs. Specifically, the following, as applicable, are eligible project costs:

- The installation of the second meter, and
- The portion of the project that benefits the agricultural operation or rural small business.

Project Eligibility (§ 4280.113)

New and Unused Versus Refurbished/Remanufactured

Comment: Numerous commenters requested that the Agency disallow refurbished wind turbines or, in general, refurbished RES. The commenters stated that refurbished wind turbines undergo tremendous wear and tear and are being sold for scrap metal prices when decommissioned, and must be significantly refurbished to gain additional viability for an additional 20 years. Commenters were concerned that allowing refurbished turbines may create significant problem for the Agency in the future, with one commenter stating that significant variances in quality will damage the reputation of the program.

One of the commenters recommended that § 4280.113(a) specify ''new and unused'' because, according to the commenter, there is no way to adequately police the degree to which a wind turbine is refurbished/remanufactured and most of the refurbished turbines that have been sold to farmers were mostly cleaned up and repainted. Another commenter stated that the refurbishment process for wind turbines is not well governed. Commenters also pointed out that there is a risk of purchasing unviable refurbished turbines.

One commenter pointed out that the Internal Revenue Service, the American Recovery and Reinvestment Act of 2009 program, and most states require new equipment ''nor previously placed in service'' for tax credit and rebate eligibility. According to the commenter, there are con artists exploiting the REAP loophole and the Agency should close it.

Commenters also stated that new turbines are often more cost effective than their refurbished counterparts, with one commenter stating that to refurbish a wind turbine that has operated in a wind farm for 15 to 20 years so that it can be expected to provide an additional 20 years of service costs more than a new wind turbine.

If refurbished systems are allowed, commenters suggested that the Agency works with NREL to establish technical criteria for refurbished wind systems to ensure they meet standards for safety, performance and reliability. Commenters also suggested that refurbished wind turbines receive approval from qualified engineers to ensure project quality. For example, one commenter stated that any retrofitted or refurbished renewable energy system should receive the review and approval of a qualified engineer—a ''wet stamp''—to ensure project quality and that engineering qualifications should be based on significant experience working with correlating RES. This commenter also recommended that the Agency require engineering recertification for the replacement of dynamic components as well as a review of all non-dynamic components to ensure sound support structures.

Finally, commenters objected to subsidizing components that have previously been subsidized under other Federal programs because it constitutes unfair competition to the current manufacturers, amounting to, as one commenter described, a ''double subsidy.''

Response: The Agency disagrees with the comments recommending that refurbished/remanufactured RES, such as wind systems, be ineligible for REAP funding. Many of the uncertainties surrounding refurbished wind turbines is a matter of missing market information that can be resolved with clear signaling; that is to say, an established set of certifications and/or standards and commensurate guarantees and/or warranty security. Secondary markets for small wind should in principle be no different than for that of used cars, farm equipment, etc. Given sufficient market information, agricultural producers and rural small businesses should be able to choose intelligently among available technologies subject to their preferences, policy support, and budget constraints. The presumption of unfair price competition assumes that

refurbished and new wind systems sell for the same price, which would not be the case given sufficient market information.

In allowing refurbished equipment to be eligible for REAP funding, the Agency has revised the definition of ''refurbished'' to address concerns and suggestions raised by the commenters. Specifically, the revised definition:

- Requires the RES to be brought into a commercial facility for refurbishment. This is intended to reduce unqualified businesses from ''refurbishing'' RES.
- Requires a warranty that is approved by the Agency or its designee. This is intended to provide additional market information to the potential buyer of the refurbished RES and to reduce unqualified businesses from ''refurbishing'' RES.

The Agency agrees that an RES could be refurbished and establishes a new ''useful life.''

Comment: One commenter, in supporting the use of refurbished and retrofitted energy systems on the basis that it is consistent with other programs aimed at supporting small renewable energy projects, recommended that the Agency develop resources for project developers to find quality refurbished parts.

Response: The Agency thanks the commenter for their support on this provision of the rule. However, the Agency cannot accommodate the commenters suggestion because REAP is a financing program and cannot serve as a ''clearinghouse'' for acceptable refurbished parts.

Certification of Turbines

Comment: Several commenters recommended that wind turbines be certified.

One commenter, who commented on both the interim final rule and the proposed rule, recommended that the Agency establish a requirement that small wind turbines be certified by an independent certification body prior to awarding grants and loans through REAP in order to promote confidence that small wind turbines installed with REAP funding have been tested for safety, function, performance and durability and to ensure consistency in ratings. In addition, for the 2011 funding cycle, the commenter recommended that small wind turbines that have achieved at least Small Wind Certification Council (SWCC) Limited Power Performance Certification or Conditional Temporary Certification receive higher scores in application review.

The commenter provided detailed suggestions for such certification. This commenter requested that the Agency establish a requirement for wind turbines to be certified by an independent certification body. In addition, for the 2013 funding cycle, the commenter recommended that wind turbines that have achieved either full certification to the AWEA 9.1 Standard or at least SWCC Limited Power Performance Certification or Conditional Temporary Certification (or equivalent) receive higher scores during application review.

The growth of the distributed wind market is often tied to grants, incentives and rebates administered by Federal, State and utility programs. On-site wind turbines have great potential to serve increasing demands for distributed generation and can provide a cost-effective solution for many homes, farms, schools and other end-users. However, performance and reliability obstacles have hindered greater adoption, and both consumers and agencies providing financial incentives need greater assurance of safety, functionality, and durability to justify investments. Certification helps prevent unethical marketing and false claims, thereby ensuring consumer protection and industry credibility.

The commenter has received 50 Notices of Intent to Apply for Certification since its inception, certified its first turbine model in 2011 and became an accredited certification body in 2012. The commenter pointed out that it has recently issued its fourth full certification along with a new Conditional Temporary Certification, bringing the tally to nine turbine models now SWCC-certified.

Representing a significant share of the North American distributed wind market, the commenter's published certification ratings and labels are allowing easier comparison shopping, aiding incentive programs with setting payment levels, and leading toward national requirements. In addition to the nine models carrying SWCC certifications, five other models are currently collecting data at their respective testing sites, and several more are taking steps towards certification.

SWCC certification has been identified as a pathway to eligibility for most of the leading wind incentive programs nationwide, and numerous programs have taken steps to require independent certification for small and medium wind turbines to be eligible for funding. The time is now for USDA to follow suit and ensure REAP's support of the continued development of the distributed wind sector. To provide perspective, the commenter included information on wind incentive programs already requiring or expecting to require certification, including links to individual programs administered by states.

The commenter is an independent non-profit organization with the public purpose of providing certification services. A three-member Certification Commission makes all certification decisions. SWCC Commissioners are qualified and independent industry experts appointed by the SWCC Board of Directors. The Board includes representatives of different stakeholder groups and includes 3 directors (out of 11) who represent the industry sector. SWCC bylaws and operating procedures prevent conflicts of interest in certification decisions.

A second commenter on the interim final rule stated support for the specific language regarding certification that is being recommended by the first commenter.

A third commenter recommended that turbines certified by the SWCC should have priority over projects with uncertified equipment. Suitable approved lists would include that as provided and maintained by the Interstate Technical Advisory Council.

Another commenters requested that the Agency provide guidance on what hardware is used, to require that turbines be certified, or in process of certification, so that the installed wind turbine actually works and the REAP money is well used.

Response: All technologies eligible for REAP funding must be found to have technical merit and the proposed project must be found determined to be technically feasible. The documentation applicants submit with their applications must be sufficient to allow the Agency to make these determinations. The Agency will continue to use experts, such as those in NREL and other public institutions, to assist in making these determinations when needed in order to ensure safety, performance, and reliability of RES, including refurbished wind systems.

In some cases, the documentation to support technical merit and technical feasibility determinations may require, or be enhanced by, appropriate certifications from existing boards for a particular type of technology. The Agency, however, is not incorporating into the rule specific certification requirements for wind turbines or any other technology. It remains the applicant's responsibility to demonstrate the quality of the technology being proposed. No changes have been made to the rule as a result of this comment.

Projected Annual Energy Costs

Comment: One commenter suggested that the Agency clarify in § 4280.113(a)(4)(i) that a project is eligible without being subject to any capacity calculation reductions that are currently applied due to size of building or equipment if annual projected energy usage is less than historical usage.

Response: The Agency agrees with the commenter that, in determining if a project qualifies as an EEI, there is no adjustment to the energy usage based on capacity differences before and after the EEI. The language in the rule text cited by the commenter makes no mention of such an adjustment. Further, the definition of ''energy efficiency improvement'' specifically references a reduction of energy consumption on an annual basis and also does not reference any adjustment to take into account any capacity changes. Thus, the Agency has determined that it is unnecessary to modify the language in the rule as suggested by the commenter.

RES/EEI Repeat Assistance on Same Project

Comment: One commenter found the term ''shortly thereafter'' in § 4280.113(a)(4)(ii) to be ambiguous. The commenter recommended providing a definitive timeframe after grant installation. The commenter suggested using the useful life of the improvements as outlined in the grant agreement for the originally funded project.

Response: The Agency agrees that the example provided in the proposed rule needs further definition and that reference to the useful life of the EEI as the timeframe is appropriate. The Agency has revised the cited paragraph in the final rule to make clear that a subsequent EEI to previously REAP-funded EEI is eligible only if the following two conditions are met: (1) The replacement occurs at or after the end of the useful life as specified in the grant agreement of the previously REAP-funded EEI, and (2) the subsequent EEI is more energy efficient than the previously REAP-funded EEI.

Grant Applications—General (§ 4280.115)

Comment: One commenter stated that all REAP applicants should receive funding for some proportion of their project cost.

Response: While the Agency appreciates the commenter's sentiment, it is simply not feasible to do so. The authorizing statute requires the Agency to score applications using certain criteria and that by doing so we rank applications to determine those projects that score the highest. It is through such a process that the Agency is able to distribute the limited resources made available to the program to the more meritorious projects. No changes have been made to the rule in response to this comment.

Third-Party Contributions

Comment: In commenting on the interim final rule, two commenters recommended reinstating the prohibition against third-party in-kind contributions as found in the 2005 final rule for REAP. Because REAP helps fund construction and equipment costs, it is not the type of assistance program where a third-party would come in and offer a valued assistance. According to the commenters, allowing in-kind contributions allows the applicant to manipulate total project costs. One of the two commenters also stated that allowing third-party in-kind contributions becomes a processing burden when determining how to value in-kind contributions, thus further complicating the program rather than simplifying it.

Response: The Agency removed the prohibition against third-party in-kind contributions because it conflicts with Agency regulations found in 7 CFR 3015, which specifically allows the use of third-party in-kind contributions to count towards satisfying cost-sharing and matching requirements of a Federal grant (see 7 CFR 3015.51(b)). Thus, the Agency has not reinstated the prohibition on third-party in-kind contributions in the final rule.

Eligible Project Costs (§ 4280.115(c))

Comment: One commenter stated that eligible project costs should not include remanufactured or refurbished equipment for the reasons previously provided by the commenter on allowing the purchase of refurbished RES as an eligible project for REAP funding.

Response: As discussed previously in responding to comments on allowing the purchase of a refurbished RES to be an eligible project, the Agency has determined that it is equally reasonable to allow refurbished equipment to be an eligible project cost, provided such equipment comes with a warranty that is approved by the Agency or its designee.

Comment: In commenting on the interim final rule, one commenter recommended that storage bins be excluded as an eligible project cost, but that grain dryers and other energy efficient savings, such as an air transfer system that is replacing a diesel tractor, be included as eligible project costs. Limiting the total project cost to just the dryer and any EEI. Putting up an 80,000 bushel storage bin that was included in the total project cost is not energy improvements. The money allocated for the 80,000 bushel bin could have been used for helping a first generation farmer replace two 30 year old bin dryers with a more energy efficient dryer. The commenter stated that more clarification is needed on eligible costs (*i.e.*, what can be included and what must be excluded).

Response: The Agency agrees with the commenter that more clarification is needed on what is included as eligible project costs, as illustrated through the commenter's example on storage bins, but disagrees with a blanket exclusion of storage bins as eligible project costs. In order to qualify as an eligible project cost for an EEI, the item in question (in this case, the storage bins) must be identified in the audit and must be ''directly related to and its use and purpose is limited to'' the EEI. If a project proposed to replace a grain dryer and its associated storage bins, the entire project would have to show an energy savings in order to be eligible. If this condition is met, then only those project items identified in the energy audit or energy assessment and that are directly related to and their use and purpose are solely for the EEI would be considered eligible project costs. If storage bins are added to eligible project costs, the simple payback for the project would be longer, potentially decreasing the score and competitiveness of the project. Thus, for the storage bins to be included as an eligible project cost, they must be identified in the energy audit or energy assessment, must be directly related to the EEI, and cannot be used for any other purpose. So, in some cases, storage bins may qualify as an eligible project costs and in others cases, they may not.

The final rule contains slightly different provisions if the applicant is seeking a guaranteed loan. In this case, the storage bins are ''directly related to'' the EEI and would qualify as an eligible project cost.

The Agency notes that in either case—grant or guaranteed loan—the storage bins would be part of total project costs.

Comment: One commenter stated that capacity for a grain crop should be defined as the number of bushels harvested. A farmer should have to show an average as proven by at least 2 years. Unless there is a catastrophic event (hailstorm, drought, tornado)—then omit the 1 year and use the prior year—explaining why.

Another commenter stated that, relevant to grain dryer applications,

information provided by energy auditors that have completed hundreds of grain dryer audits in over 20 states indicates that comparing bushels per hour (BPH) does not provide a reliable measurement of drying capacity change when evaluating two grain drying systems. A measurement of BPH indicates a system's speed of drying, much like the miles per hour when driving a vehicle. The best measurement of capacity change between two drying systems is measuring the total number of bushels dried through each system on an annual basis which then compare apples to apples. Using BPH is inaccurate, particularly for in-bin dryers compared to continuous flow dryers.

In the case of in-bin systems, these operate with fewer BPH when compared to a high capacity systems and require more time dry from a certain moisture point to another (*i.e.*, 25% to 15% which is the safe storage moisture). When measuring the total BTUs consumed by a dryer annually, the total annual bushels dried makes the most impact on the total consumption of fuel and electrical power. The lower BPH system in most cases utilize less fuel, but more electricity per bushel to remove 10 percentage points of moisture because of lower instant air heating temperature and more time with fans operating on electrical horsepower.

Consequently, when completing several grain dryer energy audits where a lower BPH system is looking to be replaced by a higher BPH system, often the lower BPH system has lower energy consumption and illustrates more efficiency when drying the same amount of bushels annually, but takes more time. Such as the typical case where projects involving converting from an in-bin dryer to a high capacity/continuous flow dryer have demonstrated notably higher BPH have been deemed inadequate for application to REAP because of the higher fuel cost.

Response: The Agency disagrees with the comment to use bushels harvested because the amount of energy to be saved is directly related to the amount of grain to be dried and not to the amount of bushels harvested. To illustrate, an agricultural producer can use corn several different ways. The corn could be used for high moisture corn in the agricultural producers operation, sold without being dried, or dried and sold to a local grain elevator. Thus using bushels harvested could over estimate energy savings for an agricultural producer that is replacing a grain dryer.

The Agency agrees with the commenter that limiting of capacity such as bushels per hours may not be the best way to evaluate a process, and the capacity limitation has been removed. The final rule requires actual average annual energy usage, based on historical records for up to 5 consecutive years, to be used in the energy assessment or energy audit for replacement of an inefficient system. An energy audit or energy assessment must document the historical energy usage by either attaching energy bills or providing a summary of those bills. If an agricultural producer had a bad year or catastrophic event where not as much grain was dried, it can be averaged with prior years or subsequent years, as appropriate.

Comment: In commenting on the interim final rule, one commenter stated that, at the time of the NOFA, there were several changes that made it seem that the Agency was trying not to fund grants for grain dryers, especially through the limitation of capacity. When this was implemented in the interim final rule as the capacity of harvest (prior year) compared to capacity of harvest (current year), this allowed farmers to update outdated equipment, but didn't allow them to double or triple their set-up. The commenter stated that, while this was an excellent way of handling this, the Agency could just state that only the grain dryer and the motors (perhaps also a variable frequency drive because it makes the motors run more efficiently) for grain moving equipment are eligible—this would make it much clearer and fairer. The commenter then continued, stating that he would like to see the money awarded in a much fairer manner. According to the commenter, larger farmers are always somehow able to be eligible for greater amounts and seem to always figure out a way to expand at the expense of others.

Response: While the Agency disagrees with the commenter's characterization of trying not to fund grain dryers, the Agency was, and is still, seeking to develop a scoring methodology that would achieve a greater diversification of technologies receiving funds under REAP. To further achieve this goal, the Agency included several changes to the REAP program and some of the proposed changes address the commenter's concern about awarding funds in a clearer and fairer manner. For example, one proposed change was to modify one of the scoring criteria for EEI projects to awards points on an ''energy saved per dollar amount requested,'' which applies to all energy efficiency technologies, including grain dryers. Further, the proposed rule removed the ''capacity'' aspect for determining the amount of a project's cost that is an eligible project cost and instead required that the project as a whole showed energy savings in order to be an eligible EEI project. These two proposed changes, which are included in the final rule, help level the playing field across all size applicants.

Funding Limits

Comment: In commenting on the interim final rule, one commenter stated that the award process should allow for some flexibility in the award amount. For some of the projects very close to the cut-off score that might be funded if their request was smaller, the Agency should be able to ask multiple applicants if they would be interested in a reduction of funds or if they need the amount applied for.

Response: The Agency agrees with the commenter and proposed a process to allow an applicant to accept a lower level of funding in the proposed rule. The Agency is retaining this provision in the final rule.

Application—General (§§ 4280.116 through 4280.119)

Number of Copies

Comment: In commenting on the interim final rule, one commenter stated that USDA should only require the original application to be submitted to the Agency (not original and one copy).

Response: The Agency agrees with commenter, especially now that the Agency is encouraging electronic submittals. As was proposed in the proposed rule, the final rule requires only the original application be submitted to the Agency.

Foreign Technology

Comment: In commenting on the interim final rule, one commenter encourages the Agency to use § 4280.116(a)(3) to police unproven/risky foreign wind turbines, but is concerned that the Agency may not have the technical expertise to make these judgments, particularly in light of the fraudulent documentation that some unscrupulous manufacturers and exporters have provided in the past. The commenter stated that they have previously recommended the adoption of certification standards for turbines that fall under the scope of AWEA 9.1–2009 (>200m2 rotor area, ~ 40 kW).

Response: As noted in a response to previous comments regarding certification standards for wind turbines, the Agency will continue to use experts, such as those in NREL and other public institutions, to assist in making these determinations when needed in order to ensure safety,

performance, and reliability of RES, including refurbished wind systems. In addition, both domestic and foreign technologies are held to the same set of standards for demonstrating that they are commercially available technologies (see the definition of Commercially Available), including the option of being considered Commercially Available if the system is certified by a recognized industry organization whose certification standards are acceptable to the Agency.

With regard to the recommendation to adopt certification standards for wind turbines, the Agency notes, as stated in a previous response, that the documentation to support technical merit and technical feasibility determinations may require, or be enhanced by, appropriate certifications from existing boards for a particular type of technology. The Agency, however, is not incorporating into the rule specific certification requirements for wind turbines or any other technology. No changes to the rule have been in response to this specific comment.

Applications—Period and Submittal

Timing of Notices

Comment: In commenting on the interim final rule, several commenters expressed concern as to the timing for when applications would be accepted, including frequency and consideration for accepting applications throughout the year. Commenters as a whole recommended advancing the timing of the whole solicitation process in the calendar year, which would allow more time for application preparation.

One commenter stated that an earlier solicitation process would allow awardees to start construction before the winter freeze and to improve coordination with other Agency programs that will facilitate the construction of digesters.

Another commenter pointed out that, since the beginning of the REAP program, the Agency has had difficulty releasing program funding notice before agricultural producers start spring planting. While state offices now accept applications based on the previous year's notice, this practice is not well known and is unevenly followed in the states.

Another commenter stated that in 2011 the Agency allowed only 2 months between the release of the NOFA (April 15) and the due date for applications (June 15). The early due date is not well-explained, especially as USDA reserves more time for itself to review applications than for applicants to prepare them—with 3.5 months before the end of the fiscal year. The timing is during the busiest part of the year for many agricultural producers, reducing their ability to use the program. The late release date and early deadline restrict the ability of various farm energy technology sectors to use the program. The commenter stated that USDA needs to release the funding notice by December or January.

Still another commenter stated that the Agency needs to provide guidance or role for the 2012 program sooner than within 60 days of the deadline.

Response: The Agency acknowledges the concerns expressed by the commenters. Under the final rule, REAP applications are accepted throughout the year. The rule establishes application deadlines and increases the number of competitions cycles and application deadlines depending on the type of application as follows:

- RES/EEI grant applications requesting $20,000 or less may be competed up to five times a year;
- combined RES/EEI guaranteed loan and grants twice a year; and
- guaranteed loan-only applications will be competed periodically, provided that the Agency receives a sufficient number of applications in order to maintain a competitive awards process.

This process is accomplished in the final rule without the need to publish a notice in the **Federal Register** each year and thus there is no longer an issue associated with waiting for funding before publishing a notice seeking applications. While the application deadlines are found in the final rule, the Agency will continue to identify the application deadlines in a FR notice published prior to the Federal fiscal year. In addition, the Agency intends to identify the application deadlines on the REAP Web page of the Agency's Web site and on grants.gov as applicable.

Hard Deadlines

Comment: In commenting on the interim final rule, two commenters stated that the series of fixed deadlines for the submission of grant applications represents a tremendous disincentive for larger-scale projects, involving a number of farms and diverse technologies. According to the commenters, it is very difficult to incorporate a hard deadline and the concept of competitive funding into the two-party project design and review that must occur for this type of project. As one of the commenters stated, the current procedure may allow for fair review of the submission of a number of single farm digester projects, but it is quite an impediment for a project such as this, involving intensive, two-sided, review and negotiation between project developer and large-scale customer.

One of the commenters also stated that this form of application procedure is unduly burdensome for a project that utilizes private equity. A review procedure should be devised that first requires and then serves to verify the due diligence that must have been performed by the investors.

Further, the prospect that a properly designed and financed project must nonetheless be contingent on the competitive allocation of limited funds is almost an overwhelming obstacle for start-up entrepreneurs and their customer partners. It is one thing to put time and capital at risk as part of the business venture. It is quite another to be required to risk capital in an uncertain competition for funding. One of the commenters stated that he was sure that more than one similar project has been taken off the drawing board because either developer or customer, or both, does not have the wherewithal to pursue design of the project by a set deadline, and without any certainty that in the end the project will even be funded.

According to one commenter, the combination of an arbitrary deadline and then passage of time for the competitive process is onerous for the development of a project in a northern climate because these areas have a limited building season to begin with, and the passage of any additional time creates tremendous pressure.

The same commenter recommended that the Agency implement a rolling application procedure, which would allow for submission of design and business plans as soon as completed, and then quick review of such plans against stated project funding requirements derived from the current scoring protocol. According to this commenter, combining this quick review procedure with on-line, updated notice of current available funds would allow developers to know where they stand going into development of a project and minimize many of these risks for all parties concerned.

Response: As noted in an earlier response, the Agency has included a continuous application process for both grant and guaranteed loan applications with periodic competitions throughout the year depending on the type of application. This allows applicants to submit applications any time during the year. These provisions should help mitigate the commenters' concerns.

Comment: In commenting on the interim final rule, one commenter noted

that there is no mention of the possibility of going to an open and continuous grant cycle for micro projects.

Response: As noted in the response to the previous comment, both the proposed rule and the final rule include a continuous application process with periodic competitions for grant applications for all technologies, including micro projects.

Rolling Over Applications

Comment: In commenting on the interim final rule, one commenter suggested that the option for rolling over the same application should remain each year so that the applicant of a project has started construction has a chance at two funding cycles instead of just one. The commenter noted that many of the other Rural Development funding programs allow for funding consideration in more than one cycle.

In contrast, another commenter commenting on the interim final rule recommended removing the option for rolling over an application. The commenter pointed out that the program is already oversubscribed and if a project did not score high enough to be funded in a fiscal year, the likelihood that it will be funded in a subsequent year is minimal. The commenter suggested that the applicant instead have the option to re-file a new application for the same project if the project has not already been completed. This same commenter, in commenting on the proposed rule, supported the proposed provision that would limit roll-over applications to two semi-annual competitions and one National competition.

Response: After considering these comments, the Agency has made a few changes to how RES and EEI grant applications will be competed.

A RES and EEI grant application requesting more than $20,000 in grant funds will be eligible to compete twice in one fiscal year—once in a state competition and, if unfunded at the state level, once in a national competition. If the application remains unfunded after the national competition, the Agency will discontinue considering the application for potential funding.

A RES and EEI grant application requesting $20,000 or less in grant funds will be eligible to compete in up to five consecutive competitions—three state competitions and two national competitions. The order in which such an application is competed can be two state competitions followed by one National competition for grants of $20,000 or less, followed by one state competition and one National competition for all grants regardless of size (all within the same Federal fiscal year) or one state and one national competition for grants of $20,000 or less, then one state competition and one national competition for all grants regardless of size and another state competition, which means that the application would be competed across two fiscal years. If an application requesting $20,000 or less in grant funds is not funded after its fifth competition, the Agency will discontinue considering the application for potential funding.

First-Come, First Served Basis

Comment: In commenting on the interim final rule, two commenters recommended the Agency include a ''first-come, first-served'' application procedure, one for multi-farm projects and one for small REAP grants.

One commenter requested that a separate application procedure be devised to allow projects involving multi-farms and a fixed price fuel supply contract to apply on a rolling basis as they are ready, on a first-come, first-serve basis. According to the commenter, this will remove the impediments of the current application procedure.

The other commenter stated that qualifying small REAP grants should be awarded on a first-come, first-served basis once funding is determined for that fiscal year. After submission from the state offices the qualifying applications should be funded in the order of their submission date until the mandatory 20 percent of REAP funds are exhausted.

Response: As noted in a previous response, the Agency must evaluate all projects against each other as required by the authorizing statute, and thus cannot implement a ''first-come, first-served'' approach to making awards.

Small Projects/$20,000 or Less Grant Requests/Total Project Costs $80,000 or Less

Placement

Comment: In commenting on the interim final rule, one commenter recommended placing the short-form application for grants under $20,000 in § 4280.116.

Response: The Agency agrees that the placement of the application material for grants of $20,000 or less could have been placed more appropriately. The Agency restructured the application provisions in the proposed rule to delineate clearly the application requirements for projects whose total project costs are $200,000 and greater (§ 4280.117), less than $200,000, but more than $80,000 (§ 4280.118), and $80,000 or less (§ 4280.119). The Agency has determined this structure is reasonable and has retained it in the final rule.

Streamline Application Process

Comment: In commenting on the interim final rule, one commenter stated that, while applications can be submitted year round, the application process and grant making overall still takes longer than necessary for small wind projects.

Another commenter stated that the current documentation requirements require a professional grant writer to win REAP awards. The commenter suggested that past distribution of REAP grants in Oregon would show that distribution is skewed in favor of large agricultural producers established in areas closest to metropolitan areas because agricultural producers in the commenter's county (Lake County) are so remote from where grant writers live that they typically do not have access to grant writers willing to travel to the county to do the grant work at a cost the agricultural producer is willing to pay for the chance of winning a grant. The commenter pointed out that they wrote a grant for the same financial benefit through the Oregon Department of Energy that could be completed in a 6-page document compared to the 60+ page document required by the REAP process. If the REAP documentation cannot be reduced to allow ranchers to write their own grants, then the REAP process, as it has been established, will continue with large agricultural producers being the beneficiaries of the program.

Response: With the changes proposed to the program as adopted in the final rule, the Agency has reduced the burden associated with submitting applications under REAP, especially for small projects. The Agency notes that it still must collect sufficient information both to evaluate the merits of a project and for competition. Thus, there is a limit to how much the process can be streamlined. The Agency also notes that it will be making available an application form that will help streamline the process for applicants seeking grants of $20,000 or less.

Comment: In commenting on the interim final rule, one commenter believes that, although OMB has approved the information collection requirements and Rural Development states that the information being collected is necessary to ensure compliance with the regulation and proper use of funds, the information

required of applicants is excessive, duplicative, and burdensome.

This commenter recommended that the REAP rule allow the smallest projects to have a greatly simplified application. REAP has a standard application and a simplified application for projects below $200,000, but it lacks a third, even simpler, application for the special category of small projects—expressly created by Congress—with grants up to $20,000. Farmers and rural businesses wanting to apply for these smallest grants often have to resort to paid grant writers to assemble the 40 to 50 pages of documentation required for a qualifying application. Many qualified applicants are dissuaded from applying by the difficulty of the application. The commenter has prepared and attached a suggested 12 page streamlined alternative (of which all but 3 pages are mandatory Federal forms) to the existing application requirements which meet all of the statutory requirements. The commenter believes that a simpler, less intimidating, application for REAP grants up to $20,000 would substantially increase participation, particularly for projects using small-scale wind and solar technologies.

The commenter stated that the failure to streamline ''mini-project'' applications may not meet the intent of the Regulatory Flexibility Act, despite Rural Development's assertion that the rule has ''no significant impact'' because it only impacts those that choose to participate in the program. This position neglects those that choose not to participate in the program because the requirements for the application are overly burdensome. Small wind system retailers report that up to 90 percent of potential applicants are dissuaded by the application requirements such as plot plans, financial statements, tax returns, and the NEPA form (they do not understand that the short form is often sufficient).

Another commenter on the interim final rule also recommended that the Agency continue to reduce application complexity, especially for small projects. The interim final rule takes a strong step toward program simplification by removing the preferences for grant/loan guarantee applications. More complex application systems mean that many applicants must hire grant writers, which biases the program towards those who are better able to afford grant writers. Simplification will benefit agricultural producers of all means, especially smaller operators. REAP rules should require a greatly simplified application process for the smallest projects. Because so many smaller systems used off-the shelf technology, much of the application can be drastically simplified. A number of requirements, such as for design warranties not commonly offered, should be removed from application requirements for small projects.

A third commenter echoed these same concerns. The commenter stated that the grant application is lengthy and overly burdensome for small, independent operators whose main focus is running their business. Faced with these burdensome requirements, many small business operators are contemplating hiring outside grant writers at considerable expense. Any action to lessen the burden for these operators would be a welcome change. Alternatively, the Department could allow application preparation as an eligible expense under professional service fees.

Response: In the proposed rule, the Agency proposed a third-tier application process for projects with total project costs of $80,000 or less, which streamlines the application process for these smaller projects. The final rule maintains this third-tier application process. The Agency notes that there is a limit to how much the application process can be streamlined because the Agency must still receive sufficient information in order to determine a project's technical merit and to make selection among various meritorious projects.

Comment: Many commenters expressed concern over the amount of paperwork and resulting expense required to file an application.

Two commenters commended the Agency for creating a third category for projects with total project costs of $80,000 or less, and agreed that the smallest projects should have a greatly simplified application. According to the commenters, the current application is a lengthy 40 to 50 pages for project grants up to $20,000, and farmers and rural small businesses interested in RES are often dissuaded by the daunting application process, or end up paying grant writers to assemble the paperwork. The commenters, therefore, recommended that the Agency develop a short form and, if practicable, an on-line application. One of these commenters provided a 12 page application example that, according to the commenter, meets all of the statutory requirements as an alternative to the current, lengthy application. According to the commenters creating simplified, less-intimidating applications for projects totaling under $80,000 and under $200,000 would substantially increase the number of small project applications (*e.g.,* small wind energy) to and participation in the REAP program.

Another commenter, who has worked on REAP applications since 2005, stated that REAP grants are long, repetitive, and cumbersome. The commenter asked for the Agency to make them shorter and easier to file.

Another commenter has stated dissatisfaction with the length and difficulty of REAP applications, citing it took over a week of intensive work to complete each application package for $20,000 grants. The commenter highlighted that a consultant fee for the present application ranges from $3,000 to $5,000, which is too high of a cost for a potential return of $20,000. The commenter stated that the commenter will not participate unless wind is able to compete fairly, and the application is drastically shortened. According to the commenter, nothing in a small wind grant application should take more than two pages or more than one hour to complete.

Response: The Agency thanks the commenters for the recommendations. The proposed rule streamlines the application process, including a simplified application for grants of $20,000 or less is provided in the final rule. The final rule incorporates three application categories, for which the Agency has developed forms to assist applicants with the application requirements. For projects with total costs $200,000 and greater, applicants can use RD Form 4280–3C, ''Application for Renewable Energy Systems and Energy Efficiency Improvement Projects, Total Project Cost of $200,000 and Greater.'' For projects with total costs of less than $200,000, but more than $80,000, applicants can use Form RD 4280–3B, ''Application for Renewable Energy Systems and Energy Efficiency Improvement Projects, Total Project Cost of Less Than $200,000, but More Than $80,000.'' Finally, for projects with total costs of $80,000 or less, applicants can use Form RD 4280–3A, ''Application for Renewable Energy Systems and Energy Efficiency Improvement Projects, Total Project Cost of $80,000 or Less.'' The three application categories require different amounts of paperwork.

The smaller the total project costs, the lesser amount of paperwork and burden are associated with the process. The forms can be used to meet the application requirements and will reduce burden because all the information needed for a complete application is in one complete concise form.

Certifications

Comment: One commenter agreed with simplifying the application process to require certifications versus additional information upfront.

Response: The Agency thanks the commenter for supporting this change. The final rule contains the same set of certifications as in the proposed rule for this set of applications.

Energy Bills

Comment: One commenter stated that, with regard to applications for projects with total project costs of $80,000 or less, the requirement of small producers to maintain and provide 36 months of energy bills (see proposed § 4280.119(b)(3)(iii)) is burdensome on the applicant and will result in many applicants being deemed ineligible after applying. According to the commenter, requiring a producer to go back for 36 months when they had no idea that they would be applying for these funds 30 months ago is unrealistic and should not be required.

Response: As noted in the response to this issue on the calculation of simple payback, the Agency agrees with the commenter that maintaining 36 months' worth of energy bills may be burdensome to some applicants. The final rule allows the applicant to use the most recent 12 months or calculate an annual average over the most recent 24, 36, 48, or 60 month period for the energy assessment and energy audit.

Technical Review

Comment: In commenting on the interim final rule, one commenter suggested that the Agency improve technical oversight at the program level and reduce technical reporting for single projects, especially small ones. Many of the concerns for project and technology viability that are addressed in applications can be addressed through other means. In the early years of the REAP program, the Agency worked more closely with the NREL to review and score applications. NREL works on renewable energy programming across multiple agencies and can continue to provide beneficial program design advice to the Agency. For example, NREL can assist the Agency in developing lists of prequalified equipment for the REAP program in order to avoid funding bad technology.

In addition, a certification process is now under development in the small wind industry. The commenter recommended incorporating this process in order to bypass high reporting and application requirements. If a manufacturer's equipment has already been certified, that should be sufficient for technology evaluation. The commenter recommended that the Agency use prequalification and valid industry certification systems to reduce technical reporting requirements.

Response: The Agency will work with third-party agencies, such as NREL, on an as-needed basis to help address concerns with ''questionable'' technologies. For example, the Agency will use a third-party to help review all applications received for refurbished systems.

With regard to reducing technical reporting for projects, especially small ones, the Agency has targeted the burden associated with the technical reporting requirements based on the size of the request for funding. This has resulted in much less burden for small project applications (those with total project costs of $80,000 or less). However, the Agency must collect sufficient information to both evaluate the merit of a project and compete that project with others. Thus, there is a limit to how much the process can be streamlined. The Agency also notes that it will be making available an application template that will help streamline the process for applicants seeking grants of $20,000 or less.

The Agency disagrees that precertification of technologies is appropriate for this program. However, the final rule allows a technology to be determined commercially available if it is certified by a recognized industry organization whose certification standards are acceptable to the Agency.

Matching Funds Verification

Comment: One commenter agreed with the Agency's decision to require applicants to provide a verification of matching funds equal to the 75 percent contribution.

Another commenter agreed with the Agency's decision to require applicants to provide the remainder of total project costs as a match. The commenter asked if the equity raised from the sale of Federal tax credits is able to be documented at the time of application in order to be used as a match.

Response: The Agency thanks the commenters for the support. In response to the one commenter's question, equity raised from tax credits can be counted as equity if they can provide third party verification.

Working With Applicants

Comment: Two commenters requested that the Agency work closely with applicants to help them through the application process.

One commenter suggested that there be a representative to work directly with farmers or the installers that work with farmers in order to get more farmers putting in systems.

The other commenter recommended that the Agency focus on providing paperwork assistance to applicant that is part of smaller agricultural operations or business owners, with a similar change considered for beginning farmers and entrepreneurs. The commenter noted that applicants that fall into these categories may not have the resources to seek extra assistance if they require it, and that paperwork assistance may determine the success of an application. The commenter stated that, if increased assistance were implemented within the program, it would help minimize the difficulty of applying for a loan, making it much easier for small operations to take advantage of REAP and encourage a diverse set of applicants.

Response: Subject to available resources, the Agency endeavors to assist every potential REAP participant that requests support in completing an application. A simplified application for grants of $20,000 or less is provided in the final rule.

Evaluation of Applications (§ 4280.120)

Independent Organizations

Comment: In commenting on the interim final rule, one commenter recommended that the Agency contract with an independent organization to evaluate the actual benefits from the broad inclusion of grain dryers under program eligibility and recommended program changes with a goal to focus limited program funds on adoption of the most energy efficient technologies available.

The commenter stated that, over the years, the REAP program has worked better for some technologies than others. In recent years, the commenter has seen a growing dominance in the number of awards for a small handful of awards technologies. Grain dryers, in particular, have risen greatly in awards under the REAP program. The commenter stated that project award information they have reviewed is not definitive on which awards are grain dryers, but the numbers of awards clearly reach well over 1,300. As a result, many other technology providers are coming to regard REAP as ''the grain dryer program.''

The commenter stated that project data they have reviewed indicates claims of increases in grain dryer efficiency of 33 percent to as much as 77 percent, usually for propane but also natural gas and electricity. The new

grain dryers are modern equipment using modern moisture sensors, flow control and metering that often replace equipment that is decades old and of lower technology. As a result, for some manufacturers, every grain dryer in their product line qualifies for REAP when replacing an old system, with no programmatic favor for more efficient models. The commenter questioned if REAP is truly driving technology improvements or if this is essentially a bonus for grain dryer purchases due to occur anyway (the ''free rider'' effect).

In previous years, many awards for dryers were based upon expanded capacity for the new system. The interim final rule includes new changes that address this by restricting the amount of the award to the replacement capacity of the system. The rule addresses the definition of ''capacity,'' which varies for the many technologies covered by REAP (in some cases generating capacity, or horsepower capacity or BPH or other). The Agency should be commended for taking first steps to rein in the unwelcome dominance of REAP by one technology sector, but there is more to be done. The new definition should establish set criteria for definitions and calculation used by national and state offices for the sake of fairness and accuracy. As a rule, the Agency should focus the already limited program funds on adoption of the most energy efficient technology available.

The large number of grain dryers funded under the program raises questions regarding how truly diverse the REAP program is when one type of technology so thoroughly dominates. In the case of grain dryers, this equipment is run only a few weeks per year, raising questions of how much energy is actually saved for the investment of public dollars. The commenter stated that they have heard reports that these grain dryers have also been very helpful in saving grain during the wet harvest seasons of recent years, though that is a side benefit. The commenter recommended that the Agency contract with an independent organization to evaluate the actual benefits from the broad inclusion of grain dryers under program eligibility and recommend program changes to reflect total energy efficiency gains due to program incentives.

Response: The commenter is especially concerned with how well REAP allows for the diversification of projects, pointing specifically to grain dryers and whether additional oversight is needed to verify information being reported in grain dryer applications. While the Agency acknowledges that grain dryers have been a dominate technology, the Agency points out that the program (*e.g.,* awarding discretionary points to under-represented technologies) helped diversify the program's portfolio, such that the percentage of the projects awarded to grain dryers fell by 50 percent or more from 52 percent in fiscal year 2010 to between 13 and 26 percent in fiscal years 2011 through 2013.

The Agency expects a further diversification to take place under the final rule by scoring projects on the basis of energy saved per Federal dollar requested. This should level the playing field further. In addition, by obtaining this metric, the Agency will be able to identify any project (grain dryer or otherwise) that reports a very high energy saved per Federal dollar requested figure to the extent that such a figure appears to be an outlier. The Agency will then be able to target such applications for further evaluation and can enlist, as necessary, additional assistance from third-parties, such as NREL, to help ensure that the information being reported is appropriate and not overstated.

Scoring Applications (§ 4280.120)

Overhaul

Comment: In commenting on the interim final rule, one commenter stated that the existing scoring system used for the REAP program is in need of review and improvement. The commenter recommended that the point system be reorganized so as to realize public policy goals of the program, which include maximizing environmental protection, energy savings, and renewable energy production for producers and rural businesses. Many of the existing scores in the program relate more to paperwork preparation and less to energy or environmental performance of the system in question. The majority of points should evaluate the degree to which the proposals meet program goals for energy and environmental benefits. The changes should result in clear definitions, clear criteria, and a weighting that reflects the program criteria. In some cases, it will be helpful to develop criteria in consultation with the DOE and other Federal or state agencies with relevant experience.

Response: The Agency agrees with the commenter that the program's scoring system needed improvement. The Agency reviewed the scoring system and the final rule contains changes that address the commenter's concerns. Under the existing rule, the energy (replacement, generation, and savings) and environmental benefit scoring criteria represented approximately 20 percent of the total potential application score. Under the final rule, these two scoring criteria account for 30 percent of the total potential score, thus emphasizing these particular aspects of the program's goals. The Agency also provides clearer definitions and scoring criteria. Finally, the Agency has evaluated the relative weightings of the scoring criteria to reflect all of the goals of the program.

Comment: In commenting on the interim final rule, one commenter recommended that anaerobic waste digester technology that produces renewable biogas power and electricity be treated under the rule in a manner that is equitable in comparison to other renewable technologies. One of the specific suggestions made by the commenter was to improve the ranking/scoring criteria that support digester projects by making changes to the ranking criteria that consider environmental attributes of a digester project.

A second commenter expressed similar concerns, stating that anaerobic digesters need to be better supported by the USDA. More REAP or similar funds need to be dedicated to anaerobic digesters as the bigger lobbying interests of wind power, solar power, and ethanol have long monopolized USDA funds. Anaerobic digesters are proven technology that cannot happen on our dairy farms without financial assistance from the Agency. This type of renewable energy project needs to have funding equity with the other technologies being funded under REAP.

Response: In both the proposed rule and the final rule, the Agency has strived to reduce any actual or perceived imbalances in its consideration of meritorious projects to fund. However, with any set of scoring criteria, some technologies will have inherent advantages or disadvantages compared to others. It is impossible to totally eliminate this. With the inclusion of discretionary points for under-represented technologies, the Agency can help alleviate any unintended biases that occur as a result of the scoring criteria.

With regard to funds being dedicated to a particular technology, in this case anaerobic digesters, the Agency cannot do so without specific statutory authorization.

Comment: One commenter asserted that the scoring criteria in the proposed rule still places renewable energy projects at a disadvantage. The commenter suggested that reverting to separate pools of money per technology

type as a first round competition may help renewable energy projects to compete. Those that did not score high enough to be funded in their technology type pool should also be allowed to compete in the final National competition of funds.

Response: While the Agency disagrees with the commenter's assertion, the Agency cannot accommodate the suggestion to create separate pools of money for each technology type without statutory authority.

Environmental Benefits

Comment: One commenter asked why this criterion is being scored as an ''all or nothing'' rather than being scored on a graduated basis. Typically, the program has awarded points when appropriate documentation is made available and it specifically cites the project, but almost all EEI and RES projects have benefits. The commenter stated that it would be more effective to award more points when a project demonstrates that it is reducing greenhouse gases more than another. If that is not the case, then what are the quantitative values or is simply a pass/fail document worth 5 points? The commenter stated that the Agency's criterion lacks any quantitative aspect.

Response: The Agency agrees that this criterion can be scored on a graduated basis based on meeting one or more of the three impact areas—environment, public health, and resource conservation. However, the Agency disagrees that this scoring criterion can be scored on a quantitative graduated basis as there are too many potential metrics and no one metric that would be suitable to all of the potential technologies. Further, selecting one specific metric, such as the commenter's greenhouse gas example, will raise a particular environmental aspect to a higher level than other, equally important environmental aspects; that is, it is difficult, if not impossible, to weigh one positive environmental impact against another.

In consideration of the comment, the Agency has revised the rule to award one point if any one of the three impact areas is met, three points if any two of the three impact areas are met, and 5 points if all three impact areas are met.

Comment: In commenting on the interim final rule, three commenters recommended increasing the points awarded for the Environmental Benefits scoring criterion. A fourth commenter, commenting on the proposed rule, also recommended increasing the points awarded for this criterion.

One commenter recommended that the points awarded be increased from 10 to 25 points, with acceptable documentation being an NRCS-approved conservation plan.

A second commenter also believes more weight needs to be considered for the environmental benefits provided from REAP-eligible projects. Dairy farmers have never faced greater environmental demands than they do today. Fortunately, there are tools available to help alleviate many of these concerns. For example, anaerobic digester systems can provide vast opportunities for dairy farmers to mitigate air and water concerns. An anaerobic digester system can allow for a dairy farmer to vastly reduce their greenhouse gas emissions, especially methane. Also, anaerobic digester systems give dairy farmers a tool to reduce and control key nutrients, such as nitrogen and phosphorus.

The third commenter stated that the Agency should increase the scoring proportion for air and water co-benefits. According to the commenter, a key rationale for the existence of REAP is to provide environmental benefits, but the program scoring falls short of gauging projects by their ability to serve this fundamental public policy goal of an improved environment. The commenter points out that the 10 points for environmental benefits are only approximately 8 percent of the overall program scoring. Furthermore, by undervaluing environmental benefits, the interim final rule's point allocation may miss opportunities during technology selection to achieve environmental gains such as better water or air quality, or habitat diversity. The marketplace already undervalues environmental benefits and REAP should provide a strong corrective for this market failure by more strongly favoring projects with environmental benefits. Examples of environmental co-benefits that should receive higher value include water savings from more energy efficient irrigation technologies, reduced pathogens or surface water due to anaerobic digesters, or the complete elimination of fossil fuel combustion due to noncombustible renewable energy sources such as wind and solar.

Lastly, the third commenter stated that the existing requirement of a letter from a state agency is largely meaningless. The true determination of the letter is more a reflection of the ability of state agencies to generate them for specific projects rather than improved stewardship. The commenter recommended that the Agency replace this letter requirement with a better system reflecting environmental co-benefits.

The commenter on the proposed rule recommended increasing the environmental benefit criterion point value from the proposed maximum of 5 points to some level above the maximum 10 points as found in the interim final rule. The commenter stated that this is an important facet of the program, as it helps give priority to projects that have a positive impact within the specified areas of the criterion—public health, the environment, and resource conservation. According to the commenter, these focus areas of this criterion are at the heart of REAP, and should be given sufficient weight. Projects that show a positive effect on the criterion's impact categories should be given priority, especially if a positive impact can be shown across all three.

Response: The Agency has considered the commenters' recommendation to increase the point value for the environmental criterion to some level higher than 10 points. The primary purpose of REAP is to generate or save energy through RES and EEI, not to provide environmental benefits as claimed by one of the commenters. The Agency acknowledges that general letters from states were not a useful mechanism, and therefore revised the provision in the proposed rule. The Agency further acknowledges many of the points made by the commenters concerning the need to reduce the adverse impacts on the environment caused by energy generation. However, consideration of environmental impacts is but one of a number of criteria that the Agency must consider in determining which projects to fund. Because many, if not all, projects eligible for funding will have some positive impact on the environment, this criterion is not necessarily a very good discriminator between projects and is subjective. Further, as noted in the previous response, it is difficult to weigh one positive environmental impact against another, let alone to necessarily be able to measure them prior to a project being built. In consideration of these factors, the Agency reviewed the scoring criteria and their associated weights and has determined that relative to the overall goals of the program the 5 points for this criterion as found in the proposed rule is reasonable and is retained in the final rule.

Energy Generated or Saved per Dollar Requested/Quantity of Energy Replaced, Produced, or Saved

Comment: Many commenters were against the addition of the ''energy generated per dollar requested''

criterion on the basis that it places small wind systems at a disadvantage.

A number of the commenters stated that solar systems often have state or utility based incentives not available to wind, and ''dumping'' of Chinese solar modules has created a distorted market place which this criterion would exacerbate. According to the commenters, over 70 percent of the solar modules installed in the U.S. in 2012 were built in China, while 91 percent of the small wind systems installed in America were built here. By making this change in the scoring criterion, the commenters state that this proposal will reduce the participation of small wind in the REAP program.

Two commenters also did not support the Agency's proposed change to this scoring criterion because, according to these commenters, it favors certain renewable energy technologies, which one of the commenters stated would contradict the promotion of all renewable energy technologies mandated by the 2002 and 2008 Farm Bills. One of these two commenter stated that, based on sample calculations, solar projects would score lower than the typical energy efficiency projects, precluding them from competing fairly for REAP grant funds. Energy generation programs are typically more costly, and it is unfair that they are scored using the same criterion as efficiency projects. The commenter requests a study be done to fairly award energy system projects on an equal basis as energy efficiency projects.

The other of these two commenters stated that certain RES often have state or utility based incentives not available to other technologies (*e.g.,* solar renewable energy payment incentives, Made-in a certain state solar energy tax credits, technology specific feed-in tariffs, etc.). To a degree, all forms of energy receive incentives, but certain technologies receive disproportionate ones, which skews the energy marketplace. The commenter, therefore, recommended that the Agency statistically normalize scoring across technologies rather than apply a blunt ''energy-generated-per-dollar-requested'' criterion.

Response: Based on the comments received, the Agency has modified this scoring criterion. The modifications are:

• Creating two scoring components as follows:

(1) Quantity of energy generated or saved per dollar requested. The points allocated to criterion were reduced from the 25 points in the proposed rule to 10 points. To obtain maximum points, the project must demonstrate it can generate or save at least 50,000 BTU's per dollar requested. This is an increase from the 25,000 BTU's published in the proposed rule.

(2) Quantity of energy replaced, produced, or saved as found in the REAP program, but not in the proposed rule. However, energy efficiency projects must demonstrate 50 percent savings, up from 35 percent in the program, to receive the maximum of 15 points.

• Applications for RES and EEI projects are eligible to receive points under both the ''Quantity of energy generated or saved per REAP dollar requested,'' and the ''Energy generated, replaced, or saved'' components.

To the extent that any technologies become under-represented as a result of this change (or as the result of any other changes to the scoring criteria), the final rule also allows State Directors and the Administrator to award up to 10 discretionary points.

With regard to the suggestion that the Agency ''normalize'' the scoring, this is not feasible at the state competition level because the level of funds is insufficient to allow a meaningful normalization. While there may be sufficient funding at the National Office pool level to consider normalization, the Agency has determined a more objective scoring criterion with the ability to award up to 10 discretionary points for under-represented technologies is the preferred approach and will still allow a broadly diverse project portfolio of renewable energy system and EEI technologies.

Comment: In commenting on the interim final rule, one commenter stated that anaerobic digester technologies provide for energy replacement, energy savings, and energy generation. The commenter then suggested that anaerobic digester technologies be eligible to receive the maximum points associated for all three categories under § 4280.117(c)(1) of the interim final rule. Currently, the digester systems would be able to receive points for only one of these three categories and this discriminates against valuable and important attributes of the system.

Response: The Agency acknowledges that anaerobic digesters have multiple attributes, but they are not the only technology to have such multiple attributes. To help maintain a balanced portfolio of technologies, the Agency has determined that it is reasonable to determine the primary use of the technology (either energy generation or energy savings) in the awarding of points. If a technology is found to be under-represented under the program, the regulation allows State Directors and the Administrator to award discretionary points to such technologies. The Agency has not made any changes to the final rule in response to this comment.

Comment: In commenting on the interim final rule, one commenter recommended that the Agency add ''anaerobic digesters and biomethane fueling stations'' as a special, separate category reflecting the Secretary's commitment to rapidly expand the digester industry. The commenter specifically referred to: § 4280.117(c)(1) of the interim final rule, add a new § 4280.117(v) detailing that digesters and biomethane fueling stations should receive similar sliding scale of points depending on the combination amount of energy replaced, saved and generated; in 7 CFR 4280.117(c)(10), add ''anaerobic digesters and biomethane fueling stations.''

Response: The 2014 Farm Bill modified the definition of renewable energy system to produce a usable energy from a renewable energy source and may include distribution components necessary to move energy produced by such system to initial point of sale, but may not include a mechanism for dispensing energy at retail. Therefore the Agency is unable to create a separate category for ''anaerobic digesters and biomethane fueling stations'' and has not revised the final rule in response to this comment.

Comment: In commenting on the interim final rule, one commenter suggested that the underlined text be added to paragraph § 4280.117(c)(1)(iii): ''(iii) Energy generation *or biomethane production.* If the proposed RES is intended primarily for production of energy for sale, or for the production of biomethane for injection into natural gas transmission and distribution systems, 10 points will be awarded.'' The commenter believes this change will increase the demand for renewable biogas produced by anaerobic digesters. It would allow anaerobic digester projects that inject renewable biogas into the natural gas, in addition to or instead of using the gas on-site. Anaerobic biogas producers can receive added value from the renewable quality of their biogas, even when that gas is not used on site but put into transmission; wind and solar generators sell the renewable quality of their electrons to firms far from where the electrons are consumed.

Encouraging the wheeling of renewable biogas through the natural gas transmission system allows customers, including stationary fuel cell power plants and hydrogen production systems and hydrogen production

systems at fuel cell electric vehicle fueling stations, to take advantage of renewable fuel using the existing natural gas system.

Response: The Agency does not agree with the commenter that the suggested text needs to be included in the rule. Under the scoring system in the proposed rule and as included in the final rule scoring, a biogas application qualifies for points based on the biogas produced, including biogas that is cleaned, compressed, and injected into a natural gas transmission and distribution system. Thus, the Agency has not revised the rule as suggested by the commenter.

Comment: In commenting on the interim final rule, one commenter stated that as a key goal of the program is to replace or save energy, or produce renewable energy, the overall weight for this scoring criterion should increase. As it stands now, this share of the points for energy replaced, produced, or saved is approximately 12 percent of the overall score. The weight should be substantially increased in proportion to the overall score, at least to 25 percent.

The commenter recommended that the minimum energy efficiency gains required to earn additional points should be increased at all levels, especially the highest, in order to provide greater energy savings benefits. The commenter pointed out that the interim final rule provides more maximum points for energy efficiency or energy replacement, 15, compared to 10 maximum points for renewable energy for sale. The additional five points at the highest level should only be awarded in those cases with significantly higher efficiency gains or for use of multiple energy efficiency technologies, so as to award the highest points to the best performing proposals and not unduly diminishing renewable energy generation awards.

Response: The Agency acknowledges that awarding of points for this scoring criterion needed to be revised. The Agency proposed revisions to this scoring criterion in the proposed rule, which addresses the commenter's concerns, including increasing the maximum points available under this criterion to 25 points and this maximum is retained in the final rule.

Comment: In commenting on the interim final rule, one commenter opposes favored treatment of any eligible technology, particularly when small wind systems received approximately 2 percent of the 2010 awards.

Response: The Agency revised the State Director and Administrator discretionary criterion in the final rule so that all projects, including small wind projects, will be equally eligible to receive discretionary points if they meet any of the conditions identified in this criterion, including, for example, if they are an under-represented technology or are needed to achieve geographic diversity.

Comment: In commenting on the interim final rule, one commenter stated that a renewable energy project being installed at a brand new facility does not receive points under this scoring criterion. The commenter recommended that a new scoring criterion be added to incentivize new businesses to install renewable energy projects.

Response: The Agency added a scoring criterion found in the proposed rule, and as carried into § 4280.120(b)(1) of the final rule that awards points to a renewable energy systems based on the amount of energy generated per dollar requested. In addition, new facilities may qualify for points under § 4280.120(b)(2)(iii) which allows points to be awarded for energy production. These changes address the concern raised by the commenter and the need for another separate scoring criterion is unnecessary.

Readiness

Comment: One commenter asked if the readiness scoring criteria will have a sliding scale for readiness points.

Response: The Agency has revised this criterion to reflect a sliding scale for those applications that can show more than 50 percent matching funds and other funds, while those applications showing 50 percent or less will still receive no points. In addition, the Agency is reducing the maximum number of points for this criterion from the 25 in the proposed rule to 20 points in the final rule; note that the 20 points is still higher than the maximum 15 points under the existing program.

To illustrate the effect of the sliding scale compared to the interim final rule provision, please see the following table:

Percentage of matching funds and other funds	Points awarded	
	Interim final rule	Final rule
50% or less	0	0
60	5	4
70	5	8
75	10	10
80	10	12
90	10	16
100	15	20

Previous Grantees and Borrowers

Comment: One commenter agreed with increasing the maximum points awarded under the ''previous grantee and borrower'' criterion, but recommended that the Agency give more to this scoring criterion.

Response: The Agency has reviewed the overall scoring weights for the criteria in light of this and other comments and has determined that increasing the maximum points that can be awarded under this criterion to 15 would further encourage new applicants to apply. The final rule reflects this increase to 15 points for this scoring criterion.

Comment: The commenter suggested that the Agency polls its field offices with specific calculations to determine how the proposed scoring change would affect the proposals prior to making any regulatory changes.

Response: The Agency engaged its field staff during the development of the proposed rule. In addition, the public, including Agency field staff, has had the opportunity to comment on the proposed rule. Thus, the Agency has determined it is not necessary to further pursue the commenter's suggestion.

State Director and Administrator Priority Points

Comment: One commenter recommended that, if comments are being sought for awarding under-represented or administrator points, the Agency should allow each state to award additional points specific to encouraging necessary growth within their state.

Response: In considering the categories for which the State Director and Administrator can award their priority points, the Agency has expanded this criterion by adding three additional categories. The addition categories will allow State Directors more flexibility in awarding points to encourage necessary growth within their state for projects funded from their state allocation. These three categories are, in brief: (1) The applicant is a member of an unserved or under-served population; (2) furthers a Presidential initiative or Secretary of Agriculture priority; and (3) the proposed project is located in an impoverished area, has experienced long-term population decline, or loss of employment. The Agency has determined that these categories for administrative points are required to maintain uniformity and consistency for awarding points between states.

Comment: One commenter encouraged the Agency to allow states to retain the State Director awarded administrative points for a percentage of their caseload submitted to the National

Office for the pooled funding award consideration.

Response: The commenter is requesting that the National Office keep any State Director points awarded to an application that is forward to the National Office for competition in the national pool of funds. The Agency disagrees with this recommendation because the purpose of the National competition is to compete all unfunded, eligible projects against each other to determine, at a National level, under-representation and geographic distribution. It is using the ''national'' lens that the Administrator will be determining whether to award these discretionary points.

Normalization

Comment: In commenting on the interim final rule, numerous commenters recommended reinstituting data normalization across technologies in the application scoring process. One of the commenters stated that the recent dominance of grain dryers in REAP, and the desire to continue to promote technology diversity, could be addressed in other ways. In previous years, the Agency took steps intended to increase technology diversity in determining REAP awards. The Agency employed a ''normalization'' process developed by the NREL. The normalization process took place after proposals were all scored and sought to preserve some degree of balance among the technologies supported in the program. The normalization system maintained the relative point scores within single technology classes.

This one commenter, in commenting on the proposed rule, again recommended that the Agency consider applying the normalization process to the REAP application process to avoid the dominance by one single technology. The commenter acknowledged that this may be difficult to do with the existing system for state allocations of program funds, but the allocations themselves also need to be reviewed and should be based on a metric related to energy. (Right now the state allocation system is vague and the method used to arrive at it is opaque). The Agency could also apply the normalization process across states to avoid grossly disproportionate awards.

In contrast to these commenters, two commenters suggested that normalization should not come back into the final regulation for REAP. According to these commenters, a normalization process just complicates the program and removes the transparency of awards.

Response: The Agency has chosen not to normalize, but to allocate funding to the states which has increased both technology diversity and participation in all 50 states and territories, and no changes have been made to the rule in response to this set of comments. The normalization procedure was performed in the past when only one funding competition was held and there were no state allocations. The use of administrative points has also allowed the Agency to sustain a broadly diverse technology portfolio.

With regard to the comment suggesting that the allocations also need to be reviewed and should be based on a metric related to energy, that is outside the purview of this particular rulemaking, but the Agency will pass this comment on to those within the Agency dealing with state allocation of funds.

Small Projects

Comment: In commenting on the interim final rule, one commenter recommended that the REAP application scoring system should be abandoned for the smallest projects and its complexity was inappropriate for micro projects. According to the commenter, the current REAP application scoring system is disproportionately complex and opaque for the smallest (grants up to $20,000) projects and it should be replaced with a simple checklist for the state offices to use before forwarding an application to USDA-Washington and all projects that meet this criteria should be eligible.

Response: The Agency partially agrees with the commenter in that some of scoring criteria were unduly complex for very small (micro) projects, including the technical merit criterion and the commercial availability criterion. Both criteria were excluded in the proposed rule. The Agency removed the criterion for commercial availability entirely (for reasons discussed elsewhere in this preamble) and replaced the technical merit scoring criterion with a pass/fail determination.

The Agency, however, cannot abandon a scoring system for the smallest projects because the Agency still needs to evaluate all projects against each other, as required by the authorizing statute, in order to determine the more meritorious projects. A ''simple checklist'' does not do this and, even though a project may be ''checked off,'' it does not speak to the project's merits relative to the Agency's goals.

Technical Report/Technical Merit

Comment: In commenting on the interim final rule, several commenters recommended that the technical report be a pass/fail review instead of being scored using a points system. According to the commenters, the score awarded is subjective and depends on the opinion of the reviewer causing inconsistencies among similar projects. Similarly, a number of commenters on the proposed rule supported the proposed removal of technical merit as a scoring criterion due to its inconsistency and subjectivity in favor of a ''pass/fail'' screen.

Response: The Agency agrees with the commenters, although the scoring criterion being referred to by the commenters was ''technical merit'' and not ''technical report.'' The Agency recognized that the ''technical merit'' criterion was posing the difficulties identified by the commenters and, in the proposed rule, proposed to remove it as a scoring criterion and replace it with a pass/fail determination, which the Agency is retaining in the final rule.

Comment: Some commenters recommended that the Agency work closely with NREL to establish the ''pass/fail'' criteria for the proposed rule. One of the commenters pointed out that NREL has a renewable energy science and engineering background to provide guidance to identify technically qualified projects.

Response: The Agency agrees that the rule needs to identify a metric by which the ''pass/fail'' determination will be made, and has included such in the final rule. Both the areas in the technical reports and the criteria developed and used to score a project's technical merit were developed in consultation with NREL. The Agency took that information to identify the key areas of each technical report to examine in determining whether a project has ''technical merit'' and distilled the criteria used to score projects on technical merit into a concise metric—does the information exhibit any weaknesses in the area and does it show that the project meets or exceeds any requirements specified for it.

Comment: Due to the nature of the small wind market, some commenters recommended that the Agency regularly communicate with the NREL to maintain a current and consistent understanding of which manufacturers and distributors may be considered reputable.

Response: The Agency agrees with the commenter. While Agency staff will continue to work to ensure that technologies eligible for REAP funding

are commercially available and meritorious, it is not the Agency's role to be either a clearinghouse of information on manufacturers and distributors or to make judgments on their reputations.

Commercial Availability and Warranty

Comment: In commenting on the interim final rule (§ 4280.117(c)(3)), one commenter recommended that the Agency add the ability to utilize an ''Operations and Performance'' contract as an alternative to a warranty requirement. Two other commenters stated that the scoring criterion that gives 5 extra points for a 5-year warranty should be removed. According to these two commenters, this criterion is unclear and can be interpreted in many ways, and it is difficult to prove that the applicant actually received the warranty upon project completion.

Response: The Agency has removed the ''commercial availability'' scoring criterion and, as a result, the language concerning warranties referred to by the commenter is no longer part of scoring. Thus, the concerns expressed by the commenters are no longer relevant.

Comment: In commenting on the interim final rule, one commenter pointed out that The Innovation Center for U.S. Dairy is working with USDA to address the lack of a North American Industry Classification System (NAICS) code(s) for anaerobic digesters, which would help relieve difficulties experienced by the industry in applying for Federal grants. If such a new code(s) is established or selected, the commenter urges its immediate adoption by the program for the process of analyzing an applicant's credit.

Response: The Agency acknowledges that at this time anaerobic digesters do not have a NAICS code specifically applicable to them, and that they are being covered under an ''energy generation'' NAICS code. If and when a NAICS code specific to anaerobic digesters is developed, the Agency does not anticipate any issues with its adoption as soon as it is available. The Agency notes that no changes to the rule are required to address the commenter's concern.

Construction Planning and Performing Development (§ 4280.124)

Comment: One commenter, referencing page 22048, column 3, paragraph 4 of the proposed rule's **Federal Register** notice, expressed support for the elimination of all procurement contracts for projects with total project cost less than $200,000.

Response: While the Agency thanks the commenter for their support, the Agency notes that the preamble paragraph the commenter is referencing states ''. . . the Agency is proposing to remove the requirement that the Agency has to sign off on all procurement contracts for projects with total project costs of less than $200,000.'' The Agency did not propose to eliminate procurement contracts for this set of projects. The Agency has retained the proposed rule's provision found in §§ 4280.118(c)(2) and 4280.119(c)(2) of the final rule to remove the ''sign off'' requirement and no changes were made to the final rule as a result of this comment.

Comment: One commenter disagreed with the Agency's removal of surety on contracts between $100,000 and $200,000 and the ability to use deposits and letters of credit in lieu of payment and performance bonds. The commenter indicated that a payment bond provides superior protection compared to a letter of credit or cash deposit to public bodies because a subcontractor or supplier can make a direct claim against the payment bond. A performance bond assures that qualified contractors are hired and that funds are available to complete the project.

Response: The Agency has not removed the requirement for surety for contracts between $100,000 and $200,000, but has enabled the grantee to request exception to the surety requirement under certain conditions (see § 4280.124(a)(3)(v)). The Agency has added language to § 4280.124(a)(3)(v) of the final rule that this must be requested by the applicant and, if an exception is made, Agency funds will not be paid out until the project is operational and performing as describe in the technical report.

Comment: One commenter noted that proposed § 4280.124(a)(3)(i) requires that the Agency be named as co-obligee on the required surety bonds. The commenter did not object to the addition as co-obligee subject to certain clarifying conditions. The Agency, as a co-obligee on the bond, is not a party to the contract between the contractor and grantee. It is a well-established principle that the obligee may not enforce the surety's obligations under the bond if the obligee itself is in default under the contract. However, the commenter presumes that the Agency is not a party to the contract. Thus, there is a question of whether the Agency can still require the surety to complete a project even when the grantee has stopped paying the contractor. A surety typically requires that the dual obligee bond have clarifying language to state that the surety cannot be expected to perform by either obligee if the first obligee (in this case, the grantee) is in breach of its payment obligations. The commenter recommended that such language be included in the regulations and the bond form.

Response: The Agency agrees with the commenter that clarifying language is needed, but will address this in instructions to the rule rather than in the rule itself. The Agency is required to review and approve all contracts and will require that the clarifying language reference by the commenter be included in all contracts. It is noted that the Agency/applicant would typically resolve any undisputed financial obligations prior to bond enforcement.

Comment: In referring to proposed § 4280.124(a)(l), which includes within the examples of competitive restrictions ''unnecessary . . . bonding requirements,'' one commenter (Duke) suggested that bond requirements should not be viewed as an unreasonable barrier to entry if the pool of eligible contract awardees that the grantee and Agency wish to reach are qualified contractors. According to the commenter, through prequalification as described by the commenter, bonds facilitate the procuring agency's function of awarding contracts to capable and qualified contractors. The commenter further stated that bonds help ensure that the pool of contractors competing for a procurement are qualified and bonds do not keep such contractors from competing.

Response: The Agency did not intend the wording in the proposed rule concerning ''unnecessary . . . bonding requirements'' to create the situation outlined by the commenter. The Agency generally agrees with the commenter. Therefore, to clarify the proposed rule language, the final rule reads, in part: ''unnecessary experience or excessive bonding.''

Comment: One commenter supported the proposed exemption from the requirement to use a licensed professional engineer (PE) either when tribal (or state) law does not require the use of a licensed PE or when the project is not complex, as determined by the Agency, and can be completed to meet the requirements of this program without the services of a licensed PE.

Response: The Agency thanks the commenter for their support on these proposed revisions, which have been included in the final rule.

Comment: In commenting on the interim final rule, two commenters recommended that the forms referenced in § 4280.119(e)(8), Final Payments, not be required for projects that are reimbursed by grant funds after project completion. Because the applicant is

allowed to incur costs as soon as the application is submitted, there is a chance that the project has been completed for some time before grant approval. Thus, it is burdensome to require paperwork on contracts that are already fulfilled and payment complete. One of the two commenters further stated that the applicant should assume this responsibility during the construction phase and the Agency would pay out funds only after the project proves it is operational.

Response: The Agency disagrees with the commenters as these forms are needed to ensure that there are no outstanding liens on the project before the Agency disburses funds, and the final rule continues to require them. After the application has been submitted, the Agency can provide these forms to the applicant if the applicant makes the Agency aware that the applicant is going to start construction. This allows the applicant to have the forms for contractor sign off at the time the project is completed.

Awarding and Administering RES and EEI Grants (§ 4280.122)

Comment: Two commenters agreed with the Agency's decision in the proposed rule to obtain certain forms and certifications on approved projects after selection rather than having every applicant complete them with their application.

Response: The Agency thanks the commenter for the support. The final rule incorporates the same provisions in this regard as found in the proposed rule.

Servicing RES and EEI Grants (§ 4280.123)

Programmatic Changes

Comment: One commenter stated that Agency concurrence on programmatic changes should only be required if the project costs increase. If a grantee is able to do the project at the same level as planned and do it for less cost, the Agency should not need to be consulted in advance of the work being done. Because reimbursements are made after the project is completed, the Agency would still be able to limit the maximum grant to 25 percent of actual costs. According to the commenter, getting Agency prior approval to spend less money is burdensome for both the grantee and the Agency and serves no useful purpose.

Response: The Agency generally agrees with the commenter that requiring Agency prior approval for a decrease in project costs applied burdens both the grantee and the Agency, and is of no advantage to the Federal Government, provided that the reason(s) for decrease in the project cost does not have a negative impact on the long-term viability of the project. If the reason(s) for the lower cost is associated with the technology, its installation, or any other factor that negatively affects the long-term viability of the project, however, the Agency must retain the ability to approve any such cost reductions. Further, the final rule requires any decrease in project cost that does not have a negative impact on the long-term viability to be reviewed and approved by the Agency prior to disbursement of funds.

Note: These changes discussed here do not affect the requirement for prior Agency approval for changes in project scope and contractor or vendor.

Renewable Energy System Reports

Comment: Two commenters supported the Agency's proposal to remove the health/sanitation requirement from the RES servicing report.

Response: The Agency thanks the commenter for their support and the final rule does not require, as found it the proposed rule, this information to be submitted with the RES servicing report.

Energy Efficiency Improvement Reports

Comment: One commenter was concerned about whether a grantee would be able to report the actual amount of energy saved in the project performance report for EEI. For example, if a grantee is switching fuel types from diesel to electric the grantee is not going to have any idea how much energy has been saved. The commenter recommended that the report instead ask for how much energy the grantee has used and the Agency can then compare that figure to grantee's previous energy usage as shown in the grantee's energy audit and prior energy bills. The commenter noted that making this change would allow the Agency to use consistent numbers when calculating the BTU value of each energy type and would provide a better overall report of savings from the overall projects.

A second commenter made a similar suggestion, but recommended that grantees be given two options—either report the annual energy savings as calculated by the applicant or report annual energy consumption by fuel source to be compared to the energy audit and calculated by the Agency. According to the commenter, these changes would ensure the accuracy of information the Agency provides to Congress.

Response: The Agency disagrees with the commenters that the requirement for applicants to report energy savings should be shifted from the applicant to the Agency. It is the Agency's position that, unlike other Federal programs where the government is implementing the improvement, REAP is financing the applicant to do the improvements. Thus, it is the applicant's responsibility to report to the Agency the energy savings to be realized. The Agency developed forms to assist applicants in meeting this requirement and to achieve more consistent reporting.

Comment: One commenter stated that the Agency has no recognized Measurement and Verification Procedure for monitoring energy generated or saved for any of its projects. The commenter asked how reporting can be deemed accurate without a Measurement and Verification protocol. The Agency's report on results issued to Congress shows the actual performance of projected energy saved or generated based on projected results for 2009 REAP projects as 35.66 percent realized for 2010 and 75.84 percent in 2011. For 2010, REAP projects reporting shows 39.74 percent of the projected results were realized. Some of individual project reporting results show that the projected energy saved or generated is exactly the same, which is an improbable result. Without any real measurement and verification mechanism how does anyone really know how effective this program is? Measurement and Verification protocol is a common practice in the industry and it is requirement in the Federal Energy Management Program. While the typical Measurement and Verification protocol cost adds 10 percent to project costs, not every Measurement and Verification protocol program need be that expensive. The single most expensive monitoring expense that REAP identified has been a separate gas meter. However, data loggers are available that record the use of propane burners, given the operating characteristics of equipment, time of use may be correlated to gas use. The cost of data logger equipment is relatively inexpensive. The commenter asked why the Agency has not adopted a program of Measurement and Verification if only on a spot basis to test a sample of projects. The commenter also asked, ''What is the justification for self-reporting?''

Response: The Agency acknowledges that a formal measurement and verification program helps ensure the accuracy of information reported. However, the Agency has decided not to implement such a program for this rule.

It is the Agency's position that, unlike other Federal programs where the Government is implementing the improvement, REAP is financing the applicant to do the improvements. Thus, it is the applicant's responsibility to (self-) report to the Agency the energy savings to be realized. Further, requiring a third-party verification process will increase the cost of the program to the grantee and may be cost prohibitive for some grantees. Implementing a ''spot'' check program run by the Agency would in appropriately shift the burden from the applicant to the government. The Agency has not made any changes to the rule as a result of this comment. However, the Agency will develop templates to assist applicants in providing accurate and consistent measurement of energy saved or generated by the project funded with REAP.

Job Reporting

Comment: One commenter stated that the requirement to submit jobs created or saved will, in virtually every case of energy efficiency, result in a negative report. If we already know that to be the case, why require it from the grantee for the 2 to 3 years of reports that have to be filed?

Another commenter suggested directly incorporating into the regulation and reporting documents that energy savings reports may report zero jobs if applicable. The commenter also recommended that the Agency clarify in the reporting document that the jobs must be a direct result of the project, not simply a statement of the number of individuals that the business currently employs.

Response: While the primary purpose of REAP is energy creation and savings, the Agency is frequently asked by Administration officials and Congress to identify the number of jobs created or saved by all of its programs. Thus, even though EEI projects are unlikely to create or save many jobs, the Agency still needs to gather this information, which is at most a minimal burden on the grantee.

With regard to the comments made by the second commenter, the Agency has made revisions to the final rule by (1) adding ''if any'' to follow ''Actual number of jobs'' to address the comment about being able to report ''0 jobs''; and (2) revising the requirement to read, in part, ''created or saved as a direct result of the EEI [RES] project for which REAP funding was used'' to address the comment about not reporting the number of people employed by the business.

Guaranteed Loans

Guaranteed Loans Awarded Subject to Available Funds

Comment: One commenter stated that the Agency needs to ensure that it has funding available when selecting awarded projects, or that it has the ability to issue conditional commitments subject to funding if the guaranteed loan program is to be successful.

Response: The Agency agrees with the commenter that funding must be in hand before the Agency makes any obligations to projects selected for funding. The Agency does not intend to issue ''conditional commitments'' as suggested because it would commit the Agency to funding projects before it actually has the funds available, which would be in violation of the Anti-deficiency Act.

Funding Level

Comment: In referring to the interim final rule, one commenter stated that increasing the maximum amount of the loan guarantee made available to an eligible project from 50 percent to 75 percent of the eligible project costs and increasing the total amount of loans guaranteed to any one borrower from $10 million to $25 million would enhance the REAP program's effectiveness in fostering the development of more anaerobic digesters.

On the other hand, another commenter stated that the interim final rule further facilitates larger projects through increases in loan/grant percentage (50 percent to 75 percent) and the maximum loan guarantee to a single borrower ($10 million to $25 million). The commenter stated that these two changes will further tilt the program towards the already successful larger project segment. This commenter recommended eliminating these two changes. The commenter stated that a project that needs a USDA loan guarantee is not a better project than one that does not and pointed to distributed wind projects with medium and large scale wind turbines that are going unfunded by REAP because they have not needed or wanted USDA loan guarantees.

In commenting on the proposed rule, a third commenter stated that, given there are already equity requirements in place for all REAP guaranteed loan projects, the 75 percent cap hinders the growth of the program. The commenter suggested, for example, that a small business or agricultural producer should be able to seek a REAP guaranteed loan for 100 percent of total project costs through a lender and that the 25 percent equity requirement should be placed on the business or agricultural producer and demonstrated from the balance sheet at closing as it is done in the B&I program.

This third commenter then pointed out that the B&I program does not implement a 75 percent cap, but still has plenty of risk mitigation due to the requirements of the tangible balance sheet equity formula—20 percent for existing businesses and 10 percent for new businesses. [**Agency note:** The commenter inadvertently reversed the percentages—the correct percentages are 10 percent for existing businesses and 20 percent for new businesses. See 7 CFR 4279.131(d).] The commenter recommended that the same be implemented for REAP guaranteed loans. The renewable energy sector has matured somewhat since the early implementation of this program in 2002. At that time it would have seemed reasonable to impose a 75 percent threshold on funds and promote cost sharing with REAP guaranteed loans; however, the risk of these projects has decreased and elimination of the 75 percent cap would attract more lending institutions to utilize these underutilized guaranteed loan program funds and benefit rural businesses and agricultural producers as is the intention of the program.

Response: The Agency implemented these two provisions in response to the 2008 Farm Bill, which limited the maximum amount of a loan guaranteed under REAP to $25 million and the maximum amount of a combined grant and loan guarantee to no more than 75 percent of the cost of the activity.

With regards to the $25 million limitation, the Agency must apply this statutory. Further this limitation is being applied not only on a single project basis, but on a single borrower basis over the life of the program.

The 75 percent of total eligible funds cap is specifically identified in the 2008 Farm Bill and continued in the 2014 Farm Bill as applying to combination requests (*i.e.*, grant plus guaranteed loan requests) and the Agency must retain and cannot modify that requirement. Further, the Agency determined that extending this same cap to guaranteed loan-only requests is consistent with the intent of the statute as stated in the bill's accompanying managers' report.

Guarantee Fee Language

Comment: One commenter expressed concern that the guarantee fee language will automatically result in increased guarantee and annual renewal fees, making the already undersubscribed

REAP guarantee program less attractive to lenders. The commenter encouraged the Agency to maintain existing annual and renewal fees to encourage participation.

Response: The guarantee fee language in the proposed rule will not automatically result in the Agency increasing guarantee and annual renewal fees. Rather, the proposed language provides the Agency the ability to change the fee if and when necessary to have an operational program. Therefore, the Agency has incorporated the proposed rule language in the final rule.

Comment: One commenter recommended that the REAP guarantee fee be allowed to be passed on to the borrower as is allowed in the B&I program.

Response: The Agency agrees with the commenter, and points out that the proposed rule allowed the guarantee fee to be passed onto the borrower. This has been retained in the final rule.

Balloons

Comment: In commenting on the interim final rule, one commenter recommended that anaerobic waste digester technology that produces renewable biogas power and electricity be treated under the rule in a manner that is equitable in comparison to other renewable technologies. One of the specific suggestions made by the commenter was for the Agency to add flexibility to loan term guidelines by allowing balloon maturities in combination with longer amortization schedules, because commercial banks that might typically utilize the REAP guarantee program will not extend loans past (say) ten years. The commenter pointed out that, although digester projects are steady cash flow producers, they typically cannot generate sufficient cash to amortize 100 percent of principal in 10 years.

Another commenter, also commenting on the interim final rule, recommended that the lender and borrower be able to negotiate a term for the loan that may be shorter than the amortization schedule (*e.g.*, a balloon payment which would then extinguish the loan guarantee.)

Response: The Agency acknowledges the potential benefit of allowing balloon maturities in combination with longer amortization schedules; however, doing so is not without risk both to the Agency and the borrower (in this case, to the rural small business and agricultural producer). It is because of this increased risk that all RBS guaranteed loan programs do not allow balloon payments. Therefore the Agency has decided not to implement balloon payments.

Restructuring Loan

Comment: In commenting on the interim final rule, one commenter stressed the importance of changing the interim final rule to enable restructuring of amortization as part of a loan guarantee. Currently, the REAP rule allows only a simple loan guarantee in which the borrower must pay equal principal and interest payments for the term of the loan. This is a reasonable approach for a project where the technology needs to be proven out, or to provide further guarantee for a borrower.

A project relying on private equity to secure the loan and utilizing proven technology certainly still benefit in part from this form of loan guarantee, as it no doubt ensures the security for the lending institution. Yet this benefit of a loan guarantee can be greatly enhanced with authorization of use of the loan guarantee to restructure the amortization. Again, this would ensure sufficient return on equity for the first few years. At the same time, the loan can be repaid well in advance of the expiration of the equipment's useful life.

Response: The Agency intends to conform the REAP regulation for guaranteed loans to the B&I program. Under the B&I program, loan reamortization is only available when a loan is in default (either technical or monetary default). The Agency finds no grounds for deviating from those provisions for projects funded under REAP and therefore has not revised the rule as a result of this comment.

Personal and Corporate Guarantees

Comment: In commenting on the interim final rule, one commenter recommended that the Agency incorporate a graduated reduction of the personal loan guarantee requirement for digester projects forecasting positive debt service coverage; that is, as the forecast coverage increases, the extent of the guarantee is reduced so that at some predetermined coverage level the personal guarantee requirement is eliminated entirely. According to the commenter, this change is needed to allow anaerobic waste digester technology that produces renewable biogas power and electricity to be treated under the rule in a manner that is equitable in comparison to other renewable technologies.

Response: The Agency disagrees with the recommendation made by the commenter for a graduated reduction of the personal loan guarantee requirement. The Agency has determined that a higher probability of success for a project can be achieved when the borrower is actively managing the project. Reducing the personal guarantee can reduce the incentive for actively managing a project and may results in placing the project in a higher risk position that could result in higher losses. For these reasons, the Agency has not revised the rule in response to the commenter's recommendation.

The Agency notes that the personal (and corporate) guarantee provisions for REAP in this regard are consistent with the Agency's B&I program and that a lender may request exceptions in cases where collateral, equity, cash flow, and profitability indicate an above average ability to repay the loan (see 7 CFR 4279.149(b)).

Comment: In commenting on the interim final rule, one commenter recommended revising § 4280.142(b) to underscore that an exemption be allowed to the longstanding requirement for a personal loan guarantee. The commenter specifically recommended that the Agency prepare business criteria for state offices to provide to lenders to evaluate the financial strength of digester projects utilizing a Debt Service Coverage Ratio (DSCR).

Response: In the proposed rule, the Agency proposed to incorporate fully the personal and corporate guarantee provisions from the B&I program (see 7 CFR 4279.149). The B&I provisions allow exemptions from the personal loan guarantee under certain circumstances. The Agency has determined that this change, as incorporated in the final rule, is sufficient so as to meet the concern of the commenter. Lastly, the suggestion to prepare separate business criteria to provide to lenders is administrative in nature and outside the scope of the final rule.

Working Capital Funding

Comment: While recognizing the benefit on placing a cap on working capital, one commenter recommended increasing the limit (cap) in order to help attract lenders to the guaranteed loan portion of REAP. According to the commenter, applicants have requested working capital for existing energy projects under REAP, but have consequently funded such projects under the Business and Industry guaranteed loan program. The commenter also recommended that the REAP regulation provide the Agency the discretion to set annual working capital funding caps as deemed necessary given program subscriptions to allow maximum flexibility from year to year.

Response: The Agency has determined that the 5 percent cap is appropriate for existing businesses because the items included in the cap have already been incurred by the business. The Agency has not revised the rule in response to this comment.

Energy Audit and REDA Grants

Applicant Eligibility

Comment: Several commenters recommended expanding the applicant eligibility section for energy audits and renewable energy developing assistance grants.

One commenter recommended including non-profit entities that can document, in their application, their qualification and historical success in providing renewable energy development assistance.

A second commenter recommended including as eligible entities non-profit or public entities, including those entities that provide water and sewer service in rural areas.

A third commenter recommended allowing milk cooperatives to be eligible for energy audit grants and renewable energy development assistance grants. Truly being the ''boots on the ground,'' milk cooperative field staff interacts every day with dairy farmers and have explicit knowledge and understanding of the operations of the farm. The commenter believes milk cooperatives have the ability and resources to provide this important service to better improve the delivery of energy audits and renewable energy development assistance.

Response: In determining which entities are eligible to apply for an energy audit or REDA grant, the Agency is limited to those entities identified in the authorizing statute. The authorizing statute identifies three specific groups of entities—a unit of state, tribal, or local government; a land grant college or university or other institution of higher education; and a rural electric cooperative or public power entity. None of the entities suggested by the commenters match any of these entities identified in the statute. The closest possible match is reference to ''public power companies'' and the public entities that provide water and sewer that were mentioned by one of the commenters. However, it is the intent of the statute that public power entities have the same definition of state utility as defined in section 214(a) of the Federal Power Act (16 U.S.C. 824q(a)), where state utility is defined, in part as ''. . . to carry on the business of developing, transmitting, utilizing, or distributing power.'' Public entities that provide water and sewer are not providing ''power'' and thus would not be included.

The authorizing statute also allows as eligible entities ''any other similar entity, as determined by the Secretary.'' None of the entities suggested by the commenters are ''similar.'' For example, none are educational institutions or government bodies. While one commenter suggested allowing milk cooperatives as eligible entities and the statue identifies rural electric cooperatives as eligible entities, the fact that both entities are cooperatives is insufficient to find them to be similar to the extent that milk cooperatives would be an eligible entity under the ''any other similar entity'' provision.

In summary, none of the entities identified by the commenters are found to be eligible under the statutory provisions and no changes to the rule have been made as a result of these comments.

Scoring EA and REDA Grant Applications

Comment: In commenting on the interim final rule, one commenter stated that the point scoring system for the $100,000 renewable energy development assistance grants provides up to 15 points for low cost energy audits, which means that proposals that provide energy audit services have a potential 15 point advantage over proposals that provide renewable energy development assistance. Given this criterion, it appears that the Agency does not really want to provide renewable energy development assistance, but is more focused on energy audits. Or does this scoring criterion only apply to energy audit proposals . . . and renewable energy development assistance grants will not be judged using this criterion or judged against the energy audit proposals?

The commenter asked: ''How can the rules give a fair opportunity and level playing field to both renewable energy development assistance as well as energy audits?'' Both are equally vital and important in creating rural success in the transition to a secure clean energy future.

Response: The Agency acknowledges the commenter's concern, which the Agency addressed in the proposed and final rules by providing equal footing for both energy audit grant applications and renewable energy development assistance grant applications.

Reporting EA/REDA

Comment: One commenter asked whether the Agency knew the number of EEI projects resulting from energy audits the program has funded.

Response: The Agency does not know the number of EEI projects that have resulted from energy audit funding under REAP. The Agency will consider developing a data management system for future tracking.

Appendix Comments

Proposed Rule—Appendix A

Comment: One commenter found the second paragraph in Appendix A to be confusing, stating that allowing EEI projects costing $200,000 or less the ability to conduct either an energy audit or energy assessment appears to conflict with the new definition for energy analysis and when it can be used.

Response: The Agency understands the potential confusion expressed by the commenter. For the reasons discussed previously in a response to another comment, the Agency has removed the definition of energy analysis from the final rule. Removing the definition of energy analysis from the rule eliminates this potential confusion.

Interim Final Rule—Appendix A and Appendix B, Section 2—Anaerobic Digester Projects

Comment: One commenter suggests adding the underlined text to the introductory paragraph: ''The technical requirements specified in this section apply to anaerobic digester projects, which are, as defined in § 4280.103, RES that use animal waste and other organic substrates to produce thermal or electrical energy via anaerobic digestion or produce biomethane in a compressed gaseous or liquid state for direct use or for injection into natural gas transmission and distribution systems.''

The commenter also suggests the following addition to paragraph (b)(2): ''(2) For systems planning to interconnect with a gas or electric utility, describe the utility's system interconnection requirements, power purchase agreements, or licenses where required and the anticipated schedule for meeting those requirements and obtaining those agreements.''

The commenter believes these changes will increase the demand for renewable biogas produced by anaerobic digesters. It would allow anaerobic digester projects that inject renewable biogas into the natural gas, in addition to or instead of using the gas on-site. Anaerobic biogas producers can receive added value from the renewable quality of their biogas, even when that gas is not used on site but put into transmission; wind and solar generators sell the renewable quality of their electrons to

firms far from where the electrons are consumed.

Encouraging the wheeling of renewable biogas through the natural gas transmission system allows customers, including stationary fuel cell power plants and hydrogen production systems and hydrogen production systems at fuel cell electric vehicle fueling stations, to take advantage of renewable fuel using the existing natural gas system.

Response: For the reasons discussed earlier in response to comments made by this commenter on the definition of ''anaerobic digesters,'' the Agency is not revising the rule as requested by the commenter. In addition, the proposed rule, and as found in the final rule, no longer contains the text being referred to by the commenter and, thus, the comment regarding the appendix for RES is no longer relevant.

Interim Final Rule, Appendix A, Section 8(f)

Comment: One commenter stated that the instructions for the payback analysis for small wind systems (Appendix A of Subpart B, Section 8) list inclusion of ''applicable investment incentives'', which conflicts with the definition of simple payback found in § 4280.103.

Response: The ''applicable investment incentives'' the commenter is referring to is in the context of providing an economic assessment of the project and is not in reference to the calculation of simple payback. Thus, there is no conflict and no changes to the rule have been made as a result of this comment.

Interim Final Rule, Appendix A, Section 8—Small Wind

Comment: One commenter noted that Section 8(i)(1) includes a requirement for a ''10 year warranty on design'' and a ''3 year warranty on equipment''. According to the commenter, the design warranty concept is not used in the wind industry. The commenter suggested that there should be a requirement for a 5-year parts and labor warranty and that turbines under 200 square meters should be certified to AWEA 9.1–2009 by the SWCC or a Nationally Recognized Testing Laboratory.

Response: The final rule, as in the proposed rule, does not contain the ''10-year'' or ''3-year'' warranty requirements, as referenced by the commenter. Instead, the final rule requires that a system, such as wind, have an established warranty for major parts and labor (that is applicable for that particular system) as part of the requirement for being determined ''commercially available.'' The Agency will provide more specific guidance in an instructions document for the rule.

Interim Final Rule, Appendix B, Section 8—Small Wind

Comment: One commenter stated that the requirements of Appendix B of Subpart B, Technical Reports, Section 8, should be radically simplified or eliminated (at least for micro projects). The commenter stated that a short-form application the commenter developed hits all the statutory requirements and would eliminate the need for the technical report.

Response: The Agency needs information on each proposed project in order to determine the merit of the project and to evaluate it against other projects. Thus, the Agency cannot eliminate technical reports, even for micro-projects. However, the Agency streamlined the application process, which includes the requirement for the technical report, for small and mid-sized grants under the proposed rule and has retained that streamlined application process in the final rule.

List of Subjects in 7 CFR Part 4280

Loan programs—Business and Industry, Economic Development, Energy, Energy Efficiency Improvements, Grant programs, Guaranteed Loan programs, Renewable Energy Systems, and Rural areas.

For the reasons set forth in the preamble, under the authority at 5 U.S.C. 301, 7 U.S.C. 1989, and 7 U.S.C. 8107, chapter XLII of title 7 of the Code of Federal Regulations (CFR) is amended as follows:

PART 4280—LOAN AND GRANTS

■ 1. The authority citation for part 4280 continues to read as follows:

Authority: 5 U.S.C. 301; 7 U.S.C. 940c; 7 U.S.C. 8107

■ 2. Subpart B is revised to read as follows:

Subpart B—Rural Energy for America Program

General

Sec.

4280.101 Purpose.
4280.102 Organization of subpart.
4280.103 Definitions.
4280.104 Exception authority.
4280.105 Review or appeal rights.
4280.106 Conflict of interest.
4280.107 Statute and regulation references.
4280.108 U.S. Department of Agriculture Departmental Regulations and laws that contain other compliance requirements.
4280.109 Ineligible Applicants, borrowers, and owners.
4280.110 General Applicant, application, and funding provisions.
4280.111 Notifications.

Renewable Energy System and Energy Efficiency Improvement Grants

4280.112 Applicant eligibility.
4280.113 Project eligibility.
4280.114 RES and EEI grant funding.
4280.115 Grant applications—general.
4280.116 Determination of technical merit.
4280.117 Grant applications for RES and EEI projects with total project costs $200,000 and greater.
4280.118 Grant applications for RES and EEI projects with total project costs of less than $200,000, but more than $80,000.
4280.119 Grant applications for RES and EEI projects with total project costs of $80,000 or less.
4280.120 Scoring RES and EEI grant applications.
4280.121 Selecting RES and EEI grant applications for award.
4280.122 Awarding and administering RES and EEI grants.
4280.123 Servicing RES and EEI grants.
4280.124 Construction planning and performing development.

Renewable Energy System and Energy Efficiency Improvement Guaranteed Loans

4280.125 Compliance with §§ 4279.29 through 4279.99 of this chapter.
4280.126 Guarantee/annual renewal fee.
4280.127 Borrower eligibility.
4280.128 Project eligibility.
4280.129 Guaranteed loan funding.
4280.130 Loan processing.
4280.131 Credit quality.
4280.132 Financial statements.
4280.133 [Reserved]
4280.134 Personal and corporate guarantees.
4280.135 Scoring RES and EEI guaranteed loan-only applications.
4280.136 [Reserved]
4280.137 Application and documentation.
4280.138 Evaluation of RES and EEI guaranteed loan applications.
4280.139 Selecting RES and EEI guaranteed loan-only applications for award.
4280.140 [Reserved]
4280.141 Changes in borrower.
4280.142 Conditions precedent to issuance of loan note guarantee.
4280.143 Requirements after project construction.
4280.144–4280.151 [Reserved]
4280.152 Servicing guaranteed loans.
4280.153–4280.164 [Reserved]

Combined Funding for Renewable Energy Systems and Energy Efficiency Improvements

4280.165 Combined grant and guaranteed loan funding requirements.
4280.166–4280.185 Reserved]

Energy Audit and Renewable Energy Development Assistance Grants (REDA)

4280.186 Applicant eligibility.
4280.187 Project eligibility.
4280.188 Grant funding for Energy Audit And Renewable Energy Development Assistance.
4280.189 [Reserved]
4280.190 Energy Audit and REDA grant applications—content.

4280.191 Evaluation of Energy Audit and REDA grant applications.
4280.192 Scoring Energy Audit and REDA grant applications.
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4280.200 OMB control number.
Appendix A to Subpart B of Part 4280—Technical Reports for Energy Efficiency Improvement (EEI) Projects
Appendix B to Subpart B of Part 4280—Technical Reports for Renewable Energy System (RES) Projects with Total Project Costs of Less Than $200,000, but More Than $80,000
Appendix C to Subpart B of Part 4280—Technical Reports for Renewable Energy System (RES) Projects with Total Project Costs of $200,000 and Greater

Subpart B—Rural Energy for America Program

General

§ 4280.101 Purpose.

This subpart contains the procedures and requirements for providing the following financial assistance under the Rural Energy for America Program (REAP):

(a) Grants or guaranteed loans, or a combination grant and guaranteed loan, for the purpose of purchasing and installing Renewable Energy Systems (RES) and Energy Efficiency Improvements (EEI); and

(b) Grants to assist Agricultural Producers and Rural Small Businesses by conducting Energy Audits (EA) and providing recommendations and information on Renewable Energy Development Assistance (REDA) and improving energy efficiency.

§ 4280.102 Organization of subpart.

(a) Sections 4280.103 through 4280.111 discuss definitions; exception authority; review or appeal rights; conflict of interest; USDA Departmental Regulations; other applicable laws; ineligible Applicants, borrowers, and owners; general Applicant, application, and funding provisions; and notifications, which are applicable to all of the funding programs under this subpart.

(b) Sections 4280.112 through 4280.124 discuss the requirements specific to RES and EEI grants. Sections 4280.112 and 4280.113 discuss, respectively, Applicant and project eligibility. Section 4280.114 addresses funding provisions for these grants. Sections 4280.115 through 4280.119 address grant application content, technical merit determination, and required documentation. Sections 4280.120 through 4280.123 address the scoring, selection, awarding and administering, and servicing of these grant applications. Section 4280.124 addresses construction planning and development.

(c) Sections 4280.125 through 4280.152 discuss the requirements specific to RES and EEI guaranteed loans. Sections 4280.125 through 4280.128 discuss eligibility and requirements for making and processing loans guaranteed by the Agency. Section 4280.129 addresses funding for guaranteed loans. In general, Sections 4280.130 through 4280.152 provide guaranteed loan origination and servicing requirements. These requirements apply to lenders, holders, and other parties involved in making, guaranteeing, holding, servicing, or liquidating such loans. Section 4280.137 addresses the application requirements for guaranteed loans.

(d) Section 4280.165 presents the process by which the Agency will make combined loan guarantee and grant funding available for RES and EEI projects.

(e) Sections 4280.186 through 4280.196 present the process by which the Agency will make EA and REDA grant funding available. These sections cover Applicant and project eligibility, grant funding, application content, evaluation, scoring, selection, awarding and administering, and servicing.

(f) Appendices A through C cover technical report requirements. Appendix A applies to EEI projects; Appendix B applies to RES projects with Total Project Costs of Less Than $200,000, but more than $80,000; and Appendix C applies RES projects with Total Project Costs $200,000 and Greater. Appendices A and B do not apply to RES and EEI projects with Total Project Costs of $80,000 or less, respectively. Instead, technical report requirements for these projects are found in § 4280.119.

§ 4280.103 Definitions.

Terms used in this subpart are defined in either § 4279.2 of this chapter or in this section. If a term is defined in both § 4279.2 and this section, it will have, for purposes of this subpart only, the meaning given in this section. Terms used in this subpart that have the same meaning as the terms defined in this section have been capitalized in this subpart.

Administrator. The Administrator of Rural Business-Cooperative Service within the Rural Development Mission Area of the U.S. Department of Agriculture (USDA).

Agency. The Rural Business-Cooperative Service (RBS) or successor agency assigned by the Secretary of Agriculture to administer the Rural Energy for America Program. References to the National Office, Finance Office, State Office, or other Agency offices or officials should be read as prefaced by ''Agency'' or ''Rural Development'' as applicable.

Agricultural Producer. An individual or entity directly engaged in the production of agricultural products, including crops (including farming); livestock (including ranching); forestry products; hydroponics; nursery stock; or aquaculture, whereby 50 percent or greater of their gross income is derived from those products.

Anaerobic Digester Project. A Renewable Energy System that uses animal waste or other Renewable Biomass and may include other organic substrates, via anaerobic digestion, to produce biomethane that is used to produce thermal or electrical energy or that is converted to a compressed gaseous or liquid state.

Annual Receipts. Means receipts as calculated under 13 CFR 121.104.

Applicant. (1) Except for EA and REDA grants, the Agricultural Producer or Rural Small Business that is seeking a grant, guaranteed loan, or a combination of a grant and loan, under this subpart.

(2) For EA and REDA grants, a unit of State, Tribal, or local government; a land-grant college or university or other Institution of Higher Education; a rural electric cooperative; a Public Power Entity; Council as defined in 16 U.S.C. 3451; or an Instrumentality of a State, Tribal, or local government that is seeking an EA or REDA grant under this subpart.

Assignment Guarantee Agreement (Form RD 4279–6, or successor form). The signed agreement among the Agency, the lender, and the holder containing the terms and conditions of an assignment of a guaranteed portion of a loan, using the single note system.

Bioenergy Project. A Renewable Energy System that produces fuel, thermal energy, or electric power from a Renewable Biomass source only.

Capacity. The maximum output rate that an apparatus or heating unit is able to attain on a sustained basis as rated by the manufacturer.

Commercially Available. A system that meets the requirements of either paragraph (1) or (2) of this definition.

(1) A domestic or foreign system that:

(i) Has, for at least one year specific to the proposed application, both a

proven and reliable operating history and proven performance data;

(ii) Is based on established design and installation procedures and practices and is replicable;

(iii) Has professional service providers, trades, large construction equipment providers, and labor who are familiar with installation procedures and practices;

(iv) Has proprietary and balance of system equipment and spare parts that are readily available;

(v) Has service that is readily available to properly maintain and operate the system; and

(vi) Has an existing established warranty that is valid in the United States for major parts and labor.

(2) A domestic or foreign Renewable Energy System that has been certified by a recognized industry organization whose certification standards are acceptable to the Agency.

Complete Application. An application that contains all parts necessary for the Agency to determine Applicant and project eligibility, score the application, and, where applicable, enable the Agency to determine the technical merit of the project.

Conditional Commitment (Form RD 4279–3, or successor form). The Agency's notice to the lender that the loan guarantee it has requested is approved subject to the completion of all conditions and requirements set forth by the Agency and outlined in the Conditional Commitment.

Council. As defined in 16 U.S.C. 3451.

Departmental Regulations. The regulations of the USDA's Office of Chief Financial Officer (or successor office) as codified in 2 CFR chapter IV.

Design/Build Method. A method of project development whereby all design, engineering, procurement, construction, and other related project activities are performed under a single contract. The contractor is solely responsible and accountable for successful delivery of the project to the grantee and/or borrower as applicable.

Eligible Project Costs. The Total Project Costs that are eligible to be paid or guaranteed with REAP funds.

Energy Assessment. An Agency-approved report assessing energy use, cost, and efficiency by analyzing energy bills and surveying the target building and/or equipment sufficiently to provide an Agency-approved Energy Assessment.

(1) If the project's Total Project Cost is greater than $80,000, the Energy Assessment must be conducted by either an Energy Auditor or an Energy Assessor or an individual supervised by either an Energy Assessor or Energy Auditor. The final Energy Assessment must be validated and signed by the Energy Assessor or Energy Auditor who conducted the Energy Assessment or by the supervising Energy Assessor or Energy Auditor of the individual who conducted the assessment, as applicable.

(2) If the project's Total Project Cost is $80,000 or less, the Energy Assessment may be conducted in accordance with paragraph (1) of this definition or by an individual or entity that has at least 3 years of experience and completed at least five energy assessments or energy audits on similar type projects.

Energy Assessor. A Qualified Consultant who has at least 3 years of experience and completed at least five energy assessments or energy audits on similar type projects and who adheres to generally recognized engineering principles and practices.

Energy Audit. A comprehensive report that meets an Agency-approved standard prepared by an Energy Auditor or an individual supervised by an Energy Auditor that documents current energy usage; recommended potential improvements, typically called energy conservation measures, and their costs; energy savings from these improvements; dollars saved per year; and Simple Payback. The methodology of the Energy Audit must meet professional and industry standards. The final Energy Audit must be validated and signed off by the Energy Auditor who conducted the audit or by the supervising Energy Auditor of the individual who conducted the audit, as applicable.

Energy Auditor. A Qualified Consultant that meets one of the following criteria:

(1) A Certified Energy Auditor certified by the Association of Energy Engineers;

(2) A Certified Energy Manager certified by the Association of Energy Engineers;

(3) A Licensed Professional Engineer in the State in which the audit is conducted with at least 1 year experience and who has completed at least two similar type energy audits; or

(4) An individual with a 4 year engineering or architectural degree with at least 3 years of experience and who has completed at least five similar type energy audits.

Energy Efficiency Improvement (EEI). Improvements to or replacement of an existing building and/or equipment that reduces energy consumption on an annual basis.

Feasibility Study. An analysis conducted by a Qualified Consultant of the economic, market, technical, financial, and management feasibility of a proposed project or business operation.

Federal Fiscal Year. The 12-month period beginning October 1 of any given year and ending on September 30 of the following year.

Financial Feasibility. The ability of a project or business operation to achieve sufficient income, credit, and cash flow to financially sustain a project over the long term. The concept of financial feasibility includes assessments of the cost-accounting system, the availability of short-term credit for seasonal businesses operations, and the adequacy of raw materials and supplies.

Geothermal Direct Generation. A system that uses thermal energy directly from a geothermal source.

Geothermal Electric Generation. A system that uses thermal energy from a geothermal source to produce electricity.

Grant Agreement (Form RD 4280–2, Rural Business Cooperative Service Grant Agreement, or successor form). An agreement between the Agency and the grantee setting forth the provisions under which the grant will be administered.

Hybrid. A combination of two or more Renewable Energy technologies that are incorporated into a unified system to support a single project.

Hydroelectric Source. A Renewable Energy System producing electricity using various types of moving water including, but not limited to, diverted run-of-river water, in-stream run-of-river water, and in-conduit water. For the purposes of this subpart, only those Hydroelectric Sources with a Rated Power of 30 megawatts or less are eligible.

Hydrogen Project. A system that produces hydrogen from a Renewable Energy source or that uses hydrogen produced from a Renewable Energy source as an energy transport medium in the production of mechanical or electric power or thermal energy.

Immediate Family. Individuals who are closely related by blood, marriage, or adoption, or who live within the same household, such as a spouse, domestic partner, parent, child, brother, sister, aunt, uncle, grandparent, grandchild, niece, or nephew.

Inspector. A Qualified Consultant who has at least 3 years of experience and completed at least five inspections on similar type projects. A project might require one or more Inspectors to perform the required inspections.

Institution of Higher Education. As defined in 20 U.S.C. 1002(a).

Instrumentality. An organization recognized, established, and controlled by a State, Tribal, or local government, for a public purpose or to carry out special purposes.

Interconnection Agreement. A contract containing the terms and conditions governing the interconnection and parallel operation of the grantee's or borrower's electric generation equipment and the utility's electric power system.

Lender's Agreement (Form RD 4279–4, or Successor Form). Agreement between the Agency and the lender setting forth the lender's loan responsibilities.

Loan Note Guarantee (Form RD 4279–5, or Successor Form). A guarantee issued and executed by the Agency containing the terms and conditions of the guarantee.

Matching Funds. Those project funds required by the 7 U.S.C. 8107 to receive the grant or guaranteed loan under this program. Funds provided by the applicant in excess of matching funds are not matching funds. Unless authorized by statute, other Federal grant funds cannot be used to meet a Matching Funds requirement.

Ocean Energy. Energy created by use of various types of moving water in the ocean and other large bodies of water (*e.g.,* Great Lakes) including, but not limited to, tidal, wave, current, and thermal changes.

Passive Investor. An equity investor that does not actively participate in management and operation decisions of the business entity as evidenced by a contractual agreement.

Power Purchase Agreement. The terms and conditions governing the sale and transportation of electricity produced by the grantee or borrower to another party.

Public Power Entity. Is defined using the definition of ''State utility'' as defined in section 217(A)(4) of the Federal Power Act (16 U.S.C. 824q(a)(4)). As of this writing, the definition ''means a State or any political subdivision of a State, or any agency, authority, or Instrumentality of any one or more of the foregoing, or a corporation that is wholly owned, directly or indirectly, by any one or more of the foregoing, competent to carry on the business of developing, transmitting, utilizing, or distributing power.''

Qualified Consultant. An independent third-party individual or entity possessing the knowledge, expertise, and experience to perform the specific task required.

Rated Power. The maximum amount of energy that can be created at any given time.

Refurbished. Refers to a piece of equipment or Renewable Energy System that has been brought into a commercial facility, thoroughly inspected, and worn parts replaced and has a warranty that is approved by the Agency or its designee.

Renewable Biomass. (1) Materials, pre-commercial thinnings, or invasive species from National Forest System land or public lands (as defined in section 103 of the Federal Land Policy and Management Act of 1976 (43 U.S.C. 1702)) that:

(i) Are byproducts of preventive treatments that are removed to reduce hazardous fuels; to reduce or contain disease or insect infestation; or to restore ecosystem health;

(ii) Would not otherwise be used for higher-value products; and

(iii) Are harvested in accordance with applicable law and land management plans and the requirements for old-growth maintenance, restoration, and management direction of paragraphs (e)(2), (e)(3), and (e)(4) and large-tree retention of subsection (f) of section 102 of the Healthy Forests Restoration Act of 2003 (16 U.S.C. 6512); or

(2) Any organic matter that is available on a renewable or recurring basis from non-Federal land or land belonging to an Indian or Indian Tribe that is held in trust by the United States or subject to a restriction against alienation imposed by the United States, including:

(i) Renewable plant material, including feed grains; other agricultural commodities; other plants and trees; and algae; and

(ii) Waste material, including crop residue; other vegetative waste material (including wood waste and wood residues); animal waste and byproducts (including fats, oils, greases, and manure); and food waste, yard waste, and other biodegradable waste. (Waste material does not include unsegregated solid waste.)

Renewable Energy. Energy derived from:

(1) A wind, solar, Renewable Biomass, ocean (including tidal, wave, current, and thermal), geothermal or Hydroelectric Source; or

(2) Hydrogen derived from Renewable Biomass or water using wind, solar, ocean (including tidal, wave, current, and thermal), geothermal or Hydroelectric Sources.

Renewable Energy Development Assistance (REDA). Assistance provided by eligible grantees to Agricultural Producers and Rural Small Businesses to become more energy efficient and to use Renewable Energy technologies and resources. The Renewable Energy Development Assistance may consist of Renewable Energy Site Assessment and/or Renewable Energy Technical Assistance.

Renewable Energy Site Assessment. A report provided to an Agricultural Producer or Rural Small Business providing information regarding and recommendations for the use of Commercially Available Renewable Energy technologies in its operation. The report must be prepared by a Qualified Consultant and must contain the information specified in Sections A through C of Appendix B.

Renewable Energy System (RES). Meets the requirements of paragraph (1) and (2) of this definition:

(1) A system that:

(i) Produces usable energy from a Renewable Energy source; and

(ii) May include distribution components necessary to move energy produced by such system to initial point of sale.

(2) A system described in paragraph (1) of this definition may not include a mechanism for dispensing energy at retail.

Renewable Energy Technical Assistance. Assistance provided to Agricultural Producers and Rural Small Businesses on how to use Renewable Energy technologies and resources in their operations.

Retrofitting. A modification that incorporates a feature or features not included in the original design or for the replacement of existing components with ones that improve the original design and does not impact original warranty if the warranty is still in existence.

Rural or Rural Area. Any area of a State not in a city or town that has a population of more than 50,000 inhabitants, according to the latest decennial census of the United States, or in the urbanized area contiguous and adjacent to a city or town that has a population of more than 50,000 inhabitants, and any area that has been determined to be ''rural in character'' by the Under Secretary for Rural Development, or as otherwise identified in this definition.

(1) An area that is attached to the urbanized area of a city or town with more than 50,000 inhabitants by a contiguous area of urbanized census blocks that is not more than two census blocks wide. Applicants from such an area should work with their Rural Development State Office to request a determination of whether their project is

located in a Rural Area under this provision.

(2) For the purposes of this definition, cities and towns are incorporated population centers with definite boundaries, local self-government, and legal powers set forth in a charter granted by the State.

(3) For the Commonwealth of Puerto Rico, the island is considered Rural and eligible except for the San Juan Census Designated Place (CDP) and any other CDP with greater than 50,000 inhabitants. CDPs with greater than 50,000 inhabitants, other than the San Juan CDP, may be determined to be eligible if they are ''not urban in character.''

(4) For the State of Hawaii, all areas within the State are considered Rural and eligible except for the Honolulu CDP within the County of Honolulu.

(5) For the purpose of defining a Rural Area in the Republic of Palau, the Federated States of Micronesia, and the Republic of the Marshall Islands, the Agency shall determine what constitutes Rural and Rural Area based on available population data.

(6) The determination that an area is ''rural in character'' will be made by the Under Secretary of Rural Development. The process to request a determination under this provision is outlined in paragraph (6)(ii) of this definition.

(i) The determination that an area is ''rural in character'' under this definition will apply to areas that are within:

(A) An urbanized area that has two points on its boundary that are at least 40 miles apart, which is not contiguous or adjacent to a city or town that has a population of greater than 150,000 inhabitants or the urbanized area of such a city or town; or

(B) An urbanized area contiguous and adjacent to a city or town of greater than 50,000 inhabitants that is within 1/4 mile of a Rural Area.

(ii) Units of local government may petition the Under Secretary of Rural Development for a ''rural in character'' designation by submitting a petition to both the appropriate Rural Development State Director and the Administrator on behalf of the Under Secretary. The petition shall document how the area meets the requirements of paragraph (6)(i)(A) or (B) of this definition and discuss why the petitioner believes the area is ''rural in character,'' including, but not limited to, the area's population density, demographics, and topography and how the local economy is tied to a rural economic base. Upon receiving a petition, the Under Secretary will consult with the applicable Governor or leader in a similar position and request comments to be submitted within 5 business days, unless such comments were submitted with the petition. The Under Secretary will release to the public a notice of a petition filed by a unit of local government not later than 30 days after receipt of the petition by way of publication in a local newspaper and posting on the Agency's Web site, and the Under Secretary will make a determination not less than 15 days, but no more than 60 days, after the release of the notice. Upon a negative determination, the Under Secretary will provide to the petitioner an opportunity to appeal a determination to the Under Secretary, and the petitioner will have 10 business days to appeal the determination and provide further information for consideration.

Rural Small Business. A Small Business that is located in a Rural Area or that can demonstrate the proposed project for which assistance is being applied for under this subpart is located in a Rural Area.

Simple Payback. The estimated Simple Payback of a project funded under this subpart as calculated using paragraph (1) or (2) as applicable, of this definition.

(1) For projects that generate energy for use offsite, Simple Payback is calculated as follows:

(i) Simple Payback = (Eligible Project Costs)/(typical year) earnings before interest, taxes, depreciation, and amortization (EBITDA) for the project only.

(ii) EBITDA will be based on:

(A) All energy-related revenue streams and all revenue from byproducts produced by the energy system for a typical year including the fair market value of byproducts produced by and used in the project or related enterprises.

(B) Income remaining after all project obligations are paid (operating and maintenance).

(C) The Agency's review and acceptance of the project's typical year income (which is after the project is operating and stabilized) projections at the time of application submittal.

(D) Does not include any tax credits, carbon credits, renewable energy credits, and construction and investment-related benefits.

(2) For projects that reduce or replace onsite energy use (*e.g.,* EEI projects that reduce and RES projects that replace onsite energy use), Simple Payback is calculated as follows:

(i) Simple Payback = (Eligible Project Costs)/Dollar Value of Energy reduced or replaced)

(ii) Dollar Value of Energy reduced or replaced incorporates the following:

(A) Energy reduced or replaced will be calculated on the quantity of energy saved or replaced as determined by subtracting the result obtained under paragraph (2)(ii)(A)(*2*) from the result obtained under paragraph (2)(ii)(A)(*1*) of this definition, and converting to a monetary value using a constant value or price of energy (as determined under paragraph (2)(ii)(A)(*3*) of this definition).

(*1*) Actual energy used in the original building and/or equipment, as applicable, prior to the RES or EEI project, must be based on the actual average annual total energy used in British thermal units (BTU) over the most recent 12, 24, 36, 48, or 60 consecutive months of operation.

(*2*) Projected energy use if the proposed RES or EEI project had been in place for the original building and/or equipment, as applicable, for the same time period used to determine that actual energy use under paragraph (2)(ii)(A)(*1*) of this definition.

(*3*) Value or price of energy must be the actual average price paid over the same time period used to calculate the actual energy used under paragraph (2)(ii)(A)(*1*) of this definition. RES projects that will replace 100 percent of an Applicant's energy use will be required to use the actual average price paid for the energy replaced and the projected revenue received from energy sold in a typical year.

(B) Does not allow Energy Efficiency Improvements to monetize benefits other than the dollar amount of the energy savings the Agricultural Producer or Rural Small Business realizes as a result of the improvement.

(C) Does not include any tax credits, carbon credits, renewable energy credits, and construction and investment-related benefits.

Small Business. An entity or utility, as applicable, described below that meets Small Business Administration's (SBA) definition of Small Business as found in 13 CFR part 121.301(a) or (b). With the exception of the entities identified in this paragraph, all other non-profit entities are ineligible.

(1) A private for-profit entity, including a sole proprietorship, partnership, and corporation;

(2) A cooperative (including a cooperative qualified under section 501(c)(12) of the Internal Revenue Code);

(3) An electric utility (including a Tribal or governmental electric utility) that provides service to rural consumers and must operate independent of direct government control; and

(4) Tribal corporations or other Tribal business entities (as described in

paragraph (4)(i) and (ii) of this definition). The Agency shall determine the Small Business status of such Tribal entity without regard to the resources of the Tribal government.

(i) Chartered under Section 17 of the Indian Reorganization Act (25 U.S.C. 477), or

(ii) Other Tribal business entities that have similar structures and relationships with their Tribal governments as determined by the Agency.

State. Any of the 50 States of the United States, the Commonwealth of Puerto Rico, the U.S. Virgin Islands, Guam, American Samoa, the Commonwealth of the Northern Mariana Islands, the Republic of Palau, the Federated States of Micronesia, and the Republic of the Marshall Islands.

Total Project Costs. The sum of all costs associated with a completed project.

Used Equipment. Any equipment that has been used in any previous application and is provided in an ''as is'' condition.

§ 4280.104 Exception authority.

The Administrator may, with the concurrence of the Secretary of Agriculture, make an exception, on a case-by-case basis, to any requirement or provision of this subpart that is not inconsistent with any authorizing statute or applicable law, if the Administrator determines that application of the requirement or provision would adversely affect the Federal Government's financial interest.

§ 4280.105 Review or appeal rights.

An Applicant, lender, holder, borrower, or grantee may seek a review of an Agency decision or appeal to the National Appeals Division in accordance with 7 CFR part 11.

(a) *Guaranteed Loan.* In cases where the Agency has denied or reduced the amount of final loss payment to the lender, the adverse decision may be appealed by the lender only. An adverse decision that only impacts the holder may be appealed by the holder only. A decision by a lender adverse to the interest of the borrower is not a decision by the Agency, whether or not concurred in by the Agency.

(b) *Combined guaranteed loan and grant.* For an adverse decision involving a combination guaranteed loan and grant funding request, only the party that is adversely affected may request the review or appeal.

§ 4280.106 Conflict of interest.

(a) *General.* No conflict of interest or appearance of conflict of interest will be allowed. For purposes of this subpart, conflict of interest includes, but is not limited to, distribution or payment of grant, guaranteed loan funds, and Matching Funds or award of project construction contracts to an individual owner, partner, or stockholder, or to a beneficiary or Immediate Family of the Applicant or borrower when the recipient will retain any portion of ownership in the Applicant's or borrower's project. Grant and Matching Funds may not be used to support costs for services or goods going to, or coming from, a person or entity with a real or apparent conflict of interest.

(b) *Assistance to employees, relatives, and associates.* The Agency will process any requests for assistance under this subpart in accordance with 7 CFR part 1900, subpart D.

(c) *Member/delegate clause.* No member of or delegate to Congress shall receive any share or part of this grant or any benefit that may arise there from; but this provision shall not be construed to bar, as a contractor under the grant, a publicly held corporation whose ownership might include a member of Congress.

§ 4280.107 Statute and regulation references.

All references to statutes and regulations are to include any and all successor statutes and regulations.

§ 4280.108 U.S. Department of Agriculture Departmental Regulations and laws that contain other compliance requirements.

(a) *Departmental Regulations.* All projects funded under this subpart are subject to the provisions of the Departmental Regulations, as applicable, which are incorporated by reference herein.

(b) *Equal opportunity and nondiscrimination.* The Agency will ensure that equal opportunity and nondiscrimination requirements are met in accordance with the Equal Credit Opportunity Act, 15 U.S.C. 1691 *et seq.* and 7 CFR part 15d, Nondiscrimination in Programs and Activities Conducted by the United States Department of Agriculture. The Agency will not discriminate against Applicants on the basis of race, color, religion, national origin, sex, marital status, or age (provided that the Applicant has the capacity to contract); because all or part of the Applicant's income derives from any public assistance program; or because the Applicant has in good faith exercised any right under the Consumer Credit Protection Act, 15 U.S.C. 1601 *et seq.*

(c) *Civil rights compliance.* Recipients of grants must comply with the Americans with Disabilities Act of 1990, 42 U.S.C. 12101 *et seq.,* Title VI of the Civil Rights Act of 1964, *42 U.S.C. 2000d et seq.,* and Section 504 of the Rehabilitation Act of 1973, 29 U.S.C. 794. This includes collection and maintenance of data on the race, sex, and national origin of the recipient's membership/ownership and employees. These data must be available to conduct compliance reviews in accordance with 7 CFR 1901.204.

(1) Initial compliance reviews will be conducted by the Agency prior to funds being obligated.

(2) Grants will require one subsequent compliance review following project completion. This will occur after the last disbursement of grant funds has been made.

(d) *Environmental analysis.* 7 CFR part 1940, subpart G outlines environmental procedures and requirements for this subpart. Prospective Applicants are advised to contact the Agency to determine environmental requirements as soon as practicable after they decide to pursue any form of financial assistance directly or indirectly available through the Agency.

(1) Any required environmental review must be completed by the Agency prior to the Agency obligating any funds.

(2) The Applicant will be notified of all specific compliance requirements, including, but not limited to, the publication of public notices, and consultation with State Historic Preservation Offices and the U.S. Fish and Wildlife Service.

(3) A site visit by the Agency may be scheduled, if necessary, to determine the scope of the review.

(e) *Discrimination complaints*—(1) *Who may file.* Persons or a specific class of persons believing they have been subjected to discrimination prohibited by this section may file a complaint personally, or by an authorized representative with USDA, Director, Office of Adjudication, 1400 Independence Avenue SW., Washington, DC 20250.

(2) *Time for filing.* A complaint must be filed no later than 180 days from the date of the alleged discrimination, unless the time for filing is extended by the designated officials of USDA or Rural Development.

§ 4280.109 Ineligible Applicants, borrowers, and owners.

Applicants, borrowers, and owners will be ineligible to receive funds under this subpart as discussed in paragraphs (a) and (b) of this section.

(a) If an Applicant, borrower, or owner has an outstanding judgment obtained by the U.S. in a Federal Court (other than in the United States Tax Court), is delinquent in the payment of Federal income taxes, or is delinquent on a Federal debt, the Applicant, borrower, or owner is not eligible to receive a grant or guaranteed loan until the judgment is paid in full or otherwise satisfied or the delinquency is resolved.

(b) If an Applicant, borrower, or owner is debarred from receiving Federal assistance, the Applicant, borrower, or owner is not eligible to receive a grant or guaranteed loan under this subpart.

§ 4280.110 General Applicant, application, and funding provisions.

(a) *Satisfactory progress.* An Applicant that has received one or more grants and/or guaranteed loans under this program must make satisfactory progress, as determined by the Agency, toward completion of any previously funded projects before the Applicant will be considered for subsequent funding.

(b) *Application submittal.* Applications must be submitted in accordance with the provisions of this subpart unless otherwise specified in a **Federal Register** notice. Grant applications, guaranteed loan-only applications, and combined guaranteed loan and grant applications for financial assistance under this subpart may be submitted at any time.

(1) *Grant applications.* Complete grant applications will be accepted on a continuous basis, with awards made based on the application's score and subject to available funding.

(2) *Guaranteed loan-only applications.* Complete guaranteed loan-only applications will be accepted on a continuous basis, with awards made based on the application's score and subject to available funding. Each application that is ready for funding and that scores at or above the minimum score will be competed on a periodic basis, with higher scoring applications receiving priority. Each application ready for funding that receives a score below the minimum score will be competed in a National Office competition at the end of the fiscal year in which the application was ready to be competed.

(3) *Combined guaranteed loan and grant applications.* Applications requesting a RES or EEI grant and a guaranteed loan under this subpart will be accepted on a continuous basis, with awards made based on the grant application's score and subject to available funding.

(c) *Limit on number of applications.* An Applicant can apply for only one RES project and one EEI project under this subpart per Federal Fiscal Year.

(d) *Limit on type of funding requests.* An Applicant can submit only one type of funding request (grant-only, guaranteed loan-only, or combined funding) for each project under this subpart per Federal Fiscal Year.

(e) *Application modification.* Once submitted and prior to Agency award, if an Applicant modifies its application, the application will be treated as a new application. The submission date of record for such modified applications will be the date the Agency receives the modified application, and the application will be processed by the Agency as a new application under this subpart.

(f) *Incomplete applications.* Applicants must submit Complete Applications in order to be considered for funding. If an application is incomplete, the Agency will identify those parts of the application that are incomplete and return it, with a written explanation, to the Applicant for possible future resubmission. Upon receipt of a Complete Application by the appropriate Agency office, the Agency will complete its evaluation and will compete the application in accordance with the procedures specified in §§ 4280.121, 4280.179, or 4280.193 as applicable.

(g) *Application withdrawal.* During the period between the submission of an application and the execution of loan and/or grant award documents for an application selected for funding, the Applicant must notify the Agency, in writing, if the project is no longer viable or the Applicant no longer is requesting financial assistance for the project. When the Applicant notifies the Agency, the selection will be rescinded and/or the application withdrawn.

(h) *Technical report.* Each technical report submitted under this subpart, as specified in §§ 4280.117(e), 4280.118(b)(4), and 4280.119(b)(3) and 4280.119(b)(4) must comply with the provisions specified in paragraphs (h)(1) through (3), as applicable, of this section.

(1) *Technical report format and detail.* The information in the technical report must follow the format specified in § 4280.119(b)(3), § 4280.119(b)(4), and Appendices A through C of this subpart, as applicable. Supporting information may be submitted in other formats. Design drawings and process flowcharts are encouraged as exhibits. In addition, information must be provided, in sufficient detail, to:

(i) Allow the Agency to determine the technical merit of the Applicant's project under § 4280.116;

(ii) Allow the calculation of Simple Payback as defined in § 4280.103; and

(iii) Demonstrate that the RES or EEI will operate or perform over the project's useful life in a reliable, safe, and a cost-effective manner. Such demonstration shall address project design, installation, operation, and maintenance.

(2) *Technical report modifications.* If a technical report is prepared prior to the Applicant's selection of a final design, equipment vendor, or contractor, or other significant decision, it may be modified and resubmitted to the Agency, provided that the overall scope of the project is not materially changed as determined by the Agency. Changes in the technical report may require an updated Form RD 1940–20, ''Request for Environmental Information.''

(3) *Hybrid projects.* If the application is for a Hybrid project, technical reports must be prepared for each technology that comprises the Hybrid project.

(i) *Time limit on use of grant funds.* Except as provided in paragraph (i)(1) of this section, grant funds not expended within 2 years from the date the Grant Agreement was signed by the Agency will be returned to the Agency.

(1) *Time extensions.* The Agency may extend the 2-year time limit if the Agency determines, at its sole discretion, that the grantee is unable to complete the project for reasons beyond the grantee's control. Grantees must submit a request for the no-cost extension no later than 30 days before the expiration date of the Grant Agreement. This request must describe the extenuating circumstances that were beyond their control to complete the project for which the grant was awarded, and why an approval is in the government's best interest.

(2) *Return of funds to the agency.* Funds remaining after grant closeout that exceed the amount the grantee is entitled to receive under the Grant Agreement will be returned to the Agency.

§ 4280.111 Notifications.

(a) *Eligibility.* If an Applicant and/or their application are determined by the Agency to be eligible for participation, the Agency will notify the Applicant or lender, as applicable, in writing.

(b) *Ineligibility.* If an Applicant and/or their application are determined to be ineligible at any time, the Agency will inform the Applicant or lender, as applicable, in writing of the decision, reasons therefore, and any appeal rights.

No further processing of the application will occur.

(c) *Funding determinations.* Each Applicant and/or lender, as applicable, will be notified of the Agency's decision on their application. If the Agency's decision is not to fund an application, the Agency will include in the notification any applicable appeal or review rights.

Renewable Energy System and Energy Efficiency Improvement Grants

§ 4280.112 Applicant eligibility.

To receive a RES or EEI grant under this subpart, an Applicant must meet the requirements specified in paragraphs (a) through (e) of this section. If an award is made to an Applicant, that Applicant (grantee) must continue to meet the requirements specified in this section. If the grantee does not, then grant funds may be recovered from the grantee by the Agency in accordance with Departmental Regulations.

(a) *Type of Applicant.* The Applicant must be an Agricultural Producer or Rural Small Business.

(b) *Ownership and control.* The Applicant must:

(1) Own or be the prospective owner of the project; and

(2) Own or control the site for the project described in the application at the time of application and, if an award is made, for the useful life of the project as described in the Grant Agreement.

(c) *Revenues and expenses.* The Applicant must have available at the time of application satisfactory sources of revenue in an amount sufficient to provide for the operation, management, maintenance, and any debt service of the project for the useful life of the project. In addition, the Applicant must control the revenues and expenses of the project, including its operation and maintenance, for which the assistance is sought. Notwithstanding the provisions of this paragraph, the Applicant may employ a Qualified Consultant under contract to manage revenues and expenses of the project and its operation and/or maintenance.

(d) *Legal authority and responsibility.* Each Applicant must have the legal authority necessary to apply for and carry out the purpose of the grant.

(e) *Universal identifier and System for Awards Management (SAM).* Unless exempt under 2 CFR 25.110, the Applicant must:

(1) Be registered in the SAM prior to submitting an application;

(2) Maintain an active SAM registration with current information at all times during which it has an active Federal award or an application under consideration by the Agency; and

(3) Provide its Dun and Bradstreet Data Universal Numbering System (DUNS) number in each application it submits to the Agency. Generally, the DUNS number is included on Standard Form–424, ''Application for Federal Assistance''.

§ 4280.113 Project eligibility.

For a project to be eligible to receive a RES or EEI grant under this subpart, the proposed project must meet each of the requirements specified in paragraphs (a) through (f) of this section.

(a) Be for:

(1) The purchase of a new RES;

(2) The purchase of a Refurbished RES;

(3) The Retrofitting of an existing RES; or

(4) Making EEI that will use less energy on an annual basis than the original building and/or equipment that it will improve or replace as demonstrated in an Energy Assessment or Energy Audit as applicable.

(i) *Types of improvements.* Eligible EEI include, but are not limited to:

(A) Efficiency improvements to existing RES and

(B) Construction of a new energy efficient building only when the building is used for the same purpose as the existing building, and, based on an Energy Assessment or Energy Audit, as applicable, it will be more cost effective to construct a new building and will use less energy on annual basis than improving the existing building.

(ii) *Subsequent Energy Efficiency Improvements.* A proposed EEI that replaces or duplicates an EEI previously funded under this subpart may or may not be eligible for funding.

(A) If the proposed EEI would replace or duplicate the same EEI that had previously received funds under this subpart prior to the end of the useful life, as specified in the Grant Agreement, of that same EEI, then the proposed improvement, even if it is more energy efficient than the previously funded improvement, is ineligible. Example: An Applicant received a REAP grant to replace an exhaust fan (exhaust fan A) in a barn with a more energy efficient exhaust fan (exhaust fan B) with an expected useful life of 15 years, as specified in the Grant Agreement. If the Applicant decides to replace exhaust fan B after 8 years (*i.e.,* before it has reached the end of its useful life as specified it the Grant Agreement), an application for exhaust fan C to replace exhaust fan B would be ineligible for funding under this subpart even if exhaust fan C is more energy efficient than exhaust fan B.

(B) If the proposed EEI would replace or duplicate the same EEI that had previously received funds under this subpart at or after the end of the useful life, as specified in the Grant Agreement, of that same EEI, then the proposed improvement is eligible for funding under this subpart provided it is more energy efficient than the previously funded improvement. If the proposed EEI is not more energy efficient than the previously funded improvement, then it is not eligible for funding under this subpart.

(b) Be for a Commercially Available technology;

(c) Have technical merit, as determined using the procedures specified in § 4280.116; and

(d) Be located in a Rural Area in a State if the type of Applicant is a Rural Small Business, or in a Rural or non-Rural Area in a State if the type of Applicant is an Agricultural Producer. If the Agricultural Producer's operation is in a non-Rural Area, then the application can only be for RES or EEI on components that are directly related to and their use and purpose is limited to the agricultural production operation, such as vertically integrated operations, and are part of and co-located with the agricultural production operation.

(e) For an RES project in which a residence is closely associated with and shares an energy metering device with a Rural Small Business, where the residence is located at the place of business, or agricultural operation, the application is eligible if the applicant can document that one of the options specified in paragraphs (e)(1) through (3) of this section is met:

(1) Installation of a second meter (or similar device) that results in all of the energy generated by the RES being used for non-residential energy usage;

(2) Certification is provided in the application that any excess power generated by the RES will be sold to the grid and will not be used by the Applicant for residential purposes; or

(3) Demonstration that 51 percent or greater of the energy to be generated will benefit the Rural Small Business or agricultural operation. The Applicant must provide documentation that includes, but is not limited to, the following:

(i) A Renewable Energy Site Assessment; or

(ii) The amount of energy that is used by the residence and the amount that is used by the Rural Small Business or agricultural operation. Provide documentation, calculations, etc. to support the breakout of energy amounts.

The Agency may request additional data to determine residential versus business operation usage; and

(iii) The actual percentage of energy determined to benefit the Rural Small Business or agricultural operation will be the basis to determine eligible project costs.

(f) The Applicant is cautioned against taking any actions or incurring any obligations prior to the Agency completing the environmental review that would either limit the range of alternatives to be considered or that would have an adverse effect on the environment, such as the initiation of construction. If the Applicant takes any such actions or incurs any such obligations, it could result in project ineligibility.

§ 4280.114 RES and EEI grant funding.

(a) *Grant amounts.* The amount of grant funds that will be made available to an eligible RES or EEI project under this subpart will not exceed 25 percent of Eligible Project Costs. Eligible Project Costs are specified in paragraph (c) of this section.

(1) *Minimum request.* Unless otherwise specified in a **Federal Register** notice, the minimum request for a RES grant application is $2,500 and the minimum request for an EEI grant application is $1,500.

(2) *Maximum request.* Unless otherwise specified in a **Federal Register** notice, the maximum request for a RES grant application is $500,000 and the maximum request for an EEI grant application is $250,000.

(3) *Maximum grant assistance.* Unless otherwise specified in a **Federal Register** notice, the maximum amount of grant assistance to one individual or entity under this subpart will not exceed $750,000 per Federal Fiscal Year.

(b) *Matching funds and other funds.* The Applicant is responsible for securing the remainder of the Total Project Costs not covered by grant funds.

(1) Without specific statutory authority, other Federal grant funds cannot be used to meet the Matching Funds requirement. A copy of the statutory authority must be provided to the Agency to verify if the other Federal grant funds can be used to meet the Matching Funds requirement under this subpart.

(2) Passive third-party equity contributions are acceptable for RES projects, including equity raised from the sale of Federal tax credits.

(c) *Eligible Project Costs.* Eligible Project Costs are only those costs incurred after a Complete Application has been received by the Agency and are associated with the items identified in paragraphs (c)(1) through (6) of this section. Each item identified in paragraphs (c)(1) through (6) of this section is only an Eligible Project Cost if it is directly related to and its use and purpose is limited to the RES or EEI.

(1) Purchase and installation of new or Refurbished equipment.

(2) Construction, Retrofitting, replacement, and improvements.

(3) EEI identified in the applicable Energy Assessment or Energy Audit.

(4) Fees for construction permits and licenses.

(5) Professional service fees for Qualified Consultants, contractors, installers, and other third-party services.

(6) For an eligible RES in which a residence is closely associated with the Rural Small Business or agricultural operation the installation of a second meter to separate the residence from the portion of the project that benefits the Rural Small Business or agricultural operation, as applicable.

(d) *Ineligible project costs.* Ineligible project costs for RES and EEI projects include, but are not limited to:

(1) Agricultural tillage equipment, Used Equipment, and vehicles;

(2) Residential RES or EEI projects;

(3) Construction or equipment costs that would be incurred regardless of the installation of a RES or EEI shall not be included as an Eligible Project Costs. For example, the foundation for a building where a RES is being installed, storage only grains bins connected to drying systems, and the roofing of a building where solar panels are being attached;

(4) Business operations that derive more than 10 percent of annual gross revenue (including any lease income from space or machines) from gambling activity, excluding State or Tribal-authorized lottery proceeds, as approved by the Agency, conducted for the purpose of raising funds for the approved project;

(5) Business operations deriving income from activities of a sexual nature or illegal activities;

(6) Lease payments;

(7) Any project that creates a conflict of interest or an appearance of a conflict of interest as provided in § 4280.106;

(8) Funding of political or lobbying activities; and

(9) To pay off any Federal direct or guaranteed loans or other Federal debts.

(e) *Award amount considerations.* In determining the amount of a RES or EEI grant awarded, the Agency will take into consideration the following six criteria:

(1) The type of RES to be purchased;

(2) The estimated quantity of energy to be generated by the RES;

(3) The expected environmental benefits of the RES;

(4) The quantity of energy savings expected to be derived from the activity, as demonstrated by an Energy Audit;

(5) The estimated period of time for the energy savings generated by the activity to equal the cost of the activity; and

(6) The expected energy efficiency of the RES.

§ 4280.115 Grant applications—general.

(a) *General.* Separate applications must be submitted for RES and EEI projects. An original of each application is required.

(b) *Application content.* Applications for RES projects or EEI projects must contain the information specified in § 4280.117 unless the requirements of either § 4280.118(a) or § 4280.119(a) are met. If the requirements of § 4280.118(a) are met, the application may contain the information specified in § 4280.118(b). If the requirements of § 4280.119(a) are met, the application may contain the information specified in § 4280.119(b).

(c) *Evaluation of applications.* The Agency will evaluate each RES and EEI grant application and make a determination as to whether:

(1) The application is complete, as defined in § 4280.103;

(2) The Applicant is eligible according to § 4280.112;

(3) The project is eligible according to § 4280.113; and

(4) The proposed project has technical merit as determined under § 4280.116.

§ 4280.116 Determination of technical merit.

The Agency will determine the technical merit of all proposed projects for which Complete Applications are submitted under §§ 4280.117, 4280.118, and 4280.119 under this subpart using the procedures specified in this section. Only projects that have been determined by the Agency to have technical merit are eligible for funding under this subpart.

(a) *General.* The Agency will use the information provided in the Applicant's technical report to determine whether or not the project has technical merit. In making this determination, the Agency may engage the services of other Government agencies or other recognized industry experts in the applicable technology field, at its discretion, to evaluate and rate the technical report. For guaranteed loan-only applications that are purchasing an existing RES, the technical report requirements can be provided in the technical feasibility section of the Feasibility Study, instead of completing separate technical report.

(b) *Technical report areas.* The areas that the Agency will evaluate in the technical reports when making the technical merit determination are specified in paragraphs (b)(1) through (5) of this section.

(1) *EEI whose total project costs are $80,000 or less.* The following areas will be evaluated in making the technical merit determination:

(i) Project description;

(ii) Qualifications of EEI provider(s); and

(iii) Energy Assessment (or EA if applicable).

(2) *RES whose total project costs are $80,000 or less.* The following areas will be evaluated in making the technical merit determination:

(i) Project description;

(ii) Resource assessment;

(iii) Project economic assessment; and

(iv) Qualifications of key service providers.

(3) *EEI whose total project costs are greater than $80,000.* The following areas will be evaluated in making the technical merit determination:

(i) Project information;

(ii) Energy Assessment or EA as applicable; and

(iii) Qualifications of the contractor or installers.

(4) *RES whose total project costs are less than $200,000, but more than $80,000.* The following areas will be evaluated in making the technical merit determination:

(i) Project description;

(ii) Resource assessment;

(iii) Project economic assessment;

(iv) Project construction and equipment; and

(v) Qualifications of key service providers.

(5) *RES whose total project costs are $200,000 and greater.* The following areas will be evaluated in making the technical merit determination:

(i) Qualifications of the project team;

(ii) Agreements and permits;

(iii) Resource assessment;

(iv) Design and engineering;

(v) Project development;

(vi) Equipment procurement and installation; and

(vii) Operations and maintenance.

(c) *Pass/fail assignments.* The Agency will assign each area of the technical report, as specified in paragraph (b) of this section, a ''pass'' or ''fail.'' An area will receive a ''pass'' if the information provided for the area has no weaknesses and meets or exceeds any requirements specified for the area. Otherwise, the area will receive a fail.

(d) *Determination.* The Agency will compile the results for each area of the technical report to determine how to further process an application.

(1) A project whose technical report receives a ''pass'' in each of the applicable technical report areas will be considered to have ''technical merit'' and is eligible for further consideration for funding.

(2) A project whose technical report receives a ''fail'' in any one technical report area will be considered to be without technical merit and is not be eligible for funding.

§ 4280.117 Grant Applications for RES and EEI projects with total project costs of $200,000 and greater.

Grant applications for RES and EEI projects with Total Project Costs of $200,000 and Greater must provide the information specified in this section. This information must be presented in the order shown in paragraphs (a) through (f), as applicable, of this section. Each Applicant is encouraged, but is not required, to self-score the project using the evaluation criteria in § 4280.120 and to submit with their application the total score, including appropriate calculations and attached documentation or specific cross-references to information elsewhere in the application.

(a) *Forms and certifications.* Each application must contain the forms and certifications specified in paragraphs (a)(1) through (9), as applicable, of this section, except that paragraph (a)(4).

(1) Form SF–424.

(2) Form SF–424C, ''Budget Information-Construction Programs.''

(3) Form SF–424D, ''Assurances-Construction Programs.''

(4) Identify the ethnicity, race, and gender of the applicant. This information is optional and is not required for a Complete Application.

(5) Form RD 1940–20 with documentation attached for the appropriate level of environmental assessment. The Applicant should contact the Agency to determine what documentation is required to be provided.

(6) The Applicant must identify whether or not the Applicant has a known relationship or association with an Agency employee. If there is a known relationship, the Applicant must identify each Agency employee with whom the Applicant has a known relationship.

(7) Certification that the Applicant is a legal entity in good standing (as applicable), and operating in accordance with the laws of the State(s) or Tribe where the Applicant has a place of business.

(8) Certification by the Applicant that the equipment required for the project is available, can be procured and delivered within the proposed project development schedule, and will be installed in conformance with manufacturer's specifications and design requirements. This would not be applicable when equipment is not part of the project.

(9) Certification by the Applicant that the project will be constructed in accordance with applicable laws, regulations, agreements, permits, codes, and standards.

(b) *Applicant information.* Provide information specified in paragraphs (b)(1) through (4) of this section to allow the Agency to determine the eligibility of the Applicant.

(1) *Type of Applicant.* Demonstrate that the Applicant meets the definition of Agricultural Producer or Rural Small Business, including appropriate information necessary to demonstrate that the Applicant meets the Agricultural Producer's percent of gross income derived from agricultural operations or the Rural Small Business' size, as applicable, requirements identified in these definitions. Include a description of the Applicant's farm/ranch/business operation.

(i) *Rural Small Business Applicants.* Identify the primary North American Industry Classification System (NAICS) code applicable to the Applicant's business concern. Provide sufficient information to determine total Annual Receipts and number of employees of the business concern and any parent, subsidiary, or affiliate to demonstrate that the Applicant meets the definition of Small Business according to the time frames specified below.

(A) For Applicant business concerns, parents, subsidiaries, and affiliates that have been in operation for 36 months or more, provide Annual Receipts information for the 36 months and the number of employees for the 12 months preceding the date the application is submitted.

(B) For Applicant business concerns, parents, subsidiaries, and affiliates that have been in operation for less than 36 months but for at least 12 months, provide Annual Receipts and the number of employees for as long as the business concern, parent, subsidiary, or affiliate has been in operation.

(C) For Applicant business concerns, parents, subsidiaries, and affiliates that have been in operation for less than 12 months, provide Annual Receipts and number of employees projections for the applicable entity based upon a typical operating year for a 3-year time period.

(ii) *Agricultural Producer Applicants.* Provide the gross market value of the Applicant's agricultural products, gross agricultural income of the Applicant,

and gross nonfarm income of the Applicant according to the Annual Receipts time frames specified in paragraphs (b)(1)(i)(A) through (C) of this section, as applicable to the length of time that Applicant's agricultural operation has been in operation.

(2) *Applicant description.* Describe the ownership of the Applicant, including the following information if applicable.

(i) *Ownership and control.* Describe how the Applicant meets the ownership and control requirements.

(ii) *Affiliated companies.* For entities (*e.g.,* corporate parents, affiliates, subsidiaries), provide a list of the individual owners with their contact information of those entities. Describe the relationship between the Applicant and these other entities, including management and products exchanged.

(3) *Financial information.* Financial information is required on the total operation of the Agricultural Producer/Rural Small Business and its parent, subsidiary, or affiliates. All information submitted under this paragraph must be substantiated by authoritative records.

(i) *Historical financial statements.* Provide historical financial statements prepared in accordance with Generally Accepted Accounting Practices (GAAP) for the past 3 years, including income statements and balance sheets. If Agricultural Producers are unable to present this information in accordance with GAAP, they may instead present financial information in the format that is generally required by commercial agriculture lenders. For a Rural Small Business or Agricultural Producer that has been in operation for less than 3 years, provide income statements and balance sheets for as long as the business operation has been in existence.

(ii) *Current balance sheet and income statement.* Provide a current balance sheet and income statement prepared in accordance with GAAP and dated within 90 days of the application. Agricultural Producers can present financial information in the format that is generally required by commercial agriculture lenders.

(iii) *Pro forma financial statements.* Provide pro forma balance sheet at start-up of the Agricultural Producer's/Rural Small Business' business operation that reflects the use of the loan proceeds or grant award; and 3 additional years, indicating the necessary start-up capital, operating capital, and short-term credit; and projected cash flow and income statements for 3 years supported by a list of assumptions showing the basis for the projections.

(4) *Previous grants and loans.* State whether the Applicant has received any grants and/or loans under this subpart. If the Applicant has, identify each such grant and/or loan and describe the progress the Applicant has made on each project for which the grant and/or loan was received, including projected schedules and actual completion dates.

(c) *Project information.* Provide information concerning the proposed project as a whole and its relationship to the Applicant's operations, including the following:

(1) Identification as to whether the project is for a RES or an EEI project. Include a description and the location of the project.

(2) A description of the process that will be used to conduct all procurement transactions to demonstrate compliance with § 4280.124(a)(1).

(3) Describe how the proposed project will have a positive effect on resource conservation (*e.g.,* water, soil, forest), public health (*e.g.,* potable water, air quality), and the environment (*e.g.,* compliance with the U.S. Environmental Protection Agency's (EPA) renewable fuel standard(s), greenhouse gases, emissions, particulate matter).

(4) Identify the amount of funds and the source(s) the Applicant is proposing to use for the project. Provide written commitments for funds at the time the application is submitted to receive points under this scoring criterion.

(i) If financial resources come from the Applicant, the Applicant must submit documentation in the form of a bank statement that demonstrates availability of funds.

(ii) If a third party is providing financial assistance, the Applicant must submit a commitment letter signed by an authorized official of the third party. The letter must be specific to the project, identify the dollar amount and any applicable rates and terms. If the third party is a bank, a letter-of-intent, pre-qualification letter, subject to bank approval, or other underwriting requirements or contingencies are not acceptable. An acceptable condition may be based on the receipt of the REAP grant or an appraisal.

(d) *Feasibility Study.* If the application is for a RES project with Total Project Costs of $200,000 and Greater, a Feasibility Study must be submitted. The Feasibility Study must be conducted by a Qualified Consultant.

(e) *Technical report.* Each application must contain a technical report prepared in accordance with § 4280.110(h) and Appendix A or C, as applicable, of this subpart.

(f) *Construction planning and performing development.* Each application submitted must be in accordance with § 4280.124 for planning, designing, bidding, contracting, and constructing RES and EEI projects as applicable.

§ 4280.118 Grant applications for RES and EEI Projects with total project costs of less than $200,000, but more than $80,000.

Grant applications for RES and EEI projects with Total Project Costs of less than $200,000, but more than $80,000, may provide the information specified in this section or, if the Applicant elects to do so, the information specified in § 4280.117. In order to submit an application under this section, the criteria specified in paragraph (a) of this section must be met. The content for applications submitted under this section is specified in paragraph (b) of this section. Unless otherwise specified in this subpart, the construction planning and performing development procedures and the payment process that will be used for awards for applications submitted under this section are specified in paragraphs (c) and (d), respectively, of this section.

(a) *Criteria for submitting applications for projects with total project costs of less than $200,000, but more than $80,000.* In order to submit an application under this section, each of the conditions specified in paragraphs (a)(1) through (7) of this section must be met.

(1) The Applicant must be eligible in accordance with § 4280.112.

(2) The project must be eligible in accordance with § 4280.113.

(3) Total Project Costs must be less than $200,000, but more than $80,000.

(4) Construction planning and performing development must be performed in compliance with paragraph (c) of this section. The Applicant or the Applicant's prime contractor assumes all risks and responsibilities of project development.

(5) The Applicant or the Applicant's prime contractor is responsible for all interim financing, including during construction.

(6) The Applicant agrees not to request reimbursement from funds obligated under this program until after project completion and is operating in accordance with the information provided in the application for the project.

(7) The Applicant must maintain insurance as required under § 4280.122(b), except business interruption insurance is not required.

(b) *Application content.* Applications submitted under this section must

contain the information specified in paragraphs (b)(1) through (4) of this section and must be presented in the same order. Each Applicant is encouraged, but is not required, to self-score the project using the evaluation criteria in § 4280.120 and to submit with their application the total score, including appropriate calculations and attached documentation or specific cross-references to information elsewhere in the application.

(1) *Forms and certifications.* The application must contain the items identified in § 4280.117(a). In addition, the Applicant must submit a certification that the Applicant meets each of the criteria for submitting an application under this section as specified in paragraph (a) of this section.

(2) *Applicant information.* The application must contain the items identified in § 4280.117(b), except that the information specified in § 4280.117(b)(3) is not required.

(3) *Project information.* The application must contain the items identified in § 4280.117(c).

(4) *Technical report.* Each application must contain a technical report in accordance with § 4280.110(h) and Appendix A or B, as applicable, of this subpart.

(c) *Construction planning and performing development.* Applicants submitting applications under this section must comply with the requirements specified in paragraphs (c)(1) through (3) of this section for construction planning and performing development.

(1) *General.* Paragraphs (a)(1), (2), and (4) of § 4280.124 apply.

(2) *Small acquisition and construction procedures.* Small acquisition and construction procedures are those relatively simple and informal procurement methods that are sound and appropriate for a procurement of services, equipment, and construction of a RES or EEI project with a Total Project Cost of not more than $200,000. The Applicant is solely responsible for the execution of all contracts under this procedure, and Agency review and approval is not required.

(3) *Contractor forms.* Applicants must have each contractor sign, as applicable:

(i) Form RD 400–6, ''Compliance Statement,'' for contracts exceeding $10,000; and

(ii) Form AD–1048, ''Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion—Lower Tier Covered Transactions,'' for contracts exceeding $25,000.

(d) *Payment process for applications for res and eei projects with total project costs of less than $200,000, but more than $80,000.* (1) Upon completion of the project, the grantee must submit to the Agency a copy of the contractor's certification of final completion for the project and a statement that the grantee accepts the work completed. At its discretion, the Agency may require the Applicant to have an Inspector certify that the project is constructed and installed correctly.

(2) The RES or EEI project must be constructed, installed, and operating as described in the technical report prior to disbursement of funds. For RES, the system must be operating at the steady state operating level described in the technical report for a period of not less than 30 days, unless this requirement is modified by the Agency, prior to disbursement of funds. Any modification to the 30-day steady state operating level requirement will be based on the Agency's review of the technical report and will be incorporated into the Letter of Conditions.

(3) Prior to making payment, the Agency will be provided with Form RD 1924–9, ''Certificate of Contractor's Release,'' and Form RD 1924–10, ''Release by Claimants,'' or similar forms, executed by all persons who furnished materials or labor in connection with the contract.

§ 4280.119 Grant applications for res and eei projects with total project costs of $80,000 or less.

Grant applications for RES and EEI projects with Total Project Costs of $80,000 or less must provide the information specified in this section or, if the Applicant elects to do so, the information specified in either §§ 4280.117 or 4280.118. In order to submit an application under this section, the criteria specified in paragraph (a) of this section must be met. The content for applications submitted under this section is specified in paragraph (b) of this section. Unless otherwise specified in this subpart, the construction planning and performing development procedures and the payment process that will be used for awards for applications submitted under this section are specified in paragraphs (c) and (d), respectively, of this section.

(a) *Criteria for submitting applications for RES and EEI projects with total project costs of $80,000 or less.* In order to submit an application under this section, each of the conditions specified in paragraphs (a)(1) through (7) of this section must be met.

(1) The Applicant must be eligible in accordance with § 4280.112.

(2) The project must be eligible in accordance with § 4280.113.

(3) Total Project Costs must be $80,000 or less.

(4) Construction planning and performing development must be performed in compliance with paragraph (c) of this section. The Applicant or the Applicant's prime contractor assumes all risks and responsibilities of project development.

(5) The Applicant or the Applicant's prime contractor is responsible for all interim financing, including during construction.

(6) The Applicant agrees not to request reimbursement from funds obligated under this program until after the project has been completed and is operating in accordance with the information provided in the application for the project.

(7) The Applicant must maintain insurance as required under § 4280.122(b), except business interruption insurance is not required.

(b) *Application content.* Applications submitted under this section must contain the information specified in paragraphs (b)(1) through (4), as applicable, of this section and must be presented in the same order. Each Applicant is encouraged, but is not required, to self-score the project using the evaluation criteria in § 4280.120 and to submit with their application the total score, including appropriate calculations and attached documentation or specific cross-references to information elsewhere in the application.

(1) *Forms and certifications.* Each application must contain the forms and certifications specified in paragraphs (b)(1)(i) through (ix), as applicable, of this section except that paragraph (b)(1)(iv) is optional.

(i) Form SF–424.

(ii) Form SF–424C.

(iii) Form SF–424D.

(iv) Identify the ethnicity, race, and gender of the applicant. This information is optional and is not required for a Complete Application.

(v) Form RD 1940–20 with documentation attached for the appropriate level of environmental assessment. The Applicant should contact the Agency to determine what documentation is required to be provided.

(vi) Certification by the Applicant that:

(A) The Applicant meets each of the Applicant eligibility criteria found in § 4280.112;

(B) The proposed project meets each of the project eligibility requirements found in § 4280.113;

(C) The design, engineering, testing, and monitoring will be sufficient to demonstrate that the proposed project will meet its intended purpose;

(D) The equipment required for the project is available, can be procured and delivered within the proposed project development schedule, and will be installed in conformance with manufacturer's specifications and design requirements. This would not be applicable when equipment is not part of the project;

(E) The project will be constructed in accordance with applicable laws, regulations, agreements, permits, codes, and standards;

(F) The Applicant meets the criteria for submitting an application for projects with Total Project Costs of $80,000 or less;

(G) The Applicant will abide by the open and free competition requirements in compliance with § 4280.124(a)(1); and

(H) For Bioenergy Projects, any and all woody biomass feedstock from National Forest System land or public lands cannot be otherwise used as a higher value wood-based product.

(vii) State whether the Applicant has received any grants and/or loans under this subpart. If the Applicant has, identify each such grant and/or loan and describe the progress the Applicant has made on each project for which the grant and/or loan was received, including projected schedules and actual completion dates.

(viii) The Applicant must identify whether or not the Applicant has a known relationship or association with an Agency employee. If there is a known relationship, the Applicant must identify each Agency employee with whom the Applicant has a known relationship.

(ix) The Applicant is a legal entity in good standing (as applicable), and operating in accordance with the laws of the state(s) or Tribe where the Applicant has a place of business.

(2) *General.* For both RES and EEI project applications:

(i) Identify whether the project is for a RES or an EEI project;

(ii) Identify the primary NAICS code applicable to the Applicant's operation if known or a description of the operation in enough detail for the Agency to determine the primary NAICS code;

(iii) Describe in detail or document how the proposed project will have a positive effect on resource conservation (*e.g.,* water, soil, forest), public health (*e.g.,* potable water, air quality), and the environment (*e.g.,* compliance with the EPA's renewable fuel standard(s), greenhouse gases, emissions, particulate matter); and

(iv) Identify the amount of Matching Funds and other funds and the source(s) the Applicant is proposing to use for the project. In order to receive points under this scoring criterion, written commitments for funds (*e.g.,* a Letter of Commitment, bank statement) must be submitted when the application is submitted.

(A) If financial resources come from the Applicant, the Applicant must submit documentation in the form of a bank statement that demonstrates availability of funds.

(B) If a third party is providing financial assistance, the Applicant must submit a commitment letter signed by an authorized official of the third party. The letter must be specific to the project, identify the dollar amount and any applicable rates and terms. If the third party is a bank, a letter-of-intent, pre-qualification letter, subject to bank approval, or other underwriting requirements or contingencies are not acceptable. An acceptable condition may be based on the receipt of the REAP grant or an appraisal.

(3) *Technical report for EEI.* Each EEI application submitted under this section must include a technical report in accordance with § 4280.110(h) and paragraphs (b)(3)(i) through (iv) of this section.

(i) *Project description.* Provide a description of the proposed EEI, including its intended purpose and how it meets the requirements for being Commercially Available.

(ii) *Qualifications of EEI provider(s).* Provide a resume or other evidence of the contractor or installer's qualifications and experience with the proposed EEI technology. Any contractor or installer with less than 2 years of experience may be required to provide additional information in order for the Agency to determine if they are a qualified installer/contractor.

(iii) *Energy assessment.* Provide a copy of the Energy Assessment (or Energy Audit) performed for the project as required under Section C of Appendix A to this subpart and the qualifications of the individual or entity which completed the Energy Assessment.

(iv) *Simple Payback.* Provide an estimate of Simple Payback, including all calculations, documentation, and any assumptions.

(4) *Technical report for RES.* Each RES application submitted under this section must include a technical report in accordance with § 4280.110(h) and paragraphs (b)(4)(i) through (iv) of this section.

(i) *Project description.* Provide a description of the project, including its intended purpose and a summary of how the project will be constructed and installed, and how it meets the definition of Commercially Available. Identify the project's location and describe the project site.

(ii) *Resource assessment.* Describe the quality and availability of the renewable resource to the project. Identify the amount of Renewable Energy that will be generated once the proposed system is operating at its steady state operating level.

(iii) *Project economic assessment.* Describe the projected financial performance of the proposed project. The description must address Total Project Costs, energy savings, and revenues, including applicable investment and other production incentives accruing from government entities. Revenues to be considered shall accrue from the sale of energy, offset or savings in energy costs, and byproducts. Provide an estimate of Simple Payback, including all calculations, documentation, and any assumptions.

(iv) *Qualifications of key service providers.* Describe the key service providers, including the number of similar systems installed and/or manufactured, professional credentials, licenses, and relevant experience. If specific numbers are not available for similar systems, you may submit an estimation of the number of similar systems.

(c) *Construction planning and performing development for applications submitted under this section.* All Applicants submitting applications under this section must comply with the requirements specified in paragraphs (c)(1) through (3) of this section for construction planning and performing development.

(1) *General.* Paragraphs (a)(1), (2), and (4) of § 4280.124 apply.

(2) *Small acquisition and construction procedures.* Small acquisition and construction procedures are those relatively simple and informal procurement methods that are sound and appropriate for a procurement of services, equipment and construction of a RES or EEI project with a Total Project Cost of not more than $80,000. The Applicant is solely responsible for the execution of all contracts under this procedure, and Agency review and approval is not required.

(3) *Contractor forms.* Applicants must have each contractor sign, as applicable:

(i) Form RD 400–6 for contracts exceeding $10,000; and

(ii) Form AD–1048 for contracts exceeding $25,000.

(d) *Payment process for applications for RES and EEI projects with total project costs of $80,000 or less.* (1) Upon completion of the project, the grantee must submit to the Agency a copy of the contractor's certification of final completion for the project and a statement that the grantee accepts the work completed. At its discretion, the Agency may require the Applicant to have an Inspector certify that the project is constructed and installed correctly.

(2) The RES or EEI project must be constructed, installed, and operating as described in the technical report prior to disbursement of funds. For RES, the system must be operating at the steady state operating level described in the technical report for a period of not less than 30 days, unless this requirement is modified by the Agency, prior to disbursement of funds. Any modification to the 30-day steady state operating level requirement will be based on the Agency's review of the technical report and will be incorporated into the Letter of Conditions.

(3) Prior to making payment, the grantee must provide the Agency with Form RD 1924–9 and Form RD 1924–10, or similar forms, executed by all persons who furnished materials or labor in connection with the contract.

§ 4280.120 Scoring RES and EEI grant applications.

Agency personnel will score each eligible RES and EEI application based on the scoring criteria specified in this section, unless otherwise specified in a **Federal Register** notice, with a maximum score of 100 points possible.

(a) *Environmental benefits.* A maximum of 5 points will be awarded for this criterion based on whether the Applicant has documented in the application that the proposed project will have a positive effect on any of the three impact areas: Resource conservation (*e.g.,* water, soil, forest), public health (*e.g.,* potable water, air quality), and the environment (*e.g.,* compliance with EPA's renewable fuel standard(s), greenhouse gases, emissions, particulate matter). Points will be awarded as follows:

(1) If the proposed project has a positive impact on any one of the three impact areas, 1 point will be awarded.

(2) If the proposed project has a positive impact on any two of the three impact areas, 3 points will be awarded.

(3) If the proposed project has a positive impact on all three impact areas, 5 points will be awarded.

(b) *Energy generated, replaced, or saved.* A maximum of 25 points will be awarded for this criterion. Applications for RES and EEI projects will be awarded points under both paragraphs (b)(1) and (2) of this section.

(1) *Quantity of energy generated or saved per REAP grant dollar requested.* A maximum of 10 points will be awarded for this sub-criterion. For RES and EEI projects, points will be awarded for either the amount of energy generation per grant dollar requested, which includes those projects that are replacing energy usage with a renewable source, or the actual annual average energy savings over the most recent 12, 24, 36, 48, or 60 consecutive months of operation per grant dollar requested; points will not be awarded for more than one category.

(i) *Renewable Energy Systems.* The quantity of energy generated per grant dollar requested will be determined by dividing the projected total annual energy generated by the RES, which will be converted to BTUs, by the grant dollars requested. Points will be awarded based on the annual amount of energy generated per grant dollar requested for the proposed RES as determined using paragraphs (b)(1)(i)(A) and (B) of this section. A maximum of 10 points will be awarded under this criterion.

(A) The energy generated per grant dollar requested will be calculated using Equation 1.

Equation 1: $EG/\$ = (EG_{12}/GR)$

where:

$EG/\$$ = Energy generated per grant dollar requested.

EG_{12} = Projected total annual energy generated (BTUs) by the proposed RES for a typical year.

GR = Grant amount requested under this subpart.

(B) If the projected total annual energy generated per grant dollar requested calculated under paragraph (b)(1)(i)(A) of this section is:

(*1*) Less than 50,000 BTUs annual energy generated per grant dollar requested, points will be awarded as follows: Points awarded = (EG/$)/50,000 × 10 points, where the points awarded are rounded to the nearest hundredth of a point.

(*2*) 50,000 BTUs average annual energy saved per grant dollar requested or higher, 10 points will be awarded. For example, an Applicant has requested a $500,000 grant to install an Anaerobic Digester Project with a 500 kilowatt (kW) generator set. The Anaerobic Digester Project will produce 5,913,000 kilowatt hours (kWh) per year. At 3,412 BTUs per kWh, this is equivalent to 20,175,156,000 BTUs. Based on this example, there are 40,350.312 BTUs generated per grant dollar requested (20,175,156,00 BTUs/$500,000). Because this is less than 50,000 BTUs average annual energy saved per grant dollar requested, points will be awarded as follows:

Points awarded = 40,350.312 BTUs/50,000 BTUs × 10 = 8.07006

This would be rounded to the nearest hundredth, or to 8.07 points.

(ii) *Energy Efficiency Improvements.* Energy savings per grant dollar requested will be determined by dividing the average annual energy projected to be saved as determined by the Energy Assessment or Energy Audit for the EEI, which will be converted to BTUs, by the grant dollars requested. Points will be awarded based on the average annual amount of energy saved per grant dollar requested for the proposed EEI as determined using paragraphs (b)(1)(ii)(A) and (B) of this section. A maximum of 10 points will be awarded under this criterion.

(A) The average annual energy saved per grant dollar requested shall be calculated using Equation 2.

Equation 2: $ES/\$ = (ES_{36}/GR)$

where:

$ES/\$$ = Average annual energy saved per grant dollar requested.

ES_{36} = Average annual energy saved by the proposed EEI over the same period used in the Energy Assessment or Energy Audit, as applicable.

GR = Grant amount requested under this subpart.

(B) If the average annual energy saved per grant dollar requested calculated under paragraph (b)(1)(ii)(A) of this section is:

(*1*) Less than 50,000 BTUs average annual energy saved per grant dollar requested, points will be awarded as follows: Points awarded = (ES/$)/50,000 × 10 points, where the points awarded are rounded to the nearest hundredth of a point.

(*2*) 50,000 BTUs average annual energy saved per grant dollar requested or higher, 10 points will be awarded. For example, an Applicant has requested a $1,500 grant to install a new boiler. The average BTU usage of the existing boiler for the most recent 12 months prior to submittal of the application was 125,555,000 BTUs per year. If the new boiler had been in place for those same 12 months, the annual average BTU usage is estimated to be 100,000,000 BTUs. Thus, the new boiler is projected to save the Applicant 25,555,000 BTUs per year. Based on this example, there are 17,036.6667 BTUs saved per grant dollar requested (25,555,000 BTUs/$1,500). Because this is less than 50,000 BTUs average annual energy saved per grant dollar requested, points will be awarded as follows:

Points awarded = 17,036.6667 BTUs/50,000 BTUs × 10 = 3.407

This would be rounded to the nearest hundredth, or to 3.41 points.

(2) *Quantity of energy replaced, saved, or generated.* A maximum of 15 points will be awarded for this sub-criterion. Points may only be awarded for energy replacement, energy savings, or energy generation. Points will not be awarded for more than one category.

(i) *Energy replacement.* If the proposed RES is intended primarily for self-use by the Agricultural Producer or Rural Small Business and will provide energy replacement of greater than zero, but equal to or less than 25 percent, 5 points will be awarded; greater than 25 percent, but equal to or less than 50 percent, 10 points will be awarded; or greater than 50 percent, 15 points will be awarded. Energy replacement is to be determined by dividing the estimated quantity of Renewable Energy to be generated over the most recent 12-month period, by the quantity of energy consumed over the same period by the applicable energy application. For a project to qualify as an energy replacement it must provide documentation on prior energy use. For a project involving new construction and being installed to serve the new facility, the project may be classified as energy replacement only if the applicant can document previous energy use from a facility of approximately the same size. Approximately the same size is further clarified to be 10 percent larger or smaller than the facility it is replacing. The estimated quantities of energy must be converted to either BTUs, Watts, or similar energy equivalents to facilitate scoring. If the estimated energy produced equals more than 150 percent of the energy requirements of the applicable process(es), the project will be scored as an energy generation project.

(ii) *Energy savings.* If the estimated energy expected to be saved over the same period used in the Energy Assessment or Energy Audit, as applicable, by the installation of the EEI will be from 20 percent up to, but not including 35 percent, 5 points will be awarded; 35 percent up to, but not including 50 percent, 10 points will be awarded; or, 50 percent or greater, 15 points will be awarded. Energy savings will be determined by the projections in an Energy Assessment or Energy Audit.

(iii) *Energy generation.* If the proposed RES is intended for production of energy, 10 points will be awarded.

(c) *Commitment of funds.* A maximum of 20 points will be awarded for this criterion based on the percentage of written commitment an Applicant has from its fund sources that are documented with a Complete Application. The percentage of written commitment must be calculated using the following equation.

Percentage of written commitment = Total amount of funds for which written commitments have been submitted with the application/Total amount of Matching Funds and other funds required.

(1) If the percentage of written commitments as calculated is 100 percent of the Matching Funds, 20 points will be awarded.

(2) If the percentage of written commitments as calculated is less than 100 percent, but more than 50 percent, points will be awarded as follows: ((percentage of written commitments − 50 percent)/(50 percent)) × 20 points, where points awarded are rounded to the nearest hundredth of a point.

(3) If the percentage of written commitments as calculated is 50 percent or less, no points will be awarded.

(d) *Size of Agricultural Producer or Rural Small Business.* A maximum of 10 points will be awarded for this criterion based on the size of the Applicant's agricultural operation or business concern, as applicable, compared to the SBA Small Business size standards categorized by the NAICS found in 13 CFR 121.201. For Applicants that are:

(1) One-third or less of the maximum size standard identified by SBA, 10 points will be awarded.

(2) Greater than one-third up to and including two-thirds of the maximum size standard identified by SBA, 5 points will be awarded.

(3) Larger than two-thirds of the maximum size standard identified by SBA, no points will be awarded.

(e) *Previous grantees and borrowers.* A maximum of 15 points will be awarded for this criterion based on whether the Applicant has received a grant or guaranteed loan under this subpart.

(1) If the Applicant has never received a grant and/or guaranteed loan under this subpart, 15 points will be awarded.

(2) If the Applicant has not received a grant and/or guaranteed loan under this subpart within the 2 previous Federal Fiscal Years, 5 points will be awarded.

(3) If the Applicant has received a grant and/or guaranteed loan under this subpart within the 2 previous Federal Fiscal Years, no points will be awarded.

(f) *Simple Payback.* A maximum of 15 points will be awarded for this criterion based on the Simple Payback of the project. Points will be awarded for either RES or EEI; points will not be awarded for more than one category.

(1) *Renewable Energy Systems.* If the Simple Payback of the proposed project is:

(i) Less than 10 years, 15 points will be awarded;

(ii) 10 years up to but not including 15 years, 10 points will be awarded;

(iii) 15 years up to and including 25 years, 5 points will be awarded; or

(iv) Longer than 25 years, no points will be awarded.

(2) *Energy Efficiency Improvements.* If the Simple Payback of the proposed project is:

(i) Less than 4 years, 15 points will be awarded;

(ii) 4 years up to but not including 8 years, 10 points will be awarded;

(iii) 8 years up to and including 12 years, 5 points will be awarded; or

(iv) Longer than 12 years, no points will be awarded.

(g) *State Director and Administrator priority points.* A maximum of 10 points will be awarded for this criterion. A State Director, for its State allocation under this subpart, or the Administrator, for making awards from the National Office reserve, may award up to 10 points to an application based on the conditions specified in paragraphs (g)(1) through (5) of this section. In no case shall an application receive more than 10 points under this criterion.

(1) The application is for an under-represented technology.

(2) Selecting the application helps achieve geographic diversity.

(3) The Applicant is a member of an unserved or under-served population.

(4) Selecting the application helps further a Presidential initiative or a Secretary of Agriculture priority.

(5) The proposed project is located in an impoverished area, has experienced long-term population decline, or loss of employment.

§ 4280.121 Selecting RES and EEI grant applications for award.

Unless otherwise provided for in a **Federal Register** notice, RES and EEI grant applications will be processed in accordance with this section. Complete Applications will be evaluated, processed, and subsequently ranked, and will compete for funding, subject to the availability of grant funding.

(a) *RES and EEI grant applications.* Complete RES and EEI grant applications, regardless of the amount of funding requested (which includes $20,000 or less), are eligible to compete in two competitions each Federal Fiscal Year—a State competition and a National competition.

(1) To be competed in the State and National competitions, Complete Applications must be received by the applicable State Office by 4:30 p.m. local time no later than April 30. If April 30 falls on a weekend or a federally-observed holiday, the next Federal business day will be considered the last day for receipt of a Complete Application. Complete Applications received after this date and time will be processed in the subsequent fiscal year.

(2) All eligible RES and EEI grant applications that remain unfunded after completion of the State competitions will be competed in a National competition.

(b) *RES and EEI grant applications requesting $20,000 or less.* Complete RES and EEI grant applications requesting $20,000 or less are eligible to compete in up to five competitions—two State competitions and a National competition for grants of $20,000 or less set aside, as well as the two competitions referenced in paragraph (a) of this section (see paragraph (e)(2) of this section).

(1) For Complete RES and EEI grant applications for grants requesting $20,000 or less, there will be two State competitions each Federal Fiscal Year. Complete Applications for $20,000 or less that are received by the Agency by 4:30 p.m. local time on October 31 of the Federal Fiscal Year will be competed against each other. Complete Applications for $20,000 or less that are received by the Agency by 4:30 p.m. local time on April 30 of the Federal Fiscal Year will be competed against each other, including any applications for $20,000 or less that were not funded from the prior competition. If either October 31 or April 30 falls on a weekend or a federally-observed holiday, the next Federal business day will be considered the last day for receipt of a Complete Application. Complete Applications received after 4:30 p.m. local time on April 30, regardless of the postmark on the application, will be processed in the subsequent fiscal year.

(2) All eligible RES and EEI grant applications requesting $20,000 or less that remain unfunded after completion of the State competition for applications received by April 30 will be competed in the National competition.

(c) *Ranking of applications.* The Agency will rank complete eligible applications using the scoring criteria specific in § 4280.120. Higher scoring applications will receive first consideration.

(d) *Funding selected applications.* As applications are funded, if insufficient funds remain to fund the next highest scoring application, the Agency may elect to fund a lower scoring application. Before this occurs, the Agency will provide the Applicant of the higher scoring application the opportunity to reduce the amount of the Applicant's grant request to the amount of funds available. If the Applicant agrees to lower its grant request, the Applicant must certify that the purposes of the project will be met and provide the remaining total funds needed to complete the project. At its discretion, the Agency may also elect to allow any remaining multi-year funds to be carried over to the next fiscal year rather than selecting a lower scoring application.

(e) *Handling of ranked applications not funded.* Based on the availability of funding, a ranked application might not be funded. How the unfunded application is handled depends on whether it is requesting more than $20,000 or is requesting $20,000 or less

(1) The Agency will discontinue consideration for funding all complete and eligible applications requesting more than $20,000 that are not selected for funding after the State and National competitions for the Federal Fiscal Year.

(2) All complete and eligible applications requesting $20,000 or less may be competed in up to five consecutive competitions as illustrated below. Example 1: An application that is unfunded in the first State competition of a fiscal year is eligible to be competed in the second State competition and the National competition for grants of $20,000 or less, as well as, the State and National competitions for all grants regardless of the dollar amount being requested, in that fiscal year. Example 2: An application that is first competed in the second State competition of a fiscal year can be competed in the National competition for that fiscal year and the first State competition in the following fiscal year for grants of $20,000 or less. In addition the application may compete in the State and National competitions for all grants regardless of the amount of funding requested, which are referenced in paragraph (a) of this section. The Agency will discontinue for potential funding all application requesting $20,000 or less that are not selected for funding after competing in a total of three State competitions and two national competitions.

(f) *Commencement of the project.* Not all grant applications that compete for funding will receive an award. Thus, the Applicant assumes all risks if the Applicant chooses to purchase the technology proposed or start construction of the project to be financed in the grant application after the Complete Application has been received by the Agency, but before the Applicant is notified as to whether or not they have been selected for an award.

§ 4280.122 Awarding and administering RES and EEI grants.

The Agency will award and administer RES and EEI grants in accordance with Departmental Regulations and with paragraphs (a) through (h) of this section.

(a) *Letter of Conditions.* A Letter of Conditions will be prepared by the Agency, establishing conditions that must be agreed to by the Applicant before any obligation of funds can occur. Upon reviewing the conditions and requirements in the Letter of Conditions, the Applicant must complete, sign, and return the Form RD 1942–46, ''Letter of Intent to Meet Conditions,'' and Form RD 1940–1, ''Request for Obligation of Funds,'' to the Agency if they accept the conditions of the grant; or if certain conditions cannot be met, the Applicant may propose alternate conditions to the Agency. The Agency must concur with any changes proposed to the Letter of Conditions by the Applicant before the application will be further processed.

(b) *Insurance requirements.* Agency approved insurance coverage must be maintained for 3 years after the Agency has approved the final performance report unless this requirement is waived or modified by the Agency in writing. Insurance coverage shall include, but is not limited to:

(1) Property insurance, such as fire and extended coverage, will normally be maintained on all structures and equipment.

(2) Liability.

(3) National flood insurance is required in accordance with 7 CFR part 1806, subpart B, if applicable.

(4) Business interruption insurance for projects with Total Project Costs of more than $200,000.

(c) *Forms and certifications.* The forms specified in paragraphs (c)(1) through (8) of this section will be attached to the Letter of Conditions referenced in paragraph (a) of this section. The forms specified in paragraphs (c)(1) through (7) of this section and all of the certifications must be submitted prior to grant approval. The form specified in paragraph (c)(8) of this section, which is to be completed by contractors, does not need to be returned to the Agency, but must be kept on file by the grantee.

(1) Form RD 1942–46, ''Letter of Intent to Meet Conditions.''

(2) Form RD 1940–1.

(3) Form AD–1049, ''Certification Regarding Drug-Free Workplace Requirements (Grants) Alternative 1-For Grantees Other than Individuals.''

(4) Form SF–LLL, ''Disclosure of Lobbying Activities,'' if the grant exceeds $100,000 and/or if the grantee has made or agreed to make payment using funds other than Federal appropriated funds to influence or attempt to influence a decision in connection with the application.

(5) Form AD–1047, ''Certification Regarding Debarment, Suspension, and Other Responsibility Matters-Primary Covered Transactions.''

(6) Form RD 400–1, ''Equal Opportunity Agreement,'' or successor form.

(7) Form RD 400–4, ''Assurance Agreement,'' or successor form.

(8) Form AD–1048, as signed by the contractor or other lower tier party.

(d) *Evidence of Matching Funds and other funds.* If an Applicant submitted written evidence of Matching Funds and other funds with the application, the Applicant is responsible for ensuring that such written evidence is still in effect (*i.e.,* not expired) when the grant is executed. If the Applicant did not submit written evidence of Matching Funds and other funds with the application, the Applicant must submit such written evidence that is in effect before the Agency will execute the Grant Agreement. In either case, written evidence of Matching Funds and other funds needed to complete the project must be provided to the Agency before execution of the Grant Agreement and must be in effect (*i.e.,* must not have expired) at the time Grant Agreement is executed.

(e) *SAM number.* Before the Grant Agreement can be executed, the number and expiration date of the Applicant's SAM number are required.

(f) *Grant Agreement.* Once the requirements specified in paragraphs (a) through (e) of this section have been met, the Grant Agreement can be executed by the grantee and the Agency. The grantee must abide by all requirements contained in the Grant Agreement, this subpart, and any other applicable Federal statutes or regulations. Failure to follow these requirements might result in termination of the grant and adoption of other available remedies.

(g) *Grant approval.* The grantee will be sent a copy of the executed Form RD 1940–1, the approved scope of work, and the Grant Agreement.

(h) *Power Purchase Agreement.* Where applicable, the grantee shall provide to the Agency a copy of the executed Power Purchase Agreement within 12 months from the date that the Grant Agreement is executed, unless otherwise approved by the Agency.

§ 4280.123 Servicing RES and EEI Grants.

The Agency will service RES and EEI grants in accordance with the requirements specified in Departmental Regulations; 7 CFR part 1951, subparts E and O, other than 7 CFR 1951.709(d)(1)(B)(iv); the Grant Agreement; and paragraphs (a) through (k) of this section.

(a) *Inspections.* Grantees must permit periodic inspection of the project records and operations by a representative of the Agency.

(b) *Programmatic changes.* Grantees may make changes to an approved project's costs, scope, contractor, or vendor subject to the provisions specified in paragraphs (b)(1) through (3) of this section. If the changes result in lowering the project's score to below what would have qualified the application for award, the Agency will not approve the changes.

(1) *Prior approval.* The grantee must obtain prior Agency approval for any change to the scope, contractor, or vendor of the approved project. Changes in project cost will require Agency Approval as outlined in paragraph (a)(1)(iii) of this section.

(i) Grantees must submit requests for programmatic changes in writing to the Agency for Agency approval.

(ii) Failure to obtain prior Agency approval of any such change could result in such remedies as suspension, termination, and recovery of grant funds.

(iii) Prior Agency approval is required for all increases in project costs. Prior Agency approval is required for a decrease in project cost only if the decrease would have a negative effect on the long-term viability of the project. A decrease in project cost that does not have a negative impact on long-term viability requires Agency review and approval prior to disbursement of funds.

(2) *Changes in project cost or scope.* If there is a significant change in project cost or any change in project scope, then the grantee's funding needs, eligibility, and scoring, as applicable, will be reassessed. Decreases in Agency funds will be based on revised project costs and other factors, including Agency regulations used at the time of grant approval.

(3) *Change of contractor or vendor.* When seeking a change, the grantee must submit to the Agency a written request for approval. The proposed contractor or vendor must have qualifications and experience acceptable to the Agency. The written request must contain sufficient information, which may include a revised technical report as required under § 4280.117(e), § 4280.118(b)(4), § 4280.119(b)(3), or § 4280.119(b)(4), as applicable, to demonstrate to the Agency's satisfaction that such change maintains project integrity. If the Agency determines that project integrity continues to be demonstrated, the grantee may make the change. If the Agency determines that project integrity is no longer demonstrated, the change will not be approved and the grantee has the following options: Continue with the original contractor or vendor; find another contractor or vendor that has qualifications and experience acceptable to the Agency to complete the project; or terminate the grant by providing a written request to the Agency. No additional funding will be available from the Agency if costs for the project have increased. The Agency decision will be provided in writing.

(c) *Transfer of obligations.* Prior to the construction of the project, the grantee may request, in writing, a transfer of obligation to a different (substitute) grantee. Subject to Agency approval provided in writing, an obligation of funds established for a grantee may be transferred to a substitute grantee provided:

(1) The substituted grantee

(i) Is eligible;

(ii) Has a close and genuine relationship with the original grantee; and

(iii) Has the authority to receive the assistance approved for the original grantee; and

(2) The type of RES or EEI technology, the project cost and scope of the project for which the Agency funds will be used remain unchanged.

(d) *Transfer of ownership.* After the project is completed and operational, the grantee may request, in writing, a transfer of the Grant Agreement to another entity. Subject to Agency approval provided in writing, the Grant Agreement may be transferred to another entity provided:

(1) The entity is determined by the Agency to be an eligible entity under this subpart; and

(2) The type of RES or EEI technology and the scope of the project for which the Agency funds will be used remain unchanged.

(e) *Disposition of acquired property.* Grantees must abide by the disposition requirements outlined in Departmental Regulations.

(f) *Financial management system and records.* The grantee must provide for financial management systems and

maintain records as specified in paragraphs (f)(1) and (2) of this section.

(1) *Financial management system.* The grantee will provide for a financial system that will include:

(i) Accurate, current, and complete disclosure of the financial results of each grant;

(ii) Records that identify adequately the source and application of funds for grant-supporting activities, together with documentation to support the records. Those records must contain information pertaining to grant awards and authorizations, obligations, unobligated balances, assets, liabilities, outlays, and income; and

(iii) Effective control over and accountability for all funds. The grantee must adequately safeguard all such assets and must ensure that funds are used solely for authorized purposes.

(2) *Records.* The grantee will retain financial records, supporting documents, statistical records, and all other records pertinent to the grant for a period of at least 3 years after completion of grant activities except that the records must be retained beyond the 3-year period if audit findings have not been resolved or if directed by the United States. The Agency and the Comptroller General of the United States, or any of their duly authorized representatives, must have access to any books, documents, papers, and records of the grantee that are pertinent to the specific grant for the purpose of making audit, examination, excerpts, and transcripts.

(g) *Audit requirements.* If applicable, grantees must provide an annual audit in accordance with 7 CFR part 3052. The Agency may exercise its right to do a program audit after the end of the project to ensure that all funding supported Eligible Project Costs.

(h) *Grant disbursement.* As applicable, grantees must disburse grant funds as scheduled in accordance with the appropriate construction and inspection requirements in §§ 4280.118, 4280.119 or 4280.124 as applicable. Unless required by third parties providing cost sharing payments to be provided on a pro-rata basis with other funds, grant funds will be disbursed after all other funds have been expended.

(1) Unless authorized by the Agency to do so, grantees may submit requests for reimbursement no more frequently than monthly. Ordinarily, payment will be made within 30 days after receipt of a proper request for reimbursement.

(2) Grantees must not request reimbursement for the Federal share of amounts withheld from contractors to ensure satisfactory completion of work until after it makes those payments.

(3) Payments will be made by electronic funds transfer.

(4) Grantees must use SF–271, ''Outlay Report and Request for Reimbursement for Construction Programs,'' or other format prescribed by the Agency to request grant reimbursements.

(5) For a grant awarded to a project with Total Project Costs of $200,000 and greater, grant funds will be disbursed in accordance with the above through 90 percent of grant disbursement. The final 10 percent of grant funds will be held by the Agency until construction of the project is completed, the project is operational, and the project has met or exceeded the steady state operating level as set out in the grant award requirements. In addition, the Agency reserves the right to request additional information or testing if upon a final site visit the 30 day steady state operating level is not found acceptable to the Agency.

(i) *Monitoring of project.* Grantees are responsible for ensuring that all activities are performed within the approved scope of work and that funds are only used for approved purposes.

(1) Grantees shall constantly monitor performance to ensure that:

(i) Time schedules are being met;

(ii) Projected work is being accomplished by projected time periods;

(iii) Financial resources are being appropriately expended by contractors (if applicable); and

(iv) Any other performance objectives identified in the scope of work are being achieved.

(2) To the extent that resources are available, the Agency will monitor grantees to ensure that activities are performed in accordance with the Agency-approved scope of work and to ensure that funds are expended for approved purposes. The Agency's monitoring of grantees neither:

(i) Relieves the grantee of its responsibilities to ensure that activities are performed within the scope of work approved by the Agency and that funds are expended for approved purposes only; nor

(ii) Provides recourse or a defense to the grantee should the grantee conduct unapproved activities, engage in unethical conduct, engage in activities that are or that give the appearance of a conflict of interest, or expend funds for unapproved purposes.

(j) *Reporting requirements.* Financial and project performance reports must be provided by grantees and contain the information specified in paragraphs (j)(1) through (3) of this section.

(1) *Federal Financial Reports.* Between grant approval and completion of project (*i.e.,* construction), SF–425, ''Federal Financial Report'' will be required of all grantees as applicable on a semiannual basis. The grantee will complete the project within the total sums available to it, including the grant, in accordance with the scope of work and any necessary modifications thereof prepared by grantee and approved by the Agency.

(2) *Project performance reports.* Between grant approval and completion of project (*i.e.,* construction), grantees must provide semiannual project performance reports and a final project development report containing the information specified in paragraphs (j)(2)(i) and (ii) of this section. These reports are due 30 working days after June 30 and December 31 of each year.

(i) *Semiannual project performance reports.* Each semiannual project performance report must include the following:

(A) A comparison of actual accomplishments to the objectives for that period;

(B) Reasons why established objectives were not met, if applicable;

(C) Reasons for any problems, delays, or adverse conditions which will affect attainment of overall program objectives, prevent meeting time schedules or objectives, or preclude the attainment of particular objectives during established time periods. This disclosure must be accompanied by a statement of the action taken or planned to resolve the situation; and

(D) Objectives and timetables established for the next reporting period.

(ii) *Final project development report.* The final project development report must be submitted 90 days after project completion and include:

(A) A detailed project funding and expense summary; and

(B) A summary of the project's installation/construction process, including recommendations for development of similar projects by future Applicants to the program.

(3) *Outcome project performance reports.* Once the project has been constructed, the grantee must provide the Agency periodic reports. These reports will include the information specified in paragraphs (j)(3)(i) or (ii) of this section, as applicable.

(i) *Renewable Energy Systems.* For RES projects, commencing the first full calendar year following the year in which project construction was completed and continuing for 3 full years, provide a report detailing the

information specified in paragraphs (j)(3)(i)(A) through (G) of this section.

(A) Type of technology;

(B) The actual annual amount of energy generated in BTUs, kilowatt-hours, or similar energy equivalents;

(C) Annual income for systems that are selling energy, if applicable, and/or energy savings of the RES;

(D) A summary of the cost of operations and maintenance;

(E) A description of any associated major maintenance or operational problems;

(F) Recommendations for development of future similar projects; and

(G) Actual number of jobs, if any, created or saved as a direct result of the RES project for which REAP funding was used.

(ii) *Energy Efficiency Improvements.* For EEI projects, commencing the first full calendar year following the year in which project construction was completed and continuing for 2 full years, provide a report detailing, including calculations and any assumptions:

(A) The actual amount of energy saved annually as determined by the difference between:

(*1*) The annual amount of energy used by the project with the project in place and

(*2*) The annual average amount of energy used in the period prior to application submittal as reported in the Energy Assessment or Energy Audit submitted with the application; and

(B) Actual number of jobs, if any, created or saved as a direct result of the EEI project for which REAP funding was used.

(k) *Grant close-out.* Grant close-out must be performed in accordance with the requirements specified in Departmental Regulations.

§ 4280.124 Construction planning and performing development.

(a) *General.* The following requirements are applicable to all procurement methods specified in paragraph (f) of this section.

(1) *Maximum open and free competition.* All procurement transactions, regardless of procurement method and dollar value, must be conducted in a manner that provides maximum open and free competition. Procurement procedures must not restrict or eliminate competition. Competitive restriction examples include, but are not limited to, the following: Placing unreasonable requirements on firms in order for them to qualify to do business; noncompetitive practices between firms; organizational conflicts of interest; and unnecessary experience or excessive bonding requirements. In specifying material(s), the grantee and its consultant will consider all materials normally suitable for the project commensurate with sound engineering practices and project requirements. The Agency will consider any recommendation made by the grantee's consultant concerning the technical design and choice of materials to be used for such a project. If the Agency determines that a design or material, other than those that were recommended, should be considered by including them in the procurement process as an acceptable design or material in the project, the Agency will provide such Applicant or grantee with a comprehensive justification for such a determination. The justification will be documented in writing.

(2) *Equal employment opportunity.* For all construction contracts and grants in excess of $10,000, the contractor must comply with Executive Order 11246, as amended by Executive Order 11375 and Executive Order 13672, and as supplemented by applicable Department of Labor regulations (41 CFR part 60). The Applicant, or the lender and borrower, as applicable, is responsible for ensuring that the contractor complies with these requirements.

(3) *Surety.* Any contract exceeding $100,000 for procurement will require surety, except as provided for in paragraph (a)(3)(v) of this section.

(i) Surety covering both performance and payment will be required. The United States, acting through the Agency, will be named as co-obligee on all surety unless prohibited by State or Tribal law. Surety may be provided as specified in paragraphs (a)(3)(i)(A) or (B) of this section.

(A) Surety in the amount of 100 percent of the contract cost may be provided using either:

(*1*) A bank letter of credit; or

(*2*) Performance bonds and payment bonds. Companies providing performance bonds and payment bonds must hold a certificate of authority as an acceptable surety on Federal bonds as listed in Treasury Circular 570 as amended and be legally doing business in the State where the project is located.

(B) Cash deposit in escrow of at least 50 percent of the contract amount. The cash deposit cannot be from funds awarded under this subpart.

(ii) The surety will normally be in the form of performance bonds and payment bonds; however, when other methods of surety are necessary, bid documents must contain provisions for such alternative types of surety. The use of surety other than performance bonds and payment bonds requires concurrence by the Agency after submission of a justification to the Agency together with the proposed form of escrow agreement or letter of credit.

(iii) For contracts of lesser amounts, the grantee may require surety.

(iv) When surety is not provided, contractors must furnish evidence of payment in full for all materials, labor, and any other items procured under the contract in an Agency-approved form.

(v) Applicants may request exceptions to surety for any of the situations identified in paragraphs (a)(3)(v)(A) through (D) of this section. Applicants must submit a written request to the Agency.

(A) Small acquisition and construction procedures as specified in § 4280.118(c) and (d) or § 4280.119(c) and (d) as applicable are used.

(B) The proposed project is for equipment purchase and installation only and the contract costs for the equipment purchase and installation are $200,000 or less.

(C) The proposed project is for equipment purchase and installation only and the contract costs for the equipment purchase and installation are more than $200,000 and the following requirements can be met:

(*1*) The project involves two or fewer subcontractors; and

(*2*) The equipment manufacturer or provider must act as the general contractor.

(D) Other construction projects that have only one contractor performing work.

(4) *Grantees accomplishing work.* In some instances, grantees may wish to perform a part of the work themselves. Grantees may accomplish construction by using their own personnel and equipment, provided the grantees possess the necessary skills, abilities, and resources to perform the work and there is not a negative impact to their business operation. For a grantee to provide a portion of the work, with the remainder to be completed by a contractor:

(i) A clear understanding of the division of work must be established and delineated in the contract;

(ii) Grantees are not eligible for payment for their own work as it is not an Eligible Project Cost;

(iii) Warranty requirements applicable to the technology must cover the grantee's work; and

(iv) Inspection and acceptance of the grantee's work must be completed by either:

(A) An Inspector that will:

(*1*) Inspect, as applicable, and accept construction; and

(*2*) Furnish inspection reports; or

(B) A licensed engineer that will:

(*1*) Prepare design drawings and specifications;

(*2*) Inspect, as applicable, and accept construction; and

(*3*) Furnish inspection reports.

(b) *Forms used.* Technical service and procurement documents must be approved by the Agency and may be used only if they are customarily used in the area and protect the interest of the Applicant and the Government with respect to compliance with items such as the drawings, specifications, payments for work, inspections, completion, nondiscrimination in construction work and acceptance of the work. The Agency will not become a party to a construction contract or incur any liability under it. No contract will become effective until concurred in writing by the Agency. Such concurrence statement must be attached to and made a part of the contract.

(c) *Technical services.* Unless the requirements of paragraph (c)(4) of this section can be met, all RES and EEI projects with Total Project Costs greater than $400,000 require:

(1) The design, installation monitoring, testing prior to commercial operation, and project completion certification be completed by a licensed professional engineer (PE) or team of licensed PEs. Licensed PEs may be ''in-house'' PEs or contracted PEs.

(2) Any contract for design services must be subject to Agency concurrence.

(3) Engineers must be licensed in the State where the project is to be constructed.

(4) The Agency may grant an exception to the requirements of paragraphs (c)(1) through (3) of this section if the following requirements are met:

(i) State or Tribal law does not require the use of a licensed PE; and

(ii) The project is not complex, as determined by the Agency, and can be completed to meet the requirements of this program without the services of a licensed PE.

(d) *Design policies.* Final plans and specifications must be reviewed by the Agency and approved prior to the start of construction. Facilities funded by the Agency must meet the following design requirements, as applicable:

(1) *Environmental review.* Facilities financed by the Agency must undergo an environmental analysis in accordance with the National Environmental Policy Act and 7 CFR part 1940, subpart G of this title. Project planning and design must not only be responsive to the grantee's needs but must consider the environmental consequences of the proposed project. Project design must incorporate and integrate, where practicable, mitigation measures that avoid or minimize adverse environmental impacts. Environmental reviews serve as a means of assessing environmental impacts of project proposals, rather than justifying decisions already made. Applicants may not take any action on a project proposal that will have an adverse environmental impact or limit the choice of reasonable project alternatives being reviewed prior to the completion of the Agency's environmental review. If such actions are taken, the Agency has the right to withdraw and discontinue processing the application.

(2) *Architectural barriers.* All facilities intended for or accessible to the public or in which physically handicapped persons may be employed must be developed in compliance with the Architectural Barriers Act of 1968 (42 U.S.C. 4151 *et seq.*) as implemented by 41 CFR 101–19.6, section 504 of the Rehabilitation Act of 1973 (42 U.S.C. 1474 *et seq.*) as implemented by 7 CFR parts 15 and 15b, and Titles II and III of the Americans with Disabilities Act of 1990 (42 U.S.C. 12101 *et seq.*).

(3) *Energy/environment.* Project design shall consider cost effective energy-efficient and environmentally-sound products and services.

(4) *Seismic safety.* All new structures, fully or partially enclosed, used or intended for sheltering persons or property will be designed with appropriate seismic safety provisions in compliance with the Earthquake Hazards Reduction Act of 1977 (42 U.S.C. 7701 *et seq.*), and EO 12699, Seismic Safety of Federal and Federally Assisted or Regulated New Building Construction. Designs of components essential for system operation and substantial rehabilitation of structures that are used for sheltering persons or property shall incorporate seismic safety provisions to the extent practicable as specified in 7 CFR part 1792, subpart C.

(e) *Contract methods.* This paragraph identifies the three types of contract methods that can be used for projects funded under this subpart. The procurement methods, which are applicable to each of these contract methods, are specified in paragraph (f) of this section.

(1) *Traditional method or design-bid-build.* The services of the consulting engineer or architect and the general construction contractor must be procured in accordance with the following paragraphs.

(i) *Solicitation of offers.* Solicitation of offers must:

(A) Incorporate a clear and accurate description of the technical requirements for the material, product, or service to be procured. The description must not, in competitive procurements, contain features that unduly restrict competition. The description may include a statement of the qualitative nature of the material, product or service to be procured, and when necessary will set forth those minimum essential characteristics and standards to which it must conform if it is to satisfy its intended use. When it is impractical or uneconomical to make a clear and accurate description of the technical requirements, a ''brand name or equal'' description may be used to define the performance or other salient requirements of a procurement. The specific features of the named brands which must be met by offerors must be clearly stated.

(B) Clearly specify all requirements which offerors must fulfill and all other factors to be used in evaluating bids or proposals.

(ii) *Contract pricing.* Cost plus a percentage of cost method of contracting must not be used.

(iii) *Unacceptable bidders.* The following will not be allowed to bid on, or negotiate for, a contract or subcontract related to the construction of the project:

(A) An engineer or architect as an individual or entity who has prepared plans and specifications or who will be responsible for monitoring the construction;

(B) Any entity in which the grantee's architect or engineer is an officer, employee, or holds or controls a substantial interest in the grantee;

(C) The grantee's governing body officers, employees, or agents;

(D) Any member of the grantee's Immediate Family or partners in paragraphs (e)(1)(iii)(A), (B), or (C) of this section; or

(E) An entity which employs, or is about to employ, any person in paragraph (e)(1)(iii)(A), (B), (C), or (D) of this section.

(iv) *Contract award.* Contracts must be made only with responsible parties possessing the potential ability to perform successfully under the terms and conditions of a proposed procurement. Consideration must include, but not be limited to, matters such as integrity, record of past performance, financial and technical resources, and accessibility to other necessary resources. Contracts must not be made with parties who are suspended or debarred.

(2) *Design/build method.* The Design/Build Method, where the same person or entity provides design and engineering work, as well as construction or installation, may be used with Agency written approval.

(i) *Concurrence information.* The Applicant will request Agency concurrence by providing the Agency at least the information specified in paragraphs (e)(2)(i)(A) through (H) of this section.

(A) The grantee's written request to use the Design/Build Method with a description of the proposed method.

(B) A proposed scope of work describing in clear, concise terms the technical requirements for the contract. It shall include a nontechnical statement summarizing the work to be performed by the contractor, the results expected, and a proposed construction schedule showing the sequence in which the work is to be performed.

(C) A proposed firm-fixed-price contract for the entire project which provides that the contractor will be responsible for any extra cost which result from errors or omissions in the services provided under the contract, as well as compliance with all Federal, State, local, and Tribal requirements effective on the contract execution date.

(D) Where noncompetitive negotiation is proposed and found, by the Agency, to be an acceptable procurement method, then the Agency will evaluate documents indicating the contractor's performance on previous similar projects in which the contractor acted in a similar capacity.

(E) A detailed listing and cost estimate of equipment and supplies not included in the construction contract but which are necessary to properly operate the project.

(F) Evidence that a qualified construction Inspector who is independent of the contractor has or will be hired.

(G) Preliminary plans and outline specifications. However, final plans and specifications must be completed and reviewed by the Agency prior to the start of construction.

(H) The grantee's attorney's opinion and comments regarding the legal adequacy of the proposed contract documents and evidence that the grantee has the legal authority to enter into and fulfill the contract.

(ii) *Agency concurrence of design/build method.* The Agency will review the material submitted by the Applicant. When all items are acceptable, the Agency approval official will concur in the use of the Design/Build Method for the proposal.

(iii) *Forms used.* Agency approved contract documents must be used provided they are customarily used in the area and protect the interest of the Applicant and the Agency with respect to compliance with items such as the drawings, specifications, payments for work, inspections, completion, nondiscrimination in construction work, and acceptance of the work. The Agency will not become a party to a construction contract or incur any liability under it. No contract shall become effective until concurred, in writing, by the Agency. Such concurrence statement must be attached to and made a part of the contract.

(iv) *Contract provisions.* Contracts will have a listing of attachments and must contain the following:

(A) The contract sum;

(B) The dates for starting and completing the work;

(C) The amount of liquidated damages, if any, to be charged;

(D) The amount, method, and frequency of payment;

(E) Surety provisions that meet the requirements of paragraph (a)(3) of this section;

(F) The requirement that changes or additions must have prior written approval of the Agency as identified in the letter of conditions;

(G) Contract review and concurrence. The grantee's attorney will review the executed contract documents, including performance and payment bonds, and will certify that they are in compliance with Federal, State, or Tribal law, and that the persons executing these documents have been properly authorized to do so. The contract documents, engineer's recommendation for award, and bid tabulation sheets will be forwarded to the Agency for concurrence prior to awarding the contract. All contracts will contain a provision that they are not effective until they have been concurred, in writing, by the Agency;

(H) This part does not relieve the grantee of any responsibilities under its contract. The grantee is responsible for the settlement of all contractual and administrative issues arising out of procurement entered into in support of Agency funding. These include, but are not limited to, source evaluation, protests, disputes, and claims. Matters concerning violation of laws are to be referred to the applicable local, State, Tribal, or Federal authority; and

(3) *Construction management.* Construction managers as a constructor (CMc) acts in the capacity of a general contractor and is financially and professionally responsible for the construction. This type of construction management is also referred to as construction manager ''At Risk.'' The construction contract is between the grantee and the CMc. The CMc in turn subcontracts for some or all of the work. The CMc will need to carry the Agency required 100 percent surety and insurance, as required under paragraph (a)(3) of this section. Projects using construction management must follow the requirements of (e)(2)(i) through (iv) of this section.

(f) *Procurement methods.* Procurement must be made by one of the following methods: competitive sealed bids (formal advertising); competitive negotiation; or noncompetitive negotiation. Competitive sealed bids (formal advertising) are the preferred procurement method for construction contracts.

(1) *Competitive sealed bids.* In competitive sealed bids (formal advertising), sealed bids are publicly solicited and a firm-fixed-price contract (lump sum or unit price) is awarded to the responsible bidder whose bid, conforming with all the material terms and conditions of the invitation for bids, is lowest, price and other factors considered. When using this method, the following will apply:

(i) At a sufficient time prior to the date set for opening of bids, bids must be solicited from an adequate number of qualified sources. In addition, the invitation must be publicly advertised.

(ii) The invitation for bids, including specifications and pertinent attachments, must clearly define the items or services needed in order for the bidders to properly respond to the invitation under paragraph (f)(1) of this section.

(iii) All bids must be opened publicly at the time and place stated in the invitation for bids.

(iv) A firm-fixed-price contract award must be made by written notice to that responsible bidder whose bid, conforming to the invitation for bids, is lowest. When specified in the bidding documents, factors such as discounts and transportation costs will be considered in determining which bid is lowest.

(v) The Applicant, with the concurrence of the Agency, will consider the amount of the bids or proposals, and all conditions listed in the invitation. On the basis of these considerations, the Applicant will select and notify the lowest responsible bidder. The contract will be awarded using an Agency-approved form.

(vi) Any or all bids may be rejected by the grantee when it is in their best interest.

(2) *Competitive negotiation.* In competitive negotiations, proposals are requested from a number of sources. Negotiations are normally conducted with more than one of the sources submitting offers (offerors). Competitive negotiation may be used if conditions are not appropriate for the use of formal advertising and where discussions and bargaining with a view to reaching agreement on the technical quality, price, other terms of the proposed contract and specifications are necessary. If competitive negotiation is used for procurement, the following requirements will apply:

(i) Proposals must be solicited from two qualified sources, unless otherwise approved by the Agency, to permit reasonable competition consistent with the nature and requirements of the procurement.

(ii) The Request for Proposal must identify all significant evaluation factors, including price or cost where required, and their relative importance.

(iii) The grantee must provide mechanisms for technical evaluation of the proposals received, determination of responsible offerors for the purpose of written or oral discussions, and selection for contract award.

(iv) Award may be made to the responsible offeror whose proposal will be most advantageous to the grantee, price and other factors considered. Unsuccessful offerors must be promptly notified.

(v) Owners may utilize competitive negotiation procedures for procurement of architectural/engineering and other professional services, whereby the offerors' qualifications are evaluated and the most qualified offeror is selected, subject to negotiations of fair and reasonable compensation.

(3) *Noncompetitive negotiation.* Noncompetitive negotiation is procurement through solicitation of a proposal from only one source. Noncompetitive negotiation may be used when the award of a contract is not feasible under small acquisition and construction procedures, competitive sealed bids (formal advertising) or competitive negotiation procedures. Circumstances under which a contract may be awarded by noncompetitive negotiations are limited to the following:

(i) After solicitation of a number of sources, competition is determined inadequate; or

(ii) No acceptable bids have been received after formal advertising.

(4) *Additional procurement methods.* The grantee may use additional innovative procurement methods provided the grantee receives prior written approval from the Agency. Contracts will have a listing of attachments and the minimum provisions of the contract will include:

(i) The contract sum;

(ii) The dates for starting and completing the work;

(iii) The amount of liquidated damages to be charged;

(iv) The amount, method, and frequency of payment;

(v) Whether or not surety bonds will be provided; and

(vi) The requirement that changes or additions must have prior written approval of the Agency.

(g) *Contracts awarded prior to applications.* Owners awarding construction or other procurement contracts prior to filing an application, must provide evidence that is satisfactory to the Agency that the contract was entered into without intent to circumvent the requirements of Agency regulations.

(1) *Modifications.* The contract shall be modified to conform to the provisions of this subpart. Where this is not possible, modifications will be made to the extent practicable and, as a minimum, the contract must comply with all State and local laws and regulations as well as statutory requirements and executive orders related to the Agency financing.

(2) *Consultant's certification.* Provide a certification by an engineer, licensed in the State where the facility is constructed, that any construction performed complies fully with the plans and specifications.

(3) *Owner's certification.* Provide a certification by the owner that the contractor has complied with applicable statutory and executive requirements related to Agency financing.

(h) *Contract administration.* Contract administration must comply with 7 CFR 1780.76. If another authority, such as a Federal, State, or Tribal agency, is providing funding and requires oversight of inspections, change orders, and pay requests, the Agency will accept copies of their reports or forms as meeting oversight requirements of the Agency.

Renewable Energy System and Energy Efficiency Improvement Guaranteed Loans

§ 4280.125 Compliance with §§ 4279.29 through 4279.99 of this chapter.

All loans guaranteed under this subpart must comply with the provisions found in §§ 4279.29 through 4279.99 of this chapter.

§ 4280.126 Guarantee/annual renewal fee.

Except for the conditions for receiving reduced guarantee fee and unless otherwise specified in a **Federal Register** notice, the provisions specified in § 4279.107 of this chapter apply to loans guaranteed under this subpart.

§ 4280.127 Borrower eligibility.

To receive a RES or EEI guaranteed loan under this subpart, a borrower must be eligible under § 4280.112. In addition, borrower must meet the requirements of paragraphs (a) through (e) of this section. Borrowers who receive a loan guaranteed under this subpart must continue to meet the requirements specified in this section.

(a) *Type of borrower.* The borrower must be an Agricultural Producer or Rural Small Business.

(b) *Ownership.* The borrower must:

(1) Own or be the prospective owner of the project; and

(2) Own or control the site for the project at the time of application and, if the loan is guaranteed under this subpart, for the term of the loan.

(c) *Revenues and expenses.* The borrower must have available or be able to demonstrate, at the time of application, satisfactory sources of revenue in an amount sufficient to provide for the operation, management, maintenance, and any debt service of the project for the term of the loan. In addition, the borrower must control the revenues and expenses of the project, including its operation and maintenance, for which the loan is sought. Notwithstanding the provisions of this paragraph, the borrower may employ a Qualified Consultant under contract to manage revenues and expenses of the project and its operation and/or maintenance.

(d) *Legal authority and responsibility.* Each borrower and lender must have the legal authority necessary to apply for and carry out the purpose of the guaranteed loan.

(e) *Universal identifier and SAM.* Unless exempt under 2 CFR 25.110, the borrower must:

(1) Be registered in the SAM prior to submitting an application;

(2) Maintain an active SAM registration with current information at all times during which it has an active Federal award or an application under consideration by the Agency; and

(3) Provide its DUNS number in each application it submits to the Agency.

§ 4280.128 Project eligibility.

For a RES or EEI project to be eligible to receive a guaranteed loan under this subpart, the project must meet each criteria specified in § 4280.113(a)

through (f). In addition, the purchase of an existing RES that meets the criteria specified in § 4280.113(b) through (f) is an eligible project under this section.

§ 4280.129 Guaranteed loan funding.

(a) The amount of the loan that will be made available to an eligible project under this subpart will not exceed 75 percent of Eligible Project Costs. Eligible Project Costs are specified in paragraph (e) of this section. Ineligible project costs are identified in paragraph (f) of this section.

(b) The minimum amount of a guaranteed loan made to a borrower will be $5,000, less any program grant amounts. The maximum amount of a guaranteed loan made to a borrower is $25 million.

(c) The percentage of guarantee, up to the maximum allowed by this section, will be negotiated between the lender and the Agency. The maximum percentage of guarantee is:

(1) 85 percent for loans of $600,000 or less;

(2) 80 percent for loans greater than $600,000 up to and including $5 million;

(3) 70 percent for loans greater than $5 million up to and including $10 million; and

(4) 60 percent for loans greater than $10 million.

(d) The total amount of the loans guaranteed under this subpart to one borrower, including the guaranteed and unguaranteed portion, the outstanding principal, and interest balance of any existing loans guaranteed under this program and the new loan request, must not exceed $25 million.

(e) Eligible Project Costs are only those costs associated with the items identified in § 4280.114(c)(1) through (c)(6) and paragraphs (e)(1) through (6) of this section as long as the items identified in both sets of paragraphs are directly related to the RES or EEI. The Eligible Project Costs identified in paragraphs (e)(1) through (4) of this section cannot exceed more than 5 percent of the loan amount.

(1) Working capital.

(2) Land acquisition.

(3) Routine lender fees, as described in § 4279.120(a) of this chapter.

(4) Energy Assessments, Energy Audits, technical reports, business plans, and Feasibility Studies completed and acceptable to the Agency, except if any portion was financed by any other Federal or State grant or payment assistance, including, but not limited to, a REAP Energy Assessment or Energy Audit, or REDA grant.

(5) Building and equipment for an existing RES.

(6) Refinancing outstanding debt when the original purpose of the debt being refinanced meets the eligible project requirements of § 4280.128. Existing debt may be refinanced provided that:

(i) The project identified in the application meets the requirements of § 4280.128;

(ii) The debt being refinanced must be less than 50 percent of the overall loan;

(iii) Refinancing is necessary to improve cash flow and viability of the project identified in the application;

(iv) At the time of application, the loan being refinanced has been current for at least the past 12 months (unless such status is achieved by the lender forgiving the borrower's debt); and

(v) The lender is providing better rates or terms for the loan being refinanced.

(f) Ineligible project costs include, but are not limited to costs identified in §§ 4280.114(d)(1), (d)(2), (d)(4) through (d)(9), guaranteeing loans made by other Federal agencies, subordinated owner debt, and loans made with the proceeds of any obligation the interest on which is excludable from income under 26 U.S.C. 103 or a successor statute. Funds generated through the issuance of tax-exempt obligations may neither be used to purchase the guaranteed portion of any Agency guaranteed loan nor may an Agency guaranteed loan serve as collateral for a tax-exempt issue. The Agency may guarantee a loan for a project which involves tax-exempt financing only when the guaranteed loan funds are used to finance a part of the project that is separate and distinct from the part which is financed by the tax-exempt obligation, and the guaranteed loan has at least a parity security position with the tax-exempt obligation.

(g) In determining the amount of a loan awarded, the Agency will take into consideration the criteria specified in § 4280.114(e).

§ 4280.130 Loan processing.

(a) Processing RES and EEI guaranteed loans under this subpart must comply with the provisions found in §§ 4279.120 through 4279.187 of this chapter, except for those sections specified in paragraph (b) of this section, and as provided in §§ 4280.131 through 4280.142.

(b) The provisions found in §§ 4279.150, 4279.155, 4279.161, and 4279.175 of this chapter do not apply to loans guaranteed under this subpart.

§ 4280.131 Credit quality.

Except for § 4279.131(d) of this chapter, the credit quality provisions of § 4279.131 of this chapter apply to this subpart. Instead of complying with § 4279.131(d), borrowers must demonstrate evidence of cash equity injection in the project of not less than 25 percent of total Eligible Project Costs. Cash equity injection must be in the form of cash. For guaranteed loan-only requests, Federal grant funds may be counted as cash equity.

§ 4280.132 Financial statements.

All financial statements must be in accordance with § 4279.137 of this chapter except that, for Agricultural Producers, the borrower may provide financial information in the manner that is generally required by agricultural commercial lenders.

§ 4280.133 [Reserved]

§ 4280.134 Personal and corporate guarantees.

Except for Passive Investors, all personal and corporate guarantees must be in accordance with § 4279.149 of this chapter.

§ 4280.135 Scoring RES and EEI guaranteed loan-only applications.

(a) *Evaluation criteria.* The Agency will score each guaranteed loan-only application received using the evaluation criteria specified in § 4280.120, except that, in § 4280.120(b)(1), the calculation will be made on the loan amount requested and not on the grant amount requested.

(b) *Minimum score.* The Agency will establish a minimum score that guaranteed loan-only applications must meet in order to be considered for funding in periodic competitions, as specified in § 4280.139(a). The minimum score is 50 points, and may be adjusted through the publishing of a Notice in the **Federal Register**. Any application that does not meet the applicable minimum score is only eligible to compete in a National competition as specified in § 4280.139(c)(2).

(c) *Notification.* The Agency will notify in writing each lender and borrower whose application does not meet the applicable minimum score.

§ 4280.136 [Reserved]

§ 4280.137 Application and documentation.

The requirements in this section apply to guaranteed loan applications for RES and EEI projects under this subpart.

(a) *General.* Guaranteed loan applications must be submitted in accordance with the guaranteed loan requirements specified in § 4280.110 and in this section.

(b) *Application content for guaranteed loans greater than $600,000.* Each guaranteed loan-only application for greater than $600,000 must contain the information specified in paragraphs (b)(1) and (2) of this section.

(1) *Application content.* Each application submitted under this paragraph must contain the information specified in §§ 4280.117(a)(6) through (9) and (b) through (e) and as specified in paragraph (b)(2) of this section, and must present the information in the same order as shown in § 4280.117.

(2) *Lender forms, certifications, and agreements.* Each application submitted under paragraph (b) of this section must contain applicable forms, certifications, and agreements specified in paragraphs (b)(2)(i) through (xi) of this section instead of the forms and certifications specified in § 4280.117(a).

(i) A completed Form RD 4279–1, ''Application for Loan Guarantee.''

(ii) Form RD 1940–20.

(iii) Identify the ethnicity, race, and gender of the applicant. This information is optional and is not required for a Complete Application.

(iv) A personal credit report from an Agency approved credit reporting company for each owner, partner, officer, director, key employee, and stockholder owning 20 percent or more interest in the borrower's business operation, except Passive Investors and those corporations listed on a major stock exchange.

(v) Appraisals completed in accordance with § 4279.144 of this chapter. Completed appraisals should be submitted when the application is filed. If the appraisal has not been completed when the application is filed, the Lender must submit an estimated appraisal. Agency approval in the form of a Conditional Commitment may be issued subject to receipt of adequate appraisals. In all cases, a completed appraisal must be submitted prior to the loan being closed.

(vi) Commercial credit reports obtained by the lender on the borrower and any parent, affiliate, and subsidiary firms.

(vii) Current personal and corporate financial statements of any guarantors.

(viii) Financial information is required on the total operation of the Agricultural Producer/Rural Small Business and its parent, subsidiary, or affiliates. All information submitted under this paragraph must be substantiated by authoritative records.

(A) *Historical financial statements.* Provide historical financial statements, including income statements and balance sheets, according to the Annual Receipts time frames specified in paragraphs § 4280.117(b)(1)(i)(A) through (C), as applicable to the length of time that Applicant's Rural Small Business or agricultural operation has been in operation. Agricultural Producers may present historical financial information in the format that is generally required by commercial agriculture lenders.

(B) *Current balance sheet and income statement.* Provide a current balance sheet and income statement presented in accordance with GAAP and dated within 90 days of the application submittal. Agricultural Producers may present financial information in the format that is generally required by commercial agriculture lenders or in a similar format used when submitting the same information in support of the borrower's Federal income tax returns.

(C) *Pro forma financial statements.* Provide pro forma balance sheet at start-up of the borrower's business operation that reflects the use of the loan proceeds or grant award; 3 additional years of financial statements, indicating the necessary start-up capital, operating capital, and short-term credit; and projected cash flow and income statements for 3 years supported by a list of assumptions showing the basis for the projections.

(ix) Lender's complete comprehensive written analysis in accordance with § 4280.131.

(x) A certification by the lender that the borrower is eligible, the loan is for authorized purposes, and there is reasonable assurance of repayment ability based on the borrower's history, projections, equity, and the collateral to be obtained.

(xi) A proposed loan agreement or a sample loan agreement with an attached list of the proposed loan agreement provisions. The following requirements must be addressed in the proposed or sample loan agreement:

(A) Prohibition against assuming liabilities or obligations of others;

(B) Restriction on dividend payments;

(C) Limitation on the purchase or sale of equipment and fixed assets;

(D) Limitation on compensation of officers and owners;

(E) Minimum working capital or current ratio requirement;

(F) Maximum debt-to-net worth ratio;

(G) Restrictions concerning consolidations, mergers, or other circumstances;

(H) Limitations on selling the business without the concurrence of the lender;

(I) Repayment and amortization provisions of the loan;

(J) List of collateral and lien priority for the loan, including a list of persons and corporations guaranteeing the loan with a schedule for providing the lender with personal and corporate financial statements. Financial statements for corporate and personal guarantors must be updated at least annually once the guarantee is provided;

(K) Type and frequency of financial statements to be required from the borrower for the duration of the loan;

(L) The addition of any requirements imposed by the Agency in its Conditional Commitment;

(M) A reserved section for any Agency environmental requirements; and

(N) A provision for the lender or the Agency to have reasonable access to the project and its performance information during its useful life or the term of the loan, whichever is longer, including the periodic inspection of the project by a representative of the lender or the Agency.

(c) *Application content for guaranteed loans of $600,000 or Less.* Each guaranteed loan-only application for $600,000 or less must contain the information specified in paragraphs (c)(1) and (2) of this section.

(1) *Application contents.* If the application is for less than $200,000, but more than $80,000, the application must contain the information specified in § 4280.118(b), except as specified in paragraph (c)(2) of this section (*e.g.,* the grant forms under § 4280.117(a) are not required to be submitted), and must present the information in the same order as shown in § 4280.118(b). If the application is for $200,000 and greater, the application must contain the information specified in § 4280.117, except as specified in paragraph (c)(2) of this section, and must present the information in the same order as shown in § 4280.117.

(2) *Lender forms, certifications, and agreements.* Each application submitted under paragraph (c) of this section must use Form RD 4279–1A, ''Application for Loan Guarantee, Short Form,'' and the forms and certifications specified in paragraphs (b)(2)(ii), (iii) (if not previously submitted), (v), (viii), (ix), (x), and (xi) of this section. The lender must have the documentation contained in paragraphs (b)(2)(iv), (vi), and (vii) available in its files for the Agency's review.

§ 4280.138 Evaluation of RES and EEI guaranteed loan applications.

The provisions of § 4279.165 of this chapter apply to this subpart, although the Agency will determine borrower and project eligibility in accordance with the provisions of this subpart.

§ 4280.139 Selecting RES and EEI guaranteed loan-only applications for award.

Complete and eligible guaranteed loan-only applications that are ready to be approved will be processed according to this section, unless otherwise modified by the Agency in a notice published in the **Federal Register**. Guaranteed loan applications that are part of a grant-guaranteed loan combination request will be processed according to § 4280.165(d).

(a) *Competing applications.* On a periodic basis, the Agency will compete each eligible application that is ready to be funded and that has a priority score, as determined under § 4280.135, that meets or exceeds the applicable minimum score. Higher scoring applications will receive first consideration. An application that does not meet the minimum score will be competed as provided in paragraph (c)(2) of this section.

(b) *Funding selected applications.* As applications are funded, the remaining guaranteed funding authority may be insufficient to fund the next highest scoring application or applications in those cases where two or more applications receive the same priority score. The procedures described in paragraphs (b)(1) and (2) of this section may be repeated as necessary in order to consider all applications as appropriate.

(1) If the remaining funds are insufficient to fund the next highest scoring project completely, the Agency will notify the lender and offer the lender the opportunity to accept the level of funds available. If the lender does not accept the offer, the Agency will process the next highest scoring application.

(2) If the remaining funds are insufficient to fund each project that receives the same priority score, the Agency will notify each lender and offer the lenders the opportunity to accept the level of funds available and the level of funds the Agency offers to each such lender will be proportional to the amount of the lenders' requests. If funds are still remaining, the Agency may consider funding the next highest scoring project.

(3) Any lender offered less than the full amount requested under either paragraph (b)(1) or (2) of this section may either accept the funds available or can request to compete in the next competition. Under no circumstances would there be an assurance that the project(s) would be funded in subsequent competitions.

(4) If a lender agrees to the lower loan funding offered by the Agency under either paragraph (b)(1) or (2) of this section, the lender must certify that the purpose(s) of the project can still be met at the lower funding level and must provide documentation that the borrower has obtain the remaining total funds needed to complete the project.

(c) *Handling of ranked applications not funded.* How the Agency disposes of ranked applications that have not received funding depends on whether the application's priority score is equal to or greater than the minimum score or is less than the minimum score.

(1) An application with a priority score equal to or greater than the minimum score that is not funded in a periodic competition will be retained by the Agency for consideration in subsequent competitions. If an application is not selected for funding after 12 months, including the first month in which the application was competed, the application will be withdrawn by the Agency from further funding consideration.

(2) An application with a priority score less than the applicable minimum priority score will be competed against all other guaranteed loan-only applications in a National competition on the first business day of September of the Federal Fiscal Year in which the application is ready for funding. If the application is not funded, the application will be withdrawn by the Agency from further funding consideration.

(d) *Unused funding.* After each periodic competition, the Agency will roll any remaining guaranteed funding authority into the next competition. At the end of each Federal Fiscal Year, the Agency may elect at its discretion to allow any remaining multi-year funds to be carried over to the next Federal Fiscal Year rather than selecting a lower scoring application.

(e) *Commencement of the project.* The Applicant assumes all risks if the choice is made to purchase the technology proposed or start construction of the project to be financed in the guaranteed loan-only application after the Complete Application has been received by the Agency, but prior to award announcement.

§ 4280.140 [Reserved]

§ 4280.141 Changes in borrower.

All changes in borrowers must be in accordance with § 4279.180 of this chapter, but the eligibility requirements of this subpart apply.

§ 4280.142 Conditions precedent to issuance of loan note guarantee.

The provisions of § 4279.181 of this chapter apply except for § 4279.181(b). In addition, paragraphs (a) and (b) of this section must be met.

(a) The project has been performing at a steady state operating level in accordance with the technical requirements, plans, and specifications, conforms with applicable Federal, State, and local codes, and costs have not exceeded the amount approved by the lender and the Agency.

(b) Where applicable, the lender must provide to the Agency a copy of the executed Power Purchase Agreement.

§ 4280.143 Requirements after project construction.

Once the project has been constructed, the lender must provide the Agency reports from the borrower in accordance with § 4280.123(j)(3), as applicable.

§§ 4280.144–4280.151 [Reserved]

§ 4280.152 Servicing guaranteed loans.

Except as specified in paragraphs (a) and (b) of this section, all loans guaranteed under this subpart must be in compliance with the provisions found in § 4287.101(b) and in §§ 4287.107 through 4287.199 of this chapter.

(a) *Documentation of request.* In complying with § 4287.134(a) of this chapter, all transfers and assumptions must be to eligible borrowers in accordance with § 4280.127.

(b) *Additional loan funds.* In complying with § 4287.134(e) of this chapter, loans to provide additional funds in connection with a transfer and assumption must be considered as a new loan application under § 4280.137.

§§ 4280.153–4280.164 [Reserved]

Combined Funding for Renewable Energy Systems and Energy Efficiency Improvements

§ 4280.165 Combined grant and guaranteed loan funding requirements.

The requirements for a RES or EEI project for which an Applicant is seeking a combined grant and guaranteed loan are specified in this section.

(a) *Eligibility.* All Applicants must be eligible under the requirements specified in § 4280.112. If the Applicant is seeking a grant, the Applicant must also meet the Applicant eligibility requirements specified in § 4280.112. If the Applicant is seeking a loan, the Applicant must also meet the borrower eligibility requirements specified in § 4280.127. Projects must meet the project eligibility requirements specified in §§ 4280.113 and 4280.128, as applicable.

(b) *Funding.* Funding provided under this section is subject to the limits described in paragraphs (b)(1) and (2) of this section.

(1) The amount of any combined grant and guaranteed loan shall not exceed 75 percent of Eligible Project Costs and the grant portion shall not exceed 25 percent of Eligible Project Costs. For purposes of combined funding requests, Eligible Project Costs are based on the total costs associated with those items specified in §§ 4280.114(c) and 4280.129(e). The Applicant must provide the remaining total funds needed to complete the project.

(2) The minimum combined funding request allowed is $5,000, with the grant portion of the funding request being at least $1,500 for EEI projects and at least $2,500 for RES projects.

(c) *Application and documentation.* When applying for combined funding, the Applicant must submit separate applications for both types of assistance (grant and guaranteed loan). The separate applications must be submitted simultaneously by the lender.

(1) Each application must meet the requirements, including the requisite forms and certifications, specified in §§ 4280.117, 4280.118, 4280.119, and 4280.137, as applicable, and as follows:

(i) Notwithstanding Form RD 4279–1, the SAM number and its expiration date must be provided prior to obligation of funds;

(ii) A combined funding request for a guaranteed loan greater than $600,000 must contain the information specified in § 4280.137(b)(1); and

(iii) A combined funding request for a guaranteed loan of $600,000 or less must contain the information specified in § 4280.137(c)(1) and (2).

(2) Where both the grant application and the guaranteed loan application provisions request the same documentation, form, or certification, such documentation, form, or certification may be submitted once; that is, the combined application does not need to contain duplicate documentation, forms, and certifications.

(d) *Evaluation.* The Agency will evaluate each application according to § 4280.115(c). The Agency will select applications according to applicable procedures specified in § 4280.121(a) unless modified by this section. A combination loan and grant request will be selected based upon the grant score of the project.

(e) *Interest rate and terms of loan.* The interest rate and terms of the guaranteed loan for the loan portion of the combined funding request will be determined based on the procedures specified in §§ 4279.125 and 4279.126 of this chapter for guaranteed loans.

(f) *Other provisions.* In addition to the requirements specified in paragraphs (a) through (e) of this section, the combined funding request is subject to the other requirements specified in this subpart, including, but not limited to, processing and servicing requirements, as applicable, as described in paragraphs (f)(1) through (6) of this section.

(1) All other provisions of §§ 4280.101 through 4280.111 apply to the combined funding request.

(2) All other provisions of §§ 4280.112 through 4280.123 apply to the grant portion of the combined funding request and § 4280.124 applies if the project for which the grant is sought has a Total Project Cost of $200,000 and greater.

(3) All other provisions of §§ 4280.125 through 4280.152, as applicable, apply to the guaranteed loan portion of the combined funding request.

(4) All guarantee loan and grant combination applications that are ranked, but not funded, will be processed in accordance with provisions found in § 4280.121(d), (e), and (f).

(5) Applicants whose combination applications are approved for funding must utilize both the loan and the grant. The guaranteed loan will be closed prior to grant funds being disbursed. The Agency reserves the right to reduce the total loan guarantee and grant award, as appropriate, if construction costs are less than projected or if funding sources differ from those provided in the application.

(6) Compliance reviews will be conducted on a combined grant and guaranteed loan request. The compliance review will encompass the entire operation, program, or activity to be funded with Agency assistance.

§§ 4280.166–4280.185 [Reserved]

Energy Audit and Renewable Energy Development Assistance (REDA) Grants

§ 4280.186 Applicant eligibility.

To be eligible for an Energy Audit grant or a REDA grant under this subpart, the Applicant must meet each of the criteria, as applicable, specified in paragraphs (a) through (d) of this section. The Agency will determine an Applicant's eligibility.

(a) The Applicant must be one of the following:

(1) A unit of State, Tribal, or local government;

(2) A land-grant college or university, or other Institution of Higher Education;

(3) A rural electric cooperative;

(4) A Public Power Entity;

(5) An Instrumentality of a State, Tribal, or local government; or

(6) A Council.

(b) The Applicant must have sufficient capacity to perform the Energy Audit or REDA activities proposed in the application to ensure success. The Agency will make this assessment based on the information provided in the application.

(c) The Applicant must have the legal authority necessary to apply for and carry out the purpose of the grant.

(d) The Applicant must:

(1) Be registered in the SAM prior to submitting an application;

(2) Maintain an active SAM registration with current information at all times during which it has an active Federal award or an application under consideration by the Agency; and

(3) Provide its DUNS number in each application it submits to the Agency. Generally, the DUNS number is included on Standard Form–424.

§ 4280.187 Project eligibility.

To be eligible for an Energy Audit or a REDA grant, the grant funds for a project must be used by the grantee to assist Agricultural Producers or Rural Small Businesses in one or both of the purposes specified in paragraphs (a) and (b) of this section, and must also comply with paragraphs (c) through (f) of this section.

(a) Conducting and promoting Energy Audits.

(b) Conducting and promoting REDA by providing to Agricultural Producers and Rural Small Businesses recommendations and information on how to improve the energy efficiency of their operations and to use Renewable Energy technologies and resources in their operations.

(c) Energy Audit and REDA can be provided only to a project located in a Rural Area unless the grantee of such project is an Agricultural Producer. If the project is owned by an Agricultural Producer, the project for which such services are being provided may be located in either a Rural or non-Rural Area. If the Agricultural Producer's project is in a non-Rural Area, then the Energy Audit or REDA can only be for an EEI or RES on components that are directly related to and their use and purpose is limited to the Agricultural Producer's project, such as vertically integrated operations, that are part of and co-located with the agricultural production operation.

(d) The Energy Audit or REDA must be provided to a recipient in a State.

(e) The Applicant must have a place of business in a State.

(f) The Applicant is cautioned against taking any actions or incurring any

obligations prior to the Agency completing the environmental review that would either limit the range of alternatives to be considered or that would have an adverse effect on the environment, such as the initiation of construction. If the Applicant takes any such actions or incurs any such obligations, it could result in project ineligibility.

§ 4280.188 Grant funding for Energy Audit and Renewable Energy Development Assistance.

(a) *Maximum grant amount.* The maximum aggregate amount of Energy Audit and REDA grants awarded to any one recipient under this subpart cannot exceed $100,000 in a Federal Fiscal Year. Grant funds awarded for Energy Audit and REDA projects may be used only to pay Eligible Project Costs, as described in paragraph (b) of this section. Ineligible project costs are listed in paragraph (c) of this section.

(b) *Eligible project costs.* Eligible Project Costs for Energy Audits and Renewable Energy Development Assistance are those costs incurred after the date a Complete Application has been received by the Agency and that are directly related to conducting and promoting Energy Audits and REDA, which include but are not limited to:

(1) Salaries;

(2) Travel expenses;

(3) Office supplies (*e.g.,* paper, pens, file folders); and

(4) Expenses charged as a direct cost or as an indirect cost of up to a maximum of 5 percent for administering the grant.

(c) *Ineligible project costs.* Ineligible project costs for Energy Audit and REDA grants include, but are not limited to:

(1) Payment for any construction-related activities;

(2) Purchase or lease of equipment;

(3) Payment of any judgment or debt owed to the United States;

(4) Any goods or services provided by a person or entity who has a conflict of interest as provided in § 4280.106;

(5) Any costs of preparing the application package for funding under this subpart; and

(6) Funding of political or lobbying activities.

(d) *Energy audits.* A grantee that conducts an Energy Audit must require that, as a condition of providing the Energy Audit, the Agricultural Producer or Rural Small Business pay at least 25 percent of the cost of the Energy Audit. Further, the amount paid by the Agricultural Producer or Rural Small Business will be retained by the grantee as a contribution towards the cost of the Energy Audit and considered program income. The grantee may use the program income to further the objectives of their project or Energy Audit services offered during the grant period in accordance with Departmental Regulations.

§ 4280.189 [Reserved]

§ 4280.190 Energy Audit and REDA grant applications—content.

(a) Unless otherwise specified in a **Federal Register** notice, Applicants may only submit one Energy Audit grant application and one REDA grant application each Federal Fiscal Year. No combination (Energy Audit and REDA) applications will be accepted.

(b) Applicants must submit Complete Applications consisting of the elements specified in paragraphs (b)(1) through (7) of this section, except that paragraph (b)(4), is optional.

(1) Form SF–424.

(2) Form SF–424A.

(3) Form SF–424B.

(4) Identify the ethnicity, race, and gender of the applicant. This information is optional and is not required for a Complete Application.

(5) Certification that the Applicant is a legal entity in good standing (as applicable), and operating in accordance with the laws of the State(s) or Tribe where the Applicant has a place of business.

(6) The Applicant must identify whether or not the Applicant has a known relationship or association with an Agency employee. If there is a known relationship, the Applicant must identify each Agency employee with whom the Applicant has a known relationship.

(7) A proposed scope of work to include the following items:

(i) A brief summary including a project title describing the proposed project;

(ii) Goals of the proposed project;

(iii) Geographic scope or service area of the proposed project and the method and rationale used to select the service area;

(iv) Identification of the specific needs for the service area and the target audience to be served. The number of Agricultural Producers and/or Rural Small Businesses to be served must be identified including name and contact information, if available, as well as the method and rationale used to select the Agricultural Producers and/or Rural Small Businesses;

(v) Timeline describing the proposed tasks to be accomplished and the schedule for implementation of each task. Include whether organizational staff, consultants, or contractors will be used to perform each task. If a project is located in multiple States, resources must be sufficient to complete all projects;

(vi) Marketing strategies to include a discussion on how the Applicant will be marketing and providing outreach activities to the proposed service area ensuring that Agricultural Producers and/or Rural Small Businesses are served;

(vii) Applicant's experience as follows:

(A) If applying for a REDA grant, the Applicant's experience in completing similar REDA activities, including the number of similar projects the Applicant has performed and the number of years the Applicant has been performing a similar service.

(B) If applying for an Energy Audit grant, the number of energy audits and energy assessments the Applicant has completed and the number of years the Applicant has been performing those services;

(C) For all Applicants, the amount of experience in administering Energy Audit, REDA, or similar activities as applicable to the purpose of the proposed project. Provide discussion if the Applicant has any existing programs that can demonstrate the achievement of energy savings or energy generation with the Agricultural Producers and/or Rural Small Businesses the Applicant has served. If the Applicant has received one or more awards within the last 5 years in recognition of its Renewable Energy, energy savings, or energy-based technical assistance, please describe the achievement; and

(viii) Identify the amount of Matching Funds and other funds and the source(s) the Applicant is proposing to use for the project. Provide written commitments for Matching Funds and other funds at the time the application is submitted.

(A) If financial resources come from the Applicant, the Applicant must submit documentation in the form of a bank statement that demonstrates availability of funds.

(B) If a third party is providing financial assistance to the project, the Applicant must submit a commitment letter signed by an authorized official of the third party. The letter must be specific to the project and identify the dollar amount being provided.

§ 4280.191 Evaluation of Energy Audit and REDA grant applications.

Section 4280.115(c) applies to Energy Audit and REDA grants, except for § 4280.115(c)(4).

§ 4280.192 Scoring Energy Audit and REDA grant applications.

The Agency will score each Energy Audit and REDA application using the criteria specified in paragraphs (a) through (f) of this section, with a maximum score of 100 points possible.

(a) *Applicant's organizational experience in completing the Energy Audit or REDA proposed activity.* A maximum of 25 points will be awarded for this criterion based on the experience of the organization in providing energy audits or renewable energy development assistance as applicable to the purpose of the proposed project. The organization must have been in business and provided services for the number of years as identified in the paragraphs below.

(1) More than 10 years of experience, 25 points will be awarded.

(2) At least 5 years and up to and including 10 years of experience, 20 points will be awarded.

(3) At least 2 years and up to and including 5 years of experience, 10 points will be awarded.

(4) Less than 2 years of experience, no points will be awarded.

(b) *Geographic scope of project in relation to identified need.* A maximum of 20 points can be awarded.

(1) If the Applicant's proposed or existing service area is State-wide or includes all or parts of multiple States, and the scope of work has identified needs throughout that service area, 20 points will be awarded.

(2) If the Applicant's proposed or existing service area consists of multiple counties in a single State and the scope of work has identified needs throughout that service area, 15 points will be awarded.

(3) If the Applicant's service area consists of a single county or municipality and the scope of work has identified needs throughout that service area, 10 points will be awarded.

(c) *Number of Agricultural Producers/Rural Small Businesses to be served.* A maximum of 20 points will be awarded for this criterion based on the proposed number of ultimate recipients to be assisted and if the Applicant has provided the names and contact information for the ultimate recipients to be assisted.

(1) If the Applicant plans to provide Energy Audits or REDA to:

(i) Up to 10 ultimate recipients, 2 points will be awarded.

(ii) Between 11 and up to and including 25 ultimate recipients, 5 points will be awarded.

(iii) More than 25 ultimate recipients, 10 points will be awarded.

(2) If the Applicant provides a list of ultimate recipients, including their name and contact information, that are ready to be assisted, an additional 10 points may be awarded.

(d) *Potential of project to produce energy savings or generation and its attending environmental benefits.* A maximum of 10 points will be awarded for this criterion under both paragraphs (d)(1) and (2) of this section

(1) If the Applicant has an existing program that can demonstrate the achievement of energy savings or energy generation with the Agricultural Producers and/or Rural Small Businesses it has served, 5 points will be awarded.

(2) If the Applicant provides evidence that it has received one or more awards within the last 5 years in recognition of its renewable energy, energy savings, or energy-based technical assistance, up to a maximum of 5 points will be awarded as follows:

(i) International/national—3 points for each.

(ii) Regional/State—2 points for each.

(iii) Local—1 point for each.

(e) *Marketing and outreach plan.* A maximum of 5 points will be awarded for this criterion. If the scope of work included in the application provides a satisfactory discussion of each of the following criteria, one point for each can be awarded.

(1) The goals of the project;

(2) Identified need;

(3) Targeted ultimate recipients;

(4) Timeline and action plan; and

(5) Marketing and outreach strategies and supporting data for strategies.

(f) *Commitment of funds for the total project cost.* A maximum of 20 points will be awarded for this criterion if written documentation from each source providing Matching Funds and other funds are submitted with the application.

(1) If the Applicant proposes to match 50 percent or more of the grant funds requested, 20 points will be awarded.

(2) If the Applicant proposes to match 20 percent or more but less than 50 percent of the grant funds requested, 15 points will be awarded.

(3) If the Applicant proposes to match 5 percent or more but less than 20 percent of the grant funds requested, 10 points will be awarded.

(4) If the Applicant proposes to match less than 5 percent of the grant funds requested, no points will be awarded.

§ 4280.193 Selecting Energy Audit and REDA grant applications for award.

Unless otherwise provided for in a **Federal Register** notice, Energy Audit and REDA grant applications will be processed in accordance with this section.

(a) *Application competition.* Complete Energy Audit and REDA applications received by the Agency by 4:30 p.m. local time on January 31 will be competed against each other. If January 31 falls on a weekend or a federally-observed holiday, the next Federal business day will be considered the last day for receipt of a Complete Application. Complete Applications received after 4:30 p.m. local time on January 31, regardless of the postmark on the application, will be processed in the subsequent fiscal year. Unless otherwise specified in a **Federal Register** notice, the two highest scoring applications from each State, based on the scoring criteria established under § 4280.192, will compete for funding.

(b) *Ranking of applications.* All applications submitted to the National Office under paragraph (a) of this section will be ranked in priority score order. All applications that are ranked will be considered for selection for funding.

(c) *Selection of applications for funding.* Using the ranking created under paragraph (a) of this section, the Agency will consider the score an application has received compared to the scores of other ranked applications, with higher scoring applications receiving first consideration for funding. If two or more applications score the same and if remaining funds are insufficient to fund each such application, the Agency will distribute the remaining funds to each such application on a pro-rata basis. At its discretion, the Agency may also elect to allow any remaining multi-year funds to be carried over to the next fiscal year rather than funding on a pro-rata basis.

(d) *Handling of ranked applications not funded.* Based on the availability of funding, a ranked application submitted for Energy Audit and/or REDA funds may not be funded. Such ranked applications will not be carried forward into the next Federal Fiscal Year's competition.

§ 4280.194 [Reserved]

§ 4280.195 Awarding and administering Energy Audit and REDA grants.

The Agency will award and administer Energy Audit and REDA grants in accordance with Departmental Regulations and with the procedures and requirements specified in § 4280.122, except as specified in paragraphs (a) through (c) of this section.

(a) Instead of complying with § 4280.122(b), the grantee must provide satisfactory evidence to the Agency that all officers of grantee organization

authorized to receive and/or disburse Federal funds are covered by such bonding and/or insurance requirements as are normally required by the grantee.

(b) Form RD 400–1 specified in § 4280.122(c)(6) is not required.

(c) The Power Purchase Agreement specified in § 4280.122(h) is not required.

§ 4280.196 Servicing Energy Audit and REDA grants.

The Agency will service Energy Audit and REDA grants in accordance with the requirements specified in Departmental Regulations, the Grant Agreement, 7 CFR part 1951, subparts E and O, other than 7 CFR 1951.709(d)(1)(i)(B)(iv), and the requirements in § 4280.123, except as specified in paragraphs (a) through (d) of this section.

(a) *Grant disbursement.* The Agency will determine, based on the applicable Departmental Regulations, whether disbursement of a grant will be by advance or reimbursement. Form SF–270 must be completed by the grantee and submitted to the Agency no more often than monthly to request either advance or reimbursement of funds.

(b) *Semiannual performance reports.* Project performance reports shall include, but not be limited to, the following:

(1) A comparison of actual accomplishments to the objectives established for that period (*e.g.,* the number of Energy Audits performed, number of recipients assisted and the type of assistance provided for REDA);

(2) A list of recipients, each recipient's location, and each recipient's NAICS code;

(3) Problems, delays, or adverse conditions, if any, that have in the past or will in the future affect attainment of overall project objectives, prevent meeting time schedules or objectives, or preclude the attainment of particular project work elements during established time periods. This disclosure shall be accompanied by a statement of the action taken or planned to resolve the situation;

(4) Objectives and timetable established for the next reporting period.

(c) *Final performance report.* A final performance report will be required with the final Federal financial report within 90 days after project completion. The final performance report must contain the information specified in paragraphs (c)(2)(i) or (ii), as applicable, of this section.

(1) For Energy Audit projects, the final performance report must provide complete information regarding:

(i) The number of audits conducted,

(ii) A list of recipients (Agricultural Producers and Rural Small Businesses) with each recipient's NAICS code,

(iii) The location of each recipient,

(iv) The cost of each audit and documentation showing that the recipient of the Energy Audit provided 25 percent of the cost of the audit, and

(v) The expected energy saved for each audit conducted if the audit is implemented.

(2) For REDA projects, the final performance report must provide complete information regarding:

(i) The number of recipients assisted and the type of assistance provided,

(ii) A list of recipients with each recipient's NAICS code,

(iii) The location of each recipient, and

(iv) The expected Renewable Energy that would be generated if the projects were implemented.

(d) *Outcome project performance report.* One year after submittal of the final performance report, the grantee will provide the Agency a final status report on the number of projects that are proceeding with the grantee's recommendations, including the amount of energy saved and the amount of Renewable Energy generated, as applicable.

§§ 4280.197–4280.199 [Reserved]

§ 4280.200 OMB control number.

The information collection requirements contained in this subpart have been approved by the Office of Management and Budget (OMB) and have been assigned OMB control number 0570–0067. A person is not required to respond to a collection of information unless it displays a currently valid OMB control number.

Appendix A to Subpart B of Part 4280—Technical Reports for Energy Efficiency Improvement (EEI) Projects

For all EEI projects with Total Project Costs of more than $80,000, provide the information specified in Sections A and D and in Section B or Section C, as applicable. If the application is for an EEI project with Total Project Costs of $80,000 or less, please see § 4280.119(b)(3) for the technical report information to be submitted with your application.

If the application is for an EEI project with Total Project Costs of $200,000 and greater, you must conduct an Energy Audit. However, if the application is for an EEI project with a Total Project Costs of less than $200,000, you may conduct either an Energy Assessment or an Energy Audit.

Section A—Project Information. Describe how all the improvements to or replacement of an existing building and/or equipment meet the requirements of being Commercially Available. Describe how the design, engineering, testing, and monitoring are sufficient to demonstrate that the proposed project will meet its intended purpose, ensure public safety, and comply with applicable laws, regulations, agreements, permits, codes, and standards. Describe how all equipment required for the EEI(s) is available and able to be procured and delivered within the proposed project development schedule. In addition, present information regarding component warranties and the availability of spare parts.

Section B—Energy audit. If conducting an EA, provide the following information.

(1) *Situation report.* Provide a narrative description of the existing building and/or equipment, its energy system(s) and usage, and activity profile. Also include average price per unit of energy (electricity, natural gas, propane, fuel oil, renewable energy, etc.) paid by the customer for the most recent 12 months, or an average of 2, 3, 4, or 5 years, for the building and equipment being audited. Any energy conversion should be based on use rather than source.

(2) *Potential improvement description.* Provide a narrative summary of the potential improvement and its ability to reduce energy consumption or improve energy efficiency, including a discussion of reliability and durability of the improvements.

(i) Provide preliminary specifications for critical components.

(ii) Provide preliminary drawings of project layout, including any related structural changes.

(iii) Identify significant changes in future related operations and maintenance costs.

(iv) Describe explicitly how outcomes will be measured.

(3) *Technical analysis.* Give consideration to the interactions among the potential improvements and the current energy system(s).

(i) For the most recent 12 months, or an average of 2, 3, 4, or 5 years, prior to the date the application is submitted, provide both the total amount and the total cost of energy used for the original building and/or equipment, as applicable, for each improvement identified in the potential project. In addition, provide for each improvement identified in the potential project an estimate of the total amount of energy that would have been used and the total cost that would have been incurred if the proposed project were in operation for this same time period.

(ii) Calculate all direct and attendant indirect costs of each improvement;

(iii) Rank potential improvements measures by cost-effectiveness; and

(iv) Provide an estimate of Simple Payback, including all calculations, documentation, and any assumptions.

(4) *Qualifications of the auditor.* Provide the qualifications of the individual or entity which completed the Energy Audit.

Section C—Energy Assessment. If conducting an Energy Assessment, provide the following information.

(1) *Situation report.* Provide a narrative description of the existing building and/or equipment, its energy system(s) and usage, and activity profile. Also include average

price per unit of energy (electricity, natural gas, propane, fuel oil, renewable energy, etc.) paid by the customer for the most recent 12 months, or an average of 2, 3, 4, or 5 years, for the building and equipment being evaluated. Any energy conversion shall be based on use rather than source.

(2) *Potential improvement description.* Provide a narrative summary of the potential improvement and its ability to reduce energy consumption or improve energy efficiency.

(3) *Technical analysis.* Giving consideration to the interactions among the potential improvements and the current energy system(s), provide the information specified in paragraphs C.(3)(i) through (iii) of this appendix.

(i) For the most recent 12 months, or an average of 2, 3, 4, or 5 years, prior to the date the application is submitted, provide both the total amount and the total cost of energy used for the original building and/or equipment, as applicable, for each improvement identified in the potential project. In addition, provide for each improvement identified in the potential project an estimate of the total amount of energy that would have been used and the total cost that would have been incurred if the proposed project were in operation for this same time period.

(ii) Document baseline data compared to projected consumption, together with any explanatory notes on source of the projected consumption data. When appropriate, show before-and-after data in terms of consumption per unit of production, time, or area.

(iii) Provide an estimate of Simple Payback, including all calculations, documentation, and any assumptions.

(4) *Qualifications of the assessor.* Provide the qualifications of the individual or entity that completed the assessment. If the Energy Assessment for a project with Total Project Costs of $80,000 or less is not conducted by Energy Auditor or Energy Assessor, then the individual or entity must have at least 3 years of experience and completed at least five Energy Assessments or Energy Audits on similar type projects.

Section D—Qualifications. Provide a resume or other evidence of the contractor or installer's qualifications and experience with the proposed EEI technology. Any contractor or installer with less than 2 years of experience may be required to provide additional information in order for the Agency to determine if they are qualified installer/contractor.

Appendix B to Subpart B of Part 4280—Technical Reports for Renewable Energy System (RES) Projects With Total Project Costs of Less Than $200,000, but More Than $80,000

Provide the information specified in Sections A through D for each technical report prepared under this appendix. A Renewable Energy Site Assessment may be used in lieu of Sections A through C if the Renewable Energy Site Assessment contains the information requested in Sections A through C. In such instances, the technical report would consist of Section D and the Renewable Energy Site Assessment.

Note: If the Total Project Cost for the RES project is $80,000 or less, this appendix does not apply. Instead, for such projects, please provide the information specified in § 4280.119(b)(4).

Section A—Project Description. Provide a description of the project, including its intended purpose and a summary of how the project will be constructed and installed. Describe how the system meets the definition of Commercially Available. Identify the project's location and describe the project site.

Section B—Resource Assessment. Describe the quality and availability of the renewable resource to the project. Identify the amount of Renewable Energy generated that will be generated once the proposed project is operating at its steady state operating level. If applicable, also identify the percentage of energy being replaced by the system.

If the application is for a Bioenergy Project, provide documentation that demonstrates that any and all woody biomass feedstock from National Forest System land or public lands cannot be used as a higher value wood-based product.

Section C—Project Economic Assessment. Describe the projected financial performance of the proposed project. The description must address Total Project Costs, energy savings, and revenues, including applicable investment and other production incentives accruing from Government entities. Revenues to be considered shall accrue from the sale of energy, offset or savings in energy costs, and byproducts. Provide an estimate of Simple Payback, including all calculations, documentation, and any assumptions.

Section D—Project Construction and Equipment Information. Describe how the design, engineering, testing, and monitoring are sufficient to demonstrate that the proposed project will meet its intended purpose, ensure public safety, and comply with applicable laws, regulations, agreements, permits, codes, and standards. Describe how all equipment required for the RES is available and able to be procured and delivered within the proposed project development schedule. In addition, present information regarding component warranties and the availability of spare parts.

Section E—Qualifications of Key Service Providers. Describe the key service providers, including the number of similar systems installed and/or manufactured, professional credentials, licenses, and relevant experience. When specific numbers are not available for similar systems, estimations will be acceptable.

Appendix C to Subpart B of Part 4280—Technical Reports for Renewable Energy System (RES) Projects With Total Project Costs of $200,000 and Greater

Provide the information specified in Sections A through G for each technical report prepared under this appendix. Provide the resource assessment under Section C that is applicable to the project.

Section A—Qualifications of the Project Team. Describe the project team, their professional credentials, and relevant experience. The description shall support that the project team key service providers have the necessary professional credentials, licenses, certifications, and relevant experience to develop the proposed project.

Section B—Agreements and Permits. Describe the necessary agreements and permits (including any for local zoning requirements) required for the project and the anticipated schedule for securing those agreements and permits. For example, Interconnection Agreements and Power Purchase Agreements are necessary for all Renewable Energy projects electrically interconnected to the utility grid.

Section C—Resource Assessment. Describe the quality and availability of the renewable resource and the amount of Renewable Energy generated through the deployment of the proposed system. For all Bioenergy Projects, except Anaerobic Digesters Projects, complete Section C.3 of this appendix. For Anaerobic Digester Projects, complete Section C.6 of this appendix.

1. *Wind.* Provide adequate and appropriate data to demonstrate the amount of renewable resource available. Indicate the source of the wind data and the conditions of the wind monitoring when collected at the site or assumptions made when applying nearby wind data to the site.

2. *Solar.* Provide adequate and appropriate data to demonstrate the amount of renewable resource available. Indicate the source of the solar data and assumptions.

3. *Bioenergy Project.* Provide adequate and appropriate data to demonstrate the amount of renewable resource available. Indicate the type, quantity, quality, and seasonality of the Renewable Biomass resource, including harvest and storage, where applicable. Where applicable, also indicate shipping or receiving method and required infrastructure for shipping. For proposed projects with an established resource, provide a summary of the resource. Document that any and all woody biomass feedstock from National Forest System land or public lands cannot be used as a higher value wood-based product.

4. *Geothermal Electric Generation.* Provide adequate and appropriate data to demonstrate the amount of renewable resource available. Indicate the quality of the geothermal resource, including temperature, flow, and sustainability and what conversion system is to be installed. Describe any special handling of cooled geothermal waters that may be necessary. Describe the process for determining the geothermal resource, including measurement setup for the collection of the geothermal resource data. For proposed projects with an established resource, provide a summary of the resource and the specifications of the measurement setup.

5. *Geothermal Direct Generation.* Provide adequate and appropriate data to demonstrate the amount of renewable resource available. Indicate the quality of the geothermal resource, including temperature, flow, and sustainability and what direct use system is to be installed. Describe any special handling of cooled geothermal waters that may be necessary. Describe the process for determining the geothermal resource, including measurement setup for the

collection of the geothermal resource data. For proposed projects with an established resource, provide a summary of the resource and the specifications of the measurement setup.

6. *Anaerobic Digester Project.* Provide adequate and appropriate data to demonstrate the amount of renewable resource available. Indicate the substrates used as digester inputs, including animal wastes or other Renewable Biomass in terms of type, quantity, seasonality, and frequency of collection. Describe any special handling of feedstock that may be necessary. Describe the process for determining the feedstock resource. Provide either tabular values or laboratory analysis of representative samples that include biodegradability studies to produce gas production estimates for the project on daily, monthly, and seasonal basis.

7. *Hydrogen Project.* Provide adequate and appropriate data to demonstrate the amount of renewable resource available. Indicate the type, quantity, quality, and seasonality of the Renewable Biomass resource. For solar, wind, or geothermal sources of energy used to generate hydrogen, indicate the renewable resource where the hydrogen system is to be installed. Local resource maps may be used as an acceptable preliminary source of renewable resource data. For proposed projects with an established renewable resource, provide a summary of the resource.

8. *Hydroelectric/Ocean Energy Projects.* Provide adequate and appropriate data to demonstrate the amount of renewable resource available. Indicate the quality of the resource, including temperature (if applicable), flow, and sustainability of the resource, including a summary of the resource evaluation process and the specifications of the measurement setup and the date and duration of the evaluation process and proximity to the proposed site. If less than 1 year of data is used, a Qualified Consultant must provide a detailed analysis of the correlation between the site data and a nearby, long-term measurement site.

Section D—Design and Engineering. Describe the intended purpose of the project and the design, engineering, testing, and monitoring needed for the proposed project. The description shall support that the system will be designed, engineered, tested, and monitored so as to meet its intended purpose, ensure public safety, and comply with applicable laws, regulations, agreements, permits, codes, and standards. In addition, identify that all major equipment is Commercially Available, including proprietary equipment, and justify how this unique equipment is needed to meet the requirements of the proposed design. In addition, information regarding component warranties and the availability of spare parts must be presented.

Section E—Project Development. Describe the overall project development method, including the key project development activities and the proposed schedule, including proposed dates for each activity. The description shall identify each significant historical and projected activity, its beginning and end, and its relationship to the time needed to initiate and carry the activity through to successful project completion. The description shall address Applicant project development cash flow requirements. Details for equipment procurement and installation shall be addressed in Section F of this appendix.

Section F—Equipment Procurement and Installation. Describe the availability of the equipment required by the system. The description shall support that the required equipment is available and can be procured and delivered within the proposed project development schedule. Describe the plan for site development and system installation, including any special equipment requirements. In all cases, the system or improvement shall be installed in conformance with manufacturer's specifications and design requirements, and comply with applicable laws, regulations, agreements, permits, codes, and standards.

Section G—Operations and Maintenance. Describe the operations and maintenance requirements of the system, including major rebuilds and component replacements necessary for the system to operate as designed over its useful life. The warranty must cover and provide protection against both breakdown and a degradation of performance. The performance of the RES or EEI shall be monitored and recorded as appropriate to the specific technology.

Dated: December 17, 2014.

Lisa Mensah,

Under Secretary, Rural Development.

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The text of laws is not published in the **Federal Register** but may be ordered in "slip law" (individual pamphlet) form from the Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402 (phone, 202–512–1808). The text will also be made available on the Internet from GPO's Federal Digital System (FDsys) at *http://www.gpo.gov/fdsys*. Some laws may not yet be available.

H.R. 669/P.L. 113–236
Sudden Unexpected Death Data Enhancement and Awareness Act (Dec. 18, 2014; 128 Stat. 2831)

H.R. 1067/P.L. 113–237
To make revisions in title 36, United States Code, as necessary to keep the title current and make technical corrections and improvements. (Dec. 18, 2014; 128 Stat. 2833)

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H.R. 1281/P.L. 113–240
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H.R. 1378/P.L. 113–241
To designate the United States Federal Judicial Center located at 333 West Broadway in San Diego, California, as the "John Rhoades Federal Judicial Center" and to designate the United States courthouse located at 333 West Broadway in San Diego, California, as the "James M. Carter and Judith N. Keep United States Courthouse". (Dec. 18, 2014; 128 Stat. 2858)

H.R. 1447/P.L. 113–242
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H.R. 2591/P.L. 113–243
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H.R. 2952/P.L. 113–246
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H.R. 3027/P.L. 113–247
To designate the facility of the United States Postal Service located at 442 Miller Valley Road in Prescott, Arizona, as the "Barry M. Goldwater Post Office". (Dec. 18, 2014; 128 Stat. 2883)

H.R. 3044/P.L. 113–248
To approve the transfer of Yellow Creek Port properties in Iuka, Mississippi. (Dec. 18, 2014; 128 Stat. 2884)

H.R. 3096/P.L. 113–249
To designate the building occupied by the Federal Bureau of Investigation located at 801 Follin Lane, Vienna, Virginia, as the "Michael D. Resnick Terrorist Screening Center". (Dec. 18, 2014; 128 Stat. 2885)

H.R. 3329/P.L. 113–250
To enhance the ability of community financial institutions to foster economic growth and serve their communities, boost small businesses, increase individual savings, and for other purposes. (Dec. 18, 2014; 128 Stat. 2886)

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H.R. 4199/P.L. 113–256
To name the Department of Veterans Affairs medical center in Waco, Texas, as the "Doris Miller Department of Veterans Affairs Medical Center". (Dec. 18, 2014; 128 Stat. 2922)

H.R. 4276/P.L. 113–257
Veterans Traumatic Brain Injury Care Improvement Act of 2014 (Dec. 18, 2014; 128 Stat. 2924)

H.R. 4416/P.L. 113–258
To redesignate the facility of the United States Postal Service located at 161 Live Oak Street in Miami, Arizona, as the "Staff Sergeant Manuel V. Mendoza Post Office Building". (Dec. 18, 2014; 128 Stat. 2927)

H.R. 4651/P.L. 113–259
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To designate the facility of the United States Postal Service located at 801 West Ocean Avenue in Lompoc, California, as the "Federal Correctional Officer Scott J. Williams Memorial Post Office Building". (Dec. 18, 2014; 128 Stat. 2945)

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H.R. 5816/P.L. 113–271
To extend the authorization for the United States Commission on International Religious Freedom. (Dec. 18, 2014; 128 Stat. 2951)

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To release the City of St. Clair, Missouri, from all restrictions, conditions, and limitations on the use, encumbrance, conveyance, and closure of the St. Clair Regional Airport. (Dec. 18, 2014; 128 Stat. 3091)

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To designate the facility of the United States Postal Service located at 18640 NW 2nd Avenue in Miami, Florida, as the ''Father Richard Marquess-Barry Post Office Building''. (Dec. 19, 2014; 128 Stat. 3989)

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