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Federal Register

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DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2014–0328; Directorate Identifier 2014–NE–07–AD; Amendment 39–18108; AD 2015–04–06]

RIN 2120–AA64

Airworthiness Directives; Rolls-Royce plc Turbofan Engines

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: We are adopting a new airworthiness directive (AD) for all Rolls-Royce plc (RR) RB211 Trent 875–17, 877–17, 884–17, 884B–17, 892–17, 892B–17, and 895–17 turbofan engines. This AD requires modification of the engine by installing upgraded software in the electronic engine control (EEC) or by removing any EEC that incorporates a software standard prior to B7.2 and installing an EEC eligible for installation. This AD was prompted by failure of the intermediate pressure (IP) turbine disk drive arm and subsequent overspeed and burst of the IP turbine disk on an RR RB211 Trent turbofan engine. We are issuing this AD to prevent overspeed of the IP turbine disk, resulting in failure of the turbine blades or the IP turbine disk and subsequent uncontained release of the turbine disk and/or blades, which could lead to damage to the engine and damage to the airplane.

DATES: This AD becomes effective April 8, 2015.

ADDRESSES: For service information identified in this AD, contact Rolls-Royce plc, Corporate Communications, P.O. Box 31, Derby, England, DE24 8BJ; phone: 011–44–1332–242424; fax: 011–44–1332–249936; email: *http://www.rolls-royce.com/contact/civil_team.jsp;* Internet: *https://www.aeromanager.com.* You may view this service information at the FAA, Engine & Propeller Directorate, 12 New England Executive Park, Burlington, MA. For information on the availability of this material at the FAA, call 781–238–7125.

Examining the AD Docket

You may examine the AD docket on the Internet at *http://www.regulations.gov* by searching for and locating Docket No. FAA–2014–0328; or in person at the Docket Management Facility between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The AD docket contains this AD, the mandatory continuing airworthiness information (MCAI), the regulatory evaluation, any comments received, and other information. The address for the Docket Office (phone: 800–647–5527) is Document Management Facility, U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE., Washington, DC 20590.

FOR FURTHER INFORMATION CONTACT: Wego Wang, Aerospace Engineer, Engine Certification Office, FAA, Engine & Propeller Directorate, 12 New England Executive Park, Burlington, MA 01803; phone: 781–238–7134; fax: 781–238–7199; email: *wego.wang@faa.gov.*

SUPPLEMENTARY INFORMATION:

Discussion

We issued a notice of proposed rulemaking (NPRM) to amend 14 CFR part 39 by adding an AD that would apply to the specified products. The NPRM was published in the **Federal Register** on July 11, 2014 (79 FR 40018). The NPRM proposed to correct an unsafe condition for the specified products. The MCAI states:

> A Trent engine experienced an engine internal fire, caused by combustion of carbon deposits inside the high/intermediate (HP/IP) oil vent tubes. The consequent chain of events resulted in the failure of the IP turbine disk drive arm. Similar engine architecture exists on Trent 800 series engines.
>
> This condition, if not corrected, could lead to uncontained multiple turbine blade failures or an IP turbine disk burst, possibly resulting in damage to, and reduced control of, the aeroplane.
>
> Prompted by these findings, an Intermediate Pressure Turbine Overspeed System (IPTOS) protection scheme has been developed for Trent 800 engines installed on Boeing 777 aeroplanes.
>
> For the reasons described above, this AD requires introduction of the IPTOS protection function by installation of a new software standard (B7.2) in the engine electronic controller (EEC), which will protect against IP turbine overspeed when IP shaft failure is detected.

Since we issued the NPRM (79 FR 40018, July 11, 2014), we issued a supplemental NPRM (79 FR 70475, November 26, 2014) to amend the costs of compliance and to more clearly state certain compliance requirements. Since we issued the supplemental NPRM, we changed paragraph (e) of this AD for clarity.

Comments

We gave the public the opportunity to participate in developing this AD. We considered the comments received.

Request To Modify the Installation Prohibition Paragraph

American Airlines (AA) requested that we modify the Installation Prohibition paragraph (f) to allow installation of an EEC with a software standard earlier than B7.2, and coincident on-wing upgrade of the software standard to B7.2 or later, but prohibit operation of an engine that incorporates a software standard earlier than B7.2. AA states that the EEC original equipment manufacturer does not update the software as part of a component shop visit.

We agree. We modified the Installation Prohibition paragraph (f) to allow installation of an EEC with a software standard earlier than B7.2, but to prohibit operation of an engine with a software standard earlier than B7.2.

Conclusion

We reviewed the available data, including the comment received, and determined that air safety and the public interest require adopting this AD with the changes described previously. We determined that these changes will not increase the economic burden on any operator or increase the scope of this AD.

Costs of Compliance

We estimate that this AD affects about 140 engines installed on airplanes of U.S. registry. We also estimate that it would take about 2 hours per engine to

comply with this AD. The average labor rate is $85 per hour. Based on these figures, we estimate the cost of this AD on U.S. operators to be $23,800.

Authority for This Rulemaking

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

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

Regulatory Findings

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

For the reasons discussed above, I certify this AD:

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

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

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

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

List of Subjects in 14 CFR Part 39

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

Adoption of the Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

2015–04–06 Rolls-Royce plc Turbofan Engines: Amendment 39–18108; Docket No. FAA–2014–0328; Directorate Identifier 2014–NE–07–AD.

(a) Effective Date

This AD becomes effective April 8, 2015.

(b) Affected ADs

None.

(c) Applicability

This AD applies to all Rolls-Royce plc (RR) RB211 Trent 875–17, 877–17, 884–17, 884B–17, 892–17, 892B–17, and 895–17 turbofan engines.

(d) Reason

This AD was prompted by failure of the intermediate pressure (IP) turbine disk drive arm and subsequent overspeed and burst of the IP turbine disk on an RR RB211 Trent turbofan engine. We are issuing this AD to prevent overspeed of the IP turbine disk, resulting in failure of the turbine blades or the IP turbine disk and subsequent uncontained release of the turbine disk and/or blades, which could lead to damage to the engine and damage to the airplane.

(e) Actions and Compliance

Twelve months after the effective date of this AD, do not operate any engine with an electronic engine control (EEC) software standard earlier than B7.2.

(f) Installation Prohibition

After removing any software standard earlier than B7.2 from an ECC on any engine, do not operate that engine with any software standard earlier than B7.2.

(g) Alternative Methods of Compliance (AMOCs)

The Manager, Engine Certification Office, FAA, may approve AMOCs to this AD. Use the procedures found in 14 CFR 39.19 to make your request. You may email your request to: *ANE-AD-AMOC@faa.gov.*

(h) Related Information

(1) For more information about this AD, contact Wego Wang, Aerospace Engineer, Engine Certification Office, FAA, Engine & Propeller Directorate, 12 New England Executive Park, Burlington, MA 01803; phone: 781–238–7134; fax: 781–238–7199; email: *wego.wang@faa.gov.*

(2) Refer to MCAI European Aviation Safety Agency AD 2014–0051, dated March 6, 2014, for more information. You may examine the MCAI in the AD docket on the Internet at *http://www.regulations.gov/#!documentDetail;D=FAA-2014-0328-0003.*

(3) RR Alert Service Bulletin No. RB.211–73–AH001, dated July 17, 2013, which is not incorporated by reference in this AD, can be obtained from Rolls-Royce plc, using the contact information in paragraph (h)(4) of this AD.

(4) For service information identified in this AD, contact Rolls-Royce plc, Corporate Communications, P.O. Box 31, Derby, England, DE24 8BJ; phone: 011–44–1332–242424; fax: 011–44–1332–249936; email: *http://www.rolls-royce.com/contact/civil_team.jsp;* or Internet: *https://www.aeromanager.com.*

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

(i) Material Incorporated by Reference

None.

Issued in Burlington, Massachusetts, on February 19, 2015.

Colleen M. D'Alessandro,

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

[FR Doc. 2015–04044 Filed 3–3–15; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 91

[Docket No. FAA–2007–29305; Amdt. No. 91–336A]

RIN 2120–AI92

Automatic Dependent Surveillance-Broadcast (ADS–B) Out Performance Requirements To Support Air Traffic Control (ATC) Service; Technical Amendment; Correction

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule; correction of a technical amendment.

SUMMARY: The FAA is correcting a final rule technical amendment published on February 9, 2015 (80 FR 6899). In that final rule, which became effective on the date of publication, the FAA corrected errors in regulatory provisions addressing Automatic Dependent Surveillance-Broadcast Out equipment and use. The FAA inadvertently listed an incorrect Amendment Number for that final rule. This document corrects that error.

DATES: Effective: March 4, 2015.

FOR FURTHER INFORMATION CONTACT: For technical questions concerning this action, contact Robert F. Nichols, Jr., Surveillance Services Group Manager, AJM–23, Air Traffic Organization,

Federal Aviation Administration, 600 Independence Avenue SW., Washington, DC 20591; telephone (202) 267–0629; email *Robert.nichols@faa.gov.*

For legal questions concerning this action, contact Lorelei Peter, Office of the Chief Counsel, AGC–200, Federal Aviation Administration, 800 Independence Avenue SW., Washington, DC 20591; telephone (202) 267–3073; email *Lorelei.Peter@faa.gov.*

SUPPLEMENTARY INFORMATION:

Background

On February 9, 2015, the FAA published a final rule technical amendment entitled, ''Automatic Dependent Surveillance-Broadcast (ADS–B) Out Performance Requirements To Support Air Traffic Control (ATC) Service; Technical Amendment.'' In that final rule, which became effective February 9, 2015, the FAA amended 14 CFR part 91. The FAA inadvertently listed the incorrect Amendment Number for part 91 in the header information of the final rule as 91–334. The correct amendment number is 91–336.

Correction

In the final rule, FR Doc. 2015–02579, published on February 9, 2015, at 80 FR 6899 make the following correction:

1. On page 6899 in the heading of the final rule, revise ''Amdt. No. 91–334'' to read ''91–336''.

Issued in Washington, DC, under the authority provided by 49 U.S.C. 106(f), on February 26, 2015.

Brenda D. Courtney,

Acting Director, Office of Rulemaking.

[FR Doc. 2015–04476 Filed 3–3–15; 8:45 am]

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DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Parts 121 and 135

[Docket No.: FAA–2011–1136; Amdt. Nos. 121–371 and 135–132]

RIN 2120–AJ33

Air Carrier Contract Maintenance Requirements

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: The Federal Aviation Administration (FAA) amends the maintenance regulations for domestic, flag, and supplemental operations, and for commuter and on-demand operations for aircraft type certificated with a passenger seating configuration of 10 seats or more (excluding any pilot seat). The new rules require affected air carriers and operators to develop policies, procedures, methods, and instructions for performing contract maintenance that are acceptable to the FAA, and to include them in their maintenance manuals. The rules also require the air carriers and operators to provide a list to the FAA of all persons with whom they contract their maintenance. These changes are needed because contract maintenance has increased to over 70 percent of all air carrier maintenance, and numerous investigations have shown deficiencies in maintenance performed by contract maintenance providers. These rules will help ensure consistency between contract and in-house air carrier maintenance and enhance the oversight capabilities of both the air carriers and the FAA.

DATES: Effective May 4, 2015 except for §§ 121.368 and 135.426 which contain information collection requirements that have not been approved by the Office of Management and Budget (OMB). The FAA will publish a document in the **Federal Register** announcing the effective date.

ADDRESSES: For information on where to obtain copies of rulemaking documents and other information related to this final rule, see ''How To Obtain Additional Information'' in the **SUPPLEMENTARY INFORMATION** section of this document.

FOR FURTHER INFORMATION CONTACT: For technical questions concerning this action, contact Wende T. DiMuro, AFS–330, Federal Aviation Administration, 800 Independence Avenue SW., Washington, DC 20591; telephone (202) 267–1685; email *wende.t.dimuro@faa.gov.*

For legal questions concerning this action, contact Edmund Averman, AGC–200, Federal Aviation Administration, 800 Independence Avenue SW., Washington, DC 20591; telephone (202) 267–3147, email *ed.averman@faa.gov.*

SUPPLEMENTARY INFORMATION:

Authority for This Rulemaking

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

This rulemaking is promulgated under the authority described in Subtitle VII, Part A, Subpart III, Section 447, Section 44701(a)(2)(A) and (B) and (5). Under that section, the FAA is charged with prescribing regulations and minimum standards in the interest of safety for inspecting, servicing, and overhauling aircraft, aircraft engines, propellers, and appliances, and equipment and facilities for, and the timing of and manner of, the inspecting, servicing and overhauling the FAA finds necessary for safety and commerce. This regulation is within the scope of that authority.

In addition, Public Law 112–95 (February 14, 2012), the ''FAA Modernization and Reform Act of 2012'' (the Act), in section 319 (Maintenance providers), requires the FAA to issue regulations ''requiring that covered work on an aircraft used to provide air transportation under part 121 . . ., be performed by persons in accordance with subsection (b).'' Subsection (b), in addition to listing persons authorized under existing regulations, referenced additional terms and conditions in subsection (c) that would apply to persons who provide contract maintenance workers, services, or maintenance functions to a part 121 air carrier for covered work. The Act mandates that the contracting part 121 air carrier be directly in charge of covered work, as defined by the Act, being performed for the carrier under contract, and that the work be done under the supervision and control of the air carrier. These statutory requirements are addressed in this rule.

I. Overview of Final Rule

The FAA is amending Title 14, Code of Federal Regulations (14 CFR) §§ 121.368, 121.369, 135.426, and 135.427. These amendments apply to certificate holders who conduct domestic, flag, or supplemental operations under part 121, and to certificate holders who conduct commuter operations or on-demand operations with aircraft type certificated for a passenger seating configuration, excluding any pilot seat, of ten seats or more [1] under part 135, if the carriers contract any of their maintenance, preventive maintenance, or alteration work to an outside source.[2] As required by the Act, this final rule addresses the performance of ''covered work.'' It codifies the statutory definition of the term, and includes requirements for the performance of that work, to include that the certificate holder must be directly in charge of it; the covered work must be carried out in accordance with

[1] For brevity throughout this preamble, we will refer to these aircraft as ''10 or more seats'' aircraft.

[2] For brevity throughout this preamble, we will refer to all of these classes of certificate holders as ''air carriers.''

the certificate holder's manual; and that work must be carried out under the supervision and control of the certificate holder.

While the Act addresses only contracted work on aircraft operated by part 121 certificate holders, the FAA is also applying the same requirements to part 135 certificate holders who operate the larger aircraft, those with 10 or more seats. As stated elsewhere in this preamble, this rulemaking began before passage of the Act in 2012, and the FAA had proposed amendments to both parts 121 and 135. After the Act's passage, the FAA accommodated the new requirements. In addition to including the requirements mandated by the Act, this final rule requires that each certificate holder who contracts for such work must first have developed policies, procedures, methods, and instructions for the accomplishment of that work, and that if they are followed, the work will be performed in accordance with the certificate holder's maintenance program and maintenance manual. Each certificate holder will be required to ensure that its system for the continuing analysis and surveillance of that work contains procedures for its oversight. All of these policies, procedures, methods, and instructions must be acceptable to the FAA and be included in the certificate holder's maintenance manual. In addition, each certificate holder who contracts any of its maintenance, preventive maintenance, or alteration work to an outside source will be required to provide to its local FAA Certificate Holding District Office a list that includes the name and address of each maintenance provider it uses, and a description of the type of maintenance the contractor would perform.

II. Background

A. Statement of the Problem

Air carrier maintenance has evolved from mostly an ''in-house'' operation to an extended network of maintenance providers that fulfill contracts with air carriers to perform their aircraft maintenance. Under §§ 121.363 and 135.413 each air carrier remains primarily responsible for the airworthiness of its aircraft regardless of whether the maintenance is contracted to another person. Any person performing maintenance for an air carrier must follow the air carrier's maintenance manual. However, air carrier general maintenance manuals often are geared toward in-house maintenance. They fail to provide the necessary instructions to maintenance providers to enable them to follow the air carrier's maintenance programs. This is exacerbated when an air carrier's manual contains proprietary data or other confidential information that an air carrier may not want to share with a maintenance provider. Often, the maintenance provider may also work on a competitor's aircraft. Consequently, air carriers often are reluctant to share such information, and therefore, often do not.

In addition, the FAA has found that, although an air carrier is required to list its maintenance providers and a general description of the work to be done in its maintenance manual, these lists are not always kept up to date, are not always complete, and are not always in a format that is readily useful for FAA oversight and analysis purposes. The FAA needs this information to be complete and readily available in order to plan surveillance of air carrier maintenance programs and determine the extent to which maintenance providers are performing their work according to the air carrier's maintenance manual. Without accurate and complete information on the work being performed for air carriers, the FAA cannot adequately target its inspection resources for surveillance and make accurate risk assessments.

B. Summary of the NPRM

On November 13, 2012, the FAA published a Notice of Proposed Rulemaking (NPRM), Notice No. 12–07, entitled ''Air Carrier Contract Maintenance Requirements,'' 77 FR 67584. The NPRM proposed to amend the maintenance regulations for domestic, flag, and supplemental operations, and for commuter and on-demand operations for aircraft type certificated with a passenger seating configuration of 10 seats or more.

In addition to proposing requirements pertaining to covered work as required by the Act, the FAA proposed to require operators to develop policies, procedures, methods, and instructions for performing contract maintenance that are acceptable to the FAA and to include them in their maintenance manuals. The NPRM also proposed to require the operators to provide a list to the FAA of all persons with whom they contract their maintenance. These lists would include the physical addresses where the work would be carried out and a description of the type of work performed at each location. The FAA proposed these changes because contract maintenance has increased to over 70 percent of all air carrier maintenance, and numerous investigations found deficiencies in maintenance performed by contract maintenance providers. The proposed changes were intended to help ensure consistency between contract and in-house maintenance and to enhance the oversight capabilities of both the operators and the FAA. The NPRM comment period closed on February 11, 2013.

C. General Overview of Comments

The FAA received 43 comments. Twenty were from air carriers; nineteen were from Associations that represent air carriers and repair stations; and nine were from individuals involved in aviation. Several commenters disagreed with some of the proposals, and some suggested changes. These will be discussed more fully in the sections below.

The FAA received comments on the following general areas of the proposal:

- ''Supervision and Control'' and ''Directly in Charge'';
- Covered work;
- Redundancy in many areas;
- Exclusion of part 135 air carriers;
- Part 135 and Overall estimated costs;
- Reporting requirement.

III. Discussion of Public Comments and Final Rule

A. ''Supervision and Control'' and ''Directly in Charge''

The FAA proposed definitions for ''directly in charge'' and ''supervision and control'' in new §§ 121.368(a)(3) and (4), and 135.426(a)(3) and (4), but is adopting only the former term. As proposed in the NPRM, this new rule defines *directly in charge* to mean: ''having responsibility for covered work performed by a maintenance provider. A representative of the certificate holder directly in charge of covered work does not need to physically observe and direct each maintenance provider constantly, but must be available for consultation on matters requiring instruction or decision.'' The proposal would have defined *supervision and control* to mean ''that a representative of the certificate holder must be available to personally observe the covered work being done to the extent necessary to ensure it is being done properly; and when the representative was not physically present to observe the work, the representative would have had to be available for consultation on matters requiring instruction or decision.'' The FAA is not adopting its proposed definition of ''supervision and control'' for reasons discussed below.

Several commenters—FEDEX, NetJets, Transportation Trades Department (TTD), Aeronautical Repair Station Association (ARSA), and others—

objected to the proposed definitions of ''directly in charge'' and ''supervision and control.'' They found the definitions confusing and maintained they were not mandated by the Act. The commenters stated they are confused as to whether and how the representative was required to be ''available.'' The National Business Aviation Association (NBAA) was concerned that some part 135 operators would be required to send the operator's one and only maintenance person to be available on-site anytime an aircraft of the operator was being repaired or undergoing routine maintenance. Ameriflight stated that the term ''available'' is vague, and may be interpreted as widely as ''in the immediate vicinity of,'' ''by telephone,'' or ''by internet,'' *etc.* The Professional Aviation Safety Specialists (PASS) stated that the proposed definitions should be more stringent, and that air carriers should be physically present to observe the work being performed. PASS believed that the definitions proposed were contrary to the intent of the Act because, without modification, there would be no change from current practices. TTD expressed the same concerns.

Aviation Technical Services (ATS) stated that the term ''to the extent necessary'' is insufficient. It believed this term provides no standards for an air carrier, but establishes that the amount of supervision is at the air carrier's discretion until that supervision proves inadequate and a noncompliance occurs. This commenter suggested that this term should either be amended or deleted.

Upon review, the FAA agrees that the proposed definition of ''supervision and control'' lacks clarity. Accordingly, we are withdrawing this definition because it is not necessary in view of the ''directly in charge'' requirement, although the regulations will contain the phrase consistent with the Act's use of it. Nearly constant presence for personal observation of work by an air carrier would seem to be required by the proposed ''supervision and control'' definition, with unfettered discretion by the air carrier to determine the meaning of ''to the extent necessary.'' Moreover, the last clause in the definition is nearly identical to that in the proposed and adopted definition of ''directly in charge.'' The FAA acknowledges that physical presence at the maintenance site is unnecessary for two reasons. One, with the state of information technology today, a person can acquire sufficient data to make a reasonably accurate decision or provide adequate instruction without having to be on site. Two, to require the physical presence of an observer at all locations where contracted covered work is performed would be extremely cost prohibitive. As such, the commenters' concerns regarding confusion between the two definitions, and over the interpretation of ''to the extent necessary,'' are resolved.

On the other hand, the FAA does not believe that the definition of ''directly in charge'' is confusing. A similar and consistent definition is in §§ 121.378 and 135.435(b) since at least 1966, and in § 145.3 since 2001. That phrase has not caused confusion in all the years it has been in these regulations. Therefore, we believe the definition proposed in the NPRM is clear.

Finally, regarding possible meanings of the term ''available,'' the FAA notes that Ameriflight is correct that the term could be broadly interpreted. However, this term is not intended to be a limiting factor of the rule. Broad interpretation of ''available'' allows an air carrier the flexibility to use numerous information technology methods—such as high resolution photographs, text messaging, or the internet—to acquire the information necessary to make decisions and provide instructions. Therefore, this term is retained in the definition of ''directly in charge.''

B. Covered Work

Until this rule, the FAA's maintenance regulations did not define ''covered work.'' With one change from what it proposed, the FAA now defines ''covered work'' exactly as set forth in the Act [3] in §§ 121.368(a)(2) and 135.426(a)(2). ''Covered work'' means any of the following: ''(i) Essential maintenance that could result in a failure, malfunction, or defect endangering the safe operation of an aircraft if not performed properly or if improper parts or materials are used; (ii) Regularly scheduled maintenance; or (iii) A required inspection item on an aircraft.'' While it was the FAA's intent to propose without change the definition in the Act, the term ''parts or'' was inadvertently omitted in front of the word ''materials'' in subparagraph (i). This omission is corrected in this final rule.

Several commenters requested clarity on two of the terms used in the definition of ''covered work'': ''essential maintenance'' and ''regularly scheduled maintenance.'' With respect to essential maintenance, ARSA stated that when terms are not defined in the legislation, the agency must rely on current usage.

Regarding ARSA's comment, we note that paragraph (d) of Operations Specifications paragraph *D–091. Requirements: Air Carrier Maintenance Providers,* provides that ''essential maintenance'' is ''on-wing'' maintenance. Nothing in this rule, or in the Act's definition of ''covered work'' expands essential maintenance to include ''off-wing'' maintenance. Therefore, the agency is relying on current usage for this term. Paragraph d of Operations Specifications paragraph D–091 states:

> *Essential maintenance* encompasses any Required Inspection Item on-wing accomplished after any maintenance or alteration. This *maintenance,* if done improperly or if improper parts or materials were used, would result in a failure effect that would endanger the continued safe flight and landing of the airplane. *Essential maintenance* is the accomplishment of the air carrier designated inspection item on wing. *Essential maintenance* does not encompass any off wing maintenance.

We also note that neither the Act nor the FAA's proposed rule attempted to define the term ''essential maintenance.'' When Congress defined ''covered work'' in section 319(d)(1) of the Act, one of the three items it included (in subparagraph (A)) was ''essential maintenance.'' The modifying text limits the scope to maintenance that ''could result in a failure, malfunction, or defect endangering the safe operation of an aircraft if not performed properly. . . .'' This limiter was excerpted from the FAA's definition found in operations specifications paragraph D–091 and in Advisory Circular AC 120–16F.

Airbus, Airlines for America (A4A), Aerospace Industries Association (AIA), United Parcel Service (UPS), and a private citizen expressed concern over whether ''essential maintenance,'' as defined in proposed §§ 121.368(a)(2)(i) and 135.426(a)(2)(i), includes on-wing maintenance but not off-wing maintenance. AIA stated that AC 120–16F defined ''essential maintenance'' as not encompassing any off-wing maintenance. A4A believes ''essential maintenance'' traditionally excludes off-wing maintenance, and that expanding the scope to include off-wing maintenance would significantly impact

[3] The FAA's proposed, and final, definition contains one other difference from that set forth in the Act. Sections 121.368(a)(2)(iii) and 135/426(a)(2)(iii) state: ''A required inspection item on an aircraft,'' whereas the Act's definition states ''A required inspection item (as defined by the Administrator.'' The FAA's definition, however, comports with that in the Act, because the agency has limited (*e.g.,* in Operations Specifications paragraph D–091 and Advisory Circular AC 120–16F) a Required Inspection Item (RII) to encompass only ''on-wing'' maintenance or alterations. Accordingly, by including the phrase ''on an aircraft'' in the rule's definition, the Act's mandate of ''as defined by the Administrator'' is satisfied.

air carriers, and requested the FAA to clarify that ''essential maintenance'' applies only to on-wing maintenance. Southwest Airlines stated that the lack of ''on an aircraft'' in the definition for essential maintenance and regularly scheduled maintenance renders the definition over-broad. In addition, various commenters stated there is no justification for on-wing maintenance to be more stringent than off-wing maintenance.

The Act is silent as to whether the maintenance at issue was meant to be restricted to on-wing maintenance or whether off-wing maintenance was also contemplated. The Act's definition of ''covered work,'' especially in view of its inclusion in subparagraph (C) of: ''A required inspection item (as defined by the Administrator),'' makes clear that Congress did not intend to change the FAA's longstanding definition of ''essential maintenance'' to include all off-wing maintenance under the heading of covered work. The FAA's longstanding guidance and practice has been that required inspection items (RII) are safety of flight items on an aircraft that require a ''second set of eyes,'' that is, an additional inspection and sign off for the item. The provision that covered work includes RIIs ''as defined by the Administrator'' contemplates continued consistency in this area. Indeed, the NPRM proposed, and this final rule includes, in §§ 121.368(a)(2)(iii) and 135.426(a)(2)(iii): ''A required inspection item on an aircraft.'' Although this subparagraph is separate from and in addition to the inclusion of ''essential maintenance'' in the Act's subparagraph (A) of § 319(d)(1), the overall context is clear that essential maintenance is meant to continue to apply only to on-wing maintenance.

We agree with ARSA that that when terms are not defined in this legislation, the agency should rely on current usage. Accordingly, the term ''essential maintenance,'' as used both in the Act and in this final rule, is restricted to on-wing maintenance. We note, however, that covered work also includes ''Regularly scheduled maintenance.'' This term necessarily includes some ''off-wing'' maintenance. This would occur, for example, in cases in which a component (*e.g.,* an engine, landing gear, *etc.*) is scheduled for removal and overhaul, or when other off-wing maintenance is scheduled at some regular interval. Covered work, for purposes of §§ 121.368(b), (c), and (d) and 135.426(b), (c), and (d), does not include other non-scheduled or non-routine off-wing maintenance.

Several commenters stated that the proposed regulations do not address non-scheduled maintenance. The FAA notes that covered work, both as proposed and in this final rule, includes both essential maintenance and required inspection items, both of which include non-scheduled maintenance. In addition, the other new requirements that address both covered work and all other contracted maintenance, such as the requirements for air carriers to develop policies, procedures, methods, and instructions for accomplishing all contracted maintenance, necessarily include both scheduled and non-scheduled work.

C. Exclusion of Part 135 Air Carriers

Part 135 contains nearly identical requirements to those in part 121 for maintenance performed on certificate holders' aircraft. For example, similar to the authorizations in part 121, part 135 permits persons other than the certificate holder to perform maintenance on aircraft operated under that part. (*See, e.g.,* §§ 135.425 and 135.437.) Also similar to requirements in part 121, part 135 requires that a certificate holder's manual contain the maintenance program that must be followed when maintenance is performed on the certificate holder's aircraft. (*See* § 135.427(b).) Further, similar to the requirement in § 121.369(a), § 135.427(a) requires each certificate holder to put in its manual a list of persons with whom it has arranged for the performance of its maintenance.

Even though both parts 121 and 135 require that the certificate holders' maintenance manuals and programs be followed for both in-house and out-sourced maintenance, as we explained in the NPRM, both the FAA and the Office of Inspector General found that too often certificate holders' programs were not followed by contract maintenance providers. The FAA is adopting this final rule in an attempt to close this gap. The agency believes that by requiring certificate holders to develop policies, procedures, methods, and instructions for the accomplishment of contract maintenance in accordance with the certificate holders' programs, contract maintenance providers will be better equipped to more closely follow them. Moreover, by enhancing the existing requirement that certificate holders provide a list of their maintenance providers to the FAA, to now include each provider's physical address where the work is being performed and a description of the maintenance being done at each location, the FAA's ability to provide meaningful surveillance will be enhanced. The need for these enhancements applies equally to both part 121 and part 135 certificate holders.

D. Estimated Costs

Several commenters stated that the FAA erred in assuming the estimated costs of compliance would be less for part 135 operators than for part 121 operators. The FAA agrees, and to address this issue the FAA is using the same cost estimating methodology for both part 121 and part 135 air carriers. The cost estimates included in the regulatory evaluation for this final rule are based on entity size (large vs. small) rather than on whether a certificate holder operates under part 121 or part 135, because entity size is a more relevant parameter for cost estimation than the part under which an air carrier operates.

Several commenters believed the cost estimates for the proposal did not take into consideration added administrative costs, people resources, technology development, data systems, and publications infrastructure. The FAA does not agree. The agency believes that administrative costs, people resources, technology development, data systems, and publications infrastructures should already be in place to comply with current regulatory requirements. Therefore, these are not additional costs of the rule.

The agency estimated the costs associated with creating lists and any changes to the manual.

Several commenters stated that the FAA did not consider training costs.

The FAA agrees that additional costs would be incurred in training personnel on the changes to the contract maintenance requirements. These training costs have been captured in the ''familiarization cost'' section of the regulatory evaluation. The FAA believes the term ''familiarization'' is a more appropriate term than ''training'' to describe these costs, not only because there is a difference in the scope and extent of material covered in these two terms, but also because familiarization-type training is given to individuals who are already qualified; therefore, ''familiarization'' is a more appropriate descriptive term.

A few commenters stated that the FAA did not consider software and auditor costs.

This rule does not require development of new technology. Existing software (*e.g.,* any word processing software) can be used to make the changes required by this final rule, so the cost for software is a sunk cost. Regarding auditor costs, the FAA did capture these costs in the NPRM, but for part 121 air carriers only,

believing at the time that auditor costs for part 135 air carriers would be negligible. In view of the comments we received on this issue, in this final rule, the FAA captured these costs for both part 121 and 135 air carriers.

See the Regulatory Evaluation for more in-depth details.

E. Redundancy

Southwest Airlines stated that the regulations proposed appear to duplicate various existing regulations, and are therefore redundant. The company stated that proposed § 121.368(e) and (f) would seem to duplicate the regulatory requirements currently found in §§ 121.367 ''Maintenance, preventive maintenance, and alterations programs,'' and 121.373 ''Continuing analysis and surveillance.'' The company asserted that paragraph (h) of both proposed §§ 121.368 and 135.426 would seem to duplicate current requirements in §§ 121.369(a) and 135.427(a). And further, that §§ 121.368(g) and 121.369(b)(10) appear to duplicate existing requirements in §§ 121.133, 121.135, 121.361, 121.363, 121.365, 121.367, and 121.369.

The FAA notes that while the amendments proposed may seem to overlap some of the existing requirements in §§ 121.361, 121.363, and 121.365, those regulations address different aspects of maintenance, whereas §§ 121.368, 121.369(b)(10), 135.426 and 135.427(b)(10) establish additional conditions for the arrangement of maintenance and establish additional requirements for providing and keeping an updated list of contract maintenance providers, including the type of maintenance they are performing. For example, § 121.367 requires each operator to have an inspection program that covers all maintenance. Sections 121.369(b)(10) and 135.427(b)(10) require that the new policies, procedures, methods, and instructions for accomplishing contracted maintenance in accordance with the air carriers' programs be included in the air carriers' manuals. In addition, the new rules will require air carriers to provide the necessary maintenance instructions to maintenance providers in order for them to perform the air carriers' maintenance, whether or not their maintenance manuals contain proprietary data, or other confidential information that an air carrier may be reluctant to share.

Finally, while §§ 121.368 and 121.369 are similar in many respects, they are different in their intent. Section 121.369 addresses in-house maintenance performed by air carrier personnel, while § 121.368 addresses contract maintenance. Their similarity reflects the overall intent to standardize maintenance between in-house and contract maintenance, and to ensure overall consistency and safety.

Therefore, the FAA is not making any changes to these sections based on the commenters' concerns about duplication.

F. Reporting Requirement

Current §§ 121.369(a) and 135.427(a) require each air carrier to include in its manual a list of persons with whom it has arranged for the performance of maintenance, preventive maintenance, and alterations, including a general description of that work. As proposed, and as adopted in this final rule, §§ 121.368(h) and 135.426(h) will require each certificate holder who contracts for maintenance, preventive maintenance, or alterations to provide to the FAA a list that includes each contract maintenance provider's name and physical address of where the work will be carried out, and a description of the type of maintenance, preventive maintenance, or alteration that is to be performed at each location.

National Air Transportation Association (NATA) stated that the proposed additional requirements pertaining to the listing of maintenance providers would appear to create a new requirement that the FAA would have to approve the addition of a maintenance provider on the list before that provider could perform contract maintenance for the certificate holder. NATA argues that, if this is the case, it would create an undue burden for part 135 certificate holders, who operate on an ad-hoc basis to locations that are unpredictable and often change, so that they cannot account for those entities with whom they engage in unplanned maintenance.

The FAA believes the issue raised by NATA would not arise because § 135.426(h) does not require that a maintenance provider be on the list and be pre-approved by the FAA before an air carrier may contract with it to perform maintenance. Neither § 121.368(h) nor § 135.426(h) prohibit deletions or additions to the list—these rules simply require that the updated list be provided to the FAA by the last day of each calendar month. In the situation outlined by NATA, a part 135 operator would contract with maintenance providers to perform maintenance, including unplanned maintenance, as provided in § 135.413, then update its list and submit it to the FAA by the end of the calendar month.

IV. Regulatory Notices and Analyses

A. Regulatory Evaluation Preamble Summary

Changes to Federal regulations must undergo several economic analyses. First, Executive Order 12866 and Executive Order 13563 direct that each Federal agency shall propose or adopt a regulation only upon a reasoned determination that the benefits of the intended regulation justify its costs. Second, the Regulatory Flexibility Act of 1980 (Pub. L. 96–354) requires agencies to analyze the economic impact of regulatory changes on small entities. Third, the Trade Agreements Act (Pub. L. 96–39) prohibits agencies from setting standards that create unnecessary obstacles to the foreign commerce of the United States. In developing U.S. standards, the Trade Act requires agencies to consider international standards and, where appropriate, that they be the basis of U.S. standards. Fourth, the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4) requires agencies to prepare a written assessment of the costs, benefits, and other effects of proposed or final rules that include a Federal mandate likely to result in the expenditure by State, local, or tribal governments, in the aggregate, or by the private sector, of $100 million or more annually (adjusted for inflation with base year of 1995). This portion of the preamble summarizes the FAA's analysis of the economic impacts of this final rule. We suggest readers seeking greater detail read the full regulatory evaluation, a copy of which we have placed in the docket for this rulemaking.

In conducting these analyses, FAA has determined that this final rule: (1) Has benefits that justify its costs, (2) is not an economically ''significant regulatory action'' as defined in section 3(f) of Executive Order 12866, (3) is not ''significant'' as defined in DOT's Regulatory Policies and Procedures; (4) will not have a significant economic impact on a substantial number of small entities; (5) will not create unnecessary obstacles to the foreign commerce of the United States; and (6) will not impose an unfunded mandate on state, local, or tribal governments, or on the private sector by exceeding the threshold identified above. These analyses are summarized below.

Total Benefits and Costs of This Rule

This rule responds to a Congressional mandate and is expected to prevent 2 accidents. The benefit for the rule is estimated to be $142.8 million or $92.0 million present value at 7% over 10 years. The estimated cost for the rule is

$20.4 million ($14.1 million, present value). More detailed benefit and cost information is presented below.

Who is potentially affected by this rule?

Certificate holders who conduct domestic, flag, or supplemental operations under part 121, and certificate holders who conduct commuter operations or on-demand operations with aircraft type certificated for a passenger seating configuration, excluding any pilot seat, of ten seats or more under part 135.

Assumptions

- All monetary values were expressed in constant 2014 dollars. We calculated the present value of the potential benefit stream by discounting the monetary values using a 7 percent interest rate from 2015 to 2024.
- The rule is expected to take effect in 2015.
- The value of a statistical life (VSL) is $9.2 million.
- VSL in future years were estimated to grow by 1.18 percent per year (the Congressional Budget Office estimated that there will be an expected 1.18 percent annual growth rate in median real wages over the next 30 years) before discounting to present value.
- The value of medical and legal costs associated with fatal injuries was estimated at about $171,000.
- The value of a minor injury was $27,600.
- The value of medical and legal costs associated with minor injuries was estimated at about $3,000.
- The FAA also estimates the cost of accident investigations. Accidents reported by the NTSB incur investigation costs from the NTSB, the FAA, and the private sector. The total accident investigation cost per accident is assumed to be $570,968.
- As per DOT guidance, we assume that real wages increase at 1.2 percent per year.

Changes From the NPRM to the Final Rule

For the benefits, we have made two significant changes to the final rule regulatory analysis:

- Since the NPRM published, the FAA has identified 2 accidents which could have been prevented by this rule. We estimate the benefit value for preventing similar future accidents will be about $92.0 million present value over 10 years.
- In this final rule, we note this rule is Congressionally mandated for part 121 air carriers.

For the cost section, we have made three significant changes to the final rule regulatory analysis, which have increased the costs from about $1.6 million to $14.1 million present value over 10 years:

- The cost estimates included in the regulatory evaluation for this final rule are based on entity size (large vs. small) rather than on whether a certificate holder operates under part 121 or part 135, because entity size is a more relevant parameter for cost estimation than whether the air carrier operates under part 121 or part 135.
- For this final rule, we used the commenters' estimates (when they were available) rather than our own, which generally raised the costs.
- We added familiarization costs.

Benefits of This Rule

A significant part of this rule is Congressionally mandated for part 121 air carriers.

The FAA identified two accidents that could have been prevented by this rule.

One of the accidents was operated by Air Midwest (part 121/135 operator) under part 121 service at the time. This accident resulted in 21 fatalities and 1 minor injury. The other accident was operated by Emery Worldwide Airlines, and resulted in 3 fatalities. The FAA believes that the benefits justify the costs for part 121 and part 135 operators. In addition to the casualties, 2 aircraft were destroyed. After factoring in the effectiveness of the rule to prevent these accidents, the FAA estimates the benefit value to be $142.8 million, or $92.0 million present value at 7% over 10 years.

Costs of This Rule

From 2015 to 2024, the cost to air carriers and the FAA would be approximately $20.4 million ($14.1 million, present value), as shown in table below.

Costs of the Final Rule

Years	Part 121 Air Carriers Costs	Part 135 Air Carriers Costs	FAA Costs	Total Costs	Present Value Costs
2015	$507,179	$680,837	$15,884	$1,203,900	$1,125,140
2016	$1,195,809	$835,959	$4,019	$2,035,786	$1,778,134
2017	$1,210,158	$845,990	$4,067	$2,060,215	$1,681,749
2018	$1,224,680	$856,142	$4,116	$2,084,938	$1,590,589
2019	$1,239,376	$866,416	$4,165	$2,109,957	$1,504,370
2020	$1,254,249	$876,813	$4,215	$2,135,277	$1,422,825
2021	$1,269,300	$887,335	$4,266	$2,160,900	$1,345,700
2022	$1,284,531	$897,983	$4,317	$2,186,831	$1,272,755
2023	$1,299,946	$908,758	$4,369	$2,213,073	$1,203,765
2024	$1,315,545	$919,663	$4,421	$2,239,630	$1,138,514
2015-2024	$11,800,773	$8,575,895	$53,837	$20,430,505	$14,063,542

Source: U.S. Department of Transportation, Federal Aviation Administration.

* Details may not add to row or column totals due to rounding

B. Regulatory Flexibility Determination

The Regulatory Flexibility Act of 1980 (Pub. L. 96–354) (RFA) establishes ''as a principle of regulatory issuance that agencies shall endeavor, consistent with the objectives of the rule and of applicable statutes, to fit regulatory and informational requirements to the scale of the businesses, organizations, and governmental jurisdictions subject to regulation. To achieve this principle, agencies are required to solicit and consider flexible regulatory proposals and to explain the rationale for their actions to assure that such proposals are given serious consideration.'' The RFA covers a wide-range of small entities,

including small businesses, not-for-profit organizations, and small governmental jurisdictions.

Agencies must perform a review to determine whether a rule will have a significant economic impact on a substantial number of small entities. If the agency determines that it will, the agency must prepare a regulatory flexibility analysis as described in the RFA.

However, if an agency determines that a rule is not expected to have a significant economic impact on a substantial number of small entities, section 605(b) of the RFA provides that the head of the agency may so certify and a regulatory flexibility analysis is not required. The certification must include a statement providing the factual basis for this determination, and the reasoning should be clear.

The FAA identified a total of 222 operators with less than 1,500 employees—these are classified as small entities.

The FAA believes that this final rule will not have a significant economic impact on a substantial number of small entities for the following reason:

The FAA estimates that their ratio of annualized costs to annual revenue is between 0.001% and 0.010%, which is not considered a significant economic impact. Therefore, as provided in section 605(b), the Administrator of the FAA certifies that this rulemaking will not result in a significant economic impact on a substantial number of small entities.

C. 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 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 it improves safety and as a legitimate domestic objective therefore will not create unnecessary obstacles to the foreign commerce of the United States.

D. 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.

E. Paperwork Reduction Act

The Paperwork Reduction Act of 1995 (44 U.S.C. 3507(d)) requires that the FAA consider the impact of paperwork and other information collection burdens imposed on the public. According to the 1995 amendments to the Paperwork Reduction Act (5 CFR 1320.8(b)(2)(vi)), an agency may not collect or sponsor the collection of information, nor may it impose an information collection requirement unless it displays a currently valid Office of Management and Budget (OMB) control number.

This final rule will impose the following amended information collection requirements. As required by the Paperwork Reduction Act of 1995 (44 U.S.C. 3507(d)), the FAA has submitted these information collection amendments to OMB for its review. Notice of OMB approval for these information collections will be published in a future **Federal Register** document.

Summary: Each operator which seeks to obtain, or is in possession of, an air carrier operating certificate must comply with the requirements of 14 CFR part 121 in order to maintain data which is used to determine if the air carrier is operating in accordance with minimum safety standards. Original certification is completed in accordance with part 119.

Each operator which seeks to obtain, or is in possession of a commuter or on-demand operating certificate must comply with the requirements of 14 CFR part 135 in order to maintain data which is used to determine if the air carrier is operating in accordance with minimum safety standards. Original certification is completed in accordance with part 119.

Continuing certification is completed in accordance with part 121 and part 135. One form is used. The use of this form was taken into account in estimating the burden for this section.

Use: This information collection supports the Department of Transportation's strategic goal of safety. Specifically, the goal is to promote the public health and safety by working toward the elimination of transportation-related deaths, injuries, and destruction of property.

Title 49 U.S.C. 44702, empowers the Secretary of Transportation to issue air carrier operating certificates and to establish minimum safety standards for the operation of the air carrier to whom such certificates are issued. Under the authority of Title 49 CFR 44701, Federal Aviation Regulations part 121 and part 135 prescribe the terms, conditions, and limitations as are necessary to ensure safety in air transportation.

Respondents (including number of): There are 80 part 121 air carriers and 168 part 135 operators affected by this rule.

Frequency: The manual requirements will be submitted as part of the submission of maintenance manuals to the FAA for acceptance.

Annual Burden Estimate: This rule requires that the air carrier's manual has all the policies, procedures, methods, and instructions for the accomplishment of maintenance by another person to include the information necessary for certificate holders to ensure all maintenance is performed in accordance with its maintenance program. The rule also requires that the air carrier provide a list with the name and address of each maintenance provider used and the type of maintenance that is to be performed.

Private Sector Costs

This rule will require affected air carriers to develop policies, procedures, methods, and instructions for performing contract maintenance that are acceptable to the FAA and to include them in their maintenance manuals. The rule also requires the air carriers to provide a list to the FAA of all persons with whom they contract their maintenance.

To calculate the cost of revising and updating the manual and revising and updating the list, the following assumptions were used, paralleling those in the regulatory evaluation:

- 222 small air carriers.
- 26 large air carriers.
- Small air carriers: amount of time revising manual (manager): 16 hours.
- Small air carriers: amount of time revising manual (technical writer): 40 hours.
- Small air carriers: amount of time revising manual (editor): 2 hours.

- Small air carriers: amount of time maintaining manual (manager): 16 hours.
- Small air carriers: amount of time maintaining manual (technical writer): 40 hours.
- Small air carriers: amount of time maintaining manual (editor): 2 hours.
- Large air carriers: amount of time revising manual (manager): 60 hours.
- Large air carriers: amount of time revising manual (technical writer): 30 hours.
- Large air carriers: amount of time revising manual (editor): 30 hours.
- Large air carriers: amount of time maintaining manual (manager): 104 hours.
- Large air carriers: amount of time maintaining manual (technical writer): 156 hours.
- Large air carriers: amount of time maintaining manual (editor): 156 hours.
- Small air carriers: amount of time to provide the list (manager): 10 hours.
- Small air carriers: amount of time to provide the list (technical writer): 3 hours.
- Small air carriers: amount of time to provide the list (auditor): 10 hours.
- Small air carriers: amount of time to maintain and update the list (manager): 12 hours.
- Small air carriers: amount of time to maintain and update the list (technical writer): 12 hours.
- Small air carriers: amount of time to maintain and update the list (auditor): 12 hours.
- Large air carriers: amount of time to provide the list (manager): 40 hours.
- Large air carriers: amount of time to provide the list (technical writer): 20 hours.
- Large air carriers: amount of time to provide the list (auditor): 20 hours.
- Large air carriers: amount of time to maintain and update the list (manager): 104 hours.
- Large air carriers: amount of time to maintain and update the list (technical writer): 156 hours.
- Large air carriers: amount of time to maintain and update the list (auditor): 156 hours.
- For the wages, we assume that there will be a 1.2 percent projected annual increase in real wages.

First Year Costs for Small Air Carriers

Cost = 222 × ((16 hours × $66.08) + (40 hours × $40.02) + (2 hours × $35.76) + (10 hours × $66.08) + (3 hours × $40.02) + (10 hours × $41.28)) = $870,966.

Time = 222 × (16 hours + 40 hours + 2 hours + 10 hours + 3 hours + 10 hours) = 17,982.

Second Year Costs for Small Air Carriers

Cost = 222 × ((16 hours × $66.87) + (40 hours × $40.50) + (2 hours × $36.19) + (12 hours × $66.87) + (12 hours × $40.50) + (12 hours × $41.77)) = $1,010,576.

Time = 222 × (16 hours + 40 hours + 2 hours + 10 hours + 3 hours + 10 hours) = 17,982.

Third Year Costs for Small Air Carriers

Cost = 222 × ((16 hours x $67.68) + (40 hours × $40.99) + (2 hours × $36.62) + (12 hours × $67.68) + (12 hours × $40.99) + (12 hours × $42.27)) = $1,022,703.

Time = 222 × (16 hours + 40 hours + 2 hours + 10 hours + 3 hours + 10 hours) = 17,982.

Fourth Year Costs for Small Air Carriers

Cost = 222 × ((16 hours × $68.49) + (40 hours × $41.48) + (2 hours × $37.06) + (12 hours × $68.49) + (12 hours × $41.48) + (12 hours × $42.78)) = $1,034,976.

Time = 222 × (16 hours + 40 hours + 2 hours + 10 hours + 3 hours + 10 hours) = 17,982.

Fifth Year Costs for Small Air Carriers

Cost = 222 × ((16 hours × $69.31) + (40 hours × $41.98) + (2 hours × $37.51) + (12 hours × $69.31) + (12 hours × $41.98) + (12 hours × $43.29)) = $1,047,395.

Time = 222 × (16 hours + 40 hours + 2 hours + 10 hours + 3 hours + 10 hours) = 17,982.

Sixth Year Costs for Small Air Carriers

Cost = 222 × ((16 hours × $70.14) + (40 hours × $42.48) + (2 hours × $37.96) + (12 hours × $70.14) + (12 hours × $42.48) + (12 hours × $43.81)) = $1,059,964.

Time = 222 × (16 hours + 40 hours + 2 hours + 10 hours + 3 hours + 10 hours) = 17,982.

Seventh Year Costs for Small Air Carriers

Cost = 222 × ((16 hours × $70.98) + (40 hours × $42.99) + (2 hours × $38.41) + (12 hours × $70.98) + (12 hours × $42.99) + (12 hours × $44.34)) = $1,072,684.

Time = 222 × (16 hours + 40 hours + 2 hours + 10 hours + 3 hours + 10 hours) = 17,982.

Eight Year Costs for Small Air Carriers

Cost = 222 × ((16 hours × $71.84) + (40 hours × $43.51) + (2 hours × $38.87) + (12 hours × $71.84) + (12 hours × $43.51) + (12 hours × $44.87)) = $1,085,556.

Time = 222 × (16 hours + 40 hours + 2 hours + 10 hours + 3 hours + 10 hours) = 17,982.

Ninth Year Costs for Small Air Carriers

Cost = 222 × ((16 hours × $72.70) + (40 hours × $44.03) + (2 hours × $39.34) + (12 hours × $72.70) + (12 hours × $44.03) + (12 hours × $45.41)) = $1,098,583.

Time = 222 × (16 hours + 40 hours + 2 hours + 10 hours + 3 hours + 10 hours) = 17,982.

Tenth Year Costs for Small Air Carriers

Cost = 222 × ((16 hours × $73.57) + (40 hours × $44.56) + (2 hours × $39.81) + (12 hours × $73.57) + (12 hours × $44.56) + (12 hours × $45.95)) = $1,111,766.

Time = 222 × (16 hours + 40 hours + 2 hours + 10 hours + 3 hours + 10 hours) = 17,982.

First Year Costs for Large Air carriers

Cost = 26 × ((60 hours × $66.08) + (30 hours × $40.02) + (30 hours × $35.76) + (40 hours × $66.08) + (20 hours × $40.02) + (20 hours × $41.28)) = $273,193.

Time = 26 × (60 hours + 30 hours + 30 hours + 40 hours + 20 hours + 20 hours) = 5,200.

Second Year Costs for Large Air carriers

Cost = 26 × ((104 hours × $66.87) + (156 hours × $40.50) + (156 hours × $36.19) + (104 hours × $66.87) + (156 hours × $40.50) + (156 hours × $41.77)) = $1,006,396.

Time = 26 × (104 hours + 156 hours + 156 hours + 104 hours + 156 hours + 156 hours) = 21,632.

Third Year Costs for Large Air carriers

Cost = 26 × ((104 hours × $67.68) + (156 hours × $40.99) + (156 hours × $36.62) + (104 hours × $67.68) + (156 hours × $40.99) + (156 hours × $42.27)) = $1,018,473.

Time = 26 × (104 hours + 156 hours + 156 hours + 104 hours + 156 hours + 156 hours) = 21,632.

Fourth Year Costs for Large Air Carriers

Cost = 26 × ((104 hours × $68.49) + (156 hours × $41.48) + (156 hours × $37.06) + (104 hours × $68.49) + (156 hours × $41.48) + (156 hours × $42.78)) = $1,030,695.

Time = 26 × (104 hours + 156 hours + 156 hours + 104 hours + 156 hours + 156 hours) = 21,632.

Fifth Year Costs for Large Air Carriers

Cost = 26 × ((104 hours × $69.31) + (156 hours × $41.98) + (156 hours × $37.51) + (104 hours × $69.31) + (156 hours × $41.98) + (156 hours × $43.29)) = $1,043,063.

Time = 26 × (104 hours + 156 hours + 156 hours + 104 hours + 156 hours + 156 hours) = 21,632.

Sixth Year Costs for Large Air Carriers

Cost = 26 × ((104 hours × $70.14) + (156 hours × $42.48) + (156 hours × $37.96) + (104 hours × $70.14) + (156 hours × $42.48) + (156 hours × $43.81)) = $1,055,580.

Time = 26 × (104 hours + 156 hours + 156 hours + 104 hours + 156 hours + 156 hours) = 21,632.

Seventh Year Costs for Large Air Carriers

Cost = 26 × ((104 hours × $70.98) + (156 hours × $42.99) + (156 hours × $38.41) + (104 hours × $70.98) + (156 hours × $42.99) + (156 hours × $44.34)) = $1,068,247.

Time = 26 × (104 hours + 156 hours + 156 hours + 104 hours + 156 hours + 156 hours) = 21,632.

Eight Year Costs for Large Air Carriers

Cost = 26 × ((104 hours × $71.84) + (156 hours × $43.51) + (156 hours × $38.87) + (104 hours × $71.84) + (156 hours × $43.51) + (156 hours × $44.87)) = $1,081,066.

Time = 26 × (104 hours + 156 hours + 156 hours + 104 hours + 156 hours + 156 hours) = 21,632.

Ninth Year Costs for Large Air Carriers

Cost = 26 × ((104 hours × $72.70) + (156 hours × $44.03) + (156 hours × $39.34) + (104 hours × $72.70) + (156 hours × $44.03) + (156 hours × $45.41)) = $1,094,038.

Time = 26 × (104 hours + 156 hours + 156 hours + 104 hours + 156 hours + 156 hours) = 21,632.

Tenth Year Costs for Large Air Carriers

Cost = 26 × ((104 hours × $73.57) + (156 hours × $44.56) + (156 hours × $39.81) + (104 hours × $73.57) + (156 hours × $44.56) + (156 hours × $45.95)) = $1,107,167.

Time = 26 × (104 hours + 156 hours + 156 hours + 104 hours + 156 hours + 156 hours) = 21,632.

Total over 10 years

Cost = ($870,966 + $1,010,576 + $1,022,703 + $1,034,976 + $1,047,395 + $1,059,964 + $1,072,684 + $1,085,556 + $1,098,583 + $1,111,766 + $273,193 + $1,006,396 + $1,018,473 + $1,030,695 + $1,043,063 + $1,055,580 + $1,068,247 + $1,081,066 + $1,094,038 + $1,107,167) = $20,193,086

Time = ((10 × 17,982 hours) + 5,200 hours + (9 × 21,632 hours)) = 379,708.

Average per Year

Cost = $20,193,086/10 = $2,019,309.

Time = 379,708/10 = 37,971 hours.

FAA Costs

The FAA has to ensure that the air carriers' manuals are revised and maintained.

To calculate the cost of ensuring that the manuals are revised and maintained, the following assumptions were used, paralleling those in the regulatory evaluation:

- 248 small and large air carriers.
- Amount of time to ensure that each manual is revised (FAA inspector): 1 hour.
- Amount of time to verify manual maintenance (FAA inspector): 1 hour.
- For the FAA inspector wage we assume that there will be a 1.2 percent projected annual increase.

First Year Costs for the FAA

Cost = 248 × (1 hour × $64.05) = $15,884.

Time = 248 × (1 hour) = 248.

Second Year Costs for the FAA

Cost = 248 × (0.25 hour × $64.82) = $4,019.

Time = 248 × (0.25 hour) = 62.

Third Year Costs for the FAA

Cost = 248 × (0.25 hour × $65.59) = $4,067

Time = 248 × (0.25 hour) = 62.

Fourth Year Costs for the FAA

Cost = 248 × (0.25 hour × $66.38) = $4,116.

Time = 248 × (0.25 hour) = 62.

Fifth Year Costs for the FAA

Cost = 248 × (0.25 hour × $67.18) = $4,165.

Time = 248 × (0.25 hour) = 62.

Sixth Year Costs for the FAA

Cost = 248 × (0.25 hour × $67.98) = $4,215.

Time = 248 × (0.25 hour) = 62.

Seventh Year Costs for the FAA

Cost = 248 × (0.25 hour × $68.80) = $4,266.

Time = 248 × (0.25 hour) = 62.

Eight Year Costs for the FAA

Cost = 248 × (0.25 hour × $69.63) = $4,317.

Time = 248 × (0.25 hour) = 62.

Ninth Year Costs for the FAA

Cost = 248 × (0.25 hour × $70.46) = $4,369.

Time = 248 × (0.25 hour) = 62.

Tenth Year Costs for the FAA

Cost = 248 × (0.25 hour x $71.31) = $4,421.

Time = 248 × (0.25 hour) = 62.

Total Over 10 Years

Cost = ($15,884 + $4,019 + $4,067 + $4,116 + $4,165 + $4,215 + $4,266 + $4,317 + $4,369 + $4,421) = $53,837.

Time = (248 hours + (9 × 62 hours)) = 806.

Average per Year

Cost = $53,837/10 = $5,384.

Time = 806/10 = 81 hours.

F. International Compatibility and Cooperation

In keeping with U.S. obligations under the Convention on International Civil Aviation, it is FAA policy to conform to International Civil Aviation Organization (ICAO) Standards and Recommended Practices to the maximum extent practicable. The FAA has determined that there are no ICAO Standards and Recommended Practices that correspond to these proposed regulations.

G. Environmental 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 in the absence of extraordinary circumstances. The FAA has determined this rulemaking action qualifies for the categorical exclusion identified in Chapter 3, paragraph 312d, and involves no extraordinary circumstances.

H. Regulations Affecting Intrastate Aviation in Alaska

Section 1205 of the FAA Reauthorization Act of 1996 (110 Stat. 3213) requires the FAA, when modifying its regulations in a manner affecting intrastate aviation in Alaska, to consider the extent to which Alaska is not served by transportation modes other than aviation, and to establish appropriate regulatory distinctions. In the NPRM, the FAA requested comments on whether the proposed rule should apply differently to intrastate operations in Alaska. The agency did not receive any comments, and has determined, based on the administrative record of this rulemaking, that there is no need to make any regulatory distinctions applicable to intrastate aviation in Alaska.

V. Executive Order Determinations

A. Executive Order 13132, Federalism

The FAA has analyzed this 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 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.

VI. How To Obtain Additional Information

A. Rulemaking Documents

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

1. Search the Federal eRulemaking 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 Publishing 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. Comments Submitted to the Docket

Comments received may be viewed by going to *http://www.regulations.gov* and following the online instructions to search the docket number for this action. Anyone is able to search the electronic form of all comments received into any of the FAA's 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.).

C. Small Business Regulatory Enforcement Fairness Act

The Small Business Regulatory Enforcement Fairness Act (SBREFA) of 1996 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** heading 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

14 CFR Part 121

Aircraft, Aviation safety, Life-limited parts, Reporting and recordkeeping requirements.

14 CFR Part 135

Aircraft, Aviation safety, Life-limited parts, Reporting and recordkeeping requirements.

The Amendment

In consideration of the foregoing, the Federal Aviation Administration amends chapter I of title 14, Code of Federal Regulations as follows:

PART 121—OPERATING REQUIREMENTS: DOMESTIC, FLAG, AND SUPPLEMENTAL OPERATIONS

■ 1. The authority citation for part 121continues to read as follows:

Authority: 49 U.S.C. 106(f), 106(g), 40113, 40119, 41706, 44101, 44701–44702, 44705, 44709–44711, 44713, 44716–44717, 44722, 44732; 46105; Pub. L. 111–216, 124 Stat. 2348 (49 U.S.C. 44701 note); Pub. L. 112–95, 126 Stat. 62 (49 U.S.C. 44732 note).

■ 2. Add new § 121.368 as follows:

§ 121.368 Contract maintenance.

(a) A certificate holder may arrange with another person for the performance of maintenance, preventive maintenance, and alterations as authorized in § 121.379(a) only if the certificate holder has met all the requirements in this section. For purposes of this section—

(1) A *maintenance provider* is any person who performs maintenance, preventive maintenance, or an alteration for a certificate holder other than a person who is trained by and employed directly by that certificate holder.

(2) *Covered work* means any of the following:

(i) Essential maintenance that could result in a failure, malfunction, or defect endangering the safe operation of an aircraft if not performed properly or if improper parts or materials are used;

(ii) Regularly scheduled maintenance; or

(iii) A required inspection item on an aircraft.

(3) *Directly in charge* means having responsibility for covered work performed by a maintenance provider. A representative of the certificate holder directly in charge of covered work does not need to physically observe and direct each maintenance provider constantly, but must be available for consultation on matters requiring instruction or decision.

(b) Each certificate holder must be directly in charge of all covered work done for it by a maintenance provider.

(c) Each maintenance provider must perform all covered work in accordance with the certificate holder's maintenance manual.

(d) No maintenance provider may perform covered work unless that work is carried out under the supervision and control of the certificate holder.

(e) Each certificate holder who contracts for maintenance, preventive maintenance, or alterations must develop and implement policies, procedures, methods, and instructions for the accomplishment of all contracted maintenance, preventive maintenance, and alterations. These policies, procedures, methods, and instructions must provide for the maintenance, preventive maintenance, and alterations to be performed in accordance with the certificate holder's maintenance program and maintenance manual.

(f) Each certificate holder who contracts for maintenance, preventive maintenance, or alterations must ensure that its system for the continuing analysis and surveillance of the maintenance, preventive maintenance, and alterations carried out by the maintenance provider, as required by § 121.373(a), contains procedures for oversight of all contracted covered work.

(g) The policies, procedures, methods, and instructions required by paragraphs (e) and (f) of this section must be acceptable to the FAA and included in the certificate holder's maintenance manual as required by§ 121.369(b)(10).

(h) Each certificate holder who contracts for maintenance, preventive maintenance, or alterations must provide to its FAA Certificate Holding District Office, in a format acceptable to the FAA, a list that includes the name and physical (street) address, or addresses, where the work is carried out for each maintenance provider that performs work for the certificate holder, and a description of the type of maintenance, preventive maintenance, or alteration that is to be performed at each location. The list must be updated with any changes, including additions or deletions, and the updated list provided to the FAA in a format acceptable to the FAA by the last day of each calendar month.

■ 3. Amend § 121.369 by adding paragraph (b)(10) as follows:

§ 121.369 Manual requirements.

* * * * *

(b) * * *

(10) Policies, procedures, methods, and instructions for the accomplishment of all maintenance, preventive maintenance, and alterations carried out by a maintenance provider. These policies, procedures, methods, and instructions must be acceptable to the FAA and provide for the maintenance, preventive maintenance, and alterations to be performed in accordance with the certificate holder's maintenance program and maintenance manual.

* * * * *

PART 135—OPERATING REQUIREMENTS: COMMUTER AND ON DEMAND OPERATIONS AND RULES GOVERNING PERSONS ON BOARD SUCH AIRCRAFT

■ 4. The authority citation for part 135 continues to read as follows:

Authority: 49 U.S.C. 106(f), 106(g), 41706, 40113, 44701–44702, 44705, 44709, 44711–44713, 44715–44717, 44722, 45101–45105.

■ 5. Add new § 135.426 to read as follows:

§ 135.426 Contract maintenance.

(a) A certificate holder may arrange with another person for the performance of maintenance, preventive maintenance, and alterations as authorized in § 135.437(a) only if the certificate holder has met all the requirements in this section. For purposes of this section—

(1) A *maintenance provider* is any person who performs maintenance, preventive maintenance, or an alteration for a certificate holder other than a person who is trained by and employed directly by that certificate holder.

(2) *Covered work* means any of the following:

(i) Essential maintenance that could result in a failure, malfunction, or defect endangering the safe operation of an aircraft if not performed properly or if improper parts or materials are used;

(ii) Regularly scheduled maintenance; or

(iii) A required inspection item on an aircraft.

(3) *Directly in charge* means having responsibility for covered work performed by a maintenance provider. A representative of the certificate holder directly in charge of covered work does not need to physically observe and direct each maintenance provider constantly, but must be available for consultation on matters requiring instruction or decision.

(b) Each certificate holder must be directly in charge of all covered work done for it by a maintenance provider.

(c) Each maintenance provider must perform all covered work in accordance with the certificate holder's maintenance manual.

(d) No maintenance provider may perform covered work unless that work is carried out under the supervision and control of the certificate holder.

(e) Each certificate holder who contracts for maintenance, preventive maintenance, or alterations must develop and implement policies, procedures, methods, and instructions for the accomplishment of all contracted maintenance, preventive maintenance, and alterations. These policies, procedures, methods, and instructions must provide for the maintenance, preventive maintenance, and alterations to be performed in accordance with the certificate holder's maintenance program and maintenance manual.

(f) Each certificate holder who contracts for maintenance, preventive maintenance, or alterations must ensure that its system for the continuing analysis and surveillance of the maintenance, preventive maintenance, and alterations carried out by a maintenance provider, as required by § 135.431(a), contains procedures for oversight of all contracted covered work.

(g) The policies, procedures, methods, and instructions required by paragraphs (e) and (f) of this section must be acceptable to the FAA and included in the certificate holder's maintenance manual, as required by § 135.427(b)(10).

(h) Each certificate holder who contracts for maintenance, preventive maintenance, or alterations must provide to its FAA Certificate Holding District Office, in a format acceptable to the FAA, a list that includes the name and physical (street) address, or addresses, where the work is carried out for each maintenance provider that performs work for the certificate holder, and a description of the type of maintenance, preventive maintenance, or alteration that is to be performed at each location. The list must be updated with any changes, including additions or deletions, and the updated list provided to the FAA in a format acceptable to the FAA by the last day of each calendar month.

■ 6. Amend § 135.427 by adding paragraph (b)(10) as follows:

§ 135.427 Manual requirements.

* * * * *

(b) * * *

(10) Policies, procedures, methods, and instructions for the accomplishment of all maintenance, preventive maintenance, and alterations carried out by a maintenance provider. These policies, procedures, methods, and instructions must be acceptable to the FAA and ensure that, when followed by the maintenance provider, the maintenance, preventive maintenance, and alterations are performed in accordance with the certificate holder's maintenance program and maintenance manual.

* * * * *

Issued under authority provided by 49 U.S.C. 106(f), 44701(a), and 44703 in Washington, DC, on February 9, 2015.

Michael P. Huerta,

Administrator.

[FR Doc. 2015–04179 Filed 3–3–15; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 100

[Docket No. USCG–2015–0056]

Special Local Regulation; Southern California Annual Marine Events for the San Diego Captain of the Port Zone

AGENCY: Coast Guard, DHS.

ACTION: Notice of enforcement of regulation.

SUMMARY: The Coast Guard will enforce the special local regulations on the waters of Oceanside Harbor, California during the California Ironman Triathlon from 6:30 a.m. to 9:30 a.m. on March 28, 2015. These special local regulations are necessary to provide for the safety of the participants, crew, spectators, sponsor vessels of the triathlon, and general users of the waterway. During the enforcement period, persons and vessels are prohibited from entering into, transiting through, or anchoring within this regulated area unless authorized by the Captain of the Port, or his designated representative.

DATES: The regulations for the marine event listed in 33 CFR 100.1101, Table 1, Item 2, will be enforced from 6:30 a.m. to 9:30 p.m. on March 28, 2015.

FOR FURTHER INFORMATION CONTACT: If you have questions on this document, call or email Petty Officer Nick Bateman, Waterways Management, U.S. Coast Guard Sector San Diego, CA; telephone (619) 278–7656, email *D11-PF-MarineEventsSanDiego@uscg.mil*

SUPPLEMENTARY INFORMATION: The Coast Guard will enforce the special local

regulations in 33 CFR 100.1101 in support of the annual marine event, the California Ironman Triathlon (Item 2 on Table 1 of 33 CFR 100.1101), held on March 28, 2015. The Coast Guard will enforce the special local regulations on the Harbor and Federal Channel in Oceanside on March 28, 2015 from 6:30 a.m. to 9:30 a.m. The triathlon course will commence at the Oceanside Harbor boat ramp then proceed outbound through the federal channel to the Oceanside Harbor Entrance, and then proceed back through the channel to the boat ramp.

Under the provisions of 33 CFR 100.1101, persons and vessels are prohibited from entering into, transiting through, or anchoring within this regulated area unless authorized by the Captain of the Port, or his designated representative. The Coast Guard may be assisted by other Federal, State, or local law enforcement agencies in enforcing this regulation.

This document is issued under authority of 5 U.S.C. 552(a) and 33 CFR 100.1101. In addition to this document in the **Federal Register**, the Coast Guard will provide the maritime community with advance notification of this enforcement period via the Local Notice to Mariners, Broadcast Notice to Mariners, and local advertising by the event sponsor.

If the Captain of the Port Sector San Diego or his designated representative determines that the regulated area need not be enforced for the full duration stated on this document, he or she may use a Broadcast Notice to Mariners or other communications coordinated with the event sponsor to grant general permission to enter the regulated area.

Dated: February 5, 2015.

J.S. Spaner,

Captain, U.S. Coast Guard, Captain of the Port San Diego.

[FR Doc. 2015–04481 Filed 3–3–15; 8:45 am]

BILLING CODE 9110–04–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 117

[Docket No. USCG–2015–0113]

Drawbridge Operation Regulation; Appomattox River, Hopewell, VA

AGENCY: Coast Guard, DHS.

ACTION: Notice of deviation from drawbridge regulations.

SUMMARY: The Coast Guard has issued a temporary deviation from the operating schedule that governs the draw of the Seaboard System Railroad (CSX Railroad) Bridge, across Appomattox River, mile 2.5, Hopewell, VA. This deviation is necessary to conduct bridge upgrades. This temporary deviation allows the swing bridge to remain in the closed to navigation position to facilitate bridge upgrades.

DATES: This deviation is effective from 7 a.m. on March 7, 2015 to 8 p.m. on March 8, 2015.

ADDRESSES: The docket for this deviation, [USCG–2015–0113] is available at *http://www.regulations.gov.* Type the docket number in the ''SEARCH'' box and click ''SEARCH.'' Click on Open Docket Folder on the line associated with this deviation. You may also visit the Docket Management Facility in Room W12–140 on the ground floor of the Department of Transportation West Building, 1200 New Jersey Avenue SE., Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: If you have questions on this temporary deviation, call or email Mr. Jim Rousseau, Bridge Administration Branch Fifth District, Coast Guard; telephone (757) 398–6557, email *James.L.Rousseau2@uscg.mil.* If you have questions on reviewing the docket, call Cheryl Collins, Program Manager, Docket Operations, 202–366–9826.

SUPPLEMENTARY INFORMATION: The CSX Corporation, who owns and operates this swing bridge, has requested a temporary deviation from the current operating regulations set out in 33 CFR 117.995 to facilitate bridge upgrades.

Under the regular operating schedule, the Seaboard System Railroad (CSX Railroad) Bridge, mile 2.5, in Hopewell, VA, must open on signal if at least 24 hour notice is given. The draw normally is in the closed to navigation position and only opens when proper notice is given. The Seaboard System Railroad (CSX Railroad) Bridge has a vertical clearance in the closed position to vessels of 10 feet above mean high water.

Under this temporary deviation, the drawbridge will be maintained in the closed to navigation position from 8 a.m. Saturday March 8, 2015, until 8 p.m. Sunday March 9, 2015. The bridge will operate under the normal operating schedule at all other times. Emergency openings cannot be provided. There are no alternate routes for vessels transiting this section of the Appomattox River but vessels may pass before 8 a.m. on March 8, 2015, and after 8 p.m. on March 9, 2015, with advance notice.

Appomattox River is used by a variety of vessels including commercial and recreational vessels. The Coast Guard has carefully coordinated the restrictions with these waterway users. The Coast Guard will also inform additional waterway users through our Local and Broadcast Notice to Mariners of the closure periods for the bridge so that vessels can arrange their transits to minimize any impacts caused by the temporary deviation. Mariners able to pass under the bridge in the closed position may do so at any time. Mariners are advised to proceed with caution.

In accordance with 33 CFR 117.35(e), the drawbridge must return to its regular operating schedule immediately at the end of the designated time period.

This deviation from the operating regulations is authorized under 33 CFR 117.35.

Dated: February 20, 2015

James L. Rousseau,

Bridge Program Manager, Fifth Coast Guard District.

[FR Doc. 2015–04482 Filed 3–3–15; 8:45 am]

BILLING CODE 9110–04–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 117

[Docket No. USCG–2014–1039]

RIN 1625–AA09

Drawbridge Operation Regulation; Chevron Oil Company Canal, Fourchon, LA

AGENCY: Coast Guard, DHS.

ACTION: Final rule.

SUMMARY: The Coast Guard is adding a special operating regulation governing the State Route 3090 (SR 3090) swing span bridge across the Chevron Oil Company Canal, mile 0.05, at Fourchon, Louisiana. Since construction of the bridge in 1972, the bridge has operated on a customary schedule requiring a one-hour advance notice without having a special operating regulation in place. This rule codifies the current custom and operating schedule of the bridge as a special operating regulation.

DATES: This rule is effective March 4, 2015.

ADDRESSES: Documents mentioned in this preamble are part of docket [USCG 2014–1039]. To view documents mentioned in this preamble as being available in the docket, go to *http://*

www.regulations.gov, type the docket number in the ''SEARCH'' box and click ''SEARCH.'' Click on Open Docket Folder on the line associated with this rulemaking. You may also visit the Docket Management Facility in Room W12–140 on the ground floor of the Department of Transportation West Building, 1200 New Jersey Avenue SE., Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: If you have questions on this rule, call or email Donna Gagliano, Bridge Specialist, Coast Guard; telephone 504–671–2128, email *Donna.Gagliano@uscg.mil.* If you have questions on viewing the docket, call Cheryl Collins, Program Manager, Docket Operations, telephone 202–366–9826.

SUPPLEMENTARY INFORMATION:

A. Regulatory History and Information

The Coast Guard is issuing this final rule without prior notice and opportunity to comment pursuant to authority under section 4(a) of the Administrative Procedure Act (APA) (5 U.S.C. 553(b)). This provision authorizes an agency to issue a rule without prior notice and opportunity to comment when the agency for good cause finds that those procedures are ''impracticable, unnecessary, or contrary to the public interest.'' Under 5 U.S.C. 553(b), the Coast Guard finds that good cause exists for not publishing a notice of proposed rulemaking (NPRM) with respect to this rule. This bridge has operated under one-hour notice for openings since put in place in 1972 without concern. Local community and waterway users are aware and accustomed to the operating schedule. In over 40 years of operation of this bridge, no complaints have been received by the Coast Guard. Waterway users understand how the bridge operates and this Final Rule simply codifies its operation. Completing the process of an NPRM is unnecessary because this operating practice is in use and accepted by the waterway users.

For the same reasons, under 5 U.S.C. 553(d)(3), the Coast Guard finds that good cause exists for making this rule effective in less than 30 days after publication in the **Federal Register** (FR). The bridge has been operating under the one-hour advance notification schedule for over 40 years. This final rule codifies the existing schedule in 33 CFR part 117. Therefore, providing a 30-day notice before making this rule effective is unnecessary.

B. Basis and Purpose

The SR 3090 swing span bridge, locally known as the Fourchon Bridge, across the Chevron Oil Company Canal, mile 0.05, at Fourchon, LA has a vertical clearance of 12.0 feet above Mean High Water elevation, 3.0 feet at Mean Sea Level in the closed-to-navigation position, unlimited in the open position. Presently, this bridge opens on signal if at least one-hour advanced notification is given to the Greater Lafourche Port Commission 24-hour dispatcher. This operating schedule has been in place since the bridge was constructed in 1972; however, this custom and operating schedule was never codified in subpart B, Specific Requirements, under 33 CFR part 117. This final rule codifies the existing operating schedule for the bridge. Since construction of the bridge, no complaints have been received by the Coast Guard from waterway users concerning the operation of the bridge.

Navigation on the waterway consists of oilfield related equipment, houseboats, shrimp boats, and other recreational craft. The bridge has opened on average one time per month for the passage of oil field equipment, houseboats, shrimp boats, and other recreational crafts. During the shrimp season, the bridge may open 8–10 times per month.

C. Discussion of Final Rule

Under 33 CFR 117.5, bridges are required to open on signal for the passage of vessels except as otherwise authorized or required. The SR 3090 bridge is currently untended and maintained in the closed-to-navigation position. The bridge opens for the passage of vessels if a one-hour advance notice to the Greater Lafourche Port Commission 24-hour dispatcher. Title 33 CFR 117.40 requires that, if approved, a description of the full operation of the advance one-hour notice on the drawbridge will be added to subpart B of this part.

This present operating schedule is known and understood by the local waterway users, but this operating schedule is not reflected in the CFR. This rule codifies this schedule as a Special Operating Requirement under 33 CFR part 117, subpart B.

The operation of the draw of the SR 3090 swing span bridge across the Chevron Oil Company Canal, mile 0.05, at Fourchon, LA is as follows: The draw of the SR 3090 bridge at Fourchon shall open on signal if at least one-hour notice is given.

D. Regulatory Analyses

We developed this Final Rule after considering numerous statutes and executive orders related to rulemaking. Below we summarize our analyses based on these statutes or executive orders.

1. Regulatory Planning and Review

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

The Coast Guard does not consider this rule to be ''significant'' under that Order because the rule only codifies the current operating schedule for the SR 3090 bridge which is already understood, known, and accepted by the local bridge and waterway users.

2. Impact on Small Entities

The Regulatory Flexibility Act of 1980 (RFA), 5 U.S.C. 601–612, as amended, requires federal agencies to consider the potential impact of regulations on small entities during rulemaking. The term ''small entities'' comprises small businesses, not-for profit organizations that are independently owned and operated and are not dominant in their fields, and governmental jurisdictions with populations of less than 50,000.

This rule would affect the following entities, some of which may be small entities: The owners or operators of vessels who wish to transit the bridge. However, the affect would be negligible as this rule codifies the current custom and operating schedule of the bridge that mariners are accustomed to and the bridge would still be able to open with advance notice.

This Final Rule formalizes the drawbridge operation custom that has been in place since 1972. Therefore, mariners would not be affected given that they would not experience any alteration of current expectations with regard to current drawbridge operation.

3. Assistance for Small Entities

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

compliance, please contact the person listed in the **FOR FURTHER INFORMATION CONTACT**, above.

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

4. Collection of Information

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

5. Federalism

A rule has implications for federalism under Executive Order 13132, Federalism, if it has a substantial direct effect on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. We have analyzed this rule under that Order and have determined that it does not have implications for federalism.

6. Protest Activities

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

7. Unfunded Mandates Reform Act

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

8. Taking of Private Property

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

9. Civil Justice Reform

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

10. Protection of Children

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

11. Indian Tribal Governments

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

12. Energy Effects

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

13. Technical Standards

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

14. Environment

We have analyzed this rule under Department of Homeland Security Management Directive 023–01, and Commandant Instruction M16475.lD which guides the Coast Guard in complying with the National Environmental Policy Act of 1969 (NEPA) (42 U.S.C. 4321–4370f), and have concluded that this action is one of a category of actions which do not individually or cumulatively have a significant effect on the human environment. This rule involves the promulgation of special operating regulations or procedures for drawbridges. This rule is categorically excluded, under figure 2–1, paragraph (32)(e), of the Instruction.

Under figure 2–1, paragraph (32)(e), of the Instruction, an environmental analysis checklist and a categorical exclusion determination are not required for this rule. We seek any comments or information that may lead to the discovery of a significant environmental impact from this rule.

List of Subjects in 33 CFR Part 117

Bridges.

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

PART 117—DRAWBRIDGE OPERATION REGULATIONS

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

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

■ 2. Redesignate §§ 117.437 through 117.439 as §§ 117.438 through 117.440, respectively, and add new § 117.437 to read as follows:

§ 117.437 Chevron Oil Company Canal.

The draw of the SR 3090, mile 0.05, at Fourchon, shall open on signal if at least one-hour notice is given.

Dated: February 11, 2015.

Kevin S. Cook,

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

[FR Doc. 2015–04483 Filed 3–3–15; 8:45 am]

BILLING CODE 9110–04–P

DEPARTMENT OF EDUCATION

34 CFR Chapter II

[Docket ID ED–2014–OESE–0134; CFDA Number: 84.415A]

Final Priorities, Requirements, Definitions, and Selection Criteria—State Tribal Education Partnership Program

AGENCY: Office of Elementary and Secondary Education, Department of Education.

ACTION: Final priorities, requirements, definitions, and selection criteria.

SUMMARY: The Assistant Secretary for Elementary and Secondary Education announces priorities, requirements, definitions, and selection criteria for the State Tribal Education Partnership (STEP) program. The Assistant Secretary may use one or more of these priorities, requirements, definitions, and selection criteria for competitions in fiscal year

(FY) 2015 and later years. We take this action to enable tribal educational agencies (TEAs) to administer formula grant programs under the Elementary and Secondary Education Act of 1965, as amended (ESEA), and to improve the partnership between TEAs and the State educational agencies (SEAs) and local educational agencies (LEAs) that educate students from the affected tribes.

DATES: Effective Date: These priorities, requirements, definitions, and selection criteria are effective April 3, 2015.

FOR FURTHER INFORMATION CONTACT: Shahla Ortega, U.S. Department of Education, 400 Maryland Avenue SW., Room 3W223, Washington, DC 20202–6450. Telephone: (202) 453–5602 or by email: *shahla.ortega@ed.gov.*

If you use a telecommunications device for the deaf (TDD) or a text telephone (TTY), call the Federal Relay Service (FRS), toll free, at 1–800–877–8339.

SUPPLEMENTARY INFORMATION:

Purposes of Program: The purposes of the STEP program are to: (1) Promote increased collaboration between TEAs and the SEAs and LEAs that serve students from affected tribes; and (2) build the capacity of TEAs to conduct certain administrative functions under certain ESEA formula grant programs for eligible schools, as determined by the TEA, SEA, and LEA.

Program Authority: 20 U.S.C. 7451(a)(4).

We published a notice of proposed priorities, requirements, definitions, and selection criteria (NPP) for this program in the **Federal Register** on October 31, 2014 (79 FR 64716). That notice contained background information and our reasons for proposing the particular priorities, requirements, definitions, and selection criteria. This notice of final priorities, requirements, definitions, and selection criteria contains several significant changes from the NPP. We fully explain these changes in the *Analysis of Comments and Changes* section below.

Public Comment: In response to our invitation in the NPP, five parties submitted comments on the proposed priorities, requirements, definitions, and selection criteria.

We group major issues according to subject. Generally we do not address technical and other minor changes.

Analysis of Comments and Changes: An analysis of the comments and of any changes in the priorities, requirements, definitions, and selection criteria since publication of the NPP follows.

General

Comment: One commenter stated that the STEP program was a good idea. Several commenters supported specific provisions in the NPP, including the requirement for projects to include at least one public school, the provision permitting the inclusion of off-reservation schools, the provision requiring the preliminary and final agreements to be signed by the TEA, SEA, and LEA, and the program-specific selection criteria.

Discussion: We appreciate the support for the STEP program and for the specific provisions in the NPP.

Changes: None.

Comment: Three commenters suggested that the Department expand the STEP program to allow TEAs and tribes to: coordinate all education programs; provide support services and technical assistance to schools serving tribal children; provide tribal ''wrap around'' services in schools located on or near reservations and service areas; perform child find duties; and develop or update tribal education codes.

Discussion: We agree that social services and other support services are very important, and that coordination and cooperation between the tribe and LEA regarding such services, including ''wrap around'' services, can lead to positive outcomes for students. We also agree that it would be appropriate for a STEP project to include cooperation between the TEA and the LEA or its schools in coordinating such services, assuming the STEP funds are not used for direct services or to supplant other funding sources. For example, a TEA that currently operates a preschool program could include provisions in the preliminary and final agreements regarding the transition of children to public school kindergarten, including required meetings between the relevant school district staff and tribal preschool staff, even if not directly tied to one of the ESEA formula grant programs. Therefore, we are revising the preliminary agreement requirements to include other activities as agreed by the parties. We are also revising the first purpose under the Purposes of Program section to broaden the scope of STEP.

Many tribes operate schools funded by the Bureau of Indian Education (BIE), or have BIE-operated schools on their reservation. While it would not be consistent with the purposes of STEP for a grantee to use STEP funds for direct services at those schools, STEP funds could be used to coordinate services provided by BIE schools and public schools. In such event, the parties would include specific provisions for such coordination in the preliminary and final agreements.

With respect to the suggestion to expand the STEP program for child find purposes, it would be duplicative and not an appropriate use of STEP funds to conduct child find for children with disabilities because there are other sources of funding, such as funds under Parts B and C of the Individuals with Disabilities Education Act (IDEA), that are specifically provided for that purpose. Under Parts B and C of the IDEA, the Department provides funds to tribal entities through the BIE, which may be used for child find purposes to identify infants, toddlers, and children with disabilities ages birth through five. Additionally, under the IDEA, the BIE is responsible for identifying, locating, and evaluating children with disabilities on reservations ages five through 21 enrolled in BIE-funded elementary and secondary schools. For infants and toddlers residing on reservations, the State lead agency is responsible under IDEA Part C for ensuring that children with disabilities ages birth through three residing in the State are identified, located, and evaluated. With respect to all other children ages three through 21 on reservations, the SEA is responsible for ensuring that all children with disabilities residing in the State are identified, located, and evaluated. However, increased collaboration between the TEA, SEA, and LEA, which is a likely outcome of a STEP project, can lead to improved communications regarding all services, including the early identification, location, and evaluation of children with disabilities.

With regard to developing tribal education codes, we understand that such codes are important. Moreover, developing a tribal education code may be helpful in implementing a STEP project, and TEAs may wish to pursue this activity. However, we have chosen not to focus on updating and developing education codes because of the limited resources available for STEP and because we wanted to focus attention on the broader purpose of STEP grants: Fostering collaboration with SEAs and LEAs.

We recognize that several of the commenters' suggested changes reflect provisions that are in section 7135 of the ESEA (''Grants to Tribes for Education Administrative Planning and Development''). The STEP program is funded under the general national activities authority in section 7131 of the ESEA, and is different from the program in section 7135. Thus, we are not required to include the activities that are in that program, and decline to do so for the reasons explained above.

Changes: We have revised the requirements of the preliminary agreement by adding paragraph (a)(2) to require an explanation of how the parties will cooperate to administer any other educational programs or services upon which the parties have agreed. We have also revised the first purpose in the ''Purposes of Program'' section of this notice to correspond with the broader cooperative goal, by deleting the phrase ''in the administration of certain ESEA formula grant programs.''

Comment: One commenter suggested that tribes or TEAs should have the ability to apply directly for ESEA formula funding under the STEP program and assume the appropriate authority. Another commenter stated that when SEAs and LEAs manage ''pass-through'' dollars, those agencies retain money rather than spending all of the funds on students. The commenter requested that TEAs receive the funds and manage the programs.

Discussion: We cannot change the underlying statutory requirements of the ESEA State-administered formula grant programs through this regulatory action, including the provisions requiring that we grant the funds to SEAs, which then distribute them to LEAs, or the provisions permitting a certain portion of funds to be used for SEA-level and LEA-level administration of the programs. The STEP program does not provide funds for direct services. The purpose of the STEP program is to increase collaboration between TEAs, SEAs, and LEAs, and to increase the capacity of the TEA so that the TEA can assume LEA-type or SEA-type functions, within the existing statutory framework.

Changes: None.

Priorities

Comment: Although one commenter expressed support for the two priorities—one for established TEAs and one for TEAs with limited prior experience—two other commenters suggested that we modify the respective scopes of the two priorities by changing the definition of ''established TEA.'' Because the effect of the priorities largely turns on the definition of ''established TEA,'' we discuss those comments here.

These commenters stated that the proposed definition of ''established TEA'' is too broad and would include many very small TEAs that would meet the proposed definition but would be at a competitive disadvantage compared to larger TEAs. One of these commenters recommended that we narrow the definition of ''established TEA'' by including only those TEAs that have a specified number of staff members, an agreement with the SEA or LEA, and an existing tribal education code. The other commenter requested that we limit established TEAs to those TEAs with sufficient staff capacity, as determined by the tribe, as well as an agreement with the SEA or LEA and an existing tribal education code. These two commenters also did not support the proposed criteria that an established TEA have administered an education program or grant program, suggesting that these factors do not demonstrate that a TEA is, in fact, established. Another commenter requested that we provide TEAs with limited prior experience more technical assistance in preparing and implementing the grant.

Discussion: We created two priorities to minimize any competitive disadvantage that newly created TEAs and TEAs with relatively little experience operating education programs may have compared to current STEP grantees or TEAs that have existing relationships with their SEAs or LEAs. We agree that a modified definition of ''established TEA'' will better meet the objectives of the STEP program. Accordingly, we are revising the final definition of ''established TEA'' to specify some criteria that will be part of the definition of ''established TEA,'' as well as optional criteria that we may choose from and announce in the notice inviting applications. This flexibility will permit the Department to learn from each competition and apply its learning to subsequent competitions to better tailor the priorities to the program objectives.

Based on experience with the current STEP grants, we agree that a prior relationship with an SEA or LEA is a strong predictor of success, and should always be one of the criteria for classification as an established TEA. However, we do not agree that the other criteria that the commenters suggested should always be used to define an ''established TEA.'' First, we believe that we should reserve flexibility regarding the tribal education code criterion because there are so few tribes that have developed a tribal education code at this time. Second, we do not agree that size of staff should be a factor, due to the large variations in size among tribes and their memberships. Finally, we do not agree that we should add a tribally defined criterion of capacity, as that could allow TEAs to determine whether they are established, without regard to objective criteria applied to all TEAs.

We believe that experience administering Federal grants and education programs, such as a tribal preschool program, provides a strong foundation for tribal capacity and should be retained as optional criteria. Thus, we are revising the definition of ''established TEA'' accordingly.

With respect to the comment requesting technical assistance, we plan to provide technical assistance for the STEP competition.

Changes: We have revised the definition of ''established TEA'' to mean a TEA that has previously received a STEP grant, or a TEA that has a preexisting relationship with an SEA or LEA as evidenced by a written agreement between the TEA and SEA or LEA, and meets one or more of the following criteria (to be determined annually): Has an existing tribal education code, has administered at least one education program within the past five years, or has administered at least one Federal, State, local, or private grant within the past five years.

Comment: None.

Discussion: In further reviewing proposed priority 2, we have decided that it is unnecessary to state in the priority that a TEA with limited experience includes a TEA that has not received a previous STEP grant. This is already part of the definition of the term ''TEA with limited experience.''

Changes: We have revised priority 2 by deleting the language ''a TEA that has not received a previous STEP grant.''

Requirements

Comment: One commenter asked the Department to clarify the functions to be performed by the TEA. The commenter noted that, under the *ESEA Formula Grant Programs* section of the proposed requirements, STEP projects must include at least one SEA-administered ESEA formula grant program, while paragraph (b) of that section provides TEAs with flexibility to perform SEA- or LEA-type functions under the chosen ESEA program.

Discussion: Generally, applicants can choose between SEA-type and LEA-type functions. We included the requirement that at least one SEA-administered program (*e.g.,* title I, title II, School Improvement Grants, etc.) be included in a project because we have expanded the scope of STEP to permit the incorporation of the ESEA title VII formula grants. Title VII formula grants are direct grants to LEAs; SEAs are not involved at all with these grants. If a project only included title VII grants, there would be no State role. Therefore, if a TEA and LEA choose to include a title VII program in the STEP project, the project must also include a State-administered ESEA formula grant

program. However, for that State-administered program, the TEA can still choose LEA-type or SEA-type functions.

Changes: We have added a note following the definition of ''ESEA formula grant program'' stating that if applicants choose to include a title VII program in their STEP project, they must also include at least one State-administered program, but that applicants can still choose whether to perform SEA- or LEA-type functions for those State-administered programs.

Comment: Two commenters supported our inclusion of title VII in the types of formula grant programs that can be part of STEP projects. One commenter stated that both TEAs and LEAs are eligible for title VII formula grants, and the STEP grant would allow these two entities to make a local decision regarding the title VII grant administration. Another commenter suggested that the title VII grant program should be amended to include TEA administrative functions to ensure that tribal students are served properly.

Discussion: We agree that including title VII grants in STEP projects provides greater flexibility for TEAs. However, tribes are not eligible for title VII formula grants in the same way as LEAs; under the statute, tribes are eligible to apply for the formula grants only if they apply in lieu of the LEA in accordance with the requirements in section 7112 of the ESEA. Tribes and their TEAs cannot compete with LEAs for a title VII grant. The STEP program does not change the title VII formula program or its statutory requirements in any way. We cannot amend the statute through this regulatory process. However, we agree that inclusion of the title VII formula grant in a STEP project would facilitate a local discussion regarding the appropriate use of the title VII funds to improve outcomes for American Indian and Alaska Native (AI/AN) youth, regardless of which entity—tribe, TEA, or LEA—is the title VII grantee.

Changes: None.

Comment: One commenter supported the proposed preliminary agreement requirements related to data sharing. However, in this context, two commenters argued that it is difficult for TEAs to access education records, and that this hampers tribes' ability to provide support services and to make data-based decisions. These commenters suggested that the Department seek amendments to the Family Educational Rights and Privacy Act (FERPA) (Section 444 of the General Education Provisions Act (20 U.S.C. 1232g)) that would include TEAs among the educational agencies, authorities, and officials to whom protected student records and information may be released without the prior written consent of parents or students. In addition, one commenter suggested that we designate TEAs as authorized representatives of the Secretary of Education, and make technical assistance available to assist TEAs in the protection of education records. Another commenter requested a streamlined process for STEP grantees to access student records.

Discussion: Although we appreciate the commenters' concerns, the provisions of FERPA are both statutory and regulatory and beyond the scope of this regulatory action. Further, we cannot designate an entity as an authorized representative of the Secretary of Education unless that entity performs an audit or evaluation function for which the Secretary is responsible (20 U.S.C. 1232g(b)(1)(C) and (b)(3) and 34 CFR 99.35(a)(1)). The Department cannot use this FERPA exception to consent in order to permit entities to obtain access to education records to conduct evaluations that SEAs or LEAs are responsible for conducting.

We understand from our work with the current STEP grantees that access to student data is important to tribes and their TEAs, as well as to the success of STEP projects. We also understand that many entities misunderstand FERPA requirements. We have provided technical assistance to the current STEP grantees, through webinars and individual assistance from our Family Policy Compliance Office, and will continue to do so for future STEP grantees. We believe that involvement by all parties—TEA, SEA, and LEA—in such technical assistance opportunities will lead to mutually satisfactory outcomes. We also agree that stronger provisions regarding data sharing in the STEP agreements between the TEA, SEA, and LEA would be helpful. Accordingly, we are revising the preliminary agreement requirements in paragraph (f)(1) to require the parties to acknowledge the importance of student data to the project's success. In addition, in paragraph (f)(1), we are specifying that, if the project design requires data sharing, the progress of the parties towards mutual data access may be a factor in determining whether a project is making substantial progress towards meeting its objectives, for purposes of continuation awards.

In response to the commenters' concerns, we note that one option under which TEAs may access student education records without written consent is for the SEA or LEA to designate the TEA as an authorized representative for purposes of evaluating one or more ESEA formula grant programs that the SEA or LEA is responsible for evaluating. Because this designation requires the parties to enter a separate written agreement that complies with the FERPA regulations (see 34 CFR 99.35(a)(3)), it can take time to finalize. Therefore, such a designation would not have to be completed as part of the preliminary STEP agreement required as part of the grant application, but must be included in or attached to the final agreement. In paragraph (f)(2) we are requiring that parties make their best efforts to participate in training regarding FERPA and to include in or attach to the final agreement the terms relating to data sharing that are consistent with FERPA.

In paragraph (f) of the *Preliminary Agreement* requirement, we purposefully use the term data-sharing to emphasize that data sharing should be mutual, rather than one-directional, in order to account for all students. We note that many tribes operate BIE-funded schools, and AI/AN students transfer frequently between such schools and public schools. Accordingly, in any final agreement on terms relating to data sharing, a BIE school could agree to provide timely information to the TEA and the LEA concerning students who transfer to the public school or who drop out of the BIE school.

Changes: We have revised the language in paragraph (f) of the *Preliminary Agreement* requirement to require the parties to: acknowledge that access to student data is important for TEA capacity building; and commit to making best efforts to participate in trainings and technical assistance and reach agreement on data sharing that is consistent with FERPA if it is required by the project design. This replaces the language that was in proposed paragraph (h) of the *Preliminary Agreement* requirement.

Comment: One commenter raised concern about requiring TEAs to enter a partnership with local public schools and SEAs, because tribes have historically struggled with these agencies.

Discussion: We acknowledge the historical struggle between tribes, SEAs, and LEAs. One of the major purposes of the STEP program is to increase collaboration between TEAs, SEAs, and LEAs, and, thus, the Department believes it is important to include these entities in the partnership. The preliminary and final agreements must therefore be signed by these parties.

Changes: None.

Comment: None.

Discussion: Because STEP grants are subject to the Indian hiring preference in section 7(b) of the Indian Self-Determination and Education Assistance Act (Pub. L. 93–638) to the extent that they benefit primarily members of federally recognized tribes, we are adding a reference to this provision under the *Requirements* section.

Changes: We have added the statutory hiring preference requirements, entitled *ISDEAA Hiring Preference,* under the *Requirements section of this notice.*

Definitions

Comment: Several commenters suggested changes to the definition of ''established TEA.'' Those comments and corresponding changes are discussed in the *Priorities* part of the *Analysis of Comments and Changes* section of this document.

Final Priorities

Final Priority 1—Established TEAs

To meet this priority, a TEA must be an established TEA.

Final Priority 2—TEAs with Limited Prior Experience

To meet this priority, a TEA with limited prior experience is, for any STEP competition, a TEA that does not meet the definition of an ''established TEA.''

Types of Priorities

When inviting applications for a competition using one or more priorities, we designate the type of each priority as absolute, competitive preference, or invitational through a notice in the **Federal Register**. The effect of each type of priority follows:

Absolute priority: Under an absolute priority, we consider only applications that meet the priority (34 CFR 75.105(c)(3)).

Competitive preference priority: Under a competitive preference priority, we give competitive preference to an application by (1) awarding additional points, depending on the extent to which the application meets the priority (34 CFR 75.105(c)(2)(i)); or (2) selecting an application that meets the priority over an application of comparable merit that does not meet the priority (34 CFR 75.105(c)(2)(ii)).

Invitational priority: Under an invitational priority, we are particularly interested in applications that meet the priority. However, we do not give an application that meets the priority a preference over other applications (34 CFR 75.105(c)(1)).

Final Requirements

The Assistant Secretary for Elementary and Secondary Education establishes the following requirements for this program. We may apply one or more of these requirements in any year in which this program is in effect.

Eligible Applicant

(a) A TEA that is from an eligible Indian tribe and is authorized by its tribe to administer this program; or

(b) A consortium of such TEAs.

Schools and ESEA Formula Grant Programs Included in Project

(a) *Schools.* (1) Projects must include at least two eligible schools, at least one of which must be a public school.

(2) All schools included in the project must receive services or funds for the specific ESEA formula grant program(s) selected by the applicant.

(3) For projects that include one or more tribally controlled schools—

(i) The applicant TEA must include in its application evidence that it submitted a copy of the application to BIE; and

(ii) If the proposed project includes SEA-type functions with regard to the tribally controlled school, the TEA may be required by BIE to enter into an agreement with BIE, to be submitted to the Department at the same time as the final agreement.

(b) *ESEA Formula Grant Programs.* Projects must include at least one ESEA formula grant program that is State-administered.

Preliminary Agreement: An applicant must submit with its application for funding a signed preliminary agreement among the TEA, SEA, and LEA. Letters of support from an SEA or LEA will not meet this requirement and will not be accepted as a substitute.

The preliminary agreement must include:

(a) An explanation of how the parties will work collaboratively to:

(1) Administer selected ESEA formula grant programs in eligible schools; and

(2) Cooperate on administering other educational programs or services as agreed to by the parties.

(b) The primary ESEA formula grant program(s) for which the TEA will assume SEA-type or LEA-type administrative functions;

(c) A description of the primary SEA-type or LEA-type administrative functions that the TEA will assume;

(d) The training and other activities that the SEA or LEA, as appropriate, will provide for the TEA to gain the knowledge and skills needed to administer ESEA formula programs;

(e) The assistance that the TEA will provide to the SEA or LEA, as appropriate, to facilitate the project, such as cultural competence training;

(f) A statement concerning student data that—

(1) Acknowledges that access by the TEA to data on students who are tribal members is important to building the capacity of the TEA, and, depending on the project design, may be one of the factors the Secretary considers in determining whether a grantee has made substantial progress in achieving the goals and objectives of the project for the purpose of making continuation awards; and

(2) Commits the parties to making their best efforts to:

(i) Participate in training and technical assistance, provided by or through the Department, on the requirements of section 444 of the General Education Provisions Act (commonly referred to as the Family Educational Rights and Privacy Act, or FERPA) and on the possible ways in which the TEA could be provided access to tribal student data consistent with FERPA; and

(ii) Reach agreement on and include as part of the Final Agreement to be submitted during year 1 of the grant, a provision on data sharing that is consistent with FERPA, if data sharing is required by the project design;

(g) The names of at least one LEA and two or more eligible schools, at least one of which must be a public school, that are expected to participate in the project;

(h) An explanation of how the STEP funds will be used to build on existing activities or add new activities rather than replace tribal or other funds; and

(i) Signatures of the authorized representatives of the TEA, SEA, participating LEA(s), and any BIE-funded tribally controlled school that is included in the project.

Final Agreement: Each grantee must submit to the Department a final agreement by the date, in year 1 of the grant, to be established by the Department in the notice inviting applications. The final agreement must contain:

(a) All of the elements from the preliminary agreement, in final form;

(b) A timetable for accomplishing each of the objectives and activities that the parties will undertake;

(c) Goals of the project and measureable objectives towards reaching the goals; and

(d) The actions that the parties will take to sustain the relationships and activities established in the agreement after the project ends.

ISDEAA Hiring Preference

(a) Awards that are primarily for the benefit of Indians are subject to the provisions of section 7(b) of the Indian Self-Determination and Education Assistance Act (P.L. 93–638). That section requires that, to the greatest extent feasible, a grantee—

(1) Give to Indians preferences and opportunities for training and employment in connection with the administration of the grant; and

(2) Give to Indian organizations and to Indian-owned economic enterprises, as defined in section 3 of the Indian Financing Act of 1974 (25 U.S.C. 1452(e)), preference in the award of contracts in connection with the administration of the grant.

(b) For purposes of this section, an Indian is a member of any federally recognized Indian tribe.

Final Definitions

The Assistant Secretary for Elementary and Secondary Education establishes the following definitions for this program. We may apply one or more of these definitions in any year in which this program is in effect.

Cultural competency means the use of culturally responsive education that takes into account a student's own cultural experiences, creates connections between home and school experiences, and uses the cultural knowledge, prior experiences, and learning styles of diverse students to make learning more appropriate and effective.

Eligible Indian tribe means a federally recognized or a State-recognized tribe.

Eligible school means a school that is included in the applicant's preliminary and final agreements, and that is:

(a) A public school, including a public charter school, or

(b) A BIE-funded tribally controlled school.

Established TEA means a TEA that:

(a) Previously received a STEP grant, or

(b) Has an existing prior relationship with an SEA or LEA as evidenced by a prior written agreement between the TEA and SEA or LEA, and meets one or more of the following criteria, as specified by the Secretary in a notice inviting applications published in the **Federal Register:**

(i) Has an existing tribal education code;

(ii) Has administered at least one education program (for example, a tribally operated preschool or afterschool program) within the past five years; or

(iii) Has administered at least one Federal, State, local, or private grant within the past five years.

Note: For each competition, the Secretary will publish in the **Federal Register** the minimum number of criteria from this list (such as two out of three), or the specific criteria from this list that an established TEA must meet.

ESEA formula grant program means one of the following programs authorized under the Elementary and Secondary Education Act of 1965, as amended (ESEA), for which SEAs or LEAs receive formula funding:

(a) Improving Academic Achievement of the Disadvantaged (title I, part A);

(b) School Improvement Grants (section 1003(g));

(c) Migrant Education (title I, part C);

(d) Neglected and Delinquent State Grants (title I, part D);

(e) Improving Teacher Quality State Grants (title II, part A);

(f) English Learner Education State Grants (title III, part A);

(g) 21st Century Community Learning Centers (title IV, part B); and

(h) Indian Education Formula Grants (title VII, part A).

Note: State-administered ESEA formula grant programs are the programs identified in paragraphs (a)-(g) of the definition of *ESEA formula grant program.* If an applicant chooses the Indian Education Formula Grants program (title VII, part A), which makes direct grants to LEAs, it must also choose at least one State-administered program listed in (a)-(g), as required by paragraph (b) of the *Schools and ESEA Formula Grant Programs Included in Project* requirement. Applicants can still choose SEA- or LEA-type functions for the State-administered ESEA formula grant.

LEA-type function means the type of activity that LEAs typically conduct, such as direct provision of educational services to students, grant implementation, school district curriculum development, staff professional development pursuant to State guidelines, and data submissions.

SEA-type function means the type of activity that SEAs typically conduct, such as overall education policy development, supervision and monitoring of school districts, provision of technical assistance to districts, statewide curriculum development, collecting and analyzing performance data, and evaluating programs.

Tribal educational agency (TEA) means the agency, department, or instrumentality of an eligible Indian tribe that is primarily responsible for supporting tribal students' elementary and secondary education, which may include early learning.

Final Selection Criteria

The Assistant Secretary for Elementary and Secondary Education establishes the following selection criteria for evaluating an application under this program. In any year in which this program is in effect, we may apply one or more of these criteria or sub-criteria, any of the selection criteria in 34 CFR 75.210, or any combination of these. In the notice inviting applications or the application package or both, we will announce the maximum possible points assigned to each criterion.

(a) *Need for project.* The Assistant Secretary considers the extent to which the goals and objectives in the preliminary agreement, including the TEA capacity-building activities, address identified educational needs of the Indian students to be served.

(b) *Quality of the project design.* The Assistant Secretary considers one or more of the following factors:

(1) The extent to which the proposed project would recognize and support tribal sovereignty.

(2) The extent to which the preliminary agreement defines goals, objectives, and outcomes of the proposed project that are likely to be achieved by the end of the project period.

(3) The extent to which the proposed project would build relationships and better communication among the TEA, SEA, and LEA, as well as families and communities, to the benefit of Indian students in the selected schools, including by enhancing the cultural competency of SEA and LEA staff.

(4) The extent to which the proposed project would enhance the capacity of the TEA to administer ESEA formula grants during the grant period and beyond.

(c) *Adequacy of resources.* The Assistant Secretary considers the extent to which:

(1) The TEA has established, prior to developing the preliminary agreement, a relationship with either the SEA or an LEA that will enhance the likelihood of the project's success; and

(2) The use of STEP grant funds supports the capacity-building activities that are needed to administer ESEA formula grants.

(d) *Quality of project personnel.* The Assistant Secretary considers the extent to which the proposed project director has experience in education and in administering Federal grants.

This notice does not preclude us from proposing additional priorities, requirements, definitions, or selection criteria, subject to meeting applicable rulemaking requirements.

Note: This notice does not solicit applications. In any year in which we choose to use one or more of these priorities, requirements, definitions, or selection criteria, we will invite applications through a notice in the **Federal Register.**

Executive Orders 12866 and 13563

Regulatory Impact Analysis

Under Executive Order 12866, the Secretary must determine whether this regulatory action is ''significant'' and, therefore, subject to the requirements of the Executive order and subject to review by the Office of Management and Budget (OMB). Section 3(f) of Executive Order 12866 defines a ''significant regulatory action'' as an action likely to result in a rule that may—

(1) Have an annual effect on the economy of $100 million or more, or adversely affect a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or tribal governments or communities in a material way (also referred to as an ''economically significant'' rule);

(2) Create serious inconsistency or otherwise interfere with an action taken or planned by another agency;

(3) Materially alter the budgetary impacts of entitlement 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 stated in the Executive order.

This final regulatory action is not a significant regulatory action subject to review by OMB under section 3(f) of Executive Order 12866.

We have also reviewed this final regulatory action under Executive Order 13563, which supplements and explicitly reaffirms the principles, structures, and definitions governing regulatory review established in Executive Order 12866. To the extent permitted by law, Executive Order 13563 requires that an agency—

(1) Propose or adopt regulations only upon a reasoned determination that their benefits justify their costs (recognizing that some benefits and costs are difficult to quantify);

(2) Tailor its regulations to impose the least burden on society, consistent with obtaining regulatory objectives and taking into account—among other things and to the extent practicable—the costs of cumulative regulations;

(3) In choosing among alternative regulatory approaches, select 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 the behavior or manner of compliance a regulated entity must adopt; and

(5) Identify and assess available alternatives to direct regulation, including economic incentives—such as user fees or marketable permits—to encourage the desired behavior, or provide information that enables the public to make choices.

Executive Order 13563 also requires an agency ''to use the best available techniques to quantify anticipated present and future benefits and costs as accurately as possible.'' The Office of Information and Regulatory Affairs of OMB has emphasized that these techniques may include ''identifying changing future compliance costs that might result from technological innovation or anticipated behavioral changes.''

We are issuing these final priorities, requirements, definitions, and selection criteria only on a reasoned determination that their benefits would justify their costs. In choosing among alternative regulatory approaches, we selected those approaches that would maximize net benefits. Based on the analysis that follows, the Department believes that this regulatory action is consistent with the principles in Executive Order 13563.

We also have determined that this regulatory action would not unduly interfere with State, local, and tribal governments in the exercise of their governmental functions.

In accordance with both Executive orders, the Department has assessed the potential costs and benefits, both quantitative and qualitative, of this regulatory action. The potential costs are those resulting from statutory requirements and those we have determined as necessary for administering the Department's programs and activities.

We believe that the final priorities, requirements, definitions, and selection criteria would not impose significant costs on eligible TEAs that receive assistance through the STEP program. We also believe that the benefits of implementing the final priorities, requirements, definitions, and selection criteria outweigh any associated costs.

We believe that the costs imposed on applicants would be limited to costs associated with developing applications, including developing partnerships with SEAs and LEAs, and that the benefits of creating a partnership that is likely to be sustained after the end of the project period would outweigh any costs incurred by applicants. The costs of carrying out activities proposed in STEP applications would be paid for with program funds. Thus, the costs of implementation would not be a burden for any eligible applicants, including small entities. We also note that program participation is voluntary.

Intergovernmental Review: This program is subject to Executive Order 12372 and the regulations in 34 CFR part 79, except that federally recognized Indian tribes are not subject to those rules. One of the objectives of the Executive order is to foster an intergovernmental partnership and a strengthened federalism. The Executive order relies on processes developed by State and local governments for coordination and review of proposed Federal financial assistance.

This document provides early notification of our specific plans and actions for this program.

Accessible Format: Individuals with disabilities can obtain this document in an accessible format (*e.g.,* braille, large print, audiotape, or compact disc) on request to the program contact person listed under **FOR FURTHER INFORMATION CONTACT**.

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: February 26, 2015.

Deborah S. Delisle,

Assistant Secretary for Elementary and Secondary Education.

[FR Doc. 2015–04492 Filed 3–3–15; 8:45 am]

BILLING CODE 4000–01–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R03–OAR–2014–0522; FRL–9923–79–Region 3]

Approval and Promulgation of Air Quality Implementation Plans; Virginia; Infrastructure Requirements for the 2010 Sulfur Dioxide National Ambient Air Quality Standards

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: The Environmental Protection Agency (EPA) is approving a State Implementation Plan (SIP) revision submitted by the Commonwealth of Virginia pursuant to the Clean Air Act (CAA). Whenever new or revised National Ambient Air Quality Standards (NAAQS) are promulgated, the CAA requires states to submit a plan for the implementation, maintenance, and enforcement of such NAAQS. The plan is required to address basic program elements, including but not limited to regulatory structure, monitoring, modeling, legal authority, and adequate resources necessary to assure implementation, maintenance, and enforcement of the NAAQS. These elements are referred to as infrastructure requirements. The Commonwealth of Virginia made a submittal addressing the infrastructure requirements for the 2010 sulfur dioxide (SO_2) primary NAAQS.

DATES: This final rule is effective on April 3, 2015.

ADDRESSES: EPA has established a docket for this action under Docket ID Number EPA–R03–OAR–2014–0522. All documents in the docket are listed in the *www.regulations.gov* Web site. 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. Copies of the State submittal are available at the Virginia Department of Environmental Quality, 629 East Main Street, Richmond, Virginia 23219.

FOR FURTHER INFORMATION CONTACT: Ellen Schmitt, (215) 814–5787, or by email at *schmitt.ellen@epa.gov.*

SUPPLEMENTARY INFORMATION:

I. Summary of SIP Revision

On June 22, 2010 (75 FR 35520), EPA promulgated a 1-hour primary SO_2 NAAQS at a level of 75 parts per billion (ppb), based on a 3-year average of the annual 99th percentile of 1-hour daily maximum concentrations. The new NAAQS is codified at 40 CFR 50.17, while the prior NAAQS are at 40 CFR 50.4. Pursuant to section 110(a)(1) of the CAA, states are required to submit SIPs meeting the applicable requirements of section 110(a)(2) within three years after promulgation of a new or revised NAAQS or within such shorter period as EPA may prescribe.

On June 18, 2014, the Commonwealth of Virginia, through the Virginia Department of Environmental Quality (VADEQ), submitted a SIP revision that addresses the infrastructure elements specified in section 110(a)(2) of the CAA necessary to implement, maintain, and enforce the 2010 SO_2 NAAQS. On August 22, 2014 (79 FR 49731), EPA published a notice of proposed rulemaking (NPR) for Virginia proposing approval of the submittal. In the NPR, EPA proposed approval of the following infrastructure elements: Section 110(a)(2)(A), (B), (C), (D)(i)(II) (prevention of significant deterioration), (D)(ii), (E)(i), (E)(iii), (F), (G), (H), (J) (consultation, public notification, and prevention of significant deterioration), (K), (L), and (M).

Virginia did not submit section 110(a)(2)(I) which pertains to the nonattainment requirements of part D, Title I of the CAA, because this element is not required to be submitted by the 3-year submission deadline of section 110(a)(1) and will be addressed in a separate process. At this time, EPA is not taking action on section 110(a)(2)(D)(i)(II) or (J) for visibility protection for the 2010 SO_2 NAAQS as explained in the NPR. Although Virginia's infrastructure SIP submittal for the 2010 SO_2 NAAQS referred to Virginia's regional haze SIP for section 110(a)(2)(D)(i)(II) and (J) for visibility protection, EPA intends to take later, separate action on Virginia's submittal for these elements as explained in the NPR and the Technical Support Document (TSD) which accompanied the NPR. This rulemaking action also does not include action on section 110(a)(2)(D)(i)(I) of the CAA because Virginia's June 18, 2014 infrastructure SIP submittal did not include provisions for this element; therefore EPA will take later, separate action on section 110(a)(2)(D)(i)(I) for the 2010 SO_2 NAAQS for Virginia as explained in the NPR. Finally, EPA will also take later, separate action with respect to Section 110(a)(2)(E)(ii) regarding CAA section 128 requirements for State Boards for the 2010 SO_2 NAAQS as explained in the NPR.

The rationale supporting EPA's proposed rulemaking action, including the scope of infrastructure SIPs in general, is explained in the published NPR and the TSD accompanying the NPR and will not be restated here. The NPR and TSD are available in the docket for this rulemaking at *www.regulations.gov,* Docket ID Number EPA–R03–OAR–2014–0522. The discussion below in responding to comments on the NPR provides additional rationale to the extent necessary and appropriate to provide such responses and support the final action.

II. Public Comments and EPA's Responses

EPA received comments from the Sierra Club on the August 22, 2014 proposed rulemaking action on Virginia's 2010 SO_2 infrastructure SIP. A full set of these comments is provided in the docket for today's final rulemaking action.

A. Background Comments

1. The Plain Language of the CAA

Comment 1: Sierra Club contends in background comments that the plain language of section 110(a)(2)(A) of the CAA, legislative history of the CAA, case law, EPA regulations such as 40 CFR 51.112(a), and EPA interpretations in rulemakings require the inclusion of enforceable emission limits in an infrastructure SIP to prevent NAAQS exceedances in areas not designated nonattainment. Sierra Club then contends that the Virginia 2010 SO_2 infrastructure SIP revision did not revise the existing SO_2 emission limits in response to the 2010 SO_2 NAAQS and fails to comport with asserted CAA requirements for SIPs to establish enforceable emission limits that are adequate to prohibit NAAQS exceedances in areas not designated nonattainment.

The Commenter states that the main objective of the infrastructure SIP process ''is to ensure that all areas of the country meet the NAAQS,'' and that nonattainment areas are addressed through nonattainment SIPs. The Commenter asserts the NAAQS are the foundation for specific emission limitations for most large stationary sources, such as coal-fired power plants.

The Commenter discusses the CAA's framework whereby states have primary responsibility to assure air quality within the state pursuant to CAA section 107(a) which the states carry out through SIPs such as infrastructure SIPs required by section 110(a)(2). The Commenter also states that on its face the CAA requires infrastructure SIPs ''to be adequate to prevent exceedances of the NAAQS.'' In support, the Commenter quotes the language in section 110(a)(1) which requires states to adopt a plan for implementation, maintenance, and enforcement of the NAAQS and the language in section 110(a)(2)(A) which requires SIPs to include enforceable emissions limitations as may be necessary to meet the requirements of the CAA and which the commenter claims include the maintenance plan requirement. Sierra Club notes the CAA definition of emission limit and reads these provisions together to require ''enforceable emission limits on source emissions sufficient to ensure maintenance of the NAAQS.''

Response 1: EPA disagrees that section 110 is clear ''on its face'' and must be interpreted in the manner suggested by Sierra Club. As we have previously explained in response to Sierra Club's similar comments in taking action on Virginia's 2008 ozone NAAQS infrastructure SIP (*see* 79 FR 17043, 17047 (March 27, 2014)), section 110 is only one provision that is part of the complicated structure governing implementation of the NAAQS program under the CAA, as amended in 1990, and it must be interpreted in the context of not only that structure, but also of the historical evolution of that structure.

EPA interprets infrastructure SIPs as more general planning SIPs, consistent with the CAA as understood in light of its history and structure. When Congress enacted the CAA in 1970, it did not include provisions requiring states and the EPA to label areas as attainment or nonattainment. Rather, states were required to include all areas of the state in ''air quality control regions'' (AQCRs) and section 110 set forth the core substantive planning provisions for these AQCRs. At that time, Congress anticipated that states would be able to address air pollution quickly pursuant to the very general planning provisions in section 110 and could bring all areas into compliance with a new NAAQS within five years. Moreover, at that time, section 110(a)(2)(A)(i) specified that the section 110 plan provide for ''attainment'' of the NAAQS and section 110(a)(2)(B) specified that the plan must include ''emission limitations, schedules, and timetables for compliance with such limitations, and such other measures as may be necessary to insure attainment and maintenance [of the NAAQS].''

In 1977, Congress recognized that the existing structure was not sufficient and many areas were still violating the NAAQS. At that time, Congress for the first time added provisions requiring states and EPA to identify whether areas of a state were violating the NAAQS (*i.e.,* were nonattainment) or were meeting the NAAQS (*i.e.,* were attainment) and established specific planning requirements in section 172 for areas not meeting the NAAQS. In 1990, many areas still had air quality not meeting the NAAQS and Congress again amended the CAA and added yet another layer of more prescriptive planning requirements for each of the NAAQS. At that same time, Congress modified section 110 to remove references to the section 110 SIP providing for attainment, including removing pre-existing section 110(a)(2)(A) in its entirety and renumbering subparagraph (B) as section 110(a)(2)(A). Additionally, Congress replaced the clause ''as may be necessary to insure attainment and maintenance [of the NAAQS]'' with ''as may be necessary or appropriate to meet the applicable requirements of this chapter.'' Thus, the CAA has significantly evolved in the more than 40 years since it was originally enacted. While at one time section 110 of the CAA did provide the only detailed SIP planning provisions for states and specified that such plans must provide for attainment of the NAAQS, under the structure of the current CAA, section 110 is only the initial stepping-stone in the planning process for a specific NAAQS. More detailed, later-enacted provisions govern the substantive planning process, including planning for attainment of the NAAQS.

Thus, EPA asserts that section 110 of the CAA is only one provision that is part of the complicated structure governing implementation of the NAAQS program under the CAA, as amended in 1990, and it must be interpreted in the context of that structure and the historical evolution of that structure. In light of the revisions to section 110 since 1970 and the later-promulgated and more specific planning requirements of the CAA, EPA reasonably interprets the requirement in section 110(a)(2)(A) of the CAA that the plan provide for ''implementation, maintenance and enforcement'' to mean that the SIP must contain enforceable emission limits that will aid in attaining and/or maintaining the NAAQS and that the state demonstrate that it has the necessary tools to implement and enforce a NAAQS, such as adequate state personnel and an enforcement program. EPA has interpreted the requirement for emission limitations in section 110 to mean that the state may rely on measures already in place to address the pollutant at issue or any new control measures that the state may choose to submit. Finally, as EPA stated in the Infrastructure SIP Guidance which specifically provides guidance to states in addressing the 2010 SO_2 NAAQS, ''[t]he conceptual purpose of an infrastructure SIP submission is to assure that the air agency's SIP contains the necessary structural requirements for the new or revised NAAQS, whether by establishing that the SIP already contains the necessary provisions, by making a substantive SIP revision to update the SIP, or both.'' Infrastructure SIP Guidance at p. 2.[1]

The Commenter makes general allegations that Virginia does not have sufficient protective measures to prevent SO_2 NAAQS exceedances. EPA addressed the adequacy of Virginia's infrastructure SIP for 110(a)(2)(A) purposes to meet applicable requirements of the CAA in the TSD accompanying the August 22, 2014 NPR and explained why the SIP includes enforceable emission limitations and other control measures necessary for maintenance of the 2010 SO_2 NAAQS throughout the Commonwealth.[2] These include applicable portions of the following chapters of 9 VAC 5: 40 (Existing Stationary Sources),[3] 50 (New and Modified Stationary Sources), and 91 (Motor Vehicle Inspection and Maintenance in Northern Virginia).[4]

[1] Thus, EPA disagrees with Sierra Club's general assertion that the main objective of infrastructure SIPs is to ensure all areas of the country meet the NAAQS, as we believe the infrastructure SIP process is the opportunity to review the structural requirements of a state's air program. EPA, however, does agree with Sierra Club that the NAAQS are the foundation upon which emission limitations are set, but we believe, as explained in responses to subsequent comments, that these emission limitations are generally set in the attainment planning process envisioned by part D of title I of the CAA, including, but not limited to, CAA sections 172 and 191–192.

[2] The TSD for this action is available on line at *www.regulations.gov,* Docket ID Number EPA–R03–OAR–2014–0522.

[3] 9VAC5 Chapter 40 includes emission standards for SO_2 for many source categories including, but not limited to, portland cement, primary and secondary metal operations, sulfuric acid production, sulfur recovery operations, and lightweight aggregate process operations.

[4] When EPA proposed to approve Virginia's SO_2 infrastructure SIP in August 2014, we included in the TSD for section 110(a)(2)(A) a reference to 9VAC5 Chapter 140 which was Virginia's SIP approved regulations implementing EPA's Clean Air Interstate Rule (CAIR), a cap-and-trade program to reduce SO_2 and nitrogen oxide (NO_X) emissions

Further, in 2012, EPA granted limited approval of Virginia's regional haze SIP which also includes emission measures related to SO_2. 77 FR 35287 (June 13, 2012). As discussed in the TSD for this rulemaking, EPA finds the provisions for SO_2 emission limitations and measures adequately address section 110(a)(2)(A) to aid in attaining and/or maintaining the NAAQS and finds Virginia demonstrated that it has the necessary tools to implement and enforce the NAAQS.

2. The Legislative History of the CAA

Comment 2: Sierra Club cites two excerpts from the legislative history of the 1970 CAA claiming they support an interpretation that SIP revisions under CAA section 110 must include emissions limitations sufficient to show maintenance of the NAAQS in all areas of Virginia. Sierra Club also contends that the legislative history of the CAA supports the interpretation that infrastructure SIPs under section 110(a)(2) must include enforceable emission limitations, citing the Senate Committee Report and the subsequent Senate Conference Report accompanying the 1970 CAA.

Response 2: As provided in the previous response, the CAA, as enacted in 1970, including its legislative history, cannot be interpreted in isolation from the later amendments that refined that structure and deleted relevant language from section 110 concerning demonstrating attainment. *See also* 79 FR at 17046 (responding to comments on Virginia's ozone infrastructure SIP). In any event, the two excerpts of legislative history the Commenter cites merely provide that states should include enforceable emission limits in their SIPs and they do not mention or otherwise address whether states are required to include maintenance plans for all areas of the state as part of the infrastructure SIP. As provided in response to another comment in this rulemaking, the TSD for the proposed rule explains why the Virginia SIP includes enforceable emissions limitations for SO_2 for the relevant area.

3. Case Law

Comment 3: Sierra Club also discusses several cases applying the CAA which Sierra Club claims support their contention that courts have been clear that section 110(a)(2)(A) requires enforceable emissions limits in infrastructure SIPs to prevent exceedances of the NAAQS. Sierra Club first cites to language in *Train* v. *NRDC,* 421 U.S. 60, 78 (1975), addressing the requirement for ''emission limitations'' and stating that emission limitations ''are specific rules to which operators of pollution sources are subject, and which, if enforced, should result in ambient air which meet the national standards.'' Sierra Club also cites to *Pennsylvania Dept. of Envtl. Resources* v. *EPA,* 932 F.2d 269, 272 (3d Cir. 1991) for the proposition that the CAA directs EPA to withhold approval of a SIP where it does not ensure maintenance of the NAAQS, and to *Mision Industrial, Inc.* v. *EPA,* 547 F.2d 123, 129 (1st Cir. 1976), which quoted section 110(a)(2)(B) of the CAA of 1970. The commenter contends that the 1990 Amendments do not alter how courts have interpreted the requirements of section 110, quoting *Alaska Dept. of Envtl. Conservation* v. *EPA,* 540 U.S. 461, 470 (2004) which in turn quoted section 110(a)(2)(A) of the CAA and also stated that ''SIPs must include certain measures Congress specified'' to ensure attainment of the NAAQS. The Commenter also quotes several additional opinions in this vein. *Mont. Sulphur & Chem. Co.* v. *EPA,* 666 F.3d 1174, 1180 (9th Cir. 2012) (''The Clean Air Act directs states to develop implementation plans—SIPs—that 'assure' attainment and maintenance of [NAAQS] through enforceable emissions limitations''); *Hall* v. *EPA* 273 F.3d 1146, 1153 (9th Cir. 2001) (''Each State must submit a [SIP] that specif[ies] the manner in which [NAAQS] will be achieved and maintained within each air quality control region in the State''); *Conn. Fund for Env't, Inc.* v. *EPA,* 696 F.2d 169, 172 (D.C. Cir. 1982) (CAA requires SIPs to contain ''measures necessary to ensure attainment and maintenance of NAAQS''). Finally, Sierra Club cites *Mich. Dept. of Envtl. Quality* v. *Browner,* 230 F.3d 181 (6th Cir. 2000) for the proposition that EPA may not approve a SIP revision that does not demonstrate how the rules would not interfere with attainment and maintenance of the NAAQS.

Response 3: None of the cases Sierra Club cites support its contention that section 110(a)(2)(A) is clear that infrastructure SIPs must include detailed plans providing for attainment *and* maintenance of the NAAQS in all areas of the state, nor do they shed light on how section 110(a)(2)(A) may reasonably be interpreted. With the exception of *Train,* none of the cases the Commenter cites concerned the interpretation of CAA section 110(a)(2)(A) (or section 110(a)(2)(B) of the pre-1990 Act). Rather, the courts reference section 110(a)(2)(A) (or section 110(a)(2)(B) of the pre-1990 CAA) in the background sections of decisions in the context of a challenge to an EPA action on revisions to a SIP that was required and approved as meeting other provisions of the CAA or in the context of an enforcement action.

In *Train,* 421 U.S. 60, the Court was addressing a state revision to an attainment plan submission made pursuant to section 110 of the CAA, the sole statutory provision at that time regulating such submissions. The issue in that case concerned whether changes to requirements that would occur before attainment was required were variances that should be addressed pursuant to the provision governing SIP revisions or were ''postponements'' that must be addressed under section 110(f) of the CAA of 1970, which contained prescriptive criteria. The Court concluded that EPA reasonably interpreted section 110(f) not to restrict a state's choice of the mix of control measures needed to attain the NAAQS and that revisions to SIPs that would not impact attainment of the NAAQS by the attainment date were not subject to the limits of section 110(f). Thus the issue was not whether a section 110 SIP needs to provide for attainment or whether emissions limits are needed as

at electric generating units (EGUs) aimed at reducing interstate impacts on ozone and particulate matter concentrations in downwind states. In August 2011, EPA issued the Cross-State Air Pollution Rule (CSAPR) to replace CAIR, which had been remanded by the United States Court of Appeals for the District of Columbia Circuit (D.C. Circuit). *See North Carolina* v. *EPA,* 550 F.3d 1176, 1178 (D.C. Cir. 2008). *See also* 76 FR 48208 (August 8, 2011) (promulgation of CSAPR). New litigation commenced in the D.C. Circuit concerning CSAPR during which the D.C. Circuit initially vacated CSAPR in *EME Homer City Generation, L.P.* v. *EPA,* 696 F.3d 7 (D.C. Cir. 2012), cert. granted 133 U.S. 2857 (2013) and ordered continued implementation of CAIR. However, the United States Supreme Court vacated that decision and remanded CSAPR to the D.C. Circuit for further proceedings. *EPA* v. *EME Homer City Generation, L.P.,* 134 S. Ct. 1584 (2014). After the Supreme Court's decision, EPA filed a motion to lift the stay of CSAPR and asked the D.C. Circuit to toll CSAPR's compliance deadlines by three years. On October 23, 2014, after EPA proposed to approve Virginia's SO_2 infrastructure SIP, the D.C. Circuit granted EPA's motion and lifted the stay on CSAPR. *EME Homer City Generation, L.P.* v. *EPA,* No. 11–1302 (D.C. Cir. Oct. 23, 2014), Order at 3. EPA views the D.C. Circuit's October 23, 2014 Order as also granting EPA's request to toll CSAPR's compliance deadlines and will therefore commence implementation of CSAPR on January 1, 2015. 79 FR 71663 (December 3, 2014) (interim final rule revising CSAPR compliance deadlines). Therefore, EPA began implementing CSAPR on January 1, 2015 and ceased implementing CAIR on December 31, 2014 because CSAPR replaced CAIR. Virginia EGU's will continue to be subject to a cap-and-trade program for reducing SO_2 emissions which will preserve reductions at such EGUs achieved through CAIR; however, this program will be CSAPR, implemented as a FIP by EPA, until such time as Virginia adds the provisions of CSAPR to its SIP. CSAPR requires substantial reductions of SO_2 and NO_X emissions from EGUs in 28 states in the Eastern United States that significantly contribute to downwind nonattainment or interfere with maintenance of the 1997 fine particulate matter ($PM_{2.5}$) and ozone NAAQS and 2006 $PM_{2.5}$ NAAQS.

part of the SIP; rather the issue was which statutory provision governed when the state wanted to revise the emission limits in its SIP if such revision would not impact attainment or maintenance of the NAAQS. To the extent the holding in the case has any bearing on how section 110(a)(2)(A) might be interpreted, it is important to realize that in 1975, when the opinion was issued, section 110(a)(2)(B) (the predecessor to section 110(a)(2)(A)) expressly referenced the requirement to attain the NAAQS, a reference that was removed in 1990.

The decision in *Pennsylvania Dept. of Envtl. Resources* was also decided based on the pre-1990 provision of the CAA. At issue was whether EPA properly rejected a revision to an approved plan where the inventories relied on by the state for the updated submission had gaps. The Court quoted section 110(a)(2)(B) of the pre-1990 CAA in support of EPA's disapproval, but did not provide any interpretation of that provision. Yet, even if the Court had interpreted that provision, EPA notes that it was modified by Congress in 1990; thus, this decision has little bearing on the issue here.

At issue in *Mision Industrial,* 547 F.2d 123, was the definition of ''emissions limitation'', not whether section 110 requires the state to demonstrate how all areas of the state will attain and maintain the NAAQS as part of their infrastructure SIPs. The language from the opinion the Commenter quotes does not interpret but rather merely describes section 110(a)(2)(A). Sierra Club does not raise any concerns about whether the measures relied on by the Commonwealth in the infrastructure SIP are ''emissions limitations'' and the decision in this case has no bearing here.[5] In *Mont. Sulphur & Chem. Co.,* 666 F.3d 1174, the Court was reviewing a federal implementation plan (FIP) that EPA promulgated after a long history of the state failing to submit an adequate SIP in response to EPA's finding under section 110(k)(5) that the previously approved SIP was substantially inadequate to attain or maintain the NAAQS, which triggered the state's duty to submit a new SIP to show how it would remedy that deficiency and attain the NAAQS. The Court cited generally to sections 107 and 110(a)(2)(A) of the CAA for the proposition that SIPs should assure attainment and maintenance of NAAQS through emission limitations, but this language was not part of the Court's holding in the case, which focused instead on whether EPA's finding of SIP inadequacy, disapproval of the state's responsive attainment demonstration, and adoption of a remedial FIP were lawful. The Commenter suggests that *Alaska Dept. of Envtl. Conservation,* 540 U.S. 461, stands for the proposition that the 1990 CAA Amendments do not alter how courts interpret section 110. This claim is inaccurate. Rather, the Court quoted section 110(a)(2)(A), which, as noted previously, differs from the pre-1990 version of that provision and the court makes no mention of the changed language. Furthermore, Sierra Club also quotes the Court's statement that ''SIPs must include certain measures Congress specified,'' but that statement specifically referenced the requirement in section 110(a)(2)(C), which requires an enforcement program and a program for the regulation of the modification and construction of new sources. Notably, at issue in that case was the state's ''new source'' permitting program, not its infrastructure SIP.

Two of the cases Sierra Club cites, *Mich. Dept. of Envtl. Quality,* 230 F.3d 181, and *Hall,* 273 F.3d 1146, interpret CAA section 110(l), the provision governing ''revisions'' to plans, and not the initial plan submission requirement under section 110(a)(2) for a new or revised NAAQS, such as the infrastructure SIP at issue in this instance. In those cases, the courts cited to section 110(a)(2)(A) solely for the purpose of providing a brief background of the CAA.

Finally, in *Conn. Fund for Env't, Inc.* v. *EPA,* the D.C. Circuit was reviewing EPA action on a control measure SIP provision which adjusted the percent of sulfur permissible in fuel oil. 696 F.2d 169 (D.C. Cir. 1982). The D.C. Circuit focused on whether EPA needed to evaluate effects of the SIP revision on one pollutant or effects of changes on all possible pollutants; therefore, the D.C. Circuit did not address required measures for infrastructure SIPs and nothing in the opinion addressed whether infrastructure SIPs needed to contain measures to ensure attainment and maintenance of the NAAQS.

4. EPA Regulations, Such as 40 CFR 51.112(a)

Comment 4: Sierra Club cites to 40 CFR 51.112(a), providing that ''[e]ach plan must demonstrate that the measures, rules and regulations contained in it are adequate to provide for the timely attainment and maintenance of the [NAAQS].'' Sierra Club asserts that this regulation requires all SIPs to include emissions limits necessary to ensure attainment of the NAAQS. Sierra Club states that ''[a]lthough these regulations were developed before the Clean Air Act separated infrastructure SIPs from nonattainment SIPs—a process that began with the 1977 amendments and was completed by the 1990 amendments—the regulations apply to I–SIPs.'' Sierra Club relies on a statement in the preamble to the 1986 action restructuring and consolidating provisions in part 51, in which EPA stated that ''[i]t is beyond the scope of th[is] rulemaking to address the provisions of Part D of the Act . . .'' 51 FR 40656, 40656 (November 7, 1986).

Response 4: Sierra Club's reliance on 40 CFR 51.112 to support its argument that infrastructure SIPs must contain emission limits ''adequate to prohibit NAAQS exceedances'' and adequate or sufficient to ensure the maintenance of the NAAQS is not supported. As an initial matter, EPA notes and the Commenter recognizes this regulatory provision was initially promulgated and ''restructured and consolidated'' prior to the CAA Amendments of 1990, in which Congress removed all references to ''attainment'' in section 110(a)(2)(A). And, it is clear on its face that 40 CFR 51.112 applies to plans specifically designed to attain the NAAQS. EPA interprets these provisions to apply when states are developing ''control strategy'' SIPs such as the detailed attainment and maintenance plans required under other provisions of the CAA, as amended in 1977 and again in 1990, such as section 175A and 191–192. The Commenter suggests that these provisions must apply to section 110 SIPs because in the preamble to EPA's action ''restructuring and consolidating'' provisions in part 51, EPA stated that the new attainment demonstration provisions in the 1977 Amendments to the CAA were ''beyond the scope'' of the rulemaking. It is important to note, however, that EPA's action in 1986 was not to establish new substantive planning requirements, but rather was meant merely to consolidate and restructure provisions that had previously been promulgated. EPA noted that it had already issued guidance addressing the new ''Part D'' attainment planning obligations. Also, as to maintenance regulations, EPA expressly stated that it was not making any revisions other than to re-number those provisions. 51 FR at 40657.

Although EPA was explicit that it was not establishing requirements interpreting the provisions of new ''Part

[5] While Sierra Club does contend that the Commonwealth shouldn't be allowed to rely on emission reductions that were developed for the prior SO_2 standards (which we address herein), it does not claim that any of the measures are not ''emissions limitations'' within the definition of the CAA.

D'' of the CAA, it is clear that the regulations being restructured and consolidated were intended to address control strategy plans. In the preamble, EPA clearly stated that 40 CFR 51.112 was replacing 40 CFR 51.13 (''Control strategy: SO_X and PM (portion)''), 51.14 (''Control strategy: CO, HC, O_X and NO_2 (portion)''), 51.80 (''Demonstration of attainment: Pb (portion)''), and 51.82 (''Air quality data (portion)''). *Id.* at 40660. Thus, the present-day 40 CFR 51.112 contains consolidated provisions that are focused on control strategy SIPs, and the infrastructure SIP is not such a plan.

5. EPA Interpretations in Other Rulemakings

Comment 5: Sierra Club also references two prior EPA rulemaking actions where EPA disapproved or proposed to disapprove SIPs and claimed they were actions in which EPA relied on section 110(a)(2)(A) and 40 CFR 51.112 to reject infrastructure SIPs. The Commenter first points to a 2006 partial approval and partial disapproval of revisions to Missouri's existing plan addressing the SO_2 NAAQS. In that action, EPA cited section 110(a)(2)(A) for disapproving a revision to the state plan on the basis that the State failed to demonstrate the SIP was sufficient to ensure maintenance of the SO_2 NAAQS after revision of an emission limit and cited to 40 CFR 51.112 as requiring that a plan demonstrates the rules in a SIP are adequate to attain the NAAQS. Second, Sierra Club cites a 2013 disapproval of a revision to the SO_2 SIP for Indiana, where the revision removed an emission limit that applied to a specific emissions source at a facility in the State. *See* 78 FR 17157, 17158, (March 20, 2013) (proposed rule on Indiana SO_2 SIP) and 78 FR 78720, 78721 (December 27, 2013) (final rule on Indiana SO_2 SIP). In its proposed disapproval, EPA relied on 40 CFR 51.112(a) in proposing to reject the revision, stating that the State had not demonstrated that the emission limit was ''redundant, unnecessary, or that its removal would not result in or allow an increase in actual SO_2 emissions.'' EPA further stated in that proposed disapproval that the State had not demonstrated that removal of the limit would not ''affect the validity of the emission rates used in the existing attainment demonstration.''

Response 5: EPA does not agree that the two prior actions referenced by Sierra Club establish how EPA reviews infrastructure SIPs. It is clear from both the final Missouri rule and the proposed and final Indiana rule that EPA was not reviewing initial infrastructure SIP submissions under section 110 of the CAA, but rather reviewing revisions that would make an already approved SIP designed to demonstrate attainment of the NAAQS less stringent. EPA's partial approval and partial disapproval of revisions to restrictions on emissions of sulfur compounds for the Missouri SIP in 71 FR 12623 addressed a control strategy SIP and not an infrastructure SIP. The Indiana action provides even less support for the Commenter's position. 78 FR 78720. The review in that rule was of a completely different requirement than the section 110(a)(2)(A) SIP. Rather, in that case, the State had an approved SO_2 attainment plan and was seeking to remove provisions from the SIP that it relied on as part of the modeled attainment demonstration. EPA proposed that the State had failed to demonstrate under section 110(l) of the CAA why the SIP revision would not result in increased SO_2 emissions and thus interfere with attainment of the NAAQS. *See* 78 FR 17157. Nothing in that proposed or final rulemaking addresses the necessary content of the initial infrastructure SIP for a new or revised NAAQS. Rather, it is simply applying the clear statutory requirement that a state must demonstrate why a revision to an approved attainment plan will not interfere with attainment of the NAAQS.

As discussed in detail in the TSD and NPR, EPA finds the Virginia SIP meets the appropriate and relevant structural requirements of section 110(a)(2) of the CAA that will aid in attaining and/or maintaining the NAAQS and that the Commonwealth demonstrated that it has the necessary tools to implement and enforce a NAAQS. Therefore, EPA approves the Virginia SO_2 infrastructure SIP.[6]

B. Comments on Virginia SIP SO_2 Emission Limits

Comment 6: Citing section 110(a)(2)(A) of the CAA, Sierra Club contends that EPA may not approve the proposed infrastructure SIP because it does not include enforceable 1-hour SO_2 emission limits for sources currently allowed to cause ''NAAQS exceedances.'' Sierra Club asserts the proposed infrastructure SIP fails to include enforceable 1-hour SO_2 emissions limits or other required measures to ensure attainment and maintenance of the SO_2 NAAQS in areas not designated nonattainment as Sierra Club claims is required by section 110(a)(2)(A). Sierra Club asserts an infrastructure SIP must ensure, through state-wide regulations or source specific requirements, proper mass limitations and short term averaging on specific large sources of pollutants such as power plants. Sierra Club asserts that emission limits are especially important for meeting the 1-hour SO_2 NAAQS because SO_2 impacts are strongly source-oriented. Sierra Club states coal-fired electric generating units (EGUs) are large contributors to SO_2 emissions but contends Virginia did not demonstrate that emissions allowed by the proposed infrastructure SIP from such large sources of SO_2 will ensure compliance with the 2010 1-hour SO_2 NAAQS. The Commenter claims the proposed infrastructure SIP would allow major sources to continue operating with present emission limits.[7] Sierra Club then refers to air dispersion modeling it conducted for two coal-fired EGUs in Virginia, Chesapeake Energy Center and Yorktown Power Station. Sierra Club asserts the results of the air dispersion modeling it conducted employing EPA's AERMOD program for modeling used the plants' allowable and maximum emissions and showed the plants could cause exceedances of the 2010 SO_2 NAAQS with either allowable or maximum emissions.[8] Based on the modeling, Sierra Club asserts the Virginia SO_2 infrastructure SIP submittal authorizes the two EGUs to cause exceedances of the NAAQS with allowable and maximum emission rates and therefore the infrastructure SIP fails to include adequate enforceable emission limitations or other required measures for sources of SO_2 sufficient to ensure attainment and maintenance of the 2010 SO_2 NAAQS. Sierra Club cites to information from the owner of Chesapeake Energy Center and Yorktown Power Station regarding the retirement of certain units at those plants in 2015 and 2016 and asserts such planned retirements should be incorporated into the Virginia infrastructure SIP as necessary to ensure attainment and maintenance of the NAAQS. Sierra Club therefore asserts EPA must disapprove Virginia's proposed SIP revision. In addition, Sierra Club asserts ''EPA must impose additional emission limits on the plants

[6] As stated previously, EPA will take later, separate action on several portions of Virginia's SO_2 infrastructure SIP submittal including the portions of the SIP submittal addressing section 110(a)(2)(D)(i)(II) and (J) (both for visibility protection) and 110(a)(2)(E)(ii) for State Boards.

[7] Sierra Club provides a chart in its comments claiming 65 percent of SO_2 emissions in Virginia are from coal-fired power plants based on 2011 data.

[8] Sierra Club asserts its modeling followed protocols pursuant to 40 CFR part 50, Appendix W and EPA's 2005 Guideline on Air Quality Models.

that ensure attainment and maintenance of the NAAQS at all times.''

Response 6: EPA believes that section 110(a)(2)(A) of the CAA is reasonably interpreted to require states to submit infrastructure SIPs that reflect the first step in their planning for attainment and maintenance of a new or revised NAAQS. These SIP revisions should contain a demonstration that the state has the available tools and authority to develop and implement plans to attain and maintain the NAAQS and show that the SIP has enforceable control measures. In light of the structure of the CAA, EPA's long-standing position regarding infrastructure SIPs is that they are general planning SIPs to ensure that the state has adequate resources and authority to implement a NAAQS in general throughout the state and not detailed attainment and maintenance plans for each individual area of the state. As mentioned above, EPA has interpreted this to mean, with regard to the requirement for emission limitations, that states may rely on measures already in place to address the pollutant at issue or any new control measures that the state may choose to submit.

As stated in response to a previous comment, EPA asserts that section 110 of the CAA is only one provision that is part of the complicated structure governing implementation of the NAAQS program under the CAA, as amended in 1990, and it must be interpreted in the context of not only that structure, but also of the historical evolution of that structure. In light of the revisions to section 110 since 1970 and the later-promulgated and more specific planning requirements of the CAA, EPA reasonably interprets the requirement in section 110(a)(2)(A) of the CAA that the plan provide for ''implementation, maintenance and enforcement'' to mean that the SIP must contain enforceable emission limits that will aid in attaining and/or maintaining the NAAQS and that the Commonwealth demonstrate that it has the necessary tools to implement and enforce a NAAQS, such as adequate state personnel and an enforcement program. As discussed above, EPA has interpreted the requirement for emission limitations in section 110 to mean that the state may rely on measures already in place to address the pollutant at issue or any new control measures that the state may choose to submit. Finally, as EPA stated in the Infrastructure SIP Guidance which specifically provides guidance to states in addressing the 2010 SO_2 NAAQS, ''[t]he conceptual purpose of an infrastructure SIP submission is to assure that the air agency's SIP contains the necessary structural requirements for the new or revised NAAQS, whether by establishing that the SIP already contains the necessary provisions, by making a substantive SIP revision to update the SIP, or both.'' Infrastructure SIP Guidance at p. 2.

On April 12, 2012, EPA explained its expectations regarding the 2010 SO_2 NAAQS via letters to each of the states. EPA communicated in the April 2012 letters that all states were expected to submit SIPs meeting the ''infrastructure'' SIP requirements under section 110(a)(2) of the CAA by June 2013. At the time, EPA was undertaking a stakeholder outreach process to continue to develop possible approaches for determining attainment status under the SO_2 NAAQS and implementing this NAAQS. EPA was abundantly clear in the April 2012 letters that EPA did not expect states to submit substantive attainment demonstrations or modeling demonstrations showing attainment for areas not designated nonattainment in infrastructure SIPs due in June 2013. Although EPA had previously suggested in its 2010 SO_2 NAAQS preamble and in prior draft implementation guidance in 2011 that states should, in the unique SO_2 context, use the section 110(a) SIP process as the vehicle for demonstrating attainment of the NAAQS, this approach was never adopted as a binding requirement and was subsequently discarded in the April 2012 letters to states. The April 2012 letters recommended states focus infrastructure SIPs due in June 2013, such as Virginia's SO_2 infrastructure SIP, on traditional ''infrastructure elements'' in section 110(a)(1) and (2) rather than on modeling demonstrations for future attainment for areas not designated as nonattainment.[9]

Therefore, EPA asserts the elements of section 110(a)(2) which address SIP revisions for SO_2 nonattainment areas including measures and modeling demonstrating attainment are due by the dates statutorily prescribed under subpart 5 under part D. Those submissions are due no later than 18 months after an area is designed nonattainment for SO_2, under CAA section 191(a). Thus, the CAA directs states to submit these 110(a)(2) elements for nonattainment areas on a separate schedule from the ''structural requirements'' of 110(a)(2) which are due within three years of adoption or revision of a NAAQS. The infrastructure SIP submission requirement does not move up the date for any required submission of a part D plan for areas designated nonattainment for the new NAAQS. Thus, elements relating to demonstrating attainment for areas not attaining the NAAQS are not necessary for infrastructure SIP submissions, and the CAA does not provide explicit requirements for demonstrating attainment for areas that have not yet been designated regarding attainment with a particular NAAQS.

As stated previously, EPA believes that the proper inquiry at this juncture is whether Virginia has met the basic structural SIP requirements appropriate at the point in time EPA is acting upon the infrastructure submittal. Emissions limitations and other control measures needed to attain the NAAQS in areas designated nonattainment for that NAAQS are due on a different schedule from the section 110 infrastructure elements. A state, like Virginia, may reference pre-existing SIP emission limits or other rules contained in part D plans for previous NAAQS in an infrastructure SIP submission. For example, Virginia submitted a list of existing emission reduction measures in the SIP that control emissions of SO_2 as discussed above in response to a prior comment and discussed in detail in the

[9] In EPA's final SO_2 NAAQS preamble (75 FR 35520 (June 22, 2010)) and subsequent draft guidance in March and September 2011, EPA had expressed its expectation that many areas would be initially designated as unclassifiable due to limitations in the scope of the ambient monitoring network and the short time available before which states could conduct modeling to support their designations recommendations due in June 2011. In order to address concerns about potential violations in these unclassifiable areas, EPA initially recommended that states submit substantive attainment demonstration SIPs based on air quality modeling by June 2013 (under section 110(a)) that show how their unclassifiable areas would attain and maintain the NAAQS in the future. *Implementation of the 2010 Primary 1-Hour SO_2 NAAQS, Draft White Paper for Discussion,* May 2012 (2012 Draft White Paper) (for discussion purposes with Stakeholders at meetings in May and June 2012), available at *http://www.epa.gov/airquality/sulfurdioxide/implement.html.* However, EPA clearly stated in this 2012 Draft White Paper its clarified implementation position that it was no longer recommending such attainment demonstrations for unclassifiable areas for June 2013 infrastructure SIPs. *Id.* EPA had stated in the preamble to the NAAQS and in the prior 2011 draft guidance that EPA intended to develop and seek public comment on guidance for modeling and development of SIPs for sections 110 and 191 of the CAA. Section 191 of the CAA requires states to submit SIPs in accordance with section 172 for areas designated nonattainment with the SO_2 NAAQS. After seeking such comment, EPA has now issued guidance for the nonattainment area SIPs due pursuant to sections 191 and 172. *See Guidance for 1-Hour SO_2 Nonattainment Area SIP Submissions,* Stephen D. Page, Director, EPA's Office of Air Quality Planning and Standards, to Regional Air Division Directors Regions 1–10, April 23, 2014. In September 2013, EPA had previously issued specific guidance relevant to infrastructure SIP submissions due for the NAAQS, including the 2010 SO_2 NAAQS. *See* Infrastructure SIP Guidance.

TSD. These provisions have the ability to reduce SO_2 overall. Although the Virginia SIP relies on measures and programs used to implement previous SO_2 NAAQS, these provisions are not limited to reducing SO_2 levels to meet one specific NAAQS and will continue to provide benefits for the 2010 SO_2 NAAQS.

Additionally, as discussed in EPA's TSD supporting the NPR, Virginia has the ability to revise its SIP when necessary (*e.g.* in the event the Administrator finds the plan to be substantially inadequate to attain the NAAQS or otherwise meet all applicable CAA requirements) as required under element H of section 110(a)(2). *See* Code of Virginia 10.1–1308 (authorizing Virginia's Air Pollution Control Board to promulgate regulations to abate, control, and prohibit air pollution throughout the Commonwealth).

EPA believes the requirements for emission reduction measures for an area designated nonattainment for the 2010 primary SO_2 NAAQS are in sections 172 and 191–192 of the CAA, and therefore, the appropriate avenue for implementing requirements for necessary emission limitations for demonstrating attainment with the 2010 SO_2 NAAQS is through the attainment planning process contemplated by those sections of the CAA. On August 5, 2013, EPA designated as nonattainment most areas in locations where existing monitoring data from 2009–2011 indicated violations of the 1-hour SO_2 standard. 78 FR 47191. At that time, no areas in Virginia had monitoring data from 2009–2011 indicating violations of the 1-hour SO_2 standard, and thus no areas were designated nonattainment in Virginia. In separate future actions, EPA intends to address the designations for all other areas for which EPA has yet to issue designations. *See, e.g.,* 79 FR 27446 (May 13, 2014) (proposing process and timetables by which state air agencies would characterize air quality around SO_2 sources through ambient monitoring and/or air quality modeling techniques and submit such data to the EPA). Although no areas within Virginia have yet been designated nonattainment, any future nonattainment designations under the 2010 SO_2 NAAQS within the Commonwealth will set appropriate due dates for any applicable attainment SIPs required pursuant to CAA sections 172, 191, and 192. EPA believes it is not appropriate to bypass the attainment planning process by imposing separate attainment planning process requirements outside the attainment planning process and into the infrastructure SIP process. Such actions would be disruptive and premature absent exceptional circumstances and would interfere with a state's planning process. *See In the Matter of EME Homer City Generation LP and First Energy Generation Corp.,* Order on Petitions Numbers III–2012–06, III–2012–07, and III2013–01 (July 30, 2014) (hereafter, *Homer City/Mansfield Order*) at 10–19 (finding Pennsylvania SIP did not require imposition of SO_2 emission limits on sources independent of the part D attainment planning process contemplated by the CAA). EPA believes that the history of the CAA, and intent of Congress for the CAA as described above, demonstrate clearly that it is within the section 172 and general part D attainment planning process that Virginia must include additional SO_2 emission limits on sources in order to demonstrate future attainment, where needed, for any areas in Virginia or other states that may be designated nonattainment in the future, in order to reach attainment with the 2010 1-hour SO_2 NAAQS.

The Commenter's reliance on 40 CFR 51.112 to support its argument that infrastructure SIPs must contain emission limits adequate to provide for timely attainment and maintenance of the standard is also not supported. As explained previously in response to the background comments, EPA notes this regulatory provision clearly on its face applies to plans specifically designed to attain the NAAQS and not to infrastructure SIPs which show the states have in place structural requirements necessary to implement the NAAQS. Therefore, EPA finds 40 CFR 51.112 inapplicable to its analysis of the Virginia SO_2 infrastructure SIP.

As noted in EPA's preamble for the 2010 SO_2 NAAQS, determining compliance with the SO_2 NAAQS will likely be a source-driven analysis, and EPA has explored options to ensure that the SO_2 designations and implementation processes realistically account for anticipated SO_2 reductions at sources that we expect will be achieved by current and pending national and regional rules. *See* 75 FR 35520. As mentioned previously above, EPA has proposed a process to address additional areas in states which may be found to not be attaining the 2010 SO_2 NAAQS. 79 FR 27446 (proposing process for further monitoring or modeling of areas with larger SO_2 sources). In addition, in response to lawsuits in district courts seeking to compel EPA's remaining designations of undesignated areas under the NAAQS, EPA has proposed to enter a settlement under which this process would require an earlier round of designations focusing on areas with larger sources of SO_2 emissions, as well as enforceable deadlines for the later rounds of designations.[10] However, because the purpose of an infrastructure SIP submission is for more general planning purposes, EPA does not believe Virginia is obligated to account for controlled SO_2 levels at individual sources during this infrastructure SIP planning process. *See Homer City/Mansfield Order* at 10–19.

Regarding the air dispersion modeling conducted by Sierra Club pursuant to AERMOD for the coal-fired EGUs including Chesapeake Energy Center and Yorktown Power Station, EPA is not at this stage prepared to opine on whether the modeling demonstrates violations of the NAAQS, and does not find the modeling information relevant for review of an infrastructure SIP. EPA has issued non-binding guidance for states to use in conducting, if they choose, additional analysis to support designations for the 2010 SO_2 NAAQS. *SO_2 NAAQS Designations Modeling Technical Assistance Document,* EPA Office of Air and Radiation and Office of Air Quality Planning and Standards, December 2013, available at *http://www.epa.gov/airquality/sulfurdioxide/implement.html.* Sierra Club's AERMOD modeling for the Virginia EGUs was conducted prior to the issuance of this guidance and may not address all recommended elements EPA may consider important to modeling for the 2010 SO_2 NAAQS for designations purposes. If any areas in Virginia are designated nonattainment in the future, any potential future modeling in attainment demonstrations by the Commonwealth would need to account for any new emissions limitations Virginia develops to support such demonstration, which at this point are unknown. Therefore, it is premature at this point to evaluate whether current modeled allowable SO_2 levels would be sufficient to show future attainment of the NAAQS. In addition, while EPA has extensively discussed the use of modeling for attainment demonstration purposes and for designations, EPA has recommended that such modeling was not needed for the SO_2 infrastructure SIPs needed for the 2010 SO_2 NAAQS. *See* April 12, 2012 letters to states and 2012 Draft White Paper. In contrast, EPA recently discussed modeling for designations in our May 14, 2014 proposal at 79 FR 27446 and for nonattainment planning in the April 23,

[10] These lawsuits have not yet been fully resolved, as of the date of this final action.

2014 *Guidance for 1-Hour SO_2 Nonattainment Area SIP Submissions.*[11]

Finally, EPA also disagrees with the Commenter that the Virginia infrastructure SIP should incorporate the planned retirement dates of certain emission units at Chesapeake Energy Center and Yorktown Power Station to ensure attainment and maintenance of the NAAQS. Because EPA does not believe Virginia's infrastructure SIP requires at this time 1-hour SO_2 emission limits on these sources or other large stationary sources to prevent exceedances of the SO_2 NAAQS for all the reasons discussed above in this response, EPA likewise does not believe incorporating planned retirement dates for SO_2 emitters is necessary for our approval of an infrastructure SIP which we have explained meets the structural requirements of section 110(a)(2). If any areas in Virginia are subsequently designated nonattainment with the 2010 SO_2 NAAQS, Virginia can address needed emission reductions, including reductions through source retirements, in any subsequent attainment planning process in accordance with part D of title I of the CAA.

In conclusion, EPA disagrees with Sierra Club's statements that EPA must disapprove Virginia's infrastructure SIP submission because it does not establish specific enforceable SO_2 emission limits, either on coal-fired EGUs or other large SO_2 sources, in order to demonstrate attainment and maintenance with the NAAQS at this time.

Comment 7: Sierra Club asserts that modeling is the appropriate tool for evaluating adequacy of infrastructure SIPs and ensuring attainment and maintenance of the 2010 SO_2 NAAQS. The Commenter refers to EPA's historic use of air dispersion modeling for attainment designations as well as ''SIP revisions.'' The Commenter cites to prior EPA statements that the Agency has used modeling for designations and attainment demonstrations, including statements in the 2010 SO_2 NAAQS preamble, EPA's 2012 Draft White Paper for Discussion on Implementing the 2010 SO_2 NAAQS, and a 1994 SO_2 Guideline Document, as modeling could better address the source-specific impacts of SO_2 emissions and historic challenges from monitoring SO_2 emissions.[12]

Sierra Club also cited to several cases upholding EPA's use of modeling in NAAQS implementation actions, including the *Montana Sulphur* case, *Sierra Club* v. *Costle,* 657 F.2d 298 (D.C. Cir. 1981), *Republic Steel Corp.* v. *Costle,* 621 F.2d 797 (6th Cir. 1980), and *Catawba County* v. *EPA,* 571 F.3d 20 (D.C. Cir. 2009). The Commenter discusses statements made by EPA staff regarding the use of modeling and monitoring in setting emission limitations or determining ambient concentrations as a result of a source's emissions, discussing performance of AERMOD as a model, if AERMOD is capable of predicting whether the NAAQS is attained, and whether individual sources contribute to SO_2 NAAQS violations. Sierra Club cites to EPA's history of employing air dispersion modeling for increment compliance verifications in the permitting process for the Prevention of Significant Deterioration (PSD) program required in part C of title I of the CAA. The Commenter claims the Chesapeake Energy Center and Yorktown Power Station are examples of sources located in elevated terrain where the AERMOD model functions appropriately in evaluating ambient impacts.

Sierra Club asserts EPA's use of air dispersion modeling was upheld in *GenOn REMA, LLC* v. *EPA,* 722 F.3d 513 (3rd Cir. 2013) where an EGU challenged EPA's use of CAA section 126 to impose SO_2 emission limits on a source due to cross-state impacts. The Commenter claims the Third Circuit in *GenOn REMA* upheld EPA's actions after examining the record which included EPA's air dispersion modeling of the one source as well as other data.

The Commenter cites to *Vehicle Mfrs. Ass'n* v. *State Farm Mut. Auto Ins. Co.,* 463 U.S. 29,43 (1983) and *NRDC* v. *EPA,* 571 F.3d 1245, 1254 (D.C. Cir. 2009) for the general proposition that it would be arbitrary and capricious for an agency to ignore an aspect of an issue placed before it and that an agency must consider information presented during notice-and-comment rulemaking.

Finally, Sierra Club claims that Virginia's proposed SO_2 infrastructure SIP lacks emission limitations informed by air dispersion modeling and therefore fails to ensure Virginia will achieve and maintain the 2010 SO_2 NAAQS. Sierra Club claims EPA must require adequate, 1-hour SO_2 emission limits in the infrastructure SIP that show no exceedances of NAAQS when modeled.

Response 7: EPA agrees with Sierra Club that air dispersion modeling, such as AERMOD, can be an important tool in the CAA section 107 designations process for SO_2 and in the sections 172 and 191–192 attainment SIP process, including supporting required attainment demonstrations. EPA agrees that prior EPA statements, EPA guidance, and case law support the use of air dispersion modeling in the SO_2 designations process and attainment demonstration process, as well as in analyses of whether existing approved SIPs remain adequate to show attainment and maintenance of the SO_2 NAAQS. However, EPA disagrees with the Commenter that EPA must disapprove the Virginia SO_2 infrastructure SIP for its alleged failure to include source-specific SO_2 emission limits that show no exceedances of the NAAQS when modeled.

As discussed above and in the Infrastructure SIP Guidance, EPA believes the conceptual purpose of an infrastructure SIP submission is to assure that the air agency's SIP contains the necessary structural requirements for the new or revised NAAQS and that the infrastructure SIP submission process provides an opportunity to review the basic structural requirements of the air agency's air quality management program in light of the new or revised NAAQS. *See* Infrastructure SIP Guidance at p. 2. EPA believes the attainment planning process detailed in part D of the CAA, including sections 172 and 191–192 attainment SIPs, is the appropriate place for the state to evaluate measures needed to bring nonattainment areas into attainment with a NAAQS and to impose additional emission limitations such as SO_2 emission limits on specific sources.

EPA had initially recommended that states submit substantive attainment demonstration SIPs based on air quality modeling in the final 2010 SO_2 NAAQS preamble (75 FR 35520) and in subsequent draft guidance issued in September 2011 for the section 110(a) SIPs due in June 2013 in order to show how areas expected to be designated as unclassifiable would attain and maintain the NAAQS. These initial statements in the preamble and 2011 draft guidance were based on EPA's expectation at the time, that by June 2012, most areas would initially be designated as unclassifiable due to limitations in the scope of the ambient monitoring network and the short time available before which states could conduct modeling to support designations recommendations in 2011.

[11] EPA does not disagree with Sierra Club's data indicating coal-fired power plants represented a majority of the SO_2 emissions in Virginia based on 2011 data. However, such data are not relevant to EPA's approval of Virginia's SO_2 infrastructure SIP, and EPA therefore provides no additional response.

[12] The Commenter also cites to a 1983 EPA Memorandum on section 107 designations policy regarding use of modeling for designations and to the 2012 *Mont. Sulphur & Chem. Co.* case which upheld EPA's finding that the previously approved SIP for an area in Montana was substantially inadequate to attain the NAAQS due to modeled violations of the NAAQS.

However, after conducting extensive stakeholder outreach and receiving comments from the states regarding these initial statements and the timeline for implementing the NAAQS, EPA subsequently stated in the April 12, 2012 letters and in the 2012 Draft White Paper that EPA was clarifying its implementation position and was no longer recommending such attainment demonstrations supported by air dispersion modeling for unclassifiable areas (which had not yet been designated) for the June 2013 infrastructure SIPs. EPA then reaffirmed this position in the February 6, 2013 memorandum, ''Next Steps for Area Designations and Implementation of the Sulfur Dioxide National Ambient Air Quality Standard.'' [13] As previously mentioned, EPA had stated in the preamble to the NAAQS and in the prior 2011 draft guidance that EPA intended to develop and seek public comment on guidance for modeling and development of SIPs for sections 110, 172 and 191–192 of the CAA. After receiving such further comment, EPA has now issued guidance for the nonattainment area SIPs due pursuant to sections 172 and 191–192 and proposed a process for further characterization of areas with larger SO_2 sources, which could include use of air dispersion modeling. *See* April 23, 2014 *Guidance for 1-Hour SO_2 Nonattainment Area SIP Submissions* and 79 FR 27446 (proposing process and timetables for gathering additional information on impacts from larger SO_2 sources informed through ambient monitoring and/or air quality modeling). While the EPA guidance for attainment SIPs and the proposed process for further characterizing SO_2 emissions from larger sources both discuss the use air dispersion modeling, EPA's 2013 Infrastructure SIP Guidance did not suggest that states use air dispersion modeling to inform emission limitations for section 110(a)(2)(A) to ensure no exceedances of the NAAQS when sources are modeled. Therefore, as discussed previously, EPA believes the Virginia SO_2 infrastructure SIP submittal contains the structural requirements to address elements in section 110(a)(2) as discussed in detail in the TSD accompanying the proposed approval. EPA believes infrastructure SIPs are general planning SIPs to ensure that a state has adequate resources and authority to implement a NAAQS. Infrastructure SIP submissions are not intended to act or fulfill the obligations of a detailed attainment and/or maintenance plan for each individual area of the state that is not attaining the NAAQS. While infrastructure SIPs must address modeling authorities in general for section 110(a)(2)(K), EPA believes 110(a)(2)(K) requires infrastructure SIPs to provide the state's authority for air quality modeling and for submission of modeling data to EPA, not specific air dispersion modeling for large stationary sources of pollutants. In the TSD for this rulemaking action, EPA provided a detailed explanation of Virginia's ability and authority to conduct air quality modeling when required and its authority to submit modeling data to the EPA.

EPA finds Sierra Club's discussion of case law, guidance, and EPA staff statements regarding advantages of AERMOD as an air dispersion model to be irrelevant to the analysis of Virginia's infrastructure SIP as this is not an attainment SIP required to demonstrate attainment of the NAAQS pursuant to sections 172 or 192. In addition, Sierra Club's comments relating to EPA's use of AERMOD or modeling in general in designations pursuant to section 107, including its citation to *Catawba County,* are likewise irrelevant as EPA's present approval of Virginia's infrastructure SIP is unrelated to the section 107 designations process. Nor is EPA's action on this infrastructure SIP related to any new source review (NSR) or PSD permit program issue. As outlined in the August 23, 2010 clarification memo, ''Applicability of Appendix W Modeling Guidance for the 1-hour SO_2 National Ambient Air Quality Standard'' (U.S. EPA, 2010a), AERMOD is the preferred model for single source modeling to address the 1-hour SO_2 NAAQS as part of the NSR/PSD permit programs. Therefore, as attainment SIPs, designations, and NSR/PSD actions are outside the scope of a required infrastructure SIP for the 2010 SO_2 NAAQS for section 110(a), EPA provides no further response to the Commenter's discussion of air dispersion modeling for these applications. If Sierra Club resubmits its air dispersion modeling for the Virginia EGUs, or updated modeling information in the appropriate context, EPA will address the resubmitted modeling or updated modeling in the appropriate future context when an analysis of whether Virginia's emissions limits are adequate to show attainment and maintenance of the NAAQS is warranted.

The Commenter correctly noted that the Third Circuit upheld EPA's Section 126 Order imposing SO_2 emissions limitations on an EGU pursuant to CAA section 126. *GenOn REMA, LLC* v. *EPA,* 722 F.3d 513. Pursuant to section 126, any state or political subdivision may petition EPA for a finding that any major source or group of stationary sources emits, or would emit, any air pollutant in violation of the prohibition of section 110(a)(2)(D)(i)(I) which relates to significant contributions to nonattainment or maintenance in another state. The Third Circuit upheld EPA's authority under section 126 and found EPA's actions neither arbitrary nor capricious after reviewing EPA's supporting docket which included air dispersion modeling as well as ambient air monitoring data showing violations of the NAAQS. The Commenter appears to have cited to this matter to demonstrate EPA's use of modeling for certain aspects of the CAA. EPA agrees with the Commenter regarding the appropriate role air dispersion modeling has for SO_2 NAAQS designations, attainment SIPs, and demonstrating significant contributions to interstate transport. However, EPA's approval of Virginia's infrastructure SIP is based on our determination that Virginia has the required structural requirements pursuant to section 110(a)(2) in accordance with our explanation of the intent for infrastructure SIPs as discussed in the 2013 Infrastructure SIP Guidance. Therefore, while air dispersion modeling may be appropriate for consideration in certain circumstances, EPA does not find air dispersion modeling demonstrating no exceedances of the NAAQS to be a required element before approval of infrastructure SIPs for section 110(a) or specifically for 110(a)(2)(A). Thus, EPA disagrees with the Commenter that EPA must require additional emission limitations in the Virginia SO_2 infrastructure SIP informed by air dispersion modeling and demonstrating attainment and maintenance of the 2010 NAAQS.

In its comments, Sierra Club relies on *Motor Vehicle Mfrs. Ass'n* and *NRDC* v. *EPA* to support its comments that EPA *must* consider the Sierra Club's modeling data on the Chesapeake Energy Center and Yorktown Power Station based on administrative law principles regarding consideration of comments provided during a rulemaking process. EPA asserts that it has considered the modeling submitted by the Commenter as well as all the submitted comments of Sierra Club. As discussed in detail in the Responses above, however, EPA does not believe the infrastructure SIPs required by

[13] The February 6, 2013 ''Next Steps for Area Designations and Implementation of the Sulfur Dioxide National Ambient Air Quality Standard,'' one of the April 12, 2012 state letters, and the May 2012 *Draft White Paper* are available at *http://www.epa.gov/airquality/sulfurdioxide/implement.html.*

section 110(a) are the appropriate place to require emission limits demonstrating future attainment with a NAAQS. Part D of title I of the CAA contains numerous requirements for the NAAQS attainment planning process, including requirements for attainment demonstrations in section 172 supported by appropriate modeling. As also discussed previously, section 107 supports EPA's use of modeling in the designations process. In *Catawba,* the D.C. Circuit upheld EPA's consideration of data or factors for designations other than ambient monitoring. EPA does not believe infrastructure SIPs must contain emission limitations informed by air dispersion modeling in order to meet the requirements of section 110(a)(2)(A). Thus, EPA has evaluated the persuasiveness of the Commenter's submitted modeling in finding that it is not relevant to the approvability of Virginia's proposed infrastructure SIP for the 2010 SO_2 NAAQS.

While EPA does not believe that infrastructure SIP submissions are required to contain emission limits, as suggested by the Commenter, EPA does recognize that in the past, states have used infrastructure SIP submittals as a 'vehicle' for incorporating regulatory revisions or source-specific emission limits into the state's plan. *See* 78 FR 73442 (December 6, 2013) (approving regulations Maryland submitted for incorporation into the SIP along with the 2008 Ozone infrastructure SIP to address ethics requirements for State Boards in sections 128 and 110(a)(2)(E)(ii)). While these SIP revisions are intended to help the state meet the requirements of section 110(a)(2), these ''ride-along'' SIP revisions are not intended to signify that all infrastructure SIP submittals should have similar regulatory revisions or source-specific emission limits. Rather, the regulatory provisions and source-specific emission limits the state relies on when showing compliance with section 110(a)(2) have likely already been incorporated into the state's SIP prior to each new infrastructure SIP submission; in some cases this was done for entirely separate CAA requirements, such as attainment plans required under section 172, or for previous NAAQS.

Comment 8: Sierra Club asserts that EPA may not approve the Virginia proposed SO_2 infrastructure SIP because it fails to include enforceable emission limitations with a 1-hour averaging time that applies at all times. The Commenter cites to CAA section 302(k) which requires emission limits to apply on a continuous basis. The Commenter claims EPA has stated that 1-hour averaging times are necessary for the 2010 SO_2 NAAQS citing to a February 3, 2011, EPA Region 7 letter to the Kansas Department of Health and Environment regarding the need for 1-hour SO_2 emission limits in a PSD permit, an EPA Environmental Hearing Board (EHB) decision rejecting use of a 3-hour averaging time for a SO_2 limit in a PSD permit, and EPA's disapproval of a Missouri SIP which relied on annual averaging for SO_2 emission rates.[14]

Sierra Club also contends that infrastructure SIPs approved by EPA must include monitoring of SO_2 emission limits on a continuous basis using a continuous emission monitor system or systems (CEMS) and cites to section 110(a)(2)(F) which requires a SIP to establish a system to monitor emissions from stationary sources and to require submission of periodic emission reports. Sierra Club contends infrastructure SIPs must require such SO_2 CEMS to monitor SO_2 sources regardless of whether sources have control technology installed to ensure limits are protective of the NAAQS. Sierra Club contends any monitoring performed for the New Source Performance Standards (NSPS) in 40 CFR part 60 is inadequate for the NAAQS because NSPS monitoring does not call for monitoring during every hour of source operation which Sierra Club asserts is needed to protect the 1-hour SO_2 NAAQS. Thus, Sierra Club contends EPA must require enforceable emission limits, applicable at all times, with 1-hour averaging periods, monitored continuously by large sources of SO_2 emissions with CEMS, and therefore must disapprove Virginia's infrastructure SIP which Sierra Club claims fails to require emission limits with adequate averaging times.

Response 8: EPA disagrees that EPA must disapprove the proposed Virginia infrastructure SIP because the SIP does not contain enforceable SO_2 emission limitations with 1-hour averaging periods that apply at all times, along with requiring CEMS, as these issues are not appropriate for resolution at this stage in advance of the state's submission of an attainment demonstration for areas which may be designated nonattainment pursuant to section 107 of the CAA.[15] As explained in detail in previous responses, the purpose of the infrastructure SIP is to ensure that a state has the structural capability to attain and maintain the NAAQS and thus, additional SO_2 emission limitations to ensure attainment and maintenance of the NAAQS are not required for such infrastructure SIPs.[16] Likewise, EPA need not address, for the purpose of approving Virginia's infrastructure SIP, whether CEMS or some other appropriate monitoring of SO_2 emissions is necessary to demonstrate compliance with emission limits in order to show attainment of the 2010 SO_2 NAAQS as EPA believes such SO_2 emission limits and an attainment demonstration are not a prerequisite to EPA's approval of Virginia's infrastructure SIP.[17] Therefore, because EPA finds Virginia's SO_2 infrastructure SIP approvable without the additional SO_2 emission limitations showing attainment of the NAAQS, EPA finds the issues of appropriate averaging periods and monitoring requirements for such future limitations not relevant at this time. Sierra Club has cited to prior EPA discussion on emission limitations required in PSD permits (from an EAB decision and EPA's letter to Kansas' permitting authority) pursuant to part C of the CAA, which is neither relevant nor applicable to section 110 infrastructure SIPs. In addition, as previously discussed, the EPA disapproval of the 2006 Missouri SIP was a disapproval relating to a control strategy SIP required pursuant to part D attainment planning and is

[14] Sierra Club cited to *In re: Mississippi Lime Co.,* PSDAPLPEAL 11–01, 2011 WL 3557194, at *26–27 (EPA Aug. 9, 2011) and 71 FR 12623, 12624 (March 13, 2006) (EPA disapproval of a control strategy SO_2 SIP).

[15] As EPA has stated, there are not presently any designated nonattainment areas pursuant to CAA section 107 for the 2010 SO_2 NAAQS in the Commonwealth. Thus, the Commonwealth, at this time, has no obligation to submit any attainment plans for the 2010 SO_2 NAAQS for sections 172, 191 and 192. EPA believes the appropriate time for examining necessity of 1-hour SO_2 emission limits on specific sources is within the attainment planning process.

[16] For a discussion on emission averaging times for emissions limitations for SO_2 attainment SIPs, see the April 23, 2014 *Guidance for 1-Hour SO_2 Nonattainment Area SIP Submissions.* EPA explained that it is possible, in specific cases, for states to develop control strategies that account for variability in 1-hour emissions rates through emission limits with averaging times that are longer than 1-hour, using averaging times as long as 30-days, but still provide for attainment of the 2010 SO_2 NAAQS as long as the limits are of at least comparable stringency to a 1-hour limit at the critical emission value. EPA has not yet evaluated any specific submission of such a limit, and so is not at this time prepared to take final action to implement this concept. If and when a state submits an attainment demonstration that relies upon a limit with such a longer averaging time, EPA will evaluate it then.

[17] EPA believes the appropriate time for application of monitoring requirements to demonstrate continuous compliance by specific sources is when such 1-hour emission limits are set for specific sources whether in permits issued by Virginia pursuant to the SIP or in attainment SIPs submitted in the part D planning process.

likewise not relevant to the analysis of infrastructure SIP requirements.

EPA has explained in the TSD supporting this rulemaking action how the Virginia SIP meets requirements in section 110(a)(2)(F) related to monitoring. 9 VAC 5–40–100 requires sources in Virginia to install, maintain, and replace equipment such as CEMS to continuously monitor SO_2 emissions where necessary and required. Further, 9 VAC 5–40 requires sources in Virginia to report information, such as periodic reports on the nature and amounts of emissions and emissions-related data, from owners or operators of stationary sources of SO_2 emissions through permits and compliance orders. Pursuant to 40 CFR part 51, subpart A, ''Air Emissions Reporting Requirements,'' Virginia provides source-specific emissions data to EPA. Thus, EPA finds Virginia has the authority and responsibility to monitor air quality for the relevant NAAQS pollutants at appropriate locations and to submit data to EPA in a timely manner in accordance with 110(a)(2)(F) and the Infrastructure SIP Guidance.[18] *See* Infrastructure SIP Guidance at p. 45–46.

Comment 9: Sierra Club states that enforceable emission limits in SIPs or permits are necessary to avoid nonattainment designations in areas where modeling or monitoring shows SO_2 levels exceed the 1-hour SO_2 NAAQS and cites to a February 6, 2013 EPA document, *Next Steps for Area Designations and Implementation of the Sulfur Dioxide National Ambient Air Quality Standard,* which Sierra Club contends discusses how states could avoid future nonattainment designations. The Commenter asserts EPA should add enforceable emission limits to the Virginia infrastructure SIP to prevent future nonattainment designations and to protect public health. The Commenter claims the modeling it conducted for Chesapeake Energy Center and Yorktown Power Station indicates fourteen counties/independent cities in Virginia are at risk for being designated nonattainment with the 2010 SO_2 NAAQS without such enforceable SO_2 limits. The Commenter states EPA must ensure large sources cannot cause exceedances of the 2010 SO_2 NAAQS to comply with section 110(a)(2)(A) and to avoid future nonattainment designations. The Commenter asserts nonattainment designations create rigorous CAA requirements which could be avoided if states adopt and EPA approves such SO_2 emission limitations. In addition, the Commenter asserts adding SO_2 emission limitations on certain sources now would bring regulatory certainty for coal-fired EGUs and ultimately save such entities money as the sources could plan now for compliance with emission limits as well as with other CAA requirements such as the Mercury Air Toxic Standards, transport rules, and regional haze requirements. In summary, the Commenter asserts EPA must disapprove the Virginia infrastructure SIP and establish enforceable emission limits to ensure large sources of SO_2 do not cause exceedances of the 2010 SO_2 NAAQS, which would avoid nonattainment designations and bring ''regulatory certainty'' to sources in Virginia.

Response 9: EPA appreciates the Commenter's concern with avoiding nonattainment designations in Virginia for the 2010 SO_2 NAAQS and with providing coal-fired EGUs regulatory certainty to help them make informed decisions on how to comply with CAA requirements. However, Congress designed the CAA such that states have the primary responsibility for achieving and maintaining the NAAQS within their geographic area by submitting SIPs which will specify the details of how the state will meet the NAAQS. Pursuant to section 107(d), the states make initial recommendations of designations for areas within each state and EPA then promulgates the designations after considering the state's submission and other information. EPA promulgated initial designations for the 2010 SO_2 NAAQS in August 2013. EPA proposed on May 14, 2014 an additional process for gathering further SO_2 emissions source information for implementing the 2010 SO_2 NAAQS. 79 FR 27446. EPA has also proposed to enter a settlement to resolve deadline suits regarding the remaining designations that would, if entered by the court, impose deadlines for three more rounds of designations. Under these proposed schemes, Virginia would have the initial opportunity for proposing additional areas for designations for the 2010 SO_2 NAAQS. While EPA appreciates Sierra Club's comments, further designations will occur pursuant to the section 107(d) process, and in accordance with any applicable future court orders addressing the designations deadline suits and, if promulgated, future EPA rules addressing additional monitoring or modeling to be conducted by states. Virginia may, on its own accord, decide to impose additional SO_2 emission limitations to avoid future designations to nonattainment. If Virginia areas are designated nonattainment, Virginia will have the initial opportunity to develop additional emissions limitations needed to attain the NAAQS in the future, and EPA would be charged with reviewing whether those are adequate. If EPA were to disapprove the limits, then it would fall to EPA to adopt limits in a FIP. However, such considerations are not required of Virginia to consider at the infrastructure SIP stage of NAAQS implementation, as this action relates to our approval of Virginia's SO_2 infrastructure SIP submittal pursuant to section 110(a) of the CAA, and Sierra Club's comments regarding designations under section 107 are neither relevant nor germane to EPA's approval of Virginia's SO_2 infrastructure SIP. Likewise, while EPA appreciates Sierra Club's concern for providing ''regulatory certainty'' for coal-fired EGUs in Virginia, such concerns for regulatory certainty are not requirements for infrastructure SIPs as outlined by Congress in section 110(a)(2) nor as discussed in EPA's Infrastructure SIP Guidance. *See Commonwealth of Virginia, et al.,* v. *EPA,* 108 F.3d 1397, 1410 (D.C. Cir. 1997) (citing *Natural Resources Defense Council, Inc.* v. *Browner,* 57 F.3d 1122, 1123 (D.C. Cir. 1995)) (discussing that states have primary responsibility for determining an emission reductions program for its areas subject to EPA approval dependent upon whether the SIP as a whole meets applicable requirements of the CAA). Thus, EPA does not believe it is appropriate and necessary to condition approval of Virginia's infrastructure SIP upon inclusion of a particular emission reduction program as long as the SIP otherwise meets the requirements of the CAA. Sierra Club's comments regarding emission limits providing ''regulatory certainty'' for EGUs are irrelevant to EPA's approval of Virginia's infrastructure SIP for the 2010 SO_2 NAAQS, and EPA disagrees that the infrastructure SIP must be disapproved for not including enforceable emissions limitations to prevent future nonattainment designations or aid in providing ''regulatory certainty.''

Comment 10: The Commenter claims EPA must disapprove the proposed infrastructure SIP for the 2010 SO_2 NAAQS for its failure to include measures to ensure compliance with section 110(a)(2)(A) for the 2010 SO_2

[18] While monitoring pursuant to NSPS requirements in 40 CFR part 60 may not be sufficient for 1-hour SO_2 emission limits, EPA does not believe Sierra Club's comment regarding NSPS monitoring provisions is relevant at this time because EPA finds 1-hour SO_2 emission limits and associated monitoring and averaging periods are not required for our approval of Virginia's SO_2 infrastructure SIP.

NAAQS. The Commenter claims the provisions listed by Virginia for section 110(a)(2)(A) in its 2010 SO_2 NAAQS infrastructure SIP are not appropriate for the NAAQS as evidenced by the Commenter's modeling for plants which are not in areas presently designated nonattainment for the 2010 SO_2 NAAQS. Sierra Club claims Virginia wrongly relies on CAA part D attainment planning requirements to address NAAQS exceedances. The Commenter asserts that the infrastructure SIP required by section 110(a) must provide assurances that the NAAQS will be attained and maintained for areas not designated nonattainment. The Commenter claims the proposed infrastructure SIP relies on emission limits added to the SIP prior to the 2010 SO_2 NAAQS and does not include hourly SO_2 emission limits. Sierra Club therefore contends the proposed infrastructure SIP cannot ensure Virginia will attain and maintain the 2010 SO_2 NAAQS and EPA must disapprove the SIP and require 1-hour emission limits to address exceedances shown by Sierra Club's submitted modeling.

Response 10: EPA disagrees with Sierra Club that it must disapprove the Virginia proposed infrastructure SIP for the 2010 SO_2 NAAQS for the reasons already discussed in response to other comments from Sierra Club. Generally, it is not appropriate to bypass the attainment planning process by imposing separate requirements, such as additional SO_2 emission limits on sources, outside the attainment planning process. Such actions would be disruptive and premature absent exceptional circumstances.[19] *See Homer City/Mansfield Order* at 10–19 (finding Pennsylvania SIP did not require imposition of 1-hour SO_2 emission limits on sources independent of the part D attainment planning process contemplated by the CAA). As discussed in the *Homer City/Mansfield Order,* imposing different emission limitation requirements outside of the attainment planning process contemplated by Congress in part D of the CAA to address requirements for attaining the NAAQS might ultimately prove inconsistent with any attainment SIP Virginia will submit (when required) for designated nonattainment areas, even where one source is likely responsible for nonattainment. *Id.* As discussed in great detail above, the conceptual purpose of an infrastructure SIP submission is to assure that an air agency's SIP contains the necessary structural requirements for the new or revised NAAQS. Infrastructure SIP Guidance at p. 2.

As mentioned previously, while EPA had in 2010 initially suggested that states submit substantive attainment demonstration SIPs for unclassifiable areas based on air dispersion modeling in section 110(a) infrastructure SIPs, EPA subsequently gathered additional information and clarified its position. The April 12, 2012 letters to states, 2012 Draft White Paper, and February 6, 2013 memorandum on next steps, as previously discussed, clearly recommend states focus section 110(a) infrastructure SIPs due in June 2013 on ''traditional infrastructure elements'' in section 110(a)(1) and (2) rather than on modeling demonstrations for future attainment for unclassifiable areas.[20]

Therefore, EPA disagrees with the Commenter that the infrastructure SIP must be disapproved for failure to include measures to ensure compliance with the 2010 SO_2 NAAQS. As Congress provided for state primacy in implementing the NAAQS, Virginia should appropriately evaluate and impose necessary SO_2 emission limits on sources, where or when needed in Virginia, for any areas in Virginia which may later be designated nonattainment with the 2010 SO_2 NAAQS under section 107.[21]

Comment 11: The Commenter alleges that the proposed SO_2 infrastructure SIP does not address sources significantly contributing to nonattainment or interfering with maintenance of the NAAQS in other states as required by section 110(a)(2)(D)(i)(I) of the CAA, and states EPA must therefore disapprove the infrastructure SIP and impose a FIP. Sierra Club claims its modeling shows that at least one plant, Chesapeake Energy Center, is contributing to exceedances in other states. Sierra Club states that the CAA requires infrastructure SIPs to address cross-state air pollution within three years of the NAAQS promulgation. The Commenter argues that Virginia has not done so and that the EPA must disapprove the proposed infrastructure SIP and issue a FIP to correct these shortcomings. The Commenter references the recent Supreme Court decision, *EPA* v. *EME Homer City Generation,, L.P. et al,* 134 S. Ct. 1584 (2014), which supports the states' mandatory duty to address cross-state pollution under section 110(a)(2)(D)(i)(I) and affirmed EPA's ability to impose a FIP upon states' failure to address cross-state air pollution.

Response 11: EPA disagrees with Sierra Club's statement that EPA must disapprove the submitted 2010 SO_2 infrastructure SIP due to Virginia's failure to address section 110(a)(2)(D)(i)(I). In EPA's NPR proposing to approve Virginia's infrastructure SIP for the 2010 SO_2 NAAQS, EPA clearly stated that it was not taking any final action with respect to the good neighbor provision in section 110(a)(2)(D)(i)(I) which addresses emissions that significantly contribute to nonattainment or interfere with maintenance of the NAAQS in another state. Virginia did not make a submission to address the requirements of section 110(a)(2)(D)(i)(I) for the 2010 SO_2 NAAQS, and thus there is no such submission upon which EPA proposed to take disapproval action under section 110(k) of the CAA. EPA cannot act under section 110(k) to disapprove a SIP submission that has not been submitted to EPA. EPA also disagrees with the Commenter that EPA cannot approve other elements of an infrastructure SIP submission without the good neighbor provision. EPA additionally believes there is no basis for the contention that EPA has triggered its obligation to issue a FIP addressing the good neighbor obligation under section 110(c), as EPA has neither found that Virginia failed to timely submit a required 110(a)(2)(D)(i)(I) SIP submission for the 2010 SO_2 NAAQS or found that such a submission was incomplete, nor has EPA disapproved a SIP submission addressing 110(a)(2)(D)(i)(I) with respect to the 2010 SO_2 NAAQS.

EPA acknowledges the Commenter's concern for the interstate transport of air pollutants and agrees in general with

[19] Thus, EPA agrees with Virginia's response to Sierra Club when the Commenter raised these same comments to the Commonwealth during the drafting of Virginia's infrastructure SIP. Sierra Club's modeling of the coal-fired power plants SO_2 emissions is not relevant at this time.

[20] The February 6, 2013 memorandum is more completely the February 6, 2013 memorandum, ''Next Steps for Area Designations and Implementation of the Sulfur Dioxide National Ambient Air Quality Standard'' available at *http://www.epa.gov/airquality/sulfurdioxide/implement.html.*

[21] EPA also notes that in EPA's final rule regarding the 2010 SO_2 NAAQS, EPA noted that it anticipates several forthcoming national and regional rules, such as the Industrial Boilers standard under CAA section 112, are likely to require significant reductions in SO_2 emissions over the next several years. *See* 75 FR 35520. EPA continues to believe similar national and regional rules will lead to SO_2 reductions that will help achieve compliance with the 2010 SO_2 NAAQS. If it appears that states with areas designated nonattainment in 2013 will nevertheless fail to attain the NAAQS as expeditiously as practicable (but no later than August 2018) during EPA's review of attainment SIPs required by section 172, the CAA provides authorities and tools for EPA to solve such failure, including, as appropriate, disapproving submitted SIPs and promulgating FIPs. Likewise, for any areas designated nonattainment after 2013, EPA has the same authorities and tools available to address any areas which do not timely attain the NAAQS.

the Commenter that sections 110(a)(1) and (a)(2) of the CAA generally require states to submit, within three years of promulgation of a new or revised NAAQS, a plan which addresses cross-state air pollution under section 110(a)(2)(D)(i)(I). However, EPA disagrees with the Commenter's argument that EPA cannot approve an infrastructure SIP submission without the good neighbor provision. Section 110(k)(3) of the CAA authorizes EPA to approve a plan in full, disapprove it in full, or approve it in part and disapprove it in part, depending on the extent to which such plan meets the requirements of the CAA. This authority to approve state SIP revisions in separable parts was included in the 1990 Amendments to the CAA to overrule a decision in the Court of Appeals for the Ninth Circuit holding that EPA could not approve individual measures in a plan submission without either approving or disapproving the plan as a whole. *See* S. Rep. No. 101–228, at 22, 1990 U.S.C.C.A.N. 3385, 3408 (discussing the express overruling of *Abramowitz* v. *EPA,* 832 F.2d 1071 (9th Cir. 1987)).

EPA interprets its authority under section 110(k)(3) of the CAA, as affording EPA the discretion to approve, or conditionally approve, individual elements of Virginia's infrastructure SIP submission for the 2010 SO_2 NAAQS, separate and apart from any action with respect to the requirements of section 110(a)(2)(D)(i)(I) of the CAA with respect to that NAAQS. EPA views discrete infrastructure SIP requirements, such as the requirements of 110(a)(2)(D)(i)(I), as severable from the other infrastructure elements and interprets section 110(k)(3) as allowing it to act on individual severable measures in a plan submission. In short, EPA believes that even if Virginia had made a SIP submission for section 110(a)(2)(D)(i)(I) of the CAA for the 2010 SO_2 NAAQS, which to date it has not, EPA would still have discretion under section 110(k) of the CAA to act upon the various individual elements of the state's infrastructure SIP submission, separately or together, as appropriate.

The Commenter raises no compelling legal or environmental rationale for an alternate interpretation. Nothing in the Supreme Court's April 2014 decision in *EME Homer City* alters EPA's interpretation that EPA may act on individual severable measures, including the requirements of section 110(a)(2)(D)(i)(I), in a SIP submission. *See EPA* v. *EME Homer City Generation, L.P.,* 134 S. Ct. 1584 (affirming a state's obligation to submit a SIP revision addressing section 110(a)(2)(D)(i)(I) independent of EPA's action finding significant contribution or interference with maintenance). In sum, the concerns raised by the Commenter do not establish that it is inappropriate or unreasonable for EPA to approve the portions of Virginia's June 18, 2014 infrastructure SIP submission for the 2010 SO_2 NAAQS.

Furthermore, as discussed above, EPA has no obligation to issue a FIP pursuant to 110(c)(1) to address Virginia's obligations under section 110(a)(2)(D)(i)(I) until EPA first either finds Virginia failed to make the required submission addressing the element or the Commonwealth has made such a submission but it is incomplete, or EPA disapproves a SIP submittal addressing that element. Until either occurs, EPA does not have the authority to issue a FIP pursuant to section 110(c) with respect to the good neighbor provision. Therefore, EPA disagrees with the Commenter's contention that it must issue a FIP for Virginia to address 110(a)(2)(D)(i)(I) for the 2010 SO_2 NAAQS at this time.

Regarding Sierra Club's assertion that one stationary source is causing ''exceedances'' in other states according to the modeling conducted by Sierra Club, EPA believes such assertion is irrelevant to our action approving Virginia's infrastructure SIP for the 2010 SO_2 NAAQS because EPA has not proposed any action on section 110(a)(2)(D)(i)(I) regarding Virginia's obligations to address the transport of SO_2 emissions. EPA may consider such information if Sierra Club resubmits when EPA does act upon a Virginia SIP submission to address 110(a)(2)(D)(i)(I) obligations for the 2010 SO_2 NAAQS.

Comment 12: Sierra Club contends that the EPA must disapprove the proposed infrastructure SIP because it does not contain adequate provisions to prohibit sources and emissions in Virginia from interfering with another state's visibility as required by section 110(a)(2)(D)(i)(II) of the CAA. The Commenter cites to the Supreme Court's decision in *EME Homer City* in support of its statement that Virginia's duty to protect visibility is a mandatory duty. The Commenter asserts EPA ignores its deadline by not acting in today's rulemaking on the visibility prong of section 110(a)(2)(D)(i)(II) and asserts EPA cites no legally defensible reason for not acting. Finally, the Commenter argues that the ''deadline for state action has passed'' and EPA must disapprove the SO_2 infrastructure SIP and issue a FIP to address the failings of the infrastructure SIP to protect visibility in other states.

Response 12: EPA disagrees with the Commenter that in today's rulemaking action EPA must disapprove the Virginia SO_2 infrastructure SIP for its failure to protect visibility and issue a FIP addressing visibility protection for Virginia. In EPA's NPR proposing to approve Virginia's infrastructure SIP for the 2010 SO_2 NAAQS, EPA clearly stated that it was not proposing to take any action at that time with respect to the visibility protection provisions in section 110(a)(2)(D)(i)(II). While Virginia did make a SIP submission to address the requirements of section 110(a)(2)(D)(i)(II) for visibility protection, and cited to its regional haze SIP and CAIR as meeting these requirements, EPA did not propose to take any action in the NPR with respect to Virginia's visibility protection obligations pursuant to section 110(a)(2)(D)(i)(II).[22] As indicated in EPA's NPR, EPA anticipates taking later action on the portion of Virginia's June 18, 2014 SIP submission addressing visibility protection.[23] EPA disagrees with the Commenter that EPA cannot approve a portion of an infrastructure SIP submittal without taking action on the visibility protection provision. Further, there is no basis for the contention that EPA must issue a FIP under section 110(c) within two years,

[22] On June 13, 2012 (77 FR 35287), EPA finalized a limited approval of Virginia's October 4, 2010 regional haze SIP, and subsequent supplements, to address the first implementation period for regional haze. On June 7, 2012, EPA issued a limited disapproval of this SIP because of Virginia's reliance on CAIR to meet certain regional haze requirements, which EPA replaced in August 2011 with CSAPR (76 FR 48208 (August 8, 2011)). 77 FR 33641. EPA had also issued on June 7, 2012 in the same action a FIP that replaced Virginia's reliance on CAIR with reliance on CSAPR for certain regional haze requirements. *Id.* Later, as discussed previously, the D.C. Circuit in *EME Homer City Generation,* 696 F.3d 7, vacated CSAPR and kept CAIR in place. Subsequently, on April 30, 2014, the Supreme Court vacated the D.C. Circuit decision and remanded the matter to the D.C. Circuit for further proceedings. *EME Homer City,* 134 S. Ct. 1584. On October 23, 2014, after we proposed to approve Virginia's infrastructure SIP, the D.C. Circuit lifted the stay on CSAPR. *EME Homer City Generation, L.P.* v. *EPA,* No. 11–1302 (D.C. Cir. Oct. 23, 2014), Order at 3. As mentioned in response to a prior comment, EPA began implementing CSAPR on January 1, 2015. 79 FR 71663 (December 3, 2014) (interim final rule revising CSAPR compliance deadlines). EPA will take appropriate action on Virginia's obligations under 110(a)(2)(D)(i)(II) for visibility protection in a subsequent rulemaking action.

[23] One way in which section 110(a)(2)(D)(i)(II) for visibility protection may be satisfied for any relevant NAAQS is through an air agency's confirmation in its infrastructure SIP submission that it has an approved regional haze SIP that fully meets the requirements of 40 CFR 51.308 or 51.309. Infrastructure SIP Guidance at p. 33. As previously indicated, Virginia has a regional haze SIP with limited approval and limited disapproval and a FIP which addresses replacement of CSAPR for CAIR for certain regional haze requirements.

as EPA has neither disapproved nor found that Virginia failed to submit a required 110(a)(2)(D)(i)(II) SIP submission addressing visibility protection for the 2010 SO_2 NAAQS.

As previously discussed regarding the good-neighbor SIP provisions for infrastructure SIPs, EPA disagrees with the Commenter's argument that EPA cannot approve a SIP without certain elements such as the visibility protection element. Section 110(k)(3) of the CAA authorizes EPA to approve a plan in full, disapprove it in full, or approve it in part and disapprove it in part, depending on the extent to which such a plan meets the requirements of the CAA. As discussed above, this authority to approve SIP revisions in separable parts was included in the 1990 Amendments to the CAA. *See* S. Rep. No. 101–228, at 22, 1990 U.S.C.C.A.N. 3385, 3408 (discussing the express overruling of *Abramowitz* v. *EPA).*

As discussed above, EPA interprets its authority under section 110(k)(3) of the CAA, as affording EPA the discretion to approve individual elements of Virginia's infrastructure submission for the 2010 SO_2 NAAQS, separate and apart from any action with respect to the requirements of section 110(a)(2)(D)(i)(II) for visibility protection. EPA views discrete infrastructure SIP requirements as severable from the other infrastructure elements and interprets section 110(k)(3) as allowing it to act on individual, severable measures. In short, EPA believes we have discretion under section 110(k) of the CAA to act upon the various individual elements of the state's infrastructure SIP submission, separately or together, as appropriate. The concerns raised by the Commenter do not establish that it is inappropriate or unreasonable for EPA to approve portions of Virginia's June 18, 2014 infrastructure SIP submission for the 2010 SO_2 NAAQS.

EPA also has no obligation to issue a FIP to address Virginia's obligations under section 110(a)(2)(D)(i)(II) until EPA first finds Virginia failed to satisfy its visibility protection obligations with a complete SIP submittal addressing that element or disapproves any SIP submittal addressing that element. Until such occurs, EPA may not issue any further FIP for visibility protection pursuant to section 110(c).

Comment 13: The Commenter alleges the infrastructure SIP must not allow for such things as ambient air incremental increases, variances, exceptions, or exclusions for limits on sources of pollutants; otherwise, the Commenter alleges Virginia cannot assure compliance with infrastructure SIP requirements for the SO_2 NAAQS. The Commenter asserts the infrastructure SIP should not allow for certain sources to be exempt from permit requirements nor allow affirmative defenses or variances to ''requirements'' during startup, shutdown or malfunction (SSM) or due to hardship. The Commenter states EPA cannot delay acting on ''startup, shutdown, and malfunction'' of operations or director's variances because of the mandatory timeline for infrastructure SIPs under the CAA. The Commenter also asserts EPA should issue a finding of non-completeness and set forth a FIP because Virginia has failed to submit certain required components for its SO_2 infrastructure SIP. The Commenter maintains the CAA is clear and that EPA's ''segmented and piecemeal approach'' to approving Virginia's infrastructure SIP is inappropriate because infrastructure SIPs must contain the entirety of a state's comprehensive plan to implement and maintain the NAAQS and because the components of section 110(a)(2) are interrelated. Thus, the Commenter asserts EPA must disapprove the SO_2 infrastructure SIP submittal and issue a FIP.

Response 13: EPA disagrees with the Commenter that EPA must disapprove Virginia's infrastructure SIP and issue a FIP, instead of acting in a ''piecemeal'' approach (as Sierra Club calls it) in approving the majority of Virginia's SO_2 infrastructure SIP while acting at a later date on certain specific elements of the SIP, including the portions related to transport and regional haze in 110(a)(2)(D)(i)(I) and (II) and the portion related to State Boards in 110(a)(2)(E)(ii). As explained in the NPR for this rulemaking action and in the responses above, EPA interprets its authority under section 110(k)(3) of the CAA as affording EPA the discretion to approve individual elements of Virginia's infrastructure submission for the 2010 SO_2 NAAQS, while taking later separate action on the infrastructure submission for the requirements of section 110(a)(2)(D)(i) for transport and visibility protection or 110(a)(2)(E)(ii) for State Board requirements. As explained previously, EPA views discrete infrastructure SIP requirements like transport, State Boards, and visibility protection as severable from the other infrastructure elements and interprets section 110(k)(3) as allowing EPA to act on individual, severable measures. Section 110(k)(3) expressly authorizes EPA to approve a plan in full, disapprove it in full, or approve it in part and disapprove it in part, depending on the extent to which such plan meets the requirements of the CAA. As discussed above, this authority to approve SIP revisions in separable parts was included in the 1990 Amendments to the CAA. *See* S. Rep. No. 101–228, at 22, 1990 U.S.C.C.A.N. 3385, 3408 (discussing the express overruling of *Abramowitz* v. *EPA).*

In short, EPA believes that EPA has discretion under section 110(k) to act upon the various individual elements of the state's infrastructure SIP submission, separately or together, as appropriate. The Commenter has not provided any case law or EPA interpretation of section 110 to support its contrary interpretation that it is inappropriate or unreasonable for EPA to approve portions of Virginia's June 18, 2014 infrastructure SIP submission for the 2010 SO_2 NAAQS.

In addition, EPA also has no obligation to issue a FIP to address Virginia's obligations under section 110(a)(2)(D)(i)(I) or (II) or 110(a)(2)(E)(ii) until EPA first finds Virginia failed to satisfy its obligations with a complete SIP submittal addressing those elements or disapproves any SIP submittal addressing that element. Until such occurs pursuant to section 110(c), EPA may not issue any FIP for transport, visibility protection, or State Board requirements or the infrastructure SIP as a whole.

EPA also disagrees with the Commenter that EPA is required to address all potential deficiencies that may exist in the Virginia SIP in the context of evaluating an infrastructure SIP submission. In particular, EPA is not addressing any existing SIP provisions related to the treatment of emissions during SSM events, including automatic or director's discretion exemptions, overbroad state enforcement discretion provisions, or affirmative defense provisions. As EPA stated in the TSD for this rulemaking action, EPA is not approving or disapproving any existing Virginia regulatory or statutory provisions with regard to excess emissions during SSM of operations at any facility. EPA believes that a number of states may have SIP provisions related to emissions during SSM events which are contrary to the CAA and existing EPA guidance (August 11, 1999 Steven Herman and Robert Perciasepe Guidance Memorandum, ''State Implementation Plans: Policy Regarding Excess Emissions During Malfunctions, Startup, and Shutdown''), and EPA is addressing such potentially deficient SIP provisions in a separate rulemaking. *See* 78 FR 12460 (February 22, 2013) (proposed rulemaking on SSM SIP

provisions). *See also* 79 FR 55920 (September 17, 2014) (supplemental proposed rulemaking on affirmative defense provisions). In the TSD, EPA also stated that EPA is not approving or disapproving any existing Virginia regulatory or statutory provisions with regard to director's discretion or variance provisions. EPA believes that a number of states may have such provisions which are contrary to the CAA and existing EPA guidance (*see* 52 FR 45109, November 1987), and EPA is also addressing such state regulations in the separate rulemaking. *See* 78 FR 12460. Similarly, EPA is not approving or disapproving any affirmative defense provisions applicable to excess emissions during SSM events in this action. EPA has separately proposed to address such existing affirmative defense provisions in the SIPs of many states, including Virginia. *See also* 79 FR 55920. In the meantime, EPA encourages any state having deficient SIP provisions related to the treatment of excess emissions during SSM events to take steps to correct them as soon as possible. Upon conclusion of EPA's SSM SIP call rulemaking, any states that EPA determines have impermissible SIP provisions related to SSM events will have time to adjust their SIPs where necessary and as required. As EPA is neither approving nor disapproving any new provisions related to automatic or director's discretion exemptions, overbroad state enforcement discretion provisions, or affirmative defense provisions in this rulemaking, EPA disagrees with Sierra Club's comment that the infrastructure SIP ''must not allow for such things'' and disagrees with any inference from the comment that EPA must disapprove the Virginia SO_2 infrastructure SIP because of any such existing deficient provisions. Moreover, EPA emphasizes that by approving Virginia's SO_2 infrastructure SIP submission, EPA is not approving or reapproving any such deficient provisions that exist in the current SIP.

Regarding the Commenter's statement that the infrastructure SIP should not allow Virginia to exempt certain sources from permitting, the Sierra Club fails to identify any exemptions from permitting that preclude EPA from approving the infrastructure SIP. EPA explained in the TSD for this rulemaking that Virginia's permitting program for major and minor stationary sources met requirements in the CAA for section 110(a)(2)(C). Specifically, EPA stated Virginia has a SIP-approved minor new source review (NSR) program located in 9 VAC 5–80–10 (New and Modified Stationary Sources) and 9 VAC 5–80–11 (Stationary Source Permit Exemption Levels) which regulates certain modifications and construction of stationary sources within areas covered by its SIP as necessary to assure the NAAQS are achieved. EPA had previously approved such provisions into the Virginia SIP as they met requirements for a minor NSR program in accordance with the CAA and 40 CFR 51.160. *See* 65 FR 21315 (April 21, 2000).

EPA's TSD for this rulemaking also explained Virginia's SIP met requirements in section 110(a)(2)(C) for a PSD permit program as required in part C of title I of the CAA. In Virginia, construction and modification of stationary sources are covered under Article 8, Permits for Major Stationary Sources and Major Modifications Locating in Prevention of Significant Deterioration Areas (9 VAC 5–80–1605 *et seq.*) which is included in the approved Virginia SIP. *See* 40 CFR 52.2420(c). Article 8 also provides that construction and modification of major stationary sources will not cause or contribute to a violation of any NAAQS (9 VAC 5–80–1635, Ambient Air Increments and 9 VAC 5–80–1645, Ambient Air Ceilings) and requires application of Best Available Control Technology to new or modified sources (9 VAC 5–80–1705, Control Technology Review). EPA has previously approved Virginia's PSD permit program as meeting the requirements in part C, title I of the CAA and 40 CFR 51.166. *See* 79 FR 10377 (February 25, 2014). The Sierra Club has not identified any specific exemption that is allegedly problematic or any recent amendments to the Virginia rules that has added such an exemption. The Sierra Club has not demonstrated that Virginia's permitting program for major and minor stationary sources does not meet requirements in the CAA for section 110(a)(2)(C).

III. Final Action

EPA is approving the following elements of Virginia's June 18, 2014 SIP revision for the 2010 SO_2 NAAQS: Section 110(a)(2)(A), (B), (C), (D)(i)(II) (PSD requirements), (D)(ii), (E)(i), (E)(iii), (F), (G), (H), (J) (consultation, public notification, and PSD), (K), (L), and (M). Virginia's SIP revision provides the basic program elements specified in Section 110(a)(2) necessary to implement, maintain, and enforce the 2010 SO_2 NAAQS. This final rulemaking action does not include action on section 110(a)(2)(I) which pertains to the nonattainment planning requirements of part D, title I of the CAA, because this element is not required to be submitted by the 3-year submission deadline of section 110(a)(1) of the CAA, and will be addressed in a separate process. Additionally, EPA will take later, separate action on section 110(a)(2)(D)(i)(I) (interstate transport of emissions), (D)(i)(II) (visibility protection), (J) (visibility protection) and (E)(ii) (Section 128, ''State Boards'') for the 2010 SO_2 NAAQS as previously discussed.

IV. General Information Pertaining to SIP Submittals From the Commonwealth of Virginia

In 1995, Virginia adopted legislation that provides, subject to certain conditions, for an environmental assessment (audit) ''privilege'' for voluntary compliance evaluations performed by a regulated entity. The legislation further addresses the relative burden of proof for parties either asserting the privilege or seeking disclosure of documents for which the privilege is claimed. Virginia's legislation also provides, subject to certain conditions, for a penalty waiver for violations of environmental laws when a regulated entity discovers such violations pursuant to a voluntary compliance evaluation and voluntarily discloses such violations to the Commonwealth and takes prompt and appropriate measures to remedy the violations. Virginia's Voluntary Environmental Assessment Privilege Law, Va. Code Sec. 10.1–1198, provides a privilege that protects from disclosure documents and information about the content of those documents that are the product of a voluntary environmental assessment. The Privilege Law does not extend to documents or information that: (1) Are generated or developed before the commencement of a voluntary environmental assessment; (2) are prepared independently of the assessment process; (3) demonstrate a clear, imminent and substantial danger to the public health or environment; or (4) are required by law.

On January 12, 1998, the Commonwealth of Virginia Office of the Attorney General provided a legal opinion that states that the Privilege law, Va. Code Sec. 10.1–1198, precludes granting a privilege to documents and information ''required by law,'' including documents and information ''required by Federal law to maintain program delegation, authorization or approval,'' since Virginia must ''enforce Federally authorized environmental programs in a manner that is no less stringent than their Federal counterparts . . .'' The opinion concludes that ''[r]egarding § 10.1–1198, therefore, documents or other information needed for civil or criminal enforcement under

one of these programs could not be privileged because such documents and information are essential to pursuing enforcement in a manner required by Federal law to maintain program delegation, authorization or approval.''

Virginia's Immunity law, Va. Code Sec. 10.1–1199, provides that ''[t]o the extent consistent with requirements imposed by Federal law,'' any person making a voluntary disclosure of information to a state agency regarding a violation of an environmental statute, regulation, permit, or administrative order is granted immunity from administrative or civil penalty. The Attorney General's January 12, 1998 opinion states that the quoted language renders this statute inapplicable to enforcement of any Federally authorized programs, since ''no immunity could be afforded from administrative, civil, or criminal penalties because granting such immunity would not be consistent with Federal law, which is one of the criteria for immunity.''

Therefore, EPA has determined that Virginia's Privilege and Immunity statutes will not preclude the Commonwealth from enforcing its program consistent with the Federal requirements. In any event, because EPA has also determined that a state audit privilege and immunity law can affect only state enforcement and cannot have any impact on Federal enforcement authorities, EPA may at any time invoke its authority under the CAA, including, for example, Sections 113, 167, 205, 211 or 213, to enforce the requirements or prohibitions of the state plan, independently of any state enforcement effort. In addition, citizen enforcement under Section 304 of the CAA is likewise unaffected by this, or any, state audit privilege or immunity law.

V. Statutory and Executive Order Reviews

A. General Requirements

Under the CAA, the Administrator is required to approve a SIP submission that complies with the provisions of the CAA and applicable Federal regulations. 42 U.S.C. 7410(k); 40 CFR 52.02(a). Thus, in reviewing SIP submissions, EPA's role is to approve state choices, provided that they meet the criteria of the CAA. Accordingly, this action merely approves state law as meeting Federal requirements and does not impose additional requirements beyond those imposed by state law. For that reason, this action:

- Is not a ''significant regulatory action'' subject to review by the Office of Management and Budget under Executive Order 12866 (58 FR 51735, October 4, 1993);
- Does not impose an information collection burden under the provisions of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*);
- Is certified as not having a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*);
- Does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4);
- Does not have Federalism implications as specified in Executive Order 13132 (64 FR 43255, August 10, 1999);
- Is not an economically significant regulatory action based on health or safety risks subject to Executive Order 13045 (62 FR 19885, April 23, 1997);
- Is not a significant regulatory action subject to Executive Order 13211 (66 FR 28355, May 22, 2001);
- Is not subject to requirements of Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) because application of those requirements would be inconsistent with the 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 approving portions of Virginia's infrastructure SIP for the 2010 SO_2 NAAQS does not have tribal implications as specified by Executive Order 13175 (65 FR 67249, November 9, 2000), because the SIP is not approved to apply in Indian country located in the state, and EPA notes that it will not impose substantial direct costs on tribal governments or preempt tribal law.

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 May 4, 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 action, which satisfies certain infrastructure requirements of section 110(a)(2) of the CAA for the 2010 SO_2 NAAQS for the Commonwealth of Virginia, 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, Reporting and recordkeeping requirements, Sulfur dioxide.

Dated: February 5, 2015.

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 VV—Virginia

■ 2. Section 52.2420 is amended by:

■ a. In paragraph (e), adding an entry for ''Section 110(a)(2) Infrastructure Requirements for the 2010 Sulfur Dioxide NAAQS'' at the end of the table.

The amendments read as follows:

§ 52.2420 Identification of plan.

* * * * *

(e) * * *

Name of non-regulatory SIP revision	Applicable geographic area	State submittal date	EPA approval date	Additional explanation
* *	*		*	* * *
Section 110(a)(2) Infrastructure Requirements for the 2010 Sulfur Dioxide NAAQS.	Statewide	6/18/14	3/4/15 [Insert **Federal Register** citation].	This action addresses the following CAA elements, or portions thereof: 110(a)(2)(A), (B), (C), (D)(i)(II) (PSD), (D)(ii), (E)(i), (E)(iii), (F), (G), (H), (J) (consultation, notification, and PSD), (K), (L), and (M).

[FR Doc. 2015–04377 Filed 3–3–15; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R06–OAR–2014–0700; FRL–9923–77–Region–6]

Approval and Promulgation of Implementation Plans; Arkansas; Revisions for the Regulation and Permitting of Fine Particulate Matter

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: The Environmental Protection Agency (EPA) is approving portions of three revisions to the Arkansas State Implementation Plan (SIP) submitted by the Arkansas Department of Environmental Quality on July 26, 2010; November 6, 2012; and December 1, 2014. Together, these three submittals update the Arkansas SIP such that the ADEQ has the authority to implement the current National Ambient Air Quality Standards (NAAQS) and regulate and permit emissions of fine particulate matter (particulate matter with diameters less than or equal to 2.5 micrometers ($PM_{2.5}$)), and its precursors, through the Arkansas Prevention of Significant Deterioration (PSD) program. The EPA has determined that the Arkansas PSD program meets all Clean Air Act (CAA or the Act) requirements for $PM_{2.5}$ PSD and, as a result, our final action will stop the two Federal Implementation Plan (FIP) clocks that are currently running on the Arkansas PSD program pertaining to $PM_{2.5}$ PSD implementation. The EPA is also approving a portion of the December 17, 2007, Arkansas SIP submittal for the $PM_{2.5}$ NAAQS pertaining to interstate transport of air pollution and PSD. The EPA is finalizing these actions under section 110 and part C of the CAA.

DATES: This final rule is effective on April 3, 2015.

ADDRESSES: The EPA has established a docket for this action under Docket ID No. EPA–R06–OAR–2014–0700. All documents in the docket are listed on the *http://www.regulations.gov* Web site. Although listed in the index, some information is not publicly available, *e.g.,* Confidential Business Information or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy form. Publicly available docket materials are available either electronically through *http://www.regulations.gov* or in hard copy at the Air Planning Section (6PD–L), Environmental Protection Agency, 1445 Ross Avenue, Suite 700, Dallas, Texas 75202–2733.

FOR FURTHER INFORMATION CONTACT: Adina Wiley, Air Permits Section (6PD–R), telephone (214) 665–2115, email address *wiley.adina@epa.gov.*

SUPPLEMENTARY INFORMATION: Throughout this document wherever ''we,'' ''us,'' or ''our'' is used, we mean the EPA.

Table of Contents

I. Background
II. Final Action
III. Incorporation by Reference
IV. Statutory and Executive Order Reviews

I. Background

The background for today's action is discussed in detail in our November 10, 2014 proposal (79 FR 66633). In that notice, we proposed to approve portions of three SIP submittals for the State of Arkansas submitted on July 26, 2010; November 6, 2012; and September 10, 2014, that collectively update the Arkansas SIP to provide for regulation and permitting of $PM_{2.5}$ in the Arkansas PSD program consistent with federal PSD permit requirements.

The September 10, 2014, submittal was a request for parallel processing of revisions adopted by the ADEQ on August 22, 2014, as revisions to the state regulations. Under the EPA's ''parallel processing'' procedure, the EPA proposes a rulemaking action on a proposed SIP revision concurrently with the State's public review process. If the State's proposed SIP revision is not significantly or substantively changed, the EPA will finalize the rulemaking on the SIP revision as proposed after responding to any submitted comments. Final rulemaking action by the EPA will occur only after the final SIP revision has been fully adopted by the ADEQ and submitted formally to the EPA for approval as a revision to the Arkansas SIP. See 40 CFR part 51, Appendix V.

The ADEQ completed their state rulemaking process and submitted the final revisions to the Arkansas SIP on December 1, 2014. The EPA has evaluated the State's final SIP revision for any changes made from the time of proposal. See ''Addendum to the TSD'' for EPA–R06–OAR–2014–0700, available in the rulemaking docket. Our evaluation indicates that the ADEQ made no changes to the proposed SIP revision. As such, the EPA is proceeding with our final approval of the revisions to the Arkansas SIP. This action is being taken under section 110 of the Act. We did not receive any comments regarding our proposal.

II. Final Action

We are approving portions of three SIP submittals for the State of Arkansas submitted on July 26, 2010; November 6, 2012; and December 1, 2014, because we have determined that these SIP packages were adopted and submitted in accordance with the CAA and EPA regulations regarding implementation of the $PM_{2.5}$ NAAQS. The EPA finds that the Arkansas PSD SIP meets all the CAA PSD requirements for implementing the 1997 and 2006 $PM_{2.5}$ NAAQS, including the $PM_{2.5}$ PSD requirements contained in the federal regulations as of December 9, 2013, including regulation of NO_X and SO_2 as $PM_{2.5}$ precursors, regulation of condensables, and $PM_{2.5}$ increments. As a result of today's final action, the EPA will stop the two FIP clocks that are currently running on the Arkansas PSD program pertaining to $PM_{2.5}$ PSD implementation. The EPA is approving the following revisions into the Arkansas SIP:

- Revisions to Regulation 19, Chapter 1 submitted on July 26, 2010, and November 6, 2012;

• Revisions to Regulation 19, Chapter 2 submitted on July 26, 2010, November 6, 2012, and December 1, 2014, with the exception of the GHG Biomass Deferral language submitted to the definition of CO_2e on November 6, 2012;
• Revision to Regulation 19, Chapter 3 submitted on July 26, 2010, and December 1, 2014;
• Revisions to Regulation 19, Chapter 5 submitted on July 26, 2010, and December 1, 2014;
• Revisions to Regulation 19, Chapter 6 submitted on July 26, 2010;
• Revisions to Regulation 19, Chapter 7 submitted on July 26, 2010;
• Revisions to Regulation 19, Chapter 9 submitted on December 1, 2014;
• Revisions to Regulation 19, Chapter 10 submitted on July 26, 2010;
• Revisions to Regulation 19, Chapter 11 submitted on July 26, 2010;
• Revisions to Regulation 19, Chapter 13 submitted on July 26, 2010;
• New Regulation 19, Appendix B submitted on December 1, 2014; and
• A portion of the December 17, 2007, SIP submittal addressing interstate transport of air pollution and PSD for the 1997 $PM_{2.5}$ NAAQS (CAA 110(a)(2)(D)(i)(II)).

This action is being taken under section 110 of the Act.

III. Incorporation by Reference

In this rule, we are finalizing regulatory text that includes incorporation by reference. In accordance with the requirements of 1 CFR 51.4, the EPA is finalizing the incorporation by reference of the revisions to the Arkansas Prevention of Significant Deterioration regulations as described in the Final Action section above. We have made, and will continue to make, these documents generally available electronically through *www.regulation.gov* and/or in hard copy at the appropriate EPA office (see the **ADDRESSES** section of this preamble for more information).

IV. Statutory and Executive Order Reviews

Under the Clean Air Act, the Administrator is required to approve a SIP submission that complies with the provisions of the Act and applicable Federal regulations. 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 Clean Air Act. Accordingly, this 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 action:

• Is not a ''significant regulatory action'' subject to review by the Office of Management and Budget under Executive Orders 12866 (58 FR 51735, October 4, 1993) 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 Clean Air Act; 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, the SIP is not approved to apply on any Indian reservation land or in any other area where EPA or an Indian tribe has demonstrated that a tribe has jurisdiction. In those areas of Indian country, the rule does not have tribal implications and will not impose substantial direct costs on tribal governments or preempt tribal law as specified by Executive Order 13175 (65 FR 67249, November 9, 2000).

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).

Under section 307(b)(1) of the Clean Air Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by May 4, 2015. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this action for the purposed 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 action 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, Intergovernmental relations, Nitrogen dioxide, Particulate matter, Reporting and recordkeeping requirements, Sulfur oxides, and Volatile organic compounds.

Dated: February 19, 2015.

Ron Curry,

Regional Administrator, Region 6.

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 E—Arkansas

■ 2. Amend § 52.170 as follows:
■ a. In paragraph (c) the table titled ''EPA-APPROVED REGULATIONS IN THE ARKANSAS SIP'' is amended by revising the entries for:
■ i. Chapter 1, Regulation No. 19, Reg. 19.101, Reg. 19.103 and Reg. 19.104;
■ ii. Chapter 2;
■ iii. Chapter 3, Reg. 19.304;
■ iv. Chapter 5, Reg.19.502, 19.503, 19.504, and 19.505;
■ v. Chapter 6, Reg. 19.601 and 19.602;
■ vi. Chapter 7, Reg. 19.702 and 19.703;
■ vii. Chapter 9, Reg. 19.903 and Reg. 19.904;
■ viii. Chapter 10, Reg. 19.1002, Reg. 19.1003, Reg 19.1004 and Reg. 19.1005;
■ ix. Chapter 11;
■ x. Chapter 13, Reg. 19.1301 and 19.1303.
■ b. In paragraph (c) the table titled ''EPA-APPROVED REGULATIONS IN

THE ARKANSAS SIP'' is amended by adding a new entry in sequential order for Regulation No. 19, Appendix B.

■ c. In paragraph (e) the third table titled ''EPA-APPROVED NON-REGULATORY PROVISIONS AND QUASI-REGULATORY MEASURES IN THE ARKANSAS SIP'' is amended by revising the entry for ''Infrastructure for the 1997 and 2006 $PM_{2.5}$ NAAQS''.

The amendments read as follows:

§ 52.170 Identification of plan.

* * * * *

(c) * * *

EPA-APPROVED REGULATIONS IN THE ARKANSAS SIP

State citation	Title/subject	State submittal/ effective date	EPA approval date	Explanation
Regulation No. 19: Regulations of the Arkansas Plan of Implementation for Air Pollution Control				
Chapter 1: Title, Intent and Purpose				
Reg 19.101	Title	1/25/2009	3/4/2015 [Insert **Federal Register** citation].	
*	*	*	*	*
Reg 19.103	Intent and Construction	1/25/2009	3/4/2015 [Insert **Federal Register** citation].	
Reg 19.104	Severability	11/18/2012	3/4/2015 [Insert **Federal Register** citation].	
Chapter 2: Definitions				
Chapter 2	Definitions	9/13/2014	3/4/2015 [Insert **Federal Register** citation].	The SIP-approved definition of ''CO2 equivalent emissions'' does not contain the GHG Biomass Deferral Provisions.
Chapter 3: Protection of the National Ambient Air Quality Standards				
,				
*	*	*	*	*
Reg 19.304	Delegated Federal Programs	1/25/2009	3/4/2015 [Insert **Federal Register** citation].	
*	*	*	*	*
Chapter 5: General Limitations Applicable to Equipment (Need to change title in CFR)				
*	*	*	*	*
Reg 19.502	General Regulations	9/13/2014	3/4/2015 [Insert **Federal Register** citation].	
Reg 19.503	Visible Emission Regulations	1/25/2009	3/4/2015 [Insert **Federal Register** citation].	
Reg 19.504	Stack Height/Dispersion Regulations	1/25/2009	3/4/2015 [Insert **Federal Register** citation].	
Reg 19.505	Revised Emissions Limitation	1/25/2009	3/4/2015 [Insert **Federal Register** citation].	
Chapter 6: Upset and Emergency Conditions				
Reg 19.601	Upset Conditions	1/25/2009	3/4/2015 [Insert **Federal Register** citation].	
Reg 19.602	Emergency Conditions	1/25/2009	3/4/2015 [Insert **Federal Register** citation].	
Chapter 7: Sampling, Monitoring, and Reporting Requirements				
*	*	*	*	*
Reg 19.702	Air Emissions Sampling	1/25/2009	3/4/2015 [Insert **Federal Register** citation].	
Reg 19.703	Continuous Emissions Monitoring	1/25/2009	3/4/2015 [Insert **Federal Register** citation].	

EPA-APPROVED REGULATIONS IN THE ARKANSAS SIP—Continued

State citation	Title/subject	State submittal/ effective date	EPA approval date	Explanation
*	*	*	*	*
Chapter 9: Prevention of Significant Deterioration				
*	*	*	*	*
Reg 19.903	Definitions	9/13/2014	3/4/2015 [Insert **Federal Register** citation].	
Reg 19.904	Adoption of Regulations	9/13/2014	3/4/2015 [Insert **Federal Register** citation].	The SIP-approved PSD program does not include the new provisions pertaining to GHG PSD PAL permitting at Regulation 19.904(A)(1), effective on July 27, 2013, and submitted to EPA on January 7, 2014. The SIP-approved PSD program does not include the revisions to Regulation 19.904(G)(1), effective on July 27, 2013, and submitted to EPA on January 7, 2014, pertaining to GHG PSD PAL permitting. The Arkansas SIP continues to include Regulation 19.904(G)(1) as approved by EPA on April 12, 2007, as submitted by the state on February 3, 2005.
Chapter 10: Regulations for the Control of Volatile Organic Compounds in Pulaski County				
*	*	*	*	*
Reg 19.1002	Purpose	1/25/2009	3/4/2015 [Insert **Federal Register** citation].	
Reg 19.1003	Definitions	1/25/2009	3/4/2015 [Insert **Federal Register** citation].	
Reg 19.1004	General Provisions	1/25/2009	3/4/2015 [Insert **Federal Register** citation].	
Reg 19.1005	Provisions for Specific Processes	1/25/2009	3/4/2015 [Insert **Federal Register** citation].	
*	*	*	*	*
Chapter 11: Major Source Permitting Procedures				
Chapter 11	Major Source Permitting Procedures	1/25/2009	3/4/2015 [Insert **Federal Register** citation].	
Chapter 13: Stage I Vapor Recovery				
Reg 19.1301	Provisions for Specific Processes	1/25/2009	3/4/2015 [Insert **Federal Register** citation].	
*	*	*	*	*
Reg. 19.1303 ...	Definitions	1/25/2009	3/4/2015 [Insert **Federal Register** citation].	
*	*	*	*	*
Appendix B: National Ambient Air Quality Standards List				
Appendix B	National Ambient Air Quality Standards List.	9/13/2014	3/4/2015 [Insert **Federal Register** citation].	

EPA-APPROVED REGULATIONS IN THE ARKANSAS SIP—Continued

State citation	Title/subject	State submittal/ effective date	EPA approval date	Explanation
*	*	*	*	*

(e) * * *

EPA-APPROVED NON-REGULATORY PROVISIONS AND QUASI-REGULATORY MEASURES IN THE ARKANSAS SIP

Name of SIP provision	Applicable geographic or nonattainment area	State submittal/ effective date	EPA approval date	Explanation
*	*	*	*	*
Infrastructure for the 1997 and 2006 $PM_{2.5}$ NAAQS.	Statewide	3/28/2008 9/16/2009 9/13/2014	3/4/2015 [Insert **Federal Register** citation].	Approval for CAA elements 110(a)(2)(A), (B), (E), (F), (G), (H), (K), (L), and (M) on 8/20/2012 (77 FR 50033). Approval for PSD elements (C), (D)(i)(II) (interfere with measures in any other state to prevent significant deterioration of air quality) and (J) on May 4, 2015 [Insert **Federal Register** citation]
*	*	*	*	*

* * * * *

■ 3. Section 52.172 is amended by revising paragraphs (c) and (d) to read as follows:

§ 52.172 Approval status.

(b) * * *

(c) 1997 $PM_{2.5}$ NAAQS: The SIP submitted March 28, 2008 is disapproved for CAA element 110(a)(2)(D)(ii).

(d) 2006 $PM_{2.5}$ NAAQS: The SIPs submitted March 28, 2008 and September 16, 2009 are disapproved for CAA element 110(a)(2)(D)(ii).

■ 4. Section 52.181 is amended by adding paragraph (a)(5) to read as follows:

§ 52.181 Significant deterioration of air quality.

(a) * * *

(5) December 1, 2014—submittal of Regulation 19, Chapter 9, Prevention of Significant Deterioration which provided the authority to regulate and permit emissions of $PM_{2.5}$ and its precursors.

* * * * *

[FR Doc. 2015–04270 Filed 3–3–15; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 52, 62, and 70

[EPA–R07–OAR–2015–0006; FRL9923–68–Region 7]

Approval and Promulgation of Air Quality Implementation Plans, State Plans for Designated Facilities and Pollutants, and Operating Permits Program; State of Missouri

AGENCY: Environmental Protection Agency.

ACTION: Direct final rule.

SUMMARY: The Environmental Protection Agency (EPA) is taking direct final action to approve revisions to the State Implementation Plan (SIP) and the operating permits program for the State of Missouri which were received on November 6, 2013, November 20, 2014, March 27, 2014, July 7, 2014, and July 14, 2014. The revisions submitted by the state include amendments to rules relating to reference methods, definitions and common reference tables, ambient air quality standards, and a rule rescission related to air quality control measures for sources clustered in small land areas. Many of the revisions are administrative in nature and either incorporate by reference or update state rules to match Federal regulations. Some are more substantive, but are non-controversial. In addition, they provide more clarity for the regulated public. This direct final action will amend the SIP to include revised regulations which will then be more consistent with Federal regulations. These revisions do not have an adverse effect on air quality. EPA's approval of these rule revisions is being done in accordance with the requirements of the Clean Air Act (CAA).

DATES: This direct final rule will be effective May 4, 2015, without further notice, unless EPA receives adverse comment April 3, 2015. If EPA receives adverse comment, we will publish a timely withdrawal of the direct final rule in the **Federal Register** informing the public that the rule will not take effect.

ADDRESSES: Submit your comments, identified by Docket ID No. EPA–R07–OAR–2015–0006, by one of the following methods:

1. *www.regulations.gov.* Follow the on-line instructions for submitting comments.
2. *Email: bhesania.amy@epa.gov.*
3. *Mail or Hand Delivery:* Amy Bhesania, 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–2015–0006. 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 through *www.regulations.gov* or email information that you consider to be CBI or otherwise protected. 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 docket are listed in the *www.regulations.gov* index. Although listed in the index, some information is not publicly available, *i.e.,* CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, will be publicly available only in hard copy form. Publicly available docket materials are available either electronically in *www.regulations.gov* or in hard copy at the Environmental Protection Agency, Air Planning and Development Branch, 11201 Renner Boulevard, Lenexa, Kansas 66219. The Regional Office's official hours of business are Monday through Friday, 8:00 to 4:30 excluding legal holidays. 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: Amy Bhesania, Environmental Protection Agency, Air Planning and Development Branch, 11201 Renner Boulevard, Lenexa, Kansas 66219 at 913–551–7147, or by email at *bhesania.amy@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 in this document?
II. Have the requirements for approval of a SIP revision been met?
III. What action is EPA taking?

I. What is being addressed in this document?

EPA is taking direct final action to amend Missouri's SIP, 111(d) plan, and operating permits program by approving the state's requests to amend the following rules:

1. 10 CSR 10–6.040, Reference Methods, received November 6, 2013.
2. 10 CSR 10–6.040, Reference Methods, received November 20, 2014.
3. 10 CSR 10–6.020, Definitions and Common Reference Tables, received March 27, 2014.
4. 10 CSR 10–5.240, Additional Air Quality Control Measures May be Required When Sources are Clustered in a Small Land Area, received July 7, 2014.
5. 10 CSR 10–6.010, Air Quality Standards, received July 14, 2014.

The revisions submitted by the state include revisions to update standards and reference methods, to clarify, add or amend definitions and reference tables, to rescind an outdated rule, and to update and clarify ambient air quality standards. For more information on the state's submissions, specific revisions to each rule and EPA's review of the revisions, see the Technical Support Document (TSD) that is a part of this docket.

II. Have the requirements for approval of a SIP, part 62, and part 70 revisions 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 above and in more detail in the TSD which is part of this docket, the revision meets the substantive SIP requirements of the CAA, including section 110 and implementing regulations. The substantive requirements of 40 CFR part 62 and Title V of the 1990 CAA Amendments and 40 CFR part 70 have been met as well.

III. What action is EPA taking?

EPA is taking direct final action to approve this rule without a prior proposed rule because we view this as a noncontroversial action and anticipate no adverse comment. However, in the ''Proposed Rules'' section of today's **Federal Register**, we are publishing a separate document that will serve as the proposed rule to approve the SIP, 111(d), and operating permits revisions, if adverse comments are received on this direct final rule. We will not institute a second comment period on this action. Any parties interested in commenting must do so at this time. For further information about commenting on this rule, see the **ADDRESSES** section of this document.

If EPA receives adverse comment, we will publish a timely withdrawal in the **Federal Register** informing the public that this direct final rule will not take effect. We will address all public comments in any subsequent final rule based on the proposed rule.

Statutory and Executive Order Reviews

In this rule, EPA is finalizing regulatory text that includes incorporation by reference. In accordance with requirements of 1 CFR 51.5, EPA is finalizing the incorporation by reference of Missouri rules 10–5.240, 10–6.010, 10–6.020, and 10–6.040 described in the direct final amendments to 40 CFR part 52 set forth below. EPA has made, and will continue to make, these documents generally available electronically through *www.regulations.gov* and/or in hard copy at the appropriate EPA office (see the **ADDRESSES** section of this preamble for more information).

Under Executive Order 12866 (58 FR 51735, October 4, 1993), this action is not a ''significant regulatory action'' and therefore is not subject to review under Executive Orders 12866 and 13563 (76 FR 3821, January 21, 2011). This action is also not subject to Executive Order 13211, ''Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use'' (66 FR 28355, May 22, 2001). This action merely approves state law as meeting Federal requirements and imposes no additional requirements beyond those imposed by state law. Accordingly, the Administrator certifies that this rule will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). Because this rule approves pre-existing requirements under state law and does not impose any additional enforceable duty beyond that required by state law, it 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).

In addition, these direct final actions are not approved to apply on any Indian reservation land or in any other area where EPA or an Indian tribe has demonstrated that a tribe has jurisdiction. In those areas of Indian country, this action does not have tribal implications and will not impose substantial direct costs on tribal governments or preempt tribal law as specified by Executive Order 13175 (65 FR 67249, November 9, 2000).

This action also does not have Federalism implications because it does not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132 (64 FR 43255, August 10, 1999). Thus Executive Order 13132 does not apply to this action. This action merely approves a state rule implementing a Federal standard, and does not alter the relationship or the distribution of power and responsibilities established in the CAA. This rule also is not subject to Executive Order 13045, ''Protection of Children from Environmental Health Risks and Safety Risks'' (62 FR 19885, April 23, 1997) because it approves a state rule implementing a Federal standard.

In reviewing SIP submissions, EPA's role is to approve state choices, provided that they meet the criteria of the CAA. In this context, in the absence of a prior existing requirement for the State to use voluntary consensus standards (VCS), EPA has no authority to disapprove a state submission for failure to use VCS. It would thus be inconsistent with applicable law for EPA, when it reviews a state submission, to use VCS in place of a state submission that otherwise satisfies the provisions of the CAA. Thus, the requirements of section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) do not apply. This action does not impose an information collection burden under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*). Burden is defined at 5 CFR 1320.3(b).

The Congressional Review Act, 5 U.S.C. 801 *et seq.,* as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**.

A major rule cannot take effect until 60 days after it is published in the **Federal Register**. This action is not a ''major rule'' as defined by 5 U.S.C. 804(2).

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 May 4, 2015. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this rule 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. Parties with objections to this direct final rule are encouraged to file a comment in response to the parallel notice of proposed rulemaking for this action published in the proposed rules section of today's **Federal Register**, rather than file an immediate petition for judicial review of this direct final rule, so that EPA can withdraw this direct final rule and address the comment in the final rulemaking. This action may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2)).

List of Subjects

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.

40 CFR Part 62

Environmental protection, Air pollution control, Administrative practice and procedure, Intergovernmental relations, Reporting and recordkeeping requirements.

40 CFR Part 70

Environmental protection, Administrative practice and procedure, Air pollution control, Intergovernmental relations, Operating permits, Reporting and recordkeeping requirements.

Dated: February 13, 2015.

Karl Brooks,

Regional Administrator, Region 7.

For the reasons stated in the preamble, the Environmental Protection Agency amends 40 CFR part 52 as set forth below: Chapter I, title 40 of the Code of Federal Regulations is amended as follows:

PART 52—APPROVAL AND PROMULGATION OF IMPLEMENTATION PLANS

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

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

Subpart AA—Missouri

■ 2. In § 52.1320 the table in paragraph (c) is amended by:

■ a. Removing under Chapter 5, the entry ''10–5.240''; and

■ b. Revising under Chapter 6, the entries for ''10–6.010'', ''10–6.020'', and ''10–6.040''.

The revisions 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				

EPA-APPROVED MISSOURI REGULATIONS—Continued

Missouri citation	Title	State effective date	EPA approval date	Explanation
*	*	*	*	*
Chapter 6—Air Quality Standards, Definitions, Sampling and Reference Methods, and Air Pollution Control Regulations for the State of Missouri				
10 CSR 10–6.010	Ambient Air Quality Standards.	7/30/14	3/4/15 *and [Insert **Federal Register** citation].*	Hydrogen Sulfide and Sulfuric Acid state standards are not SIP approved.
10 CSR 10–6.020	Definitions and Common Reference Tables.	3/30/14	3/4/15 *and [Insert **Federal Register** citation].*	Many of the definitions pertain to Title V, 111(d) and asbestos programs and are approved in the SIP because they provide overall consistency in the use of terms in the air program. Similarly, the EPA has also approved this rule as part of the Title V program, and 111(d) even though many of the definitions pertain only to the SIP.
*	*	*	*	*
10 CSR 10–6.040	Reference Methods	11/30/14	3/4/15 *and [Insert **Federal Register** citation].*	
*	*	*	*	*

* * * * *

PART 62—APPROVAL AND PROMULGATION OF STATE PLANS FOR DESIGNATED FACILITIES AND POLLUTANTS

■ 3. The authority citation for part 62 continues to read as follows:

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

Subpart AA—Missouri

* * * * *

■ 4. Section 62.6350 is amended by adding paragraph (b)(6) to read as follows:

§ 62.6350 Identification of plan.

* * * * *

(b) * * *

(6) A revision to Missouri's 111(d) plan to incorporate state regulation 10 CSR 10–6.020 Definitions and Common Reference Tables was state effective March 30, 2014. The effective date of the amended plan is May 4, 2015.

* * * * *

PART 70—STATE OPERATING PERMIT PROGRAMS

■ 5. The authority citation for part 70 continues to read as follows:

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

■ 6. Appendix A to part 70 is amended by adding paragraph (cc) under Missouri to read as follows:

Appendix A to Part 70—Approval Status of State and Local Operating Permits Programs

* * * * *

Missouri

* * * * *

(cc) The Missouri Department of Natural Resources submitted revisions to Missouri rule 10 CSR 10–6.020, ''Definitions and Common Reference Tables'' on March 27, 2014. The state effective date is March 30, 2014. This revision is effective May 4, 2015.

* * * * *

[FR Doc. 2015–04400 Filed 3–3–15; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 52 and 81

[EPA–R03–OAR–2014–0147; FRL–9923–78–Region 3]

Approval and Promulgation of Air Quality Implementation Plans; Pennsylvania; Redesignation Request and Associated Maintenance Plan for the Reading, Pennsylvania Nonattainment Area for the 1997 Annual Fine Particulate Matter Standard, and 2007 Base Year Inventory

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: The Environmental Protection Agency (EPA) is approving the Commonwealth of Pennsylvania's request to redesignate to attainment the Reading, Pennsylvania Nonattainment Area (Reading Area or Area) for the 1997 annual fine particulate matter ($PM_{2.5}$) national ambient air quality standard (NAAQS). EPA has determined that the Reading Area attained the standard and that it continues to attain the standard. In addition, EPA is approving, as a revision to the Pennsylvania State Implementation Plan (SIP), the Reading Area maintenance plan to show maintenance of the 1997 annual $PM_{2.5}$ NAAQS through 2025 for the Area. The maintenance plan includes the 2017 and 2025 $PM_{2.5}$ and nitrogen oxides (NO_X) mobile vehicle emissions budgets (MVEBs) for the Reading Area for the 1997 annual $PM_{2.5}$ NAAQS, which EPA is approving and finding adequate for transportation conformity purposes. EPA is also approving the comprehensive emissions inventory for the 1997 annual $PM_{2.5}$ NAAQS for the Reading Area. These actions are being taken under the Clean Air Act (CAA).

DATES: This final rule is effective on March 4, 2015.

ADDRESSES: EPA has established a docket for this action under Docket ID Number EPA–R03–OAR–2014–0147. All documents in the docket are listed in the *www.regulations.gov* Web site. 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. Copies of the State submittal are available at the Pennsylvania Department of Environmental Protection, Bureau of Air Quality Control, P.O. Box 8468, 400 Market Street, Harrisburg, Pennsylvania 17105.

FOR FURTHER INFORMATION CONTACT: Marilyn Powers at (215) 814–2308, or by email at *powers.marilyn@epa.gov.*

SUPPLEMENTARY INFORMATION:

I. Background

On November 25, 2013, the Commonwealth of Pennsylvania, through the Pennsylvania Department of Environmental Protection (PADEP), formally submitted a request to redesignate the Reading Area from nonattainment to attainment for the 1997 annual $PM_{2.5}$ NAAQS. Concurrently, PADEP submitted a maintenance plan for the Area as a SIP revision to ensure continued attainment throughout the Area over the next 10 years. The maintenance plan includes the 2017 and 2025 $PM_{2.5}$ and NO_X MVEBs for the Area for the 1997 annual $PM_{2.5}$ NAAQS, which EPA is approving for transportation conformity purposes. PADEP also submitted a 2007 comprehensive emissions inventory for the 1997 annual $PM_{2.5}$ NAAQS for $PM_{2.5}$, NO_X, sulfur dioxide (SO_2), volatile organic compounds (VOC), and ammonia (NH_3).

On December 22, 2014 (79 FR 76251), EPA published a notice of proposed rulemaking (NPR) for the Commonwealth of Pennsylvania. In the NPR, EPA proposed approval of Pennsylvania's November 25, 2013 request to redesignate the Reading Area to attainment for the 1997 annual $PM_{2.5}$ NAAQS, including the associated maintenance plan for the Reading Area, the 2017 and 2025 $PM_{2.5}$ and NO_X MVEBs, which EPA proposed to approve and find adequate for purposes of transportation conformity, and the 2007 emissions inventory to meet the emissions inventory requirement of section 172(c)(3) of the CAA.

The details of Pennsylvania's submittal and the rationale for EPA's proposed actions are explained in the NPR and will not be restated here. No public comments were received on the NPR.

II. Final Action

EPA is taking final actions on the redesignation request and SIP revision submitted by the Commonwealth of Pennsylvania on November 25, 2013 for the Reading Area for the 1997 annual $PM_{2.5}$ NAAQS. EPA is approving Pennsylvania's redesignation request for the 1997 annual $PM_{2.5}$ NAAQS, because EPA has determined that the request meets the redesignation criteria set forth in section 107(d)(3)(E) of the CAA for this standard. EPA finds that the monitoring data demonstrates that the Area has attained the 1997 $PM_{2.5}$ NAAQS, and continues to attain the NAAQS. EPA is also approving the associated maintenance plan for the Reading Area as a revision to the Pennsylvania SIP for the 1997 annual $PM_{2.5}$ NAAQS because it meets the requirements of section 175A of the CAA. EPA is also approving and finding adequate the 2017 and 2025 $PM_{2.5}$ and NO_X MVEBs submitted by Pennsylvania for the Reading Area for transportation conformity purposes. Finally, EPA is approving the 2007 emissions inventory to meet section 172(c)(3) of the CAA. Approval of this redesignation request will change the official designation of the Reading Area from nonattainment to attainment for the 1997 annual $PM_{2.5}$ NAAQS.

In accordance with 5 U.S.C. 553(d), EPA finds there is good cause for this action to become effective immediately upon publication. A delayed effective date is unnecessary due to the nature of a redesignation to attainment, which eliminates CAA obligations that would otherwise apply. The immediate effective date for this action is authorized under both 5 U.S.C. 553(d)(1), which provides that rulemaking actions may become effective less than 30 days after publication if the rule ''grants or recognizes an exemption or relieves a restriction,'' and section 553(d)(3), which allows an effective date less than 30 days after publication ''as otherwise provided by the agency for good cause found and published with the rule.'' The purpose of the 30-day waiting period prescribed in section 553(d) is to give affected parties a reasonable time to adjust their behavior and prepare before the final rule takes effect. Today's rule, however, does not create any new regulatory requirements such that affected parties would need time to prepare before the rule takes effect. Rather, today's rule relieves the Commonwealth of Pennsylvania of the obligation to comply with nonattainment-related planning requirements for the Area pursuant to Part D of the CAA and approves certain emissions inventories and MVEBs for the Area. For these reasons, EPA finds good cause under 5 U.S.C. 553(d) for this action to become effective on the date of publication of this notice.

III. Statutory and Executive Order Reviews

A. General Requirements

Under the CAA, redesignation of an area to attainment and the accompanying approval of the maintenance plan under CAA section 107(d)(3)(E) are actions that affect the status of a geographical area and do not impose any additional regulatory requirements on sources beyond those required by state law. A redesignation to attainment does not in and of itself impose any new requirements, but rather results in the application of requirements contained in the CAA for areas that have been redesignated to attainment. Moreover, the Administrator is required to approve a SIP submission that complies with the provisions of the Act and applicable Federal regulations. 42 U.S.C. 7410(k); 40 CFR 52.02(a). Thus, in reviewing SIP submissions, EPA's role is to approve state choices, provided that they meet the criteria of the CAA. Accordingly, this action merely approves state law as meeting Federal requirements and does not impose additional requirements beyond those imposed by state law. For that reason, this action:

- Is not a ''significant regulatory action'' subject to review by the Office of Management and Budget under Executive Order 12866 (58 FR 51735, October 4, 1993);
- does not impose an information collection burden under the provisions of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*);
- is certified as not having a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*);
- does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4);
- does not have Federalism implications as specified in Executive Order 13132 (64 FR 43255, August 10, 1999);
- is not an economically significant regulatory action based on health or safety risks subject to Executive Order 13045 (62 FR 19885, April 23, 1997);

• is not a significant regulatory action subject to Executive Order 13211 (66 FR 28355, May 22, 2001);

• is not subject to requirements of Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) because application of those requirements would be inconsistent with the 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.

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 May 4, 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 action, approving the redesignation request and maintenance plan, and comprehensive emissions inventory for the Reading Area for the 1997 annual $PM_{2.5}$ NAAQS may not be challenged later in proceedings to enforce its requirements. *See* section 307(b)(2).

List of Subjects

40 CFR part 52

Environmental protection, Air pollution control, Incorporation by reference, Nitrogen oxides, Particulate matter, Reporting and recordkeeping requirements, Sulfur dioxide, Volatile organic compounds.

40 CFR part 81

Air pollution control, National parks, Wilderness areas.

Dated: February 9, 2015.

William C. Early,

Acting Regional Administrator,Region III.

40 CFR parts 52 and 81 are 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. In § 52.2020, the table in paragraph (e)(1) is amended by adding an entry for 1997 Annual $PM_{2.5}$ Maintenance Plan and 2007 Base Year Emissions Inventory at the end of the table. The added text reads as follows:

§ 52.2020 Identification of plan.

* * * * *

(e) * * *

(1) * * *

Name of non-regulatory SIP revision	Applicable geographic area	State submittal date	EPA approval date	Additional explanation
*	*	*	*	*
1997 Annual $PM_{2.5}$ Maintenance Plan and 2007 Base Year Emissions Inventory.	Reading Area (Berks County).	11/25/14	3/4/15 [Insert **Federal Register** citation].	See § 52.2036(s) and § 52.2059(n).

■ 3. Section 52.2036 is amended by adding paragraph (s) to read as follows:

§ 52.2036 Base year emissions inventory.

* * * * *

(s) EPA approves as revisions to the Pennsylvania State Implementation Plan the 2007 base year emissions inventory for the Reading 1997 annual fine particulate matter ($PM_{2.5}$) nonattainment area submitted by the Pennsylvania Department of Environmental Protection on November 25, 2014. The emissions inventory includes emissions estimates that cover the general source categories of point, area, nonroad, and onroad sources. The pollutants that comprise the inventory are $PM_{2.5}$, nitrogen oxides (NO_X), volatile organic compounds (VOCs), ammonia (NH_3), and sulfur dioxide (SO_2).

■ 4. Section 52.2059 is amended by adding paragraph (n) to read as follows:

§ 52.2059 Control strategy: Particular matter.

* * * * *

(n) EPA approves the maintenance plan for the Reading nonattainment area for the 1997 annual $PM_{2.5}$ NAAQS submitted by the Commonwealth of Pennsylvania on November 25, 2014. The maintenance plan includes the 2017 and 2025 $PM_{2.5}$ and NO_X mobile vehicle emissions budgets (MVEBs) for Berks County to be applied to all future transportation conformity determinations and analyses for the Reading nonattainment area for the 1997 annual $PM_{2.5}$ NAAQS.

READING AREA'S MOTOR VEHICLE EMISSION BUDGETS FOR THE 1997 ANNUAL $PM_{2.5}$ NAAQS IN TONS PER YEAR

Type of control strategy SIP	Year	$PM_{2.5}$	NO_X	Effective date of SIP approval
Maintenance Plan	2017	200	5,739	3/4/15

READING AREA'S MOTOR VEHICLE EMISSION BUDGETS FOR THE 1997 ANNUAL $PM_{2.5}$ NAAQS IN TONS PER YEAR—Continued

Type of control strategy SIP	Year	$PM_{2.5}$	NO_X	Effective date of SIP approval
	2025	146	3,719	3/4/15

PART 81—DESIGNATION OF AREAS FOR AIR QUALITY PLANNING PURPOSES

■ 1. The authority citation for Part 81 continues to read as follows:

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

■ 2. Section 81.339 is amended by revising the 1997 Annual $PM_{2.5}$ NAAQS table entry for the Reading Area to read as follows:

§ 81.339 Pennsylvania.

* * * * *

PENNSYLVANIA—1997 ANNUAL $PM_{2.5}$ NAAQS

[Primary and secondary]

Designated Area	Designation [a]		Classification	
	Date [1]	Type	Date [2]	Type
* * *	*	*	*	*
Reading, PA:				
Berks County	March 4, 2015	Attainment.		
* * *	*	*	*	*

[a] Includes Indian Country located in each county or area, except as otherwise specified.
[1] This date is 90 days after January 5, 2005, unless otherwise noted.
[2] This date is July 2, 2014, unless otherwise noted.

* * * * *

[FR Doc. 2015–04391 Filed 3–3–15; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 180

[EPA–HQ–OPP–2014–0110; FRL–9921–85]

Metaldehyde; Pesticide Tolerances

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: This regulation establishes tolerances for residues of metaldehyde in or on multiple commodities which are identified and discussed later in this document. Interregional Research Project Number 4 (IR–4) requested these tolerances under the Federal Food, Drug, and Cosmetic Act (FFDCA). This regulation additionally removes the established tolerances in or on fruit, citrus group 10 and tomato as the tolerances will be superseded by tolerances established by this action.

DATES: This regulation is effective March 4, 2015. Objections and requests for hearings must be received on or before May 4, 2015, and must be filed in accordance with the instructions provided in 40 CFR part 178 (see also Unit I.C. of the **SUPPLEMENTARY INFORMATION**).

ADDRESSES: The docket for this action, identified by docket identification (ID) number EPA–HQ–OPP–2014–0110 is available at *http://www.regulations.gov* or at the Office of Pesticide Programs Regulatory Public Docket (OPP Docket) in the Environmental Protection Agency Docket Center (EPA/DC), West William Jefferson Clinton Bldg., Rm. 3334, 1301 Constitution Ave. NW., Washington, DC 20460–0001. The Public Reading Room is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Public Reading Room is (202) 566–1744, and the telephone number for the OPP Docket is (703) 305–5805. Please review the visitor instructions and additional information about the docket available at *http://www.epa.gov/dockets.*

FOR FURTHER INFORMATION CONTACT: Susan Lewis, Registration Division (7505P), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave. NW., Washington, DC 20460–0001; main telephone number: (703) 305–7090; email address: *Notices*@epa.gov.

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this action apply to me?

You may be potentially affected by this action if you are an agricultural producer, food manufacturer, or pesticide manufacturer. The following list of North American Industrial Classification System (NAICS) codes is not intended to be exhaustive, but rather provides a guide to help readers determine whether this document applies to them. Potentially affected entities may include:

- Crop production (NAICS code 111).
- Animal production (NAICS code 112).
- Food manufacturing (NAICS code 311).
- Pesticide manufacturing (NAICS code 32532).

B. How can I get electronic access to other related information?

You may access a frequently updated electronic version of EPA's tolerance regulations at 40 CFR part 180 through the Government Publishing Office's e-CFR site at *http://www.ecfr.gov/cgi-bin/text-idx?&c=ecfr&tpl=/ecfrbrowse/Title40/40tab_02.tpl.*

C. How can I file an objection or hearing request?

Under FFDCA section 408(g), 21 U.S.C. 346a, any person may file an

objection to any aspect of this regulation and may also request a hearing on those objections. You must file your objection or request a hearing on this regulation in accordance with the instructions provided in 40 CFR part 178. To ensure proper receipt by EPA, you must identify docket ID number EPA–HQ–OPP–2014–0110 in the subject line on the first page of your submission. All objections and requests for a hearing must be in writing, and must be received by the Hearing Clerk on or before May 4, 2015. Addresses for mail and hand delivery of objections and hearing requests are provided in 40 CFR 178.25(b).

In addition to filing an objection or hearing request with the Hearing Clerk as described in 40 CFR part 178, please submit a copy of the filing (excluding any Confidential Business Information (CBI)) for inclusion in the public docket. Information not marked confidential pursuant to 40 CFR part 2 may be disclosed publicly by EPA without prior notice. Submit the non-CBI copy of your objection or hearing request, identified by docket ID number EPA–HQ–OPP–2014–0110, by one of the following methods:

- *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the online instructions for submitting comments. Do not submit electronically any information you consider to be CBI or other information whose disclosure is restricted by statute.
- *Mail:* OPP Docket, Environmental Protection Agency Docket Center (EPA/DC), (28221T), 1200 Pennsylvania Ave. NW., Washington, DC 20460–0001.
- *Hand Delivery:* To make special arrangements for hand delivery or delivery of boxed information, please follow the instructions at *http://www.epa.gov/dockets/contacts.html.*

Additional instructions on commenting or visiting the docket, along with more information about dockets generally, is available at *http://www.epa.gov/dockets.*

II. Summary of Petitioned-For Tolerance

In the **Federal Register** of February 25, 2014 (79 FR 10459) (FRL–9906–77), EPA issued a document pursuant to FFDCA section 408(d)(3), 21 U.S.C. 346a(d)(3), announcing the filing of a pesticide petition (PP 3E8223) by IR–4, 500 College Road East, Suite 201W, Princeton, NJ 08540. The petition requested that 40 CFR 180.523 be amended by establishing tolerances for residues of the molluscicide metaldehyde, 2,4,6,8-tetramethyl-1,3,5,7-tetroxocane, in or on clover, forage at 0.5 parts per million (ppm); clover, hay at 0.5 ppm; ginseng at 0.05 ppm; vegetable legume, edible podded, subgroup 6A at 0.8 ppm; pea and bean, succulent shelled, subgroup 6B at 0.2 ppm; vegetable, foliage of legume, except soybean, subgroup 7A at 1.5 ppm; tomato subgroup 8–10A at 0.24 ppm; and fruit, citrus, group 10–10 at 0.26 ppm. Clover, forage and clover, hay were proposed as tolerances with regional registrations. Additionally, the petition requested removing the established tolerances in or on fruit, citrus, group 10 at 0.26 ppm; and tomato at 0.24 ppm, upon establishment of the proposed tolerances. That document referenced a summary of the petition prepared by Lonza, Inc., the registrant, which is available in the docket, *http://www.regulations.gov.* Comments were received on the notice of filing. EPA's response to these comments is discussed in Unit IV.C.

Based upon review of the data supporting the petition, EPA has modified the proposed tolerances for clover, forage and clover, hay from 0.5 ppm to 0.60 ppm. The reason for these changes are explained in Unit IV.D.

III. Aggregate Risk Assessment and Determination of Safety

Section 408(b)(2)(A)(i) of FFDCA allows EPA to establish a tolerance (the legal limit for a pesticide chemical residue in or on a food) only if EPA determines that the tolerance is ''safe.'' Section 408(b)(2)(A)(ii) of FFDCA defines ''safe'' to mean that ''there is a reasonable certainty that no harm will result from aggregate exposure to the pesticide chemical residue, including all anticipated dietary exposures and all other exposures for which there is reliable information.'' This includes exposure through drinking water and in residential settings, but does not include occupational exposure. Section 408(b)(2)(C) of FFDCA requires EPA to give special consideration to exposure of infants and children to the pesticide chemical residue in establishing a tolerance and to ''ensure that there is a reasonable certainty that no harm will result to infants and children from aggregate exposure to the pesticide chemical residue* * *''

Consistent with FFDCA section 408(b)(2)(D), and the factors specified in FFDCA section 408(b)(2)(D), EPA has reviewed the available scientific data and other relevant information in support of this action. EPA has sufficient data to assess the hazards of and to make a determination on aggregate exposure for metaldehyde including exposure resulting from the tolerances established by this action. EPA's assessment of exposures and risks associated with metaldehyde follows.

A. Toxicological Profile

EPA has evaluated the available toxicity data and considered its validity, completeness, and reliability as well as the relationship of the results of the studies to human risk. EPA has also considered available information concerning the variability of the sensitivities of major identifiable subgroups of consumers, including infants and children. The principal toxic effects for metaldehyde are clinical signs of neurotoxicity, as well as changes in the liver and testes/prostate following repeated oral dosing. The dog is the most sensitive species for neurotoxic effects. Nervous system effects observed in the subchronic and chronic oral toxicity studies include: Ataxia and tremors; twitching; salivation; emesis; rapid respiration in dogs and maternal rats; and limb paralysis, spinal cord necrosis, and hemorrhage in maternal rats. Liver effects include increased liver weight, increased incidence of liver lesions (hepatocellular necrosis, hepatocellular hypertrophy and inflammation), and an increased incidence of hepatocellular adenomas in female rats and in both sexes of mice. In dogs, atrophy of the testes and prostate was observed following subchronic and chronic exposure.

In the rat developmental toxicity study, maternal toxicity was observed as evidenced by clinical signs including ataxia, tremors, and twitching at the highest dose tested (HDT) in the absence of developmental toxicity. There was no observed developmental or maternal toxicity in the rabbit developmental toxicity study. In the 2-generation rat reproductive toxicity study, mortality and clinical signs including limb paralysis, spinal cord necrosis and hemorrhage were observed in the maternal animals. Effects on the offspring in the rat reproductive toxicity study consisted of decreased pup body weight and body weight gains; reproductive toxicity was not observed.

In the rat, clinical signs of neurotoxicity occurred at high dose levels following repeated oral exposures. In the 90-day neurotoxicity study, bilateral hindlimb paralysis was observed in one female rat at the HDT.

Chronic feeding studies in rats and mice indicated that metaldehyde produced liver effects characterized by liver hypertrophy and liver tumors. The chronic mouse toxicity study showed that metaldehyde was associated with a common tumor in both sexes (liver tumors, adenomas), and the rat chronic

toxicity study showed that metaldehyde was associated with liver adenomas in the female. EPA has determined that quantification of risk using a nonlinear Reference Dose (RfD) approach, using the chronic RfD/Population-Adjusted Dose (PAD), will adequately account for all chronic toxicity, including carcinogenicity, that could result from exposure to metaldehyde. That conclusion is based on the following considerations:

1. Tumors found are commonly seen in the mouse;
2. Liver tumors (adenomas) in both species were benign;
3. Metaldehyde is not mutagenic;
4. No carcinogenic response was seen in the male rat;
5. Incidence of adenomas at the high dose in the female rat was within the historical control range of the testing lab; and
6. Both the No Observed Adverse Effect Level (NOAEL) and Lowest Observed Adverse Effect Level (LOAEL) from the chronic rat study on which the chronic RfD/PAD was based are well below the dose at which adenomas were seen.

Specific information on the studies received and the nature of the adverse effects caused by metaldehyde as well as the no-observed-adverse-effect-level (NOAEL) and the lowest-observed-adverse-effect-level (LOAEL) from the toxicity studies can be found at *http://www.regulations.gov* in document ''Metaldehyde; Human Health Risk Assessment for Proposed New Uses on Vegetable, Legume, Edible Podded [Subgroup 6A], Pea and Bean, Succulent Shelled [Subgroup 6B], Vegetable, Foliage of Legume, Except Soybean [Subgroup 7A], Clover Forage and Hay, and Ginseng; and for Amendments to Existing Tolerances [Tomato and Crop Group 10]'' in docket ID number EPA–HQ–OPP–2014–0110.

B. Toxicological Points of Departure/ Levels of Concern

Once a pesticide's toxicological profile is determined, EPA identifies toxicological points of departure (POD) and levels of concern to use in evaluating the risk posed by human exposure to the pesticide. For hazards that have a threshold below which there is no appreciable risk, the toxicological POD is used as the basis for derivation of reference values for risk assessment. PODs are developed based on a careful analysis of the doses in each toxicological study to determine the dose at which no adverse effects are observed (the NOAEL) and the lowest dose at which adverse effects of concern are identified (the LOAEL). Uncertainty/safety factors are used in conjunction with the POD to calculate a safe exposure level—generally referred to as a population-adjusted dose (PAD) or a reference dose (RfD)—and a safe margin of exposure (MOE). For non-threshold risks, the Agency assumes that any amount of exposure will lead to some degree of risk. Thus, the Agency estimates risk in terms of the probability of an occurrence of the adverse effect expected in a lifetime. For more information on the general principles EPA uses in risk characterization and a complete description of the risk assessment process, see *http://www.epa.gov/pesticides/factsheets/riskassess.htm.*

A summary of the toxicological endpoints for metaldehyde used for human risk assessment is discussed in Unit III.B. of the final rule published in the **Federal Register** of November 27, 2013 (78 FR 70864) (FRL–9399–8).

C. Exposure Assessment

1. *Dietary exposure from food and feed uses.* In evaluating dietary exposure to metaldehyde, EPA considered exposure under the petitioned-for tolerances as well as all existing metaldehyde tolerances in 40 CFR 180.523. EPA assessed dietary exposures from metaldehyde in food as follows:

i. *Acute exposure.* Quantitative acute dietary exposure and risk assessments are performed for a food-use pesticide, if a toxicological study has indicated the possibility of an effect of concern occurring as a result of a 1-day or single exposure.

Such effects were identified for metaldehyde. In estimating acute dietary exposure, EPA used the Dietary Exposure Evaluation Model with the Food Commodity Intake Database (DEEM–FCID). This software incorporates 2003–2008 food consumption data from the U.S. Department of Agriculture's National Health and Nutrition Examination Survey, What We Eat in America, (NHANES/WWEIA). As to residue levels in food, EPA used tolerance-level residues for all commodities and 100 percent crop treated (PCT) estimates. The Agency also assumed processing factors to be 1.0 for all commodities except for dried tomato, tomato juice, cranberry juice, and high fructose corn syrup; for these commodities, DEEM default processing factors were used.

ii. *Chronic exposure.* In conducting the chronic dietary exposure assessment EPA used the food consumption data from the USDA 2003–2008 NHANES/WWEIA. As to residue levels in food, EPA used tolerance-level residues for all commodities and assumed 100 PCT. The Agency also assumed processing factors to be 1.0 for all commodities except for dried tomato, tomato juice, cranberry juice, and high fructose corn syrup; for these commodities, DEEM default processing factors were used.

iii. *Cancer.* As discussed in Unit III.A., EPA has concluded that a nonlinear RfD approach is appropriate for assessing cancer risk to metaldehyde. Cancer risk was assessed using the same exposure estimates as discussed in Unit III.C.1.ii.

iv. *Anticipated residue and PCT information.* EPA did not use anticipated residue and/or PCT information in the dietary assessment for metaldehyde. Tolerance-level residues and/or 100 PCT were assumed for all food commodities.

2. *Dietary exposure from drinking water.* The Agency used screening level water exposure models in the dietary exposure analysis and risk assessment for metaldehyde in drinking water. These simulation models take into account data on the physical, chemical, and fate/transport characteristics of metaldehyde. Further information regarding EPA drinking water models used in pesticide exposure assessment can be found at *http://www.epa.gov/oppefed1/models/water/index.htm.*

Based on the Pesticide Root Zone Model/Exposure Analysis Modeling System (PRZM/EXAMS) and Pesticide Root Zone Model Ground Water (PRZM GW), the estimated drinking water concentrations (EDWCs) of metaldehyde for acute exposures are estimated to be 205 parts per billion (ppb) for surface water and 1,880 ppb for ground water and for chronic exposures for non-cancer assessments are estimated to be 136 ppb for surface water and 915 ppb for ground water.

Modeled estimates of drinking water concentrations were directly entered into the dietary exposure model.

For acute dietary risk assessment, the water concentration value of 1,880 ppb was used to assess the contribution to drinking water.

For chronic dietary risk assessment, the water concentration of value 915 ppb was used to assess the contribution to drinking water.

3. *From non-dietary exposure.* The term ''residential exposure'' is used in this document to refer to non-occupational, non-dietary exposure (*e.g.,* for lawn and garden pest control, indoor pest control, termiticides, and flea and tick control on pets).

Metaldehyde is currently registered for the following uses that could result in residential exposures: Residential ornamentals and lawn/turf applications.

EPA assessed residential exposure using the following assumptions:

i. Adult handler short-term inhalation exposures from loading/applying metaldehyde products including liquid ready-to-use products (with manually-pressurized hand wands, hose-end sprayers, and sprinkler cans) and applying granules (via push-type rotary spreaders, belly grinders, spoons, cups, hands, and shaker cans); and

ii. Metaldehyde incidental post-application exposures assessed for children, including short-term exposure from hand-to-mouth and object-to-mouth contact with treated turf, and short- and intermediate-term exposures from treated soil ingestion. While EPA did calculate an acute incidental ingestion scenario for toddlers accidentally ingesting granules of metaldehyde, it is not appropriate to aggregate this scenario because it represents poisoning incident which is not likely to overlap with the typical post-application exposure scenario. Further information regarding EPA standard assumptions and generic inputs for residential exposures may be found at *http://www.epa.gov/pesticides/science/residential-exposure-sop.html.*

4. *Cumulative effects from substances with a common mechanism of toxicity.* Section 408(b)(2)(D)(v) of FFDCA requires that, when considering whether to establish, modify, or revoke a tolerance, the Agency consider ''available information'' concerning the cumulative effects of a particular pesticide's residues and ''other substances that have a common mechanism of toxicity.''

EPA has not found metaldehyde to share a common mechanism of toxicity with any other substances, and metaldehyde does not appear to produce a toxic metabolite produced by other substances. For the purposes of this tolerance action, therefore, EPA has assumed that metaldehyde does not have a common mechanism of toxicity with other substances. For information regarding EPA's efforts to determine which chemicals have a common mechanism of toxicity and to evaluate the cumulative effects of such chemicals, see EPA's Web site at *http://www.epa.gov/pesticides/cumulative.*

D. Safety Factor for Infants and Children

1. *In general.* Section 408(b)(2)(C) of FFDCA provides that EPA shall apply an additional tenfold (10X) margin of safety for infants and children in the case of threshold effects to account for prenatal and postnatal toxicity and the completeness of the database on toxicity and exposure unless EPA determines based on reliable data that a different margin of safety will be safe for infants and children. This additional margin of safety is commonly referred to as the FQPA Safety Factor (SF). In applying this provision, EPA either retains the default value of 10X, or uses a different additional safety factor when reliable data available to EPA support the choice of a different factor.

2. *Prenatal and postnatal sensitivity.* Developmental toxicity was not observed in the rat or rabbit developmental toxicity studies, and maternal toxicity was not observed in the rabbit. In the rat, maternal toxicity was observed, as evidenced by clinical signs (ataxia, tremors, and twitching) at the HDT. In the rat reproductive toxicity study, mortality and clinical signs (limb paralysis, spinal cord necrosis and hemorrhage) were observed in the maternal animals, and the effects on the offspring consisted of decreased pup body weight and body weight gains. Reproductive toxicity was not observed.

3. *Conclusion.* EPA has determined that reliable data show the safety of infants and children would be adequately protected if the FQPA SF were reduced to 1x. That decision is based on the following findings:

i. The toxicity database for metaldehyde is complete.

ii. The toxicity database contains indications of neurotoxicity resulting from exposure to metaldehyde, including:

a. Clinical signs [ataxia, twitching, tremors, prostration, paresis of hind legs] in female rats in the developmental toxicity study;

b. Hindlimb paralysis, necrosis and hemorrhage in the spinal cord and vertebra luxation in F0 dams during lactation period in the 2-generation reproduction study;

c. Bilateral hindlimb paralysis observed initially on day 10 in one high-dose female sacrificed on day 22 due to poor condition in the 90-day subchronic neurotoxicity study in rats; no neuropathology was evident;

d. Clinical signs [ataxia, tremors, twitching, salivation] in the chronic dog study, which occurred within the first week of exposure and persisted through week 19; other signs observed in the chronic dog study included lateral position, reduced mobility, convulsions, and vocalization in one female, and agitation in another.

EPA has determined that the acute and developmental neurotoxicity studies are not needed, nor are additional uncertainty factors (UFs) necessary to account for neurotoxicity. There were no indications of neurotoxic effects in developing rats or rabbits in either the developmental or reproductive studies. Although there were some effects in adult rats, those effects occurred at doses much higher than in the dog study. The dog is the more sensitive species for neurotoxic effects and points of departure (30 mg/kg/day and 10 mg/kg/day) are based on the chronic dog oral toxicity study, which EPA considers to be protective of any neurotoxicity at higher dose levels.

iii. There is no evidence that metaldehyde results in increased susceptibility in *in utero* rats or rabbits in the prenatal developmental studies or in young rats in the 2-generation reproduction study.

iv. There are no residual uncertainties identified in the exposure databases. The dietary food exposure assessments were performed based on 100 PCT and tolerance-level residues. EPA made conservative (protective) assumptions in the ground and surface water modeling used to assess exposure to metaldehyde in drinking water. EPA used similarly conservative assumptions to assess post application exposure of children as well as incidental oral exposure of toddlers. These assessments will not underestimate the exposure and risks posed by metaldehyde.

E. Aggregate Risks and Determination of Safety

EPA determines whether acute and chronic dietary pesticide exposures are safe by comparing aggregate exposure estimates to the acute PAD (aPAD) and chronic PAD (cPAD). For linear cancer risks, EPA calculates the lifetime probability of acquiring cancer given the estimated aggregate exposure. Short-, intermediate-, and chronic-term risks are evaluated by comparing the estimated aggregate food, water, and residential exposure to the appropriate PODs to ensure that an adequate MOE exists.

1. *Acute risk.* Using the exposure assumptions discussed in this unit for acute exposure, the acute dietary exposure from food and water to metaldehyde will occupy 55% of the aPAD for all infants (less than 1 year old), the population group receiving the greatest exposure.

2. *Chronic risk.* Using the exposure assumptions described in this unit for chronic exposure, EPA has concluded that chronic exposure to metaldehyde from food and water will utilize 51% of the cPAD for all infants less than 1 year old the population group receiving the greatest exposure. Chronic exposures to metaldehyde are expected for food and water only.

3. *Short-term risk.* Short-term aggregate exposure takes into account short-term residential exposure plus chronic exposure to food and water (considered to be a background exposure level). Metaldehyde is currently registered for uses that could result in short-term residential exposure, and the Agency has determined that it is appropriate to aggregate chronic exposure through food and water with short-term residential exposures to metaldehyde. Using the exposure assumptions described in this unit for short-term exposures, EPA has concluded the combined short-term food, water, and residential exposures result in aggregate MOEs of 1,400 for adults and 590 for children. Because EPA's level of concern for metaldehyde is a MOE of 100 or below, these MOEs are not of concern.

4. *Intermediate-term risk.* Intermediate-term aggregate exposure takes into account intermediate-term residential exposure plus chronic exposure to food and water (considered to be a background exposure level). Metaldehyde is currently registered for uses that could result in intermediate-term residential exposure, and the Agency has determined that it is appropriate to aggregate chronic exposure through food and water with intermediate-term residential exposures to metaldehyde.

Using the exposure assumptions described in this unit for intermediate-term exposures, EPA has concluded that the combined intermediate-term food, water, and residential exposures result in an aggregate MOE of 280 for children, only. Because EPA's level of concern for metaldehyde is a MOE of 100 or below, this MOE is not of concern.

5. *Aggregate cancer risk for U.S. population.* Based on the data summarized in Unit III.A., EPA has concluded that a nonlinear RfD approach is appropriate for assessing cancer risk to metaldehyde. Cancer risk was assessed using the same cPAD and exposure estimates as discussed in Unit III.A. and Unit III.C.1.ii. for the chronic risk assessment. Based on the results discussed in Unit III.E.2., EPA concludes that aggregate exposure to metaldehyde will not pose a cancer risk.

6. *Determination of safety.* Based on these risk assessments, EPA concludes that there is a reasonable certainty that no harm will result to the general population, or to infants and children from aggregate exposure to metaldehyde residues.

IV. Other Considerations

A. Analytical Enforcement Methodology

Adequate enforcement methodology (gas chromatography with mass spectrometry (GC/MS) method (EN–CAS Method No. ENC–3/99, Revision 1) is available to enforce the tolerance expression.

B. International Residue Limits

In making its tolerance decisions, EPA seeks to harmonize U.S. tolerances with international standards whenever possible, consistent with U.S. food safety standards and agricultural practices. EPA considers the international maximum residue limits (MRLs) established by the Codex Alimentarius Commission (Codex), as required by FFDCA section 408(b)(4). The Codex Alimentarius is a joint United Nations Food and Agriculture Organization/World Health Organization food standards program, and it is recognized as an international food safety standards-setting organization in trade agreements to which the United States is a party. EPA may establish a tolerance that is different from a Codex MRL; however, FFDCA section 408(b)(4) requires that EPA explain the reasons for departing from the Codex level.

The Codex has not established a MRL for metaldehyde.

C. Response to Comments

Six comments were posted in the docket for this action. However, the comments received were regarding bee concerns for a different chemical, sulfoxaflor. These comments were addressed at the time the Agency assessed sulfoxaflor. As a result, the only comments received were determined to be irrelevant to the Agency's tolerance action on metaldehyde.

D. Revisions to Petitioned-For Tolerances

The Agency has determined that tolerances of 0.60 ppm for clover hay and forage are appropriate based on available residue data and use of the OECD tolerance calculation procedures.

V. Conclusion

Therefore, tolerances are established for residues of metaldehyde in or on the following commodities: Vegetable, legume, edible podded, subgroup 6A at 0.80 ppm; pea and bean, succulent shelled, subgroup 6B at 0.20 ppm; vegetable, foliage of legume, except soybean, subgroup 7A at 1.5 ppm; tomato subgroup 8–10A at 0.24 ppm; fruit, citrus, group 10–10 at 0.26; and ginseng at 0.05 ppm; and tolerances with regional registrations for clover, forage at 0.60 ppm and clover, hay at 0.60 ppm. The regulation additionally removes the tolerances in or on fruit, citrus group 10 and tomato.

VI. Statutory and Executive Order Reviews

This action establishes tolerances under FFDCA section 408(d) in response to a petition submitted to the Agency. The Office of Management and Budget (OMB) has exempted these types of actions from review under Executive Order 12866, entitled ''Regulatory Planning and Review'' (58 FR 51735, October 4, 1993). Because this action has been exempted from review under Executive Order 12866, this action is not subject to Executive Order 13211, entitled ''Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use'' (66 FR 28355, May 22, 2001) or Executive Order 13045, entitled ''Protection of Children from Environmental Health Risks and Safety Risks'' (62 FR 19885, April 23, 1997). This action does not contain any information collections subject to OMB approval under the Paperwork Reduction Act (PRA) (44 U.S.C. 3501 *et seq.*), nor does it require any special considerations under Executive Order 12898, entitled ''Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations'' (59 FR 7629, February 16, 1994).

Since tolerances and exemptions that are established on the basis of a petition under FFDCA section 408(d), such as the tolerances in this final rule, do not require the issuance of a proposed rule, the requirements of the Regulatory Flexibility Act (RFA) (5 U.S.C. 601 *et seq.*), do not apply.

This action directly regulates growers, food processors, food handlers, and food retailers, not States or tribes, nor does this action alter the relationships or distribution of power and responsibilities established by Congress in the preemption provisions of FFDCA section 408(n)(4). As such, the Agency has determined that this action will not have a substantial direct effect on States or tribal governments, on the relationship between the national government and the States or tribal governments, or on the distribution of power and responsibilities among the various levels of government or between the Federal Government and Indian tribes. Thus, the Agency has determined that Executive Order 13132, entitled ''Federalism'' (64 FR 43255, August 10, 1999) and Executive Order 13175,

entitled ''Consultation and Coordination with Indian Tribal Governments'' (65 FR 67249, November 9, 2000) do not apply to this action. In addition, this action does not impose any enforceable duty or contain any unfunded mandate as described under Title II of the Unfunded Mandates Reform Act (UMRA) (2 U.S.C. 1501 *et seq.*).

This action does not involve any technical standards that would require Agency consideration of voluntary consensus standards pursuant to section 12(d) of the National Technology Transfer and Advancement Act (NTTAA) (15 U.S.C. 272 note).

VII. Congressional Review Act

Pursuant to the Congressional Review Act (5 U.S.C. 801 *et seq.*), EPA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. This action is not a ''major rule'' as defined by 5 U.S.C. 804(2).

List of Subjects in 40 CFR Part 180

Environmental protection, Administrative practice and procedure, Agricultural commodities, Pesticides and pests, Reporting and recordkeeping requirements.

Dated: February 23, 2015.

Susan Lewis,

Director, Registration Division, Office of Pesticide Programs.

Therefore, 40 CFR chapter I is amended as follows:

PART 180—[AMENDED]

■ 1. The authority citation for part 180 continues to read as follows:

Authority: 21 U.S.C. 321(q), 346a and 371.

■ 2. In § 180.523:

■ a. Revise the entry for ''Fruit, citrus, group 10'' in the table in paragraph (a).

■ b. Add alphabetically the entries for ''Ginseng''; ''Pea and bean, succulent shelled, subgroup 6B''; ''Tomato subgroup 8–10A''; ''Vegetable, foliage of legume, except soybean, subgroup 7A''; and ''Vegetable, legume, edible podded subgroup 6A'' to the table in paragraph (a).

■ c. Remove the entry for ''Tomato'' in the table in paragraph (a).

■ d. Add alphabetically the entries for ''Clover, forage'' and ''Clover, hay'' to the table in paragraph (c).

The amendments read as follows:

§ 180.523 Metaldehyde; tolerances for residues.

(a) * * *

Commodity	Parts per million
* * * * * * *	
Fruit, citrus, group 10–10	0.26
Ginseng	0.05
* * * * * * *	
Pea and bean, succulent shelled, subgroup 6B	0.20
* * * * * * *	
Tomato subgroup 8–10A	0.24
* * * * * * *	
Vegetable, foliage of legume, except soybean, subgroup 7A	1.5
Vegetable, legume, edible podded subgroup 6A	0.80
* * * * * * *	

* * * * * (c) * * *

Commodity	Parts per million
Clover, forage	0.60
Clover, hay	0.60
* * * * * * *	

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[FR Doc. 2015–04277 Filed 3–3–15; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 180

[EPA–HQ–OPP–2013–0601; FRL–9922–29]

9-Octadecenoic Acid (9*Z*)-, Sulfonated, Oxidized and its Potassium and Sodium Salts; Exemption From the Requirement of a Tolerance

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: This regulation establishes an exemption from the requirement of a tolerance for residues of 9-octadecenoic acid (9*Z*)-, sulfonated, oxidized; 9-octadecenoic acid (9*Z*)-, sulfonated, oxidized, potassium salts; and 9-octadecenoic acid (9*Z*)-, sulfonated, oxidized, sodium salts, when used as an inert ingredient in antimicrobial pesticide formulations used on food contact surfaces in public eating places, dairy processing equipment and food processing equipment and utensils at a maximum end-use concentration not to exceed 250 parts per million (ppm). Ecolab submitted a petition to EPA under the Federal Food, Drug, and Cosmetic Act (FFDCA), requesting establishment of an exemption from the requirement of a tolerance. This regulation eliminates the need to establish a maximum permissible level for residues of 9-octadecenoic acid (9*Z*)-, sulfonated, oxidized and its potassium and sodium salts.

DATES: This regulation is effective March 4, 2015. Objections and requests for hearings must be received on or before May 4, 2015, and must be filed in accordance with the instructions provided in 40 CFR part 178 (see also Unit I.C. of the **SUPPLEMENTARY INFORMATION**).

ADDRESSES: The docket for this action, identified by docket identification (ID) number EPA–HQ–OPP–2013–0601, is available at *http://www.regulations.gov* or at the Office of Pesticide Programs Regulatory Public Docket (OPP Docket) in the Environmental Protection Agency Docket Center (EPA/DC), West William Jefferson Clinton Bldg., Rm. 3334, 1301 Constitution Ave. NW., Washington, DC 20460–0001. The Public Reading Room is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Public Reading Room is (202) 566–1744, and the telephone number for the OPP Docket is (703) 305–5805. Please review the visitor instructions and additional information about the docket available at *http://www.epa.gov/dockets.*

FOR FURTHER INFORMATION CONTACT: Susan Lewis, Director, Registration Division (7505P), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave. NW., Washington, DC 20460–0001; main telephone number: (703) 305–7090; email address: *RDFRNotices@epa.gov.*

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this action apply to me?

You may be potentially affected by this action if you are an agricultural producer, food manufacturer, or pesticide manufacturer. The following list of North American Industrial Classification System (NAICS) codes is not intended to be exhaustive, but rather provides a guide to help readers determine whether this document applies to them. Potentially affected entities may include:

- Crop production (NAICS code 111).
- Animal production (NAICS code 112).
- Food manufacturing (NAICS code 311).
- Pesticide manufacturing (NAICS code 32532).

B. How can I get electronic access to other related information?

You may access a frequently updated electronic version of 40 CFR part 180 through the Government Publishing Office's e-CFR site at *http://www.ecfr.gov/cgi-bin/text-idx?&c=ecfr&tpl=/ecfrbrowse/Title40/40tab_02.tpl.* To access the OCSPP test guidelines referenced in this document electronically, please go to *http://www.epa.gov/ocspp* and select ''Test Methods and Guidelines.''

C. How can I file an objection or hearing request?

Under FFDCA section 408(g), 21 U.S.C. 346a, any person may file an objection to any aspect of this regulation and may also request a hearing on those objections. You must file your objection or request a hearing on this regulation in accordance with the instructions provided in 40 CFR part 178. To ensure proper receipt by EPA, you must identify docket ID number EPA–HQ–OPP–2013–0601 in the subject line on the first page of your submission. All objections and requests for a hearing must be in writing, and must be received by the Hearing Clerk on or before May 4, 2015. Addresses for mail and hand delivery of objections and hearing requests are provided in 40 CFR 178.25(b).

In addition to filing an objection or hearing request with the Hearing Clerk as described in 40 CFR part 178, please submit a copy of the filing (excluding any Confidential Business Information (CBI)) for inclusion in the public docket. Information not marked confidential pursuant to 40 CFR part 2 may be disclosed publicly by EPA without prior notice. Submit the non-CBI copy of your objection or hearing request, identified by docket ID number EPA–HQ–OPP–2013–0601, by one of the following methods:

- *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the online instructions for submitting comments. Do not submit electronically any information you consider to be CBI or other information whose disclosure is restricted by statute.
- *Mail:* OPP Docket, Environmental Protection Agency Docket Center (EPA/DC), (28221T), 1200 Pennsylvania Ave. NW., Washington, DC 20460–0001.
- *Hand Delivery:* To make special arrangements for hand delivery or delivery of boxed information, please follow the instructions at *http://www.epa.gov/dockets/contacts.html.*

Additional instructions on commenting or visiting the docket, along with more information about dockets generally, is available at *http://www.epa.gov/dockets.*

II. Petition for Exemption

In the **Federal Register** of September 12, 2013 (78 FR 56185) (FRL–9399–7), EPA issued a document pursuant to FFDCA section 408, 21 U.S.C. 346a, announcing the filing of a pesticide petition (PP IN–10549) by Ecolab, Inc. 370 N. Wabasha Street, St. Paul, MN 55102. The petition requested that 40 CFR 180.940(a) be amended by establishing an exemption from the requirement of a tolerance for residues of 9-octadecenoic acid (9*Z*)-, sulfonated, oxidized (CAS Reg. No. 1315321–93–7); 9-octadecenoic acid (9*Z*)-, sulfonated, oxidized, potassium salts (CAS Reg. No. 1315321–94–8); and 9-octadecenoic acid (9*Z*)-, sulfonated, oxidized, sodium salts, (CAS No. 1315321–95–9) when used as an inert ingredient in antimicrobial pesticide formulations used on food contact surfaces in public eating places, dairy processing equipment, and food processing equipment and utensils at a maximum end-use concentration not to exceed 250 ppm. That document referenced a summary of the petition prepared by Ecolab Inc, the petitioner, which is available in the docket, *http://www.regulations.gov.* There were no

comments received in response to the notice of filing.

III. Inert Ingredient Definition

Inert ingredients are all ingredients that are not active ingredients as defined in 40 CFR 153.125 and include, but are not limited to, the following types of ingredients (except when they have a pesticidal efficacy of their own): Solvents such as alcohols and hydrocarbons; surfactants such as polyoxyethylene polymers and fatty acids; carriers such as clay and diatomaceous earth; thickeners such as carrageenan and modified cellulose; wetting, spreading, and dispersing agents; propellants in aerosol dispensers; microencapsulating agents; and emulsifiers. The term ''inert'' is not intended to imply nontoxicity; the ingredient may or may not be chemically active. Generally, EPA has exempted inert ingredients from the requirement of a tolerance based on the low toxicity of the individual inert ingredients.

IV. Aggregate Risk Assessment and Determination of Safety

Section 408(c)(2)(A)(i) of FFDCA allows EPA to establish an exemption from the requirement for a tolerance (the legal limit for a pesticide chemical residue in or on a food) only if EPA determines that the tolerance is ''safe.'' Section 408(b)(2)(A)(ii) of FFDCA defines ''safe'' to mean that ''there is a reasonable certainty that no harm will result from aggregate exposure to the pesticide chemical residue, including all anticipated dietary exposures and all other exposures for which there is reliable information.'' This includes exposure through drinking water and in residential settings, but does not include occupational exposure. Section 408(b)(2)(C) of FFDCA requires EPA to give special consideration to exposure of infants and children to the pesticide chemical residue in establishing a tolerance and to ''ensure that there is a reasonable certainty that no harm will result to infants and children from aggregate exposure to the pesticide chemical residue. . . .''

EPA establishes exemptions from the requirement of a tolerance only in those cases where it can be clearly demonstrated that the risks from aggregate exposure to pesticide chemical residues under reasonably foreseeable circumstances will pose no appreciable risks to human health. In order to determine the risks from aggregate exposure to pesticide inert ingredients, the Agency considers the toxicity of the inert in conjunction with possible exposure to residues of the inert ingredient through food, drinking water, and through other exposures that occur as a result of pesticide use in residential settings. If EPA is able to determine that a finite tolerance is not necessary to ensure that there is a reasonable certainty that no harm will result from aggregate exposure to the inert ingredient, an exemption from the requirement of a tolerance may be established.

Consistent with FFDCA section 408(c)(2)(A), and the factors specified in FFDCA section 408(c)(2)(B), EPA has reviewed the available scientific data and other relevant information in support of this action. EPA has sufficient data to assess the hazards of and to make a determination on aggregate exposure for 9-octadecenoic acid (9*Z*)-, sulfonated, oxidized and its potassium and sodium salts including exposure resulting from the exemption established by this action. EPA's assessment of exposures and risks associated with 9-octadecenoic acid (9*Z*)-, sulfonated, oxidized and its potassium and sodium salts follows.

A. Toxicological Profile

EPA has evaluated the available toxicity data and considered their validity, completeness, and reliability as well as the relationship of the results of the studies to human risk. EPA has also considered available information concerning the variability of the sensitivities of major identifiable subgroups of consumers, including infants and children. Specific information on the studies received and the nature of the adverse effects caused by 9-octadecenoic acid (9*Z*)-, sulfonated, oxidized and its potassium and sodium salt (also referred to as peroxy sulfonated oleic acid (PSOA)) as well as the no-observed-adverse-effect-level (NOAEL) and the lowest-observed-adverse-effect-level (LOAEL) from the toxicity studies discussed in this unit.

Peroxy sulfonated oleic acid is acutely toxic via the oral route and is highly corrosive via the dermal and inhalation routes of exposure. In a 28-day oral toxicity study (OECD Guideline 407), rats were administered PSOA via gavage at dose levels of 15 milligrams/kilogram/day (mg/kg/day) and 50 mg/kg/day. No observable adverse effects were seen at either dose level but since no systemic effects were observed, the dosing was considered by the Agency to not be adequate.

In a developmental toxicity (OECD Guideline 414) study with PSOA, the parental NOAEL for systemic effects was 50 mg/kg bw/day, the highest dose tested. The NOAEL for embryotoxic, fetotoxic and developmental effects was also 50 mg/kg bw/day, the highest dose tested.

The dosing in the 28-day gavage study and the developmental toxicity studies was considered inadequate because animals were not challenged at higher doses. The applicant suggested that the higher doses were not utilized because of the corrosive nature of the chemical. Since there was no evidence of corrosivity in the study, a 14-day oral toxicity study was conducted at dose levels of 100 mg/kg/day, 300 mg/kg/day and 1,000 mg/kg/day. The study results confirmed that higher doses would have been corrosive.

In a series of genotoxicity studies PSOA is negative for inducing mutations in bacterial and mammalian cells, with and without metabolic activation. In the *in vitro* chromosome aberration study using human lymphocytes, PSOA was positive with and without metabolic activation. However, the *in vivo* micronucleus assay in rats was negative.

A neurotoxicity study was not conducted with PSOA. However, detailed functional observations were made among the parameters measured in the 28-day subchronic oral feeding study. There were no PSOA related changes in any of the parameters measured, including functional observations battery (FOB). No evidence of neurotoxicity was observed. An immunotoxicity study was not conducted with PSOA. However, minimal hemorrhage in the thymus was observed after the recovery period in the 14-day oral toxicity study with rats. Since, this effect is a common background lesion it is not considered indicative of potential immunotoxicity. There are no known chronic toxicity studies with PSOA and no available PSOA mammalian metabolism studies.

B. Toxicological Points of Departure/Levels of Concern

Once a pesticide's toxicological profile is determined, EPA identifies toxicological points of departure (POD) and levels of concern to use in evaluating the risk posed by human exposure to the pesticide. For hazards that have a threshold below which there is no appreciable risk, the toxicological POD is used as the basis for derivation of reference values for risk assessment. PODs are developed based on a careful analysis of the doses in each toxicological study to determine the dose at which no adverse effects are observed (the NOAEL) and the lowest dose at which adverse effects of concern are identified (the LOAEL). Uncertainty/safety factors are used in conjunction with the POD to calculate a safe

exposure level—generally referred to as a population-adjusted dose (PAD) or a reference dose (RfD)—and a safe margin of exposure (MOE). For non-threshold risks, the Agency assumes that any amount of exposure will lead to some degree of risk. Thus, the Agency estimates risk in terms of the probability of an occurrence of the adverse effect expected in a lifetime. For more information on the general principles EPA uses in risk characterization and a complete description of the risk assessment process, see *http://www.epa.gov/pesticides/factsheets/riskassess.htm.*

TABLE 1—SUMMARY OF TOXICOLOGICAL DOSE AND ENDPOINTS FOR 9-OCTADECENOIC ACID (9*Z*)-, SULFONATED, OXIDIZED AND ITS POTASSIUM AND SODIUM SALT FOR USE IN HUMAN RISK ASSESSMENT

Exposure/scenario	Dose used in risk assessment, interspecies and intraspecies and any traditional UF	Special FQPA SF and LOC for risk assessment	Study and toxicological effects
Acute dietary (all populations)	An endpoint attributable to a single dose exposure has not been identified.		
Chronic dietary (all populations)	NOAEL= 50 mg/kg/day ..... UF_A = 10X UF_H= 10X Chronic RfD = 0.5 mg/kg/day	FQPA SF = 1X ..... cPAD = chronic RfD/Special	14-day and 28-day rat oral toxicity study in rats. LOAEL = 300 mg/kg/day based on gastrointestinal irritation.
Cancer (Oral, dermal, inhalation) ..	NA	NA	NA.

FQPA SF = Food Quality Protection Act Safety Factor. LOAEL = lowest-observed-adverse-effect-level. LOC = level of concern. mg/kg/day = milligram/kilogram/day.

MOE = margin of exposure. NOAEL = no-observed-adverse-effect-level. PAD = population adjusted dose (a = acute, c = chronic). RfD = reference dose. UF = uncertainty factor. UF_A = extrapolation from animal to human (interspecies). UF_H = potential variation in sensitivity among members of the human population (intraspecies).

C. Exposure Assessment

1. *Dietary exposure from food and feed uses.* In evaluating dietary exposure to PSOA, EPA considered exposure under the proposed exemption from the requirement of a tolerance. EPA assessed dietary exposures from peroxy sulfonated oleic acids in food as follows:

In the absence of actual dietary exposure data resulting from this use, EPA has utilized a conservative, health-protective method of estimating dietary intake that is based upon conservative assumptions related to the amount of residues that can be transferred to foods as a result of the proposed use of 9-octadecenoic acid (9*Z*)-, sulfonated, oxidized and its potassium and sodium salts in food contact sanitizing pesticide products. This same methodology has been utilized by EPA in estimating dietary exposures to antimicrobial pesticides used in food-handling settings. A complete description of the approach used to assess dietary exposures resulting from food contact sanitizing solution uses of nitric acid can be found at *http://www.regulations.gov* in document ''Peroxy Sulfonated Oleic Acids; Human Health Risk Assessment and Ecological Effects Assessment to Support Proposed Exemption from the Requirement of a Tolerance When Used as Inert Ingredients in Pesticide Formulations,'' pp. 14–15 in docket ID number EPA–HQ–OPP–2013–0601. EPA assessed dietary exposures from 9-octadecenoic acid (9*Z*)-, sulfonated, oxidized and its potassium and sodium salts in food as follows:

i. *Acute exposure.* No adverse effects attributable to a single exposure of PSOA were seen in the toxicity databases. Therefore, an acute dietary exposure assessment for 9-octadecenoic acid (9*Z*)-, sulfonated, oxidized and its potassium and sodium salts is not necessary.

ii. *Chronic exposure.* In conducting the chronic dietary exposure assessment, the Agency believes the assumptions used to estimate chronic dietary exposures lead to an extremely conservative assessment of chronic dietary risk due to a series of compounded conservative assumptions. First, when a surface is treated with a disinfectant, a quantity of the disinfectant remains on the surface (residual solution). In the absence of any other data, EPA has used an estimated worst-case concentration of 1 mg of residual solution per square centimeter (cm) of treated surface area for this quantity. Second, the conservatism of this methodology is compounded by EPA's decision to assume a worst case scenario that all food that an individual consumers will come into contact with 4,000 cm^2 of sanitized non-porous food contact surfaces. This contact area represents all the surface area from silverware, china, and glass used by a person who regularly eats three meals per day at an institutional or public facility. Third, EPA assumes that 100% of the material present on food contact surfaces will migrate to food.

2. *Dietary exposure from drinking water.* Due to the proposed use pattern, the Agency believes PSOA will not enter surface water or ground water as a result of the proposed use. Therefore a dietary exposure assessment for drinking water is not necessary.

3. *From non-dietary exposure.* The term ''residential exposure'' is used in this document to refer to non-occupational, non-dietary exposure. Peroxy sulfonated oleic acids are not used as an inert ingredient in pesticide products that are registered for specific uses that may result in both indoor and outdoor residential exposures. Therefore, a residential exposure and risk assessment was not conducted for PSOA.

4. *Cumulative effects from substances with a common mechanism of toxicity.* Section 408(b)(2)(D)(v) of FFDCA requires that, when considering whether to establish, modify, or revoke a tolerance, the Agency consider ''available information'' concerning the cumulative effects of a particular pesticide's residues and ''other substances that have a common mechanism of toxicity.''

EPA has not found peroxy sulfonated oleic acids to share a common mechanism of toxicity with any other substances, and peroxy sulfonated oleic acids do not appear to produce a toxic metabolite produced by other substances. For the purposes of this tolerance action, therefore, EPA has assumed that peroxy sulfonated oleic acids do not have a common mechanism of toxicity with other substances. For information regarding EPA's efforts to determine which chemicals have a common mechanism of toxicity and to evaluate the cumulative effects of such

chemicals, see EPA's Web site at *http://www.epa.gov/pesticides/cumulative.*

D. Safety Factor for Infants and Children

1. *In general.* Section 408(b)(2)(C) of FFDCA provides that EPA shall apply an additional tenfold (10X) margin of safety for infants and children in the case of threshold effects to account for prenatal and postnatal toxicity and the completeness of the database on toxicity and exposure unless EPA determines based on reliable data that a different margin of safety will be safe for infants and children. This additional margin of safety is commonly referred to as the FQPA Safety Factor (SF). In applying this provision, EPA either retains the default value of 10X, or uses a different additional safety factor when reliable data available to EPA support the choice of a different factor.

2. *Prenatal and postnatal sensitivity.* There is no concern for fetal susceptibility. There were no treatment related effects observed in a developmental toxicity study in rats up to the maximum dose tested (50 mg/kg/day). Based on the corrosive nature of PSOA toxicity testing at doses greater than 100 mg/kg/day results in local effects (*i.e.,* severe gastrointestinal irritation) with other observed systemic effects being secondary to the irritation effects. Therefore, based on the available data, there are no concerns for residual uncertainties concerning prenatal and postnatal toxicity.

3. *Conclusion.* EPA has determined that reliable data show the safety of infants and children would be adequately protected if the FQPA SF were reduced to 1X. That decision is based on the following findings:

i. The NOAEL used for risk assessment is based on the corrosive effects of PSOA which occur at dose levels below which any systemic toxicity is observed and is therefore protective of potential developmental and reproductive effects.

ii. There is no indication that PSOA is a neurotoxic chemical and there is no need for a developmental neurotoxicity study or additional UFs to account for neurotoxicity.

iii. There is no indication that PSOA is an immunotoxic chemical and there is no need for additional UFs to account for immunotoxicity.

iv. There is no evidence that PSOA results in increased susceptibility in *in utero* rodents.

v. There are no residual uncertainties identified in the exposure databases. EPA made conservative (health-protective) assumptions regarding dietary exposure to PSOA. This assessment will not underestimate the exposure and risks posed by PSOA.

E. Aggregate Risks and Determination of Safety

EPA determines whether acute and chronic pesticide exposures are safe by comparing aggregate exposure estimates to the acute PAD (aPAD) and chronic PAD (cPAD). The aPAD and cPAD represent the highest safe exposures, taking into account all appropriate SFs. EPA calculates the aPAD and cPAD by dividing the POD by all applicable UFs. For linear cancer risks, EPA calculates the probability of additional cancer cases given the estimated aggregate exposure. Short-, intermediate-, and chronic-term risks are evaluated by comparing the estimated aggregate food, water, and residential exposure to the POD to ensure that the MOE called for by the product of all applicable UFs is not exceeded.

1. *Acute risk.* An acute aggregate risk assessment takes into account acute exposure estimates from dietary consumption of food and drinking water. No adverse effect resulting from a single oral exposure was identified and no acute dietary endpoint was selected. Therefore, peroxy sulfonated oleic acids are not expected to pose an acute risk.

2. *Chronic risk.* Using the exposure assumptions described in this unit for chronic exposure, EPA has concluded that chronic exposure to peroxy sulfonated oleic acids from food and water will utilize 18% of the cPAD for children 1–2 years old, the population group receiving the highest exposure. There are no residential uses for peroxy sulfonated oleic acids. Based on the explanation in Unit IIIC.3 residential use patterns, chronic residential exposure to residues of peroxy sulfonated oleic acids is not expected.

3. *Short-term risk.* Short-term aggregate exposure takes into account short-term residential exposure plus chronic exposure to food and water (considered to be a background exposure level). Because there are no residential uses, short-term residential exposures are not likely to occur, and no short-term adverse effect was identified therefore peroxy sulfonated oleic acids are not expected to pose a short-term aggregate risk.

4. *Intermediate-term risk.* Intermediate-term aggregate exposure takes into account intermediate-term residential exposure plus chronic exposure to food and water (considered to be a background exposure level). Because there are no residential uses, intermediate-term residential exposures are not likely to occur, and peroxy sulfonated oleic acids are not expected to pose an intermediate-term aggregate risk.

5. *Aggregate cancer risk for U.S. population.* Based upon negative response for mutagenicity in a battery of genotoxicity tests, and lack of any structural alerts for carcinogenicity, peroxy sulfonated oleic acids are not expected to pose a cancer risk to humans.

6. *Determination of safety.* Based on these risk assessments, EPA concludes that there is a reasonable certainty that no harm will result to the general population, or to infants and children from aggregate exposure to peroxy sulfonated oleic acids residues.

V. Other Considerations

A. Analytical Enforcement Methodology

An analytical method is not required for enforcement purposes since the Agency is not establishing a numerical tolerance for residues of peroxy sulfonated oleic acids of in or on any food commodities. EPA is establishing a limitation on the amount of peroxy sulfonated oleic acids that may be used in pesticide formulations. That limitation will be enforced through the pesticide registration process under the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA), 7 U.S.C. 136 *et seq.* EPA will not register any pesticide for sale or distribution for which the final end use concentration of peroxy sulfonated oleic acids in antimicrobial food contact surface sanitizing solutions would exceed 250 ppm.

B. International Residue Limits

In making its tolerance decisions, EPA seeks to harmonize U.S. tolerances with international standards whenever possible, consistent with U.S. food safety standards and agricultural practices. EPA considers the international maximum residue limits (MRLs) established by the Codex Alimentarius Commission (Codex), as required by FFDCA section 408(b)(4). The Codex Alimentarius is a joint United Nation Food and Agriculture Organization/World Health Organization food standards program, and it is recognized as an international food safety standards-setting organization in trade agreements to which the United States is a party. EPA may establish a tolerance that is different from a Codex MRL; however, FFDCA section 408(b)(4) requires that EPA explain the reasons for departing from the Codex level.

The Codex has not established a MRL for peroxy sulfonated oleic acids.

VI. Conclusions

Therefore, an exemption from the requirement of a tolerance is established under 40 CFR 180.940(a) for residues of 9-octadecenoic acid (9*Z*)-, sulfonated, oxidized (CAS Reg. No. 1315321–93–7); 9-octadecenoic acid (9*Z*)-, sulfonated, oxidized, potassium salts (CAS Reg. No. 1315321–94–8); and 9-octadecenoic acid (9*Z*)-, sulfonated, oxidized, sodium salts, (CAS No. 1315321–95–9) when used as an inert ingredient in antimicrobial pesticide formulations used on food contact surfaces in public eating places, dairy processing equipment and food processing equipment and utensils at a maximum end-use concentration not to exceed 250 ppm.

VII. Statutory and Executive Order Reviews

This action establishes a tolerance under FFDCA section 408(d) in response to a petition submitted to the Agency. The Office of Management and Budget (OMB) has exempted these types of actions from review under Executive Order 12866, entitled ''Regulatory Planning and Review'' (58 FR 51735, October 4, 1993). Because this action has been exempted from review under Executive Order 12866, this action is not subject to Executive Order 13211, entitled ''Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use'' (66 FR 28355, May 22, 2001) or Executive Order 13045, entitled ''Protection of Children from Environmental Health Risks and Safety Risks'' (62 FR 19885, April 23, 1997). This action does not contain any information collections subject to OMB approval under the Paperwork Reduction Act (PRA) (44 U.S.C. 3501 *et seq.*), nor does it require any special considerations under Executive Order 12898, entitled ''Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations'' (59 FR 7629, February 16, 1994).

Since tolerances and exemptions that are established on the basis of a petition under FFDCA section 408(d), such as the tolerance in this final rule, do not require the issuance of a proposed rule, the requirements of the Regulatory Flexibility Act (RFA) (5 U.S.C. 601 *et seq.*), do not apply.

This action directly regulates growers, food processors, food handlers, and food retailers, not States or tribes, nor does this action alter the relationships or distribution of power and responsibilities established by Congress in the preemption provisions of FFDCA section 408(n)(4). As such, the Agency has determined that this action will not have a substantial direct effect on States or tribal governments, on the relationship between the national government and the States or tribal governments, or on the distribution of power and responsibilities among the various levels of government or between the Federal Government and Indian Tribes. Thus, the Agency has determined that Executive Order 13132, entitled ''Federalism'' (64 FR 43255, August 10, 1999) and Executive Order 13175, entitled ''Consultation and Coordination with Indian Tribal Governments'' (65 FR 67249, November 9, 2000) do not apply to this action. In addition, this action does not impose any enforceable duty or contain any unfunded mandate as described under Title II of the Unfunded Mandates Reform Act (UMRA) (2 U.S.C. 1501 *et seq.*).

This action does not involve any technical standards that would require Agency consideration of voluntary consensus standards pursuant to section 12(d) of the National Technology Transfer and Advancement Act (NTTAA) (15 U.S.C. 272 note).

VIII. Congressional Review Act

Pursuant to the Congressional Review Act (5 U.S.C. 801 *et seq.*), EPA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. This action is not a ''major rule'' as defined by 5 U.S.C. 804(2).

List of Subjects in 40 CFR Part 180

Environmental protection, Administrative practice and procedure, Agricultural commodities, Pesticides and pests, Reporting and recordkeeping requirements.

Dated: February 25, 2015.

Susan Lewis,

Director, Registration Division, Office of Pesticide Programs.

Therefore, 40 CFR chapter I is amended as follows:

PART 180—[AMENDED]

■ 1. The authority citation for part 180 continues to read as follows:

Authority: 21 U.S.C. 321(q), 346a and 371.

■ 2. In § 180.940(a), alphabetically add the following inert ingredients to the table in paragraph (a) to read as follows:

§ 180.940 Tolerance exemptions for active and inert ingredients for use in antimicrobial formulations (Food-contact surface sanitizing solutions).

* * * * *

(a) * * *

Pesticide chemical	CAS Reg. No.	Limits
* * *	* * * *	
9-Octadecenoic acid (9*Z*)-, sulfonated, oxidized	1315321–93–7	When ready for use, the end-use concentration is not to exceed 250 ppm.
9-Octadecenoic acid (9*Z*)-, sulfonated, oxidized, potassium salts.	1315321–94–8	When ready for use, the end-use concentration is not to exceed 250 ppm.
9-Octadecenoic acid (9*Z*)-, sulfonated, oxidized, sodium salts.	1315321–95–9	When ready for use, the end-use concentration is not to exceed 250 ppm.
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[FR Doc. 2015–04396 Filed 3–3–15; 8:45 am]

BILLING CODE 6560–50–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 64

[WC Docket No. 13–39; FCC 13–135]

Rural Call Completion Recordkeeping and Reporting Requirements

AGENCY: Federal Communications Commission.

ACTION: Final rule; announcement of effective date.

SUMMARY: In this document, the Federal Communications Commission (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 *Report and Order (Order)* WC Docket No. 13–39, FCC 13–135. This document is consistent with the *Order,* which stated that the Commission would publish a document in the **Federal Register** announcing OMB approval and the effective date of the requirements.

DATES: 47 CFR 64.2103, 64.2105, 64.2107, and the information collection in paragraph 67 of this Report and Order, which contains information collection requirements published at 78 FR 76218, December 17, 2013 are effective on March 4, 2015.

FOR FURTHER INFORMATION CONTACT: Randy Clarke, Acting Division Chief, Wireline Competition Bureau, at (202) 418–1587.

SUPPLEMENTARY INFORMATION: This document announces that, on January 29, 2015, OMB approved, for a period of three years, the information collection requirements contained in the Commission's *Order,* FCC 13–135, published at 78 FR 76218, December 17, 2013. The OMB Control Number is 3060–1186. The Commission publishes this document as an announcement of the effective date of paragraphs 66 and 67, of document WC Docket No. 13–39, FCC 13–135. 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 Nicole Ongele, Federal Communications Commission, Room 1–620, 445 12th Street SW., Washington, DC 20554, or via email at: *Nicole.Ongele@fcc.gov.* Please include the OMB Control Number, 3060–1186, in your correspondence. The Commission also will accept comments via email. Please 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 January 29, 2015, for the information collection requirements contained in 64.2103, 64.2105, and 64.2107 of the Commission's Rules and the information collection in paragraph 67 of the *Order.*

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 3060–1186.

The foregoing notice is required by the Paperwork Reduction Act of 1995, Public Law 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: 3060–1186.

OMB Approval Date: January 29, 2015.

OMB Expiration Date: January 31, 2018.

Title: Rural Call Completion Recordkeeping and Reporting Requirements.

Form Number: FCC Form 480.

Respondents: Businesses or other for-profit entities.

Number of Respondents and Responses: 225 respondents; 940 responses.

Estimated Time per Response: 12.5 hours (per quarter).

Frequency of Response: Quarterly and one-time reporting requirements and recordkeeping requirement.

Obligation to Respond: Required to obtain or retain benefits. Statutory authority for this information collection is contained in 47 U.S.C. 151, 154(i), 201(b), 202(a), 218, 220(a), 251(a), 403.

Total Annual Burden: 11,280 hours.

Total Annual Cost: $793,750.

Privacy Impact Assessment: No impact (s).

Nature and Extent of Confidentiality: An assurance of confidentiality is not offered because this information collection does not require the collection of personally identifiable information from individuals. If the FCC requests that respondents submit information which respondents believe is confidential, respondents may request confidential treatment of such information pursuant to Section 0.459 of the FCC's rules, 47 CFR 0.459.

Needs and Uses: On October 28, 2013, the Wireline Competition Bureau (Bureau) of the Federal Communications Commission adopted a *Report and Order* (*Order*), in WC Docket No. 13–39; FCC 13–135, 78 FR 76218, Rural Call Completion. Under the rules adopted by the *Order,* submission of Form 480 is mandatory for a ''covered provider'' as defined in 47 CFR 64.2101(c). A covered provider failing to file Form 480 in a timely fashion may be subject to penalties under the Communications Act, including sections 502 and 503(b). In the *Order* the Commission improves its ability to monitor problems with completing calls to rural areas, and enforce restrictions against blocking, choking, reducing, or restricting calls. The *Order* applies the new rules to ''covered providers,'' meaning providers of long-distance voice service that make the initial long-distance call path choice for more than 100,000 domestic retail subscriber lines, counting the total of all business and residential fixed subscriber lines and mobile phones and aggregated over all of the providers' affiliates. In most cases, this is the calling party's long-distance provider. Covered providers include LECs, interexchange carriers (IXCs), commercial mobile radio service (CMRS) providers, and VoIP service providers. These rules do not apply to intermediate providers. Covered providers must file quarterly reports and retain the call detail records for at least six calendar months. Long-distance voice service providers that have more than 100,000 domestic retail subscriber lines but that, for reasons set forth in paragraph 67 of the *Order,* are not required to file quarterly reports are required to file a one-time letter in WC Docket No. 13–39 explaining that they do not make the initial long-distance call path choice for more than 100,000 long-distance voice service subscriber lines and identifying the long-distance provider or providers to which they hand off their end-user customers' calls. The *Order* also allows qualifying providers to certify that they meet the conditions for a Safe Harbor that would reduce reporting and retention obligations. In addition, the Commission has delegated to the

Bureau, in consultation with the Enforcement Bureau, the authority to act on requests from qualified providers for waiver of these rules. The *Order* also adopts a rule prohibiting all originating and intermediate providers from causing audible ringing to be sent to the caller before the terminating provider has signaled that the called party is being alerted.

In the near future, the Bureau will issue a public notice providing detailed instructions and announcing the deadline for the submission of data and providing further filing information.

Federal Communications Commission.

Marlene H. Dortch,

Secretary.

[FR Doc. 2015–04415 Filed 3–3–15; 8:45 am]

BILLING CODE 6712–01–P

DEPARTMENT OF THE TREASURY

48 CFR Parts 1001, 1002, 1016, 1019, 1028, 1032, 1034, 1042, and 1052

Department of the Treasury Acquisition Regulation; Technical Amendments

AGENCY: Office of the Procurement Executive, Treasury.

ACTION: Final rule.

SUMMARY: The Department of the Treasury is amending the Department of the Treasury Acquisition Regulation (DTAR) in order to make editorial changes. These editorial changes are in response to updates made to the Federal Acquisition Regulations (FAR), Treasury bureau organizational restructuring, and other internal updates that have occurred since the 2013 edition.

DATES: *Effective:* April 3, 2015.

FOR FURTHER INFORMATION CONTACT: Thomas O'Linn, Procurement Analyst, Office of the Procurement Executive, at (202) 622–2092.

SUPPLEMENTARY INFORMATION: The DTAR, which supplement the Federal Acquisition Regulation, are codified at 48 CFR Chapter 10. In order to update certain elements in 48 CFR part 10, the Department issued a proposed rule on December 23, 2014 (79 FR 76948) to solicit comments on certain editorial changes to the DTAR, which include updating Treasury bureau names and updating titles and dates, and other nonsubstantive revisions. This proposed rule also invited comments on removal of the Earned Value Management System provisions codified at section 1052.234–72. There is no longer a need for Treasury-specific coverage in this area.

The public comment period on the proposed rule closed on January 22, 2015. No comments were received. Accordingly, the Department is adopting the provisions of the proposed rule without change.

Regulatory Planning and Review

This rule is not a significant regulatory action as defined in section 3(f) of Executive Order 12866. Therefore a regulatory assessment is not required.

Regulatory Flexibility Act

The Regulatory Flexibility Act (5 U.S.C. chapter 6) generally requires agencies to conduct an initial regulatory flexibility analysis and a final regulatory flexibility analysis of any rule subject to notice and comment rulemaking requirements, unless the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities.

It is hereby certified that this rule will not have a significant economic impact on a substantial number of small entities. Although the rule may affect a substantial number of small entities, the rule is limited to nonsubstantive, editorial changes to the DTAR, which are anticipated to have no economic impact. Therefore, a regulatory flexibility analysis is not required.

Paperwork Reduction Act

The information collections contained in this rule have been previously approved by the Office of Management and Budget under the Paperwork Reduction Act (44 U.S.C. 3501, *et seq.*) and assigned OMB control numbers 1505–0081; 1505–0080; and 1505–0107. Under the Paperwork Reduction Act, 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.

List of Subjects in 48 CFR Chapter 10

Government procurement.

Accordingly, the Department of the Treasury amends 48 CFR chapter 10 as follows:

PART 1001—DEPARTMENT OF THE TREASURY ACQUISITION REGULATION (DTAR) SYSTEM

■ 1. The authority citation for part 1001 is revised to read as follows:

Authority: 41 U.S.C. 1707.

1001.670 [Amended]

■ 2. Amend section 1001.670 by removing in the first sentence the word ''Technical'' and revising ''COTR'' to read ''COR'' wherever it occurs.

PART 1002—DEFINITIONS OF WORDS AND TERMS

■ 3. The authority citation for part 1002 is revised to read as follows:

Authority: 41 U.S.C. 1707.

■ 4. Section 1002.101 is revised to read as follows:

1002.101 Definitions.

Bureau means any one of the following Treasury organizations:

(1) Alcohol and Tobacco Tax and Trade Bureau (TTB);

(2) Bureau of Engraving & Printing (BEP);

(3) Bureau of the Fiscal Service (formerly Bureau of Public Debt and Financial Management Service);

(4) Departmental Offices (DO);

(5) Financial Crimes Enforcement Network (FinCEN);

(6) Office of the Inspector General (OIG);

(7) Internal Revenue Service (IRS);

(8) Office of the Comptroller of the Currency (OCC);

(9) Special Inspector General for the Troubled Asset Relief Program (SIGTARP);

(10) Treasury Inspector General for Tax Administration (TIGTA); or

(11) United States Mint.

1002.70 [Amended]

■ 5. Amend section 1002.70 by—

■ a. Removing ''*COTR* Contracting Technical Officer's Representative'' and adding ''*COR* Contracting Officer's Representative'' in its place.

■ b. Removing ''*IPP* Internet Payment Platform'' and adding ''*IPP* Invoice Processing Platform'' in its place.

PART 1016—TYPES OF CONTRACTS

■ 6. The authority citation for part 1016 is revised to read as follows:

Authority: 41 U.S.C. 1707.

1016.505 [Amended]

■ 7. Section 1016.505 is revised to read as follows:

1016.505 Ordering.

(b)(8) The HCA shall designate a task and delivery order ombudsman in accordance with bureau procedures and provide a copy of the designation to the agency task and delivery order ombudsman. Bureau task and delivery order ombudsmen shall review complaints from contractors concerning task and delivery orders placed by the contracting activity and ensure they are afforded a fair opportunity to be considered, consistent with the procedures in the contract. In the absence of a designation, the Bureau

advocate for competition will serve in that capacity.

PART 1019—SMALL BUSINESS PROGRAMS

■ 8. The authority citation for part 1019 is revised to read as follows:

Authority: 41 U.S.C. 1707.

■ 9. Amend section 1019.202–70 by—
■ a. Removing from paragraph (d)(1) the text ''List of Parties Excluded from Federal Procurement and Nonprocurement Programs,'' and adding ''System for Award Management Exclusions,'' in its place;
■ b. Adding paragraph (n)(2)(vi).
■ c. Removing from paragraph (p)(1) the text ''$500,000 ($1,000,000 for construction)'' and adding ''$650,000 ($1,500,000 for construction)'' in its place; and
■ d. Revising paragraph (p)(2).

The addition and revision read as follows:

1019.202–70 The Treasury Mentor Protégé Program.

* * * * *

(n) * * *

(2) * * *

(vi) Protégé firms shall submit a post completion report 24 months after exiting the Mentor-Protégé Program. The post completion report will assist the Department of the Treasury in assessing the progress of Protégé firms upon completion of the program.

* * * * *

(p) * * *

(2) Insert the clause at *1052.219–75*, Mentor Requirements and Evaluation, in solicitations and contracts where the contractor is a participant in the Treasury Mentor-Protégé Program.

Subpart 1019.8—Contracting With the Small Business Administration (The 8(a) Program)

■ 10. Revise the heading for subpart 1019.8 to read as set forth above.

1019.811–3 [Amended]

■ 11. Amend section 1019.811–3 by—
■ a. Removing from paragraph (d)(3) the citation ''1019.8'' and adding ''FAR 19.8'' in its place; and
■ b. Removing from paragraph (f) the citation ''1019.8'' and adding ''FAR 19.8'' in its place.

PART 1028—BONDS AND INSURANCE

■ 12. The authority citation for part 1028 is revised to read as follows:

Authority: 41 U.S.C. 1707.

1028.307–1 [Amended]

■ 13. In section 1028.307–1, remove reserved paragraph (b).

■ 14. Revise section 1028.310–70 to read as follows:

1028.310–70 Agency contract clause for work on a Government installation.

(a) Insert a clause substantially similar to 1052.228–70, Insurance requirements, in all solicitations and contracts that contain the clause at FAR 52.228–5.

■ 15. Revise section 1028.311–2 to read as follows:

1028.311–2 Agency solicitation provisions and contract clauses.

Insert a clause substantially similar to 1052.228–70, Insurance requirements, in all solicitations and contracts that contain the clause at FAR 52.228–7.

PART 1032—CONTRACT FINANCING

■ 16. The authority citation for part 1032 is revised to read as follows:

Authority: 41 U.S.C. 1707.

1032.7002 [Amended]

■ 17. Amend section 1032.7002 by—
■ a. Removing from paragraph (a) introductory text the words ''awarded after October 1, 2012,'' and
■ b. Removing from paragraph (c) the words ''Treasury Internet Payment Platform'' and adding the words ''Treasury Invoice Processing Platform'' in their place.

■ 18. Section 1032.7003 is revised to read as follows:

1032.7003 Contract clause.

Except as provided in *1032.7002*(a), use the clause at *1052.232–7003*, Electronic Submission of Payment Requests, in all solicitations and contracts.

PART 1034—MAJOR SYSTEM ACQUISITION

■ 19. The authority citation for part 1034 is revised to read as follows:

Authority: 41 U.S.C. 1707.

■ 20. In section 1034.001, add introductory text and remove the definition of ''Core Earned Value Management''.

The addition reads as follows:

1034.001 Definitions.

As used in this part—

* * * * *

Subpart 34.2—[Removed]

■ 21. Remove subpart 34.2.

PART 1042—CONTRACT ADMINISTRATION AND AUDIT SERVICES

■ 22. The authority citation for part 1042 is revised to read as follows:

Authority: 41 U.S.C. 1707.

1042.1500 [Removed and Reserved]

■ 23. Remove and reserve section 1042.1500.

PART 1052—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

■ 24. The authority citation for part 1052 is revised to read as follows:

Authority: 41 U.S.C. 1707.

■ 25. In section 1052.201–70, revise the introductory text and paragraphs (a), (b), (c) introductory text, (c)(6), (d), and (e) to read as follows:

1052.201–70 Contracting Officer's Representative (COR) appointment and authority.

As prescribed in *1001.670–6*, insert the following clause:

CONTRACTING OFFICER'S REPRESENTATIVE (COR) APPOINTMENT AND AUTHORITY (APR 2015)

(a) The COR is ____ [insert name, address and telephone number].

(b) Performance of work under this contract is subject to the technical direction of the COR identified above, or a representative designated in writing. The term ''technical direction'' includes, without limitation, direction to the contractor that directs or redirects the labor effort, shifts the work between work areas or locations, and/or fills in details and otherwise serves to ensure that tasks outlined in the work statement are accomplished satisfactorily.

(c) Technical direction must be within the scope of the contract specification(s)/work statement. The COR does not have authority to issue technical direction that:

* * * * *

(6) Directs, supervises or otherwise controls the actions of the Contractor's employees.

(d) Technical direction may be oral or in writing. The COR must confirm oral direction in writing within five workdays, with a copy to the Contracting Officer.

(e) The Contractor shall proceed promptly with performance resulting from the technical direction issued by the COR. If, in the opinion of the Contractor, any direction of the COR or the designated representative falls within the limitations of (c) above, the Contractor shall immediately notify the Contracting Officer no later than the beginning of the next Government work day.

* * * * *

■ 26. Revise section 1052.210–70 to read as follows:

1052.210–70 Contractor publicity.

As prescribed in *1009.204–70*, insert the following clause:

CONTRACTOR PUBLICITY (APR 2015)

The Contractor, or any entity or representative acting on behalf of the Contractor, shall not refer to the supplies or services furnished pursuant to the provisions

of this contract in any news release or commercial advertising, or in connection with any news release or commercial advertising, without first obtaining explicit written consent to do so from the Contracting Officer. Should any reference to such supplies or services appear in any news release or commercial advertising issued by or on behalf of the Contractor without the required consent, the Government shall consider institution of all remedies available under applicable law, including 31 U.S.C. 333, and this contract. Further, any violation of this clause may be considered as part of the evaluation of past performance.

(End of clause)

■ 27. Revise section 1052.228–70 to read as follows:

1052.228–70 Insurance requirements.

As prescribed in *1028.310–70* and *1028.311–2*, insert a clause substantially as follows: The contracting officer may require additional kinds of insurance (*e.g.,* aircraft public and passenger liability, vessel liability) or higher limits of coverage.

INSURANCE (APR 2015)

In accordance with FAR clause 52.228–5, entitled ''Insurance—Work on a Government Installation'' [or FAR clause 52.228–7 entitled, ''*Insurance—Liability to Third Persons*''], insurance of the following kinds and minimum amounts shall be provided and maintained during the period of performance of this contract:

(a) *Worker's compensation and employer's liability.* The Contractor shall, as a minimum, meet the requirements specified at FAR 28.307–2(a).

(b) *General liability.* The Contractor shall, at a minimum, meet the requirements specified at FAR 28.307–2(b).

(c) *Automobile liability.* The Contractor shall, at a minimum, meet the requirements specified at FAR 28.307–2(c).

(End of clause)

■ 28. Revise section 1052.232–7003 to read as follows:

1052.232–7003 Electronic submission of payment requests.

As prescribed in *1032.7003*, use the following clause:

ELECTRONIC SUBMISSION OF PAYMENT REQUESTS (APR 2015)

(a) *Definitions.* As used in this clause—

(1) ''*Payment request*'' means a bill, voucher, invoice, or request for contract financing payment with associated supporting documentation. The payment request must comply with the requirements identified in FAR 32.905(b), ''Content of Invoices'' and the applicable Payment clause included in this contract.

(b) Except as provided in paragraph (c) of this clause, the Contractor shall submit payment requests electronically using the Invoice Processing Platform (IPP). Information regarding IPP, including IPP Customer Support contact information, is available at *www.ipp.gov* or any successor site.

(c) The Contractor may submit payment requests using other than IPP only when the Contracting Officer authorizes alternate procedures in writing in accordance with Treasury procedures.

(d) If alternate payment procedures are authorized, the Contractor shall include a copy of the Contracting Officer's written authorization with each payment request.

(End of clause)

1052.234–2 [Removed]

■ 29. Remove section 1052.234–2.

1052.234–3 [Removed]

■ 30. Remove section 1052.234–3.

1052.234–4 [Removed]

■ 31. Remove section 1052.234–4.

1052.234–70 [Removed]

■ 32. Remove section 1052.234–70.

1052.234–71 [Removed]

■ 33. Remove section 1052.234–71.

1052.234–72 [Removed]

■ 34. Remove section 1052.234–72.

Iris B. Cooper,

Senior Procurement Executive, Office of the Procurement Executive.

[FR Doc. 2015–04464 Filed 3–3–15; 8:45 am]

BILLING CODE 4810–25–P

Proposed Rules

Federal Register
Vol. 80, No. 42
Wednesday, March 4, 2015

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

7 CFR Part 340

[Docket No. APHIS–2008–0023]

RIN 0579–AC31

Importation, Interstate Movement, and Release Into the Environment of Certain Genetically Engineered Organisms

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Proposed rule; withdrawal.

SUMMARY: We are withdrawing a proposed rule that would have amended the regulations regarding the introduction (importation, interstate movement, and environmental release (field testing)) of certain genetically engineered organisms. We are doing this in light of the experience we have gained over the past 28 years, continuing advances in biotechnology, and comments we received on the rule. We will begin a fresh stakeholder engagement aimed at exploring alternative policy approaches. This engagement will begin with a series of webinars that will provide the stakeholder community an opportunity to provide initial feedback. Information on these webinars will be announced in the coming month.

DATES: Effective March 4, 2015, the proposed rule published on October 9, 2008 (73 FR 60008), is withdrawn.

FOR FURTHER INFORMATION CONTACT: Mrs. Chessa Huff-Woodard, Biotechnology Regulatory Services, APHIS, 4700 River Road Unit 146, Riverdale, MD 20737–1236; (301) 8513943.

SUPPLEMENTARY INFORMATION:

Background

On October 9, 2008, the Animal and Plant Health Inspection Service (APHIS) published in the **Federal Register** a proposal [1] (73 FR 60008–60048, Docket No. APHIS–2008–0023) to amend the regulations regarding the introduction (importation, interstate movement, and environmental release (field testing)) of certain genetically engineered (GE) organisms in response to advancements in biotechnology and APHIS' accumulated experience in implementing the current regulations. The proposed revisions were extensive and included significant changes to the scope of the regulations and the mechanics of APHIS' regulatory oversight. These changes included aligning the regulations with provisions of the Plant Protection Act (7 U.S.C. 7701 *et seq.*) and eliminating the current notification and permitting procedures and developing a multiple-category permitting system in its place.

APHIS sought public comment on the proposal from October 9, 2008, to June 29, 2009. We received over 88,300 comments by the close of the comment period. These were received in 5,580 submissions that included unique comments, form letters, and signatories to petitions. We thoroughly reviewed each comment we received. Comments were from a variety of stakeholders, including advocacy groups; State, Tribal, and foreign governments; university researchers; farmers, businesses, trade associations and other regulated entities; and private citizens. We wish to thank the commenters for sharing their knowledge and views on this important subject.

Many commenters indicated that the proposed scope and many of the provisions of the rule were unclear. With regard to the scope of the proposed changes, some commenters asserted that APHIS regulations needed to be more rigorous and far-reaching, while others believed that the proposed regulations were overly restrictive. Other commenters indicated that they were not clear as to what would and would not be regulated, and raised concerns regarding what future criteria might be used to determine what organisms would fall under APHIS regulatory jurisdiction. Concerns regarding oversight of crops that produce pharmaceutical and industrial compounds and increased regulatory burden are just a few examples of the complex issues raised by commenters.

Many commenters also expressed opposition to genetic engineering in general and expressed concerns with a wide range of issues, many of which were outside the scope of the proposed rule. For example, commenters stated that APHIS should consider non-safety based risks, such as economic and social impacts, including impacts on the marketability of non-GE products. Other commenters requested that APHIS regulations include provisions related to the labeling of GE products and raised concerns regarding health effects of GE products and increased pesticide use.

Based on the experience we have gained over the past 28 years, continuing advances in biotechnology, and the scope of comments received on the proposed rule, we have decided to withdraw it and to begin a fresh stakeholder engagement aimed at exploring alternative policy approaches. Because of rules limiting *ex parte* [2] communications with respect to active rulemakings, publication of the 2008 proposed rule has constrained our ability to talk about alternatives with stakeholders. Withdrawing the proposed rule will lift this constraint and provide for a more timely and transparent dialogue. Once it is withdrawn, the nature of our conversations with stakeholders can change, allowing APHIS to discuss regulatory issues in ways that were not possible while the proposal was in formal rulemaking. Our intention is to utilize an open and robust policy dialogue to drive the development of a forward-looking rule that will provide a foundation for our future regulatory activities.

Therefore, we are withdrawing the October 9, 2008, proposed rule. As we explore a full range of policy alternatives, we will consider the comments we received on the proposed rule, as well as new scientific knowledge whenever it is available, and continue to seek the active and open input of stakeholders. In the coming months, we will engage stakeholders on biotechnology regulation alternatives to ensure the safe environmental release (field testing), interstate movement, and importation of certain GE organisms

[1] To view the proposed rule, supporting documents, and comments we received, go to *http://www.regulations.gov/#!docketDetail;D=APHIS-2008-0023.*

[2] *Ex parte* rules are designed to prevent unequal access or the perception of favoritism during the active rulemaking period occurring after a new rule is proposed.

regulated under 7 CFR part 340. Plans for that engagement are underway and will begin with a series of webinars that will provide the stakeholder community an opportunity to provide initial feedback. Information on these webinars will be announced in the coming month and will be available on the APHIS Web site.[3] For those interested in additional information in advance of the webinars, this will be one of many topics at an upcoming U.S. Department of Agriculture workshop [4] on coexistence that is being held on March 12–13, 2015, and will be made widely available via webcast.

Authority: 7 U.S.C. 7701–7772 and 7781–7786; 31 U.S.C. 9701; 7 CFR 2.22, 2.80, and 371.3.

Done in Washington, DC, this 27th day of February 2015.

Kevin Shea,

Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 2015–04463 Filed 3–3–15; 8:45 am]

BILLING CODE 3410–34–P

[3] Information on upcoming webinars will be available at *http://www.aphis.usda.gov/wps/portal/aphis/ourfocus/biotechnology/!ut/p/a1/04_Sj9CPykssy0xPLMnMz0vMAfGjzOK9_D2MDJ0MjDzd3V2dDDz93HwCzL29jAyMTIEKIvEo8DYlTr-zu6OHibmPgYGBiYWRgaeLk4eLuaWvgYGnGXH6DXAARwNC-sP1o_AqAfkArACfE8EK8LihIDc0NMIg0xMA5AbGNw!!/?1dmy&urile=wcm%3apath%3a%2Faphis_content_library%2Fsa_our_focus%2Fsa_biotechnology%2Fsa_news%2Fct_news.*

[4] Call-in and Webcast information is available at the agricultural coexistence workshop Web page at: *http://www.aphis.usda.gov/wps/portal/aphis/newsroom/stakeholder-info/!ut/p/a1/nVFNU4MwEP0tHjxmEkgk4Ug7foBKD9W25MJskyixFChEx_57gem1aN3bzr739u1bLPEGywq-7Ds4W1dQDr0MchYL36fEj8ULFyQi8zBZxCtC6E0PyHoAOVMRGfnJ4sH3Zj3_fhnekjhd3T2LJ04fZwFeY4mlqlzjCpxBU9guV3XlTOXy0m5baIlowbar;XpIMctvWny8f52HcOdqaoS23ablBolNU4CxljRocaBYp6iCnOkdAAiAPVEBiujQcnxxOWfrl4dDyhkPATYCKUrPfAzy5JAry88KjkD3-yH4eDjPq0h3y_Hd78M–5m_7oX9Ih2b2mKZHb1A2VTHxo!/?1dmy&urile=wcm%3apath%3a%2Faphis_content_library%2Fsa_about_aphis%2Fsa_stakeholders%2Fct_coexistence_meeting.* A notice announcing the workshop was published on February 3, 2015 (80 FR 5729–5731, Docket No. APHIS–2013–0047).

DEPARTMENT OF ENERGY

10 CFR Part 429

[Docket No. EERE–2013–BT–NOC–0005]

Appliance Standards and Rulemaking Federal Advisory Committee: Notice of Open Meeting and Webinar

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

ACTION: Notice of open meeting and webinar.

SUMMARY: This document announces a meeting of the Appliance Standards and Rulemaking Federal Advisory Committee (ASRAC).

DATES: The meeting will be held on Thursday, March 19, 2015 from 9 a.m. to 1 p.m.

ADDRESSES: U.S. Department of Energy, Forrestal Building, Room 8E–089, 1000 Independence Avenue SW., Washington, DC 20585. For individuals that wish to attend by webinar, please register at—*https://attendee.gotowebinar.com/register/9166475973377623554.* After registering you will receive an email with the appropriate link to join the meeting and the necessary call-in information.

FOR FURTHER INFORMATION CONTACT: John Cymbalsky, ASRAC Designated Federal Officer, U.S. Department of Energy (DOE), Office of Energy Efficiency and Renewable Energy, 950 L'Enfant Plaza SW., Washington, DC, 20024. Email: *asrac@ee.doe.gov.*

SUPPLEMENTARY INFORMATION: The Federal Advisory Committee Act, Public Law 92–463, 86 Stat. 770, requires that agencies publish notice of an advisory committee meeting in the **Federal Register**.

Purpose of Meeting: To provide advice and recommendations to the Energy Department on the development of standards and test procedures for residential appliances and commercial equipment.

Tentative Agenda: (Subject to change; final agenda will be posted at *http://www.appliancestandards.energy.gov*):

- Discussion of formation of working groups to negotiate proposed rules for commercial and industrial fans and miscellaneous refrigeration products.
- Discussion of other topics where ASRAC can assist the Appliance and Equipment Standards Program
- Discussion of public engagement under DOE's retrospective regulatory review plan

Public Participation: Members of the public are welcome to observe the business of the meeting and, if time allows, may make oral statements during the specified period for public comment. To attend the meeting and/or to make oral statements regarding any of the items on the agenda, email *asrac@ee.doe.gov.* In the email, please indicate your name, organization (if appropriate), citizenship, and contact information. Please note that foreign nationals participating in the public meeting are subject to advance security screening procedures which require advance notice prior to attendance at the public meeting. If a foreign national wishes to participate in the public meeting, please inform DOE as soon as possible by contacting Ms. Regina Washington at (202) 586–1214 or by email: *Regina.Washington@ee.doe.gov* so that the necessary procedures can be completed. Anyone attending the meeting will be required to present a government photo identification, such as a passport, driver's license, or government identification. Due to the required security screening upon entry, individuals attending should arrive early to allow for the extra time needed.

Due to the REAL ID Act implemented by the Department of Homeland Security (DHS) recent changes regarding ID requirements for individuals wishing to enter Federal buildings from specific states and U.S. territories. Driver's licenses from the following states or territory will not be accepted for building entry and one of the alternate forms of ID listed below will be required.

DHS has determined that regular driver's licenses (and ID cards) from the following jurisdictions are not acceptable for entry into DOE facilities: Alaska, Louisiana, New York, American Samoa, Maine, Oklahoma, Arizona, Massachusetts, Washington, and Minnesota.

Acceptable alternate forms of Photo-ID include: U. S. Passport or Passport Card; An Enhanced Driver's License or Enhanced ID-Card issued by the states of Minnesota, New York or Washington (Enhanced licenses issued by these states are clearly marked Enhanced or Enhanced Driver's License); A military ID or other Federal government issued Photo-ID card.

Members of the public will be heard in the order in which they sign up for the Public Comment Period. Time allotted per speaker will depend on the number of individuals who wish to speak but will not exceed five minutes. Reasonable provision will be made to include the scheduled oral statements on the agenda. The co-chairs of the Committee will make every effort to hear the views of all interested parties and to facilitate the orderly conduct of business.

Participation in the meeting is not a prerequisite for submission of written comments. ASRAC invites written comments from all interested parties. Any comments submitted must identify the ASRAC, and provide docket number EERE–2013–BT–NOC–0005. Comments may be submitted using any of the following methods:

1. *Federal eRulemaking Portal: www.regulations.gov.* Follow the instructions for submitting comments.

2. *Email: ASRAC@ee.doe.gov.* Include docket number EERE–2013–BT–NOC–0005 in the subject line of the message.

3. *Mail:* Ms. Brenda Edwards, U.S. Department of Energy, Building Technologies Program, Mailstop EE–5B, 1000 Independence Avenue SW., Washington, DC 20585–0121. If possible, please submit all items on a compact disc (CD), in which case it is not necessary to include printed copies.

4. *Hand Delivery/Courier:* Ms. Brenda Edwards, U.S. Department of Energy, Building Technologies Program, 950 L'Enfant Plaza SW., Suite 600, Washington, DC 20024. Telephone: (202) 586–2945. If possible, please submit all items on a CD, in which case it is not necessary to include printed copies.

No telefacsimilies (faxes) will be accepted.

Docket: The docket is available for review at *www.regulations.gov,* including **Federal Register** notices, public meeting attendee lists and transcripts, comments, and other supporting documents/materials. All documents in the docket are listed in the *www.regulations.gov* index. However, not all documents listed in the index may be publicly available, such as information that is exempt from public disclosure.

The Secretary of Energy has approved publication of this notice of proposed rulemaking.

Issued in Washington, DC, on February 25, 2015.

Kathleen B. Hogan,

Deputy Assistant Secretary for Energy Efficiency, Energy Efficiency and Renewable Energy.

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DEPARTMENT OF TREASURY

Internal Revenue Service

26 CFR Parts 1 and 31

[REG–132253–11]

RIN 1545–BL68

Information Returns; Winnings From Bingo, Keno, and Slot Machines

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice of proposed rulemaking and notice of public hearing.

SUMMARY: This document contains proposed regulations under section 6041 regarding the filing of information returns to report winnings from bingo, keno, and slot machine play. The proposed regulations affect persons who pay winnings of $1,200 or more from bingo and slot machine play, $1,500 or more from keno, and recipients of such payments. This document also provides a notice of a public hearing on these proposed regulations.

DATES: Written or electronic comments must be received by June 2, 2015. Outlines of topics to be discussed at the public hearing scheduled for June 17, 2015 at 10 a.m. must be received by June 2, 2015.

ADDRESSES: Send submissions to: CC:PA: LPD:PR (REG–132253–11), Room 5205, Internal Revenue Service, P.O. Box 7604, Ben Franklin Station, Washington, DC 20044. Submissions may be hand-delivered Monday through Friday between the hours of 8 a.m. and 4 p.m. to CC:PA:LPD:PR (REG–132253–11), Courier's Desk, Internal Revenue Service, 1111 Constitution Avenue NW., Washington, DC, or sent electronically, via the Federal eRulemaking Portal at *http://www.regulations.gov* (IRS REG–132253–11). The public hearing will be held in the IRS Auditorium, Internal Revenue Building, 1111 Constitution Avenue NW., Washington, DC.

FOR FURTHER INFORMATION CONTACT: Concerning the proposed regulations, David Bergman, (202) 317–6844; concerning submissions of comments, the hearing, or to be placed on the building access list to attend the hearing, Oluwafunmilayo P. Taylor (202) 317–6901 (not toll-free numbers).

SUPPLEMENTARY INFORMATION:

Background

This document contains proposed regulations to Title 26 of the Code of Federal Regulations under section 6041 of the Internal Revenue Code. The proposed regulations would update and simplify the existing information reporting requirements under § 7.6041–1 of the Temporary Income Tax Regulations under the Tax Reform Act of 1976 for persons who make reportable payments of bingo, keno, or slot machine winnings. The updated requirements are proposed to be set forth in a new § 1.6041–10 of the regulations. Accordingly, when § 1.6041–10 of the proposed regulations becomes final, the regulations under § 7.6041–1 will be removed.

Section 6041 generally requires information reporting by every person engaged in a trade or business who, in the course of such trade or business, makes payments of gross income of $600 or more in any taxable year. The current regulatory reporting thresholds for winnings from bingo, keno, and slot machines deviate from this general rule. Prior to the adoption of the current thresholds in 1977, reporting from bingo, keno, and slot machines was based a sliding scale threshold tied to the amount of the wager and required the wager odds to be at least 300 to 1. On January 7, 1977, temporary regulation § 7.6041–1 was published establishing reporting thresholds for payments of winnings from bingo, keno, and slot machine play in the amount of $600. In Announcement 77–63, 1977–8 IRB 25, the IRS announced that it would not assert penalties for failure to file information returns before May 1, 1977, to allow the casino industry to submit, and the IRS to consider, information regarding the industry's problems in complying with the reporting requirements. After considering the evidence presented by the casino industry, the IRS announced in a press release that effective May 1, 1977, information reporting to the IRS would be required on payments of winnings of $1,200 or more from a bingo game or a slot machine play, and $1,500 or more from a keno game net of the wager. On June 30, 1977, § 7.6041–1 was amended to raise the reporting thresholds for winnings from a bingo game and slot machine play to $1,200, and the reporting threshold for winnings from a keno game to $1,500.

Section 7.6041–1(c) provides that bingo, keno, and slot machine winnings are reported on the Form W–2G, ''Certain Gambling Winnings.'' The payor must provide a copy of the Form W–2G to the payee by January 31 of the year following the year in which the reportable payment is made, and the payor must file the Form W–2G with the IRS by February 28 of the year following the year in which the reportable payment is made. The Form W–2G must include, among other things, the name, address, and taxpayer identification number of the payee and a general description of the two forms of identification used to verify this information.

Explanation of Provisions

The current regulations governing information reporting of winnings from bingo, keno, and slot machine play were published in 1977. There have been significant changes in gaming industry technology since that time. For instance, today many gaming establishments employ electronic slot machines and other mechanisms, such as player's cards, that permit electronic tracking of wagers and/or winnings. In addition, there have been many changes in the tax information reporting regime since the late 1970s, such as the enactment of backup withholding and requirements for electronic filing of information returns, including the Form W–2G. Current regulations under § 7.6041–1 of

the Temporary Income Tax Regulations do not take these changes into account. Accordingly, the Treasury Department and the IRS think the regulations for reporting winnings from bingo, keno, and slot machine play need to be updated in light of these developments and that there are opportunities to reduce burden and simplify reporting. The changes proposed by this document are intended to accomplish these goals. In addition, the Treasury Department and the IRS specifically request comments on certain topics addressed by the regulations.

Filing Requirement

Proposed § 1.6041–10(a) retains the general rule from § 7.6041–1 of the Temporary Income Tax Regulations that every person engaged in a trade or business who, in the course of its trade or business, pays reportable gambling winnings must make an information return with respect to such payments. Proposed § 1.6041–10(a) clarifies that, consistent with current law and as provided in § 1.6041–1(b) of the regulations, the term ''persons engaged in a trade or business'' includes not only those engaged in a trade or business for profit or gain, but also organizations whose activities are not for profit or gain, such as tax-exempt organizations and governmental entities.

Proposed § 1.6041–10(b) sets thresholds for when winnings from bingo, keno, and slot machine play will be treated as reportable gambling winnings and subject to reporting. Existing § 7.6041–1(b) of the Temporary Income Tax Regulations sets one threshold for bingo and slots, and a different threshold for keno. In addition, under § 7.6041–1(b) of the Temporary Income Tax Regulations, winnings from a keno game are reduced by the amount wagered in that game in determining whether the reporting threshold is satisfied, whereas for bingo and slot machine play winnings are not reduced by the amount wagered in determining whether the reporting threshold is satisfied.

Under the proposed regulations, the reporting thresholds for winnings from bingo, keno and slot machine play (other than electronically tracked slot machine play) remain the same as under the existing regulations. These thresholds are intended to reach a balance between reporting burden and compliance risk. Based on over 35 years of experience with the current thresholds, the IRS thinks they are sufficient at this time to verify correct reporting of wagering income. Accordingly, § 1.6041–10(b) of the proposed regulations provides that reportable gambling winnings means (i) $1,200 or more in the case of one bingo game or slot machine play, and (ii) $1,500 or more in the case of one keno game. However, advances in technology in the nearly four decades since the existing rules were adopted may overcome the compliance concerns that prompted the higher reporting thresholds and may warrant reducing the thresholds for bingo, keno, and slots to $600, consistent with other information reporting thresholds under § 6041(a). Accordingly, the IRS and Treasury will continue to monitor the effectiveness of the existing (and proposed) reporting thresholds, and may propose to reduce those thresholds at a future time. Comments are specifically requested regarding the proposed reporting thresholds, including the feasibility of reducing those thresholds to $600 at a future time, whether electronically tracked slot machine play should have a separate reporting threshold, and whether the amounts should be uniform for bingo, keno, and slot machine play.

In addition, the proposed regulations retain the rule from § 7.6041–1(b) of the Temporary Income Regulations that, in determining whether the reporting threshold is satisfied, the amount of the winnings from bingo or slot machine play is not reduced by the amount wagered, but the amount of winnings from one keno game is reduced by the amount wagered in that one game. Allowing the winnings from one keno game to be reduced by the amount wagered in that one game has been permitted by the regulations for over 35 years. This rule has been relied upon by payors and is an established norm in the gaming industry. The proposed regulations do not permit the winnings from one bingo game or slot machine pull to be reduced by the amount wagered in that one game or pull because the IRS does not have data indicating that this is feasible. Comments are requested regarding whether reportable gambling winnings in the case of bingo and slot machine play (other than electronically tracked slot machine play) should be determined by netting the wager against the winnings as with keno.

The proposed regulations also include new rules for determining the reporting threshold for electronically tracked slot machine play. Under § 1.6041–10(b)(1) of the proposed regulations, electronically tracked slot machine play means slot machine play where an electronic player system that is controlled by the gaming establishment (such as through the use of a player's card or similar system) records the amount a specific individual won and wagered on slot machine play. The new reporting threshold rules for electronically tracked slot machine play rules are intended to simplify reporting by allowing payors to leverage their existing technology and processes to report winnings from electronically tracked slot machine play. In addition, these changes are intended to facilitate reporting that more closely reflects gross income that will be reported by payees on their individual income tax returns. See Notice 2015–21 for more information on computing gross income attributable to electronically tracked slot machine play. Comments are specifically requested with respect to the definitions of session and electronically tracked slot machine play.

Under these new rules, gambling winnings for electronically tracked slot machine play must be reported when two criteria are met: (i) The total amount of winnings earned from electronically tracked slot machine play during a single session netted against the total amount of wagers placed on electronically tracked slot machines during the same session is $1,200 or more; and (ii) at least one single win during the session (without regard to the amount wagered) equals or exceeds $1,200. The first criterion helps to implement the safe harbor for computing gross income attributable to electronically tracked slot machine play described in Notice 2015–21. The second criterion is intended to be consistent with the casino industry's current practice of gathering payee information when a player wins a single jackpot that satisfies the reporting threshold. The $1,200 threshold for each criterion is intended to balance reporting burden and compliance risk as discussed previously. Pursuant to § 1.6041–10(b)(3) of the proposed regulations, a session begins when a patron places the first wager on a particular type of game at the payor's gaming establishment and ends when the patron places his or her last wager on the same type of game before the end of the same calendar day at the same establishment. Under this rule, reporting with respect to electronically tracked slot machine play is not required if no single win (without reduction for the amount of the wager) meets the $1,200 reporting threshold or if the net amount of winnings reduced by the amount of all wagers for the session is less than $1,200. However, if the $1,200 reporting threshold for a single win is satisfied and all winnings from electronically tracked slot machine play during a session netted against all

wagers on electronically tracked slot machine play during that session are $1,200 or more, gambling winnings for the session must be reported on a Form W–2G.

Proposed § 1.6041–10(b)(2) also includes several clarifications regarding the definition of reportable gambling winnings. First, the proposed regulations clarify that all winnings from all cards played during one bingo game are combined and that all winnings from all ''ways'' on a multi-way keno ticket are combined. Second, the proposed regulations clarify that winnings from different types of games are not combined to determine whether the reporting thresholds are satisfied, and that bingo, keno, electronically tracked slot machine play, and slot machine play that is not electronically tracked are all different types of games.

Proposed § 1.6041–10(b)(4) also adds a definition of the term ''slot machine'' to these information reporting regulations. Under this definition, a slot machine is a device that, by application of the element of chance, may deliver or entitle the person playing or operating the device to receive cash, premiums, merchandise, or tokens, whether or not the device is operated by inserting a coin, token, or similar object. The definition of slot machine in the proposed regulations is intended to be consistent with § 44.4402–1(b)(1) of the Wagering Tax Regulations.

Filing and Form and Content of the Information Return

Proposed § 1.6041–10(d) retains the requirement in § 7.6041–1(c) of the Temporary Income Tax Regulations that a payor of reportable gambling winnings file a Form W–2G, ''Certain Gambling Winnings,'' or successor form, on or before February 28 (or March 31, if filed electronically) of the year following the calendar year in which the reportable gambling winnings were paid. Outdated references to the place of filing have been replaced with a requirement that the return is filed with the appropriate Internal Revenue Service location designated in the instructions to the form.

Proposed § 1.6041–10(g) requires a payor of reportable gambling winnings to provide a statement of the reportable gambling winnings to each payee on or before January 31st of the calendar year after the calendar year in which the gambling winnings were paid. Although § 7.6041–1 of the Temporary Income Tax Regulations does not address when to provide statements to the payees, the proposed regulations are a restatement of the requirement to furnish statements to payees in section 6041(d). In addition, proposed § 1.6041–10(i) clarifies that the rules for reporting winnings from bingo, keno, and slot machine play under proposed § 1.6041–10 do not apply to payments made to foreign persons. Instead, gambling winnings paid to a foreign person are generally subject to 30 percent withholding under sections 1441(a) and 1442(a) and are reportable on Form 1042, Annual Withholding Tax Return for U.S. Source Income of Foreign Persons, and Form 1042–S, Foreign Person's U.S. Source Income Subject to Withholding. Proposed § 1.6041–10(e) retains the rules in § 7.6041–1(c) of the Temporary Regulations regarding the information that is required on the return, including the requirement that the payor describe on the return the two types of identification relied on to verify the payee's identity. However, proposed § 1.6041–10(e) now requires that one of the forms of identification include the payee's photograph to ensure that certain safeguards are in place to properly identify the payee. In addition, under proposed § 1.6041–10(f), the type of identification that is acceptable has been expanded.

Payee Identification

Section 7.6041–1(c)(3) of the Temporary Income Tax Regulations, which has been in place since 1977, provides that the identification verifying the payee's identity must include the payee's social security number. According to those regulations, examples of acceptable identification include a driver's license, a social security card, or a voter registration card. However, today most forms of identification do not include a person's social security number. Therefore, many payees do not have identification that contains the payee's social security number and, even if they do, they may not have this identification with them at the time that they receive a payment of reportable gambling winnings. To address this issue, § 1.6041–10(f) of the proposed regulations provides that, in addition to government-issued identification, a properly completed Form W–9 signed by the payee is an acceptable form of identification to verify the payee's identifying information. This rule is consistent with procedures currently used by many payors to address the fact that most forms of identification do not contain social security numbers. Accordingly, payors who verify payee information using identification set forth in proposed § 1.6041–10(f) before the date that final regulations implementing these provisions are published in the **Federal Register** will be treated as meeting the requirements of § 7.6041–1(c) of the Temporary Income Tax Regulations.

Aggregate Reporting Method

Proposed § 1.6041–10(h) provides an alternative method for reporting multiple winnings from bingo, keno, and slots. Under current regulations, each payment of gambling winnings from a single bingo or keno game, or slot machine play that meets the reporting threshold is required to be reported on a Form W–2G to the same payee. To simplify reporting, proposed § 1.6041–10(h) would allow a payor who makes more than one payment of reportable gambling winnings to the same payee from the same type of game during the same session to report the aggregate amount of such reportable gambling winnings on one Form W–2G. This aggregate reporting method may be used at the payor's option. Proposed § 1.6041–10(h)(3) sets forth certain recordkeeping requirements for a payor using the aggregate reporting method.

Gambling Winnings Other Than Bingo, Keno, and Slot Machine Play

These proposed regulations apply to reporting of gambling winnings from bingo, keno, and slot machine play. The Treasury Department and the IRS are aware that taxpayers required to report winnings from pari-mutuel gambling may have concerns, similar to those addressed in these proposed regulations, relating to when wagers with respect to horse races, dog races, and jai alai may be treated as identical. Identical wagers are combined and offset against winnings to determine proceeds from the wager for purposes of determining whether the reporting thresholds are satisfied. The Treasury Department and the IRS intend to amend the regulations under § 31.3402(q)–1 in a manner consistent with these proposed regulations and request comments from the public on this topic. In addition, comments are requested regarding whether the aggregate reporting method should be available for gambling winnings other than winnings from bingo, keno, and slot machine play.

Proposed Effective/Applicability Date

These regulations are proposed to apply to payments made on or after the date of publication of the Treasury decision adopting these rules as final regulations in the **Federal Register**.

Special Analyses

It has been determined that this notice of proposed rulemaking is not a significant regulatory action as defined

in Executive Order 12866, as supplemented by Executive Order 13563. Therefore, a regulatory assessment is not required. It has been determined that section 553(b) of the Administrative Procedure Act (5 U.S.C. chapter 5) does not apply to these regulations. It is hereby certified that this rule will not have a significant economic impact on a substantial number of small entities. This certification is based on the fact that this rule merely provides guidance as to the timing and filing of information reporting returns for payors who make reportable payments of bingo, keno, or slot machine winnings and who are required by section 6041 to make returns reporting those payments. The requirement for payors to make information returns is imposed by statute and not these regulations. In addition, this rule is reducing the existing burden on payors to comply with the statutory requirement by simplifying the process for payors to verify payees' identities using a broader range of documents that are more readily available and also by allowing payors to reduce the number of information returns they issue if they adopt the new aggregate reporting methodology in the regulations. Therefore, a Regulatory Flexibility Analysis under the Regulatory Flexibility Act (5 U.S.C. Chapter 6) is not required. Pursuant to section 7805(f) of the Internal Revenue Code, this notice of proposed rulemaking has been submitted to the Chief Counsel for Advocacy of the Small Business Administration for comment on its impact on small business.

Comments and Public Hearing

Before these proposed regulations are adopted as final regulations, consideration will be given to any written comments (a signed original and eight (8) copies) or electronic comments that are submitted timely to the IRS. In addition to the requests for comments noted in the Background Section, Treasury and the IRS request comments on any other aspects of the proposed rules, and any other issues relating to the payment of bingo, keno, and slot machine winnings that are not addressed in the proposed regulations. All comments will be available at *www.regulations.gov* for public inspection and copying.

A public hearing has been scheduled for June 17, 2015, beginning at 10 a.m. in the IRS Auditorium, Internal Revenue Building, 1111 Constitution Avenue NW., Washington, DC. Due to building security procedures, visitors must enter at the Constitution Avenue entrance. In addition, all visitors must present photo identification to enter the building. Because of access restrictions, visitors will not be admitted beyond the immediate entrance area more than 30 minutes before the hearing starts. For information about having your name placed on the building access list to attend the hearing, see the **FOR FURTHER INFORMATION CONTACT** section of this preamble.

The rules of § 601.601(a)(3) apply to the hearing. Persons who wish to present oral comments at the hearing must submit electronic or written comments and an outline of the topics to be discussed and the time to be devoted to each topic (signed original and eight (8) copies) and an outline of the topics to be discussed and the time to be devoted to each topic by June 2, 2015. A period of 10 minutes will be allotted to each person for making comments. An agenda showing the scheduling of the speakers will be prepared after the deadline for receiving outlines has passed. Copies of the agenda will be available free of charge at the hearing.

Drafting Information

The principal author of these proposed regulations is Charles W. Gorham, formerly of the Office of the Associate Chief Counsel (Procedure and Administration).

List of Subjects

26 CFR Part 1

Income taxes, Reporting and recordkeeping requirements.

26 CFR Part 31

Employment Taxes and Collection of Income Tax at Source.

Proposed Amendment to the Regulations

Accordingly, 26 CFR parts 1 and 31 are proposed to be amended as follows:

PART 1—INCOME TAXES

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

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

■ **Par. 2.** Section 1.6041–10 is added to read as follows:

§ 1.6041–10 Return of information as to payments of winnings from bingo, keno, and slot machine play.

(a) *In general.* Every person engaged in a trade or business (as defined in § 1.6041–1(b)) and who, in the course of such trade or business, makes a payment of reportable gambling winnings (defined in paragraph (b)(2) of this section) must make an information return with respect to such payment. Unless the provisions of paragraph (h) of this section (regarding aggregate reporting) apply, a separate information return is required with respect to each payment of reportable gambling winnings.

(b) *Definitions*—(1) *Electronically tracked slot machine play.* For purposes of this section, the term ''electronically tracked slot machine play'' means slot machine play using an electronic player system that is controlled by the gaming establishment (such as through the use of a player's card or similar system) that records the amount a specific individual won and wagered on slot machine play.

(2) *Reportable gambling winnings.* (i) For purposes of this section, the term ''reportable gambling winnings'' is defined as follows:

(A) For bingo, the term ''reportable gambling winnings'' means winnings of $1,200 or more from one bingo game, without reduction for the amount wagered. All winnings received from all wagers made during one bingo game are combined (for example, all winnings from all cards played during one bingo game are combined).

(B) For keno, the term ''reportable gambling winnings'' means winnings of $1,500 or more from one keno game reduced by the amount wagered on the same keno game. All winnings received from all wagers made during one keno game are combined (for example, all winnings from all ''ways'' on a multi-way keno ticket are combined).

(C) For slot machine play (other than electronically tracked slot machine play as defined in paragraph (b)(1) of this section), the term ''reportable gambling winnings'' means winnings of $1,200 or more from one slot machine play, without reduction for the amount wagered.

(D) For electronically tracked slot machine play (as defined in (b)(1) of this section), the term ''reportable gambling winnings'' means net winnings of $1,200 or more, but only if the winnings from at least one electronically tracked slot machine play during the session, without reduction for any amount wagered, is $1,200 or more. For purposes of this paragraph (b)(2)(i)(D) of this section, net winnings is determined by combining the amount of all winnings from all electronically tracked slot machine play during the session reduced by the amount of all wagers from all electronically tracked slot machine play during the same session.

(ii) Winnings and wagers from different types of games are not combined to determine if the reporting threshold is satisfied. Bingo, keno, and

slot machine play are different types of games. Electronically tracked slot machine play and slot machine play that is not electronically tracked are different types of games.

(iii) Winnings include the fair market value of a payment in any medium other than cash.

(iv) The amount wagered in the case of a free play is zero.

(v) For purposes of paragraph (b)(2)(i)(D) of this section, with respect to electronically tracked slot machine play, if the amount wagered during a session exceeds the amount won during the same session, the amount of winnings is zero.

(3) *Session.* For purposes of this section, a session of play begins when a patron places the first wager on a particular type of game at a gaming establishment and ends when the patron places his or her last wager on the same type of game before the end of the same calendar day at the same gaming establishment. For purposes of this section, the time is determined by the time zone of the location where the patron places the wager. A session of play is always determined with reference to a calendar day (24-hour period from 12 a.m. through 11:59 p.m.) and ends no later than the end of that calendar day. Nothing in this section prohibits a payor from terminating a session for any reason before the end of that calendar day.

(4) *Slot machine.* The term ''slot machine'' means a device that, by application of the element of chance, may deliver, or entitle the person playing or operating the device to receive cash, premiums, merchandise, or tokens whether or not the device is operated by insertion of a coin, token, or similar object.

(c) *Examples.* The following examples illustrate the provisions of paragraphs (a) and (b) of this section:

Example 1. At 10 a.m., A wagers $20 at casino R on one play on a slot machine that is not electronically tracked. A wins $1,200 from this wager. At 2 p.m. on the same day, A wagers $100 on one keno game at casino R. A wins $1,550 from that wager. A makes no other wagers that day:

(i) Under paragraph (b)(2)(i)(C) of this section, A's $1,200 in winnings from slot machine play that is not electronically tracked are not reduced by the amount wagered. Therefore, the $1,200 winnings from slot machine play that is not electronically tracked are reportable gambling winnings. R must report the $1,200 in winnings from slot machine play that it pays to A.

(ii) Under paragraph (b)(2)(ii) of this section, because winnings from different types of games are not combined to determine whether the threshold for reportable gambling winnings is satisfied, A's winnings from slot machine play that is not electronically tracked are not combined with A's winnings from keno. A's winnings from keno are below the $1,500 reporting threshold for keno, because the gross amount of $1,550 that A won is reduced by the $100 amount that A wagered. R is therefore not required to report the winnings from keno that it pays to A under paragraph (b)(2)(i)(B) of this section.

Example 2. Between 11 a.m. and 11 p.m. on the same day, B places five wagers of $20 each at casino Q on slot machine play that is not electronically tracked. B wins a total of $1,600 during that period of time as follows: an $800 win on the first play, no win on the second play, no win on the third play, a $600 win on the fourth play, and a $200 win on the fifth play. Under paragraph (b)(2)(i)(C) of this section, winnings from slot machine play that is not electronically tracked are not combined to determine whether the reporting threshold is satisfied. Therefore, none of B's winnings is a reportable gambling winning and Q is not required to report winnings from slot machine play that it pays to B.

Example 3. During one session at casino R, C places two $20 wagers on one electronically tracked slot machine and three $20 wagers on a different electronically tracked slot machine. The first four wagers result in no wins. The fifth wager results in a win of $2,000. C makes no further wagers on any games at R during the same session. C's combined winnings for the session ($2,000) reduced by C's combined wagers for the session ($100) is $1,900, which is over the $1,200 threshold described in paragraph (b)(2)(i)(D) of this section. In addition, C had one win in the same session of $1,200 or more ($2,000 win). Therefore, under paragraph (b)(2)(i)(D) of this section, R paid reportable gambling winnings with respect to electronically tracked slot machine play of $1,900. Accordingly, R must report the winnings of $1,900 that it paid to C.

Example 4. Assume the same facts as in *Example 3,* except that the fourth wager results in an $800 win and the fifth wager results in a $1,000 win. C's combined winnings for the session of $1,800 ($800 + $1,000) reduced by C's combined wagers placed during the session of $100 is $1,700. However, C did not have a single win during that session of $1,200 or more, as required under paragraph (b)(2)(i)(D) of this section, for there to be reportable gambling winnings from electronically tracked slot machine play. Accordingly, R is not required to report the winnings from the session from electronically tracked slot machine play that it pays to C.

Example 5. During one session, D places ten $200 wagers on electronically tracked slot machine play at casino S. The first nine wagers result in no wins. The last wager results in a $1,500 win. D's combined winnings for the session ($1,500) reduced by D's combined wagers placed during the session ($2,000) did not result in any net winnings from electronically tracked slot machine play during the session. Under paragraph (b)(2)(i)(D) of this section, gambling winnings from a session of electronically tracked slot machine play are not reportable gambling winnings unless they include a single win of $1,200 or more and the net amount of all winnings during the session reduced by all wagers placed during the session is $1,200 or more. Here, there was a single win of $1,500, which exceeds the threshold for a single win under paragraph (b)(2)(i)(D) of this section. However, because the net amount of the winnings reduced by all the wagers placed during the session is not $1,200 or more, paragraph (b)(2)(i)(D) of this section is not satisfied. Therefore, during the session, D did not have reportable gambling winnings with respect to electronically tracked slot machine play during the session and S is not required to report the winnings it pays D with respect to electronically tracked slot machine play during this session.

Example 6. During one session, E places five $20 wagers at casino T on slot machine play that is not electronically tracked. The first four wagers result in no wins. The fifth wager results in a win of $1,200. During the same session, E also places five $20 wagers at casino T on slot machine play that is electronically tracked. The first four wagers result in no wins. The fifth wager results in a win of $1,400. E makes no wagers on any other games at T during that session. Under paragraph (b)(2)(ii) of this section, winnings from slot machine play that is not electronically tracked and winnings from electronically tracked slot machine play are not combined. However, even without combining the winnings from both types of slot machine play, T paid reportable gambling winnings with respect to both the slot machine play that is not electronically tracked, and electronically tracked slot machine play as follows:

(i) Under paragraph (b)(2)(i)(C) of this section, E's $1,200 of winnings from slot machine play that is not electronically tracked is not reduced by the amount wagered, even though all of E's wagers were placed during the same session. Accordingly, the $1,200 of winnings from slot machine play that is not electronically tracked meets the threshold in paragraph (b)(2)(i)(C) of this section and T must report the $1,200 in winnings from slot machine play that is not electronically tracked that it pays to E.

(ii) Because E's combined winnings from electronically tracked slot machine play during the session ($1,400) reduced by E's combined wagers on electronically tracked slot machine play placed during the session ($100) is $1,200 or more ($1,400 − $100 = $1,300) and E had at least one win during the same session of $1,200 or more (a win of $1,400), under paragraph (b)(2)(i)(D) of this section, T paid E reportable gambling winnings with respect to electronically tracked slot machine play. Accordingly, T must also report winnings from the electronically tracked slot machine play during the session of $1,300 that it pays to E.

Example 7. During the same session, F makes five $20 wagers at casino V on slot machine play that is electronically tracked on the same slot machine. The first three wagers result in no wins. The fourth wager results in a win of $900. The fifth wager results in

a win of $1,100. After the fifth wager, F uses free play to make a wager. The free play wager occurs during the same session as the five wagers and is also electronically tracked. As a result of the free play, F wins $1,200. In this case, there are reportable gambling winnings from electronically tracked slot machine play. Under paragraph (b)(2)(i)(D) of this section, F's combined winnings from electronically tracked slot machine play during the session ($3,200) reduced by F's combined wagers placed on electronically tracked slot machine play during the session (($20 × 5) + 0 = $100) is $3,100, and F had at least one win in the same session of $1,200 or more (a win of $1,200 from the free play). Accordingly, V must report the $3,100 of winnings from the electronically tracked slot machine play during the session that it pays to F.

Example 8. Between 11 p.m. and 11:59 p.m. on Day 1, G makes five $20 wagers at casino W on slot machine play that is electronically tracked. The first four wagers placed on Day 1 result in no wins. The fifth wager placed on Day 1 results in an $800 win. Between 12:00 a.m. and 12:15 a.m. on Day 2, G makes two $20 wagers on the same slot machine at casino W that is electronically tracked. The first wager placed on Day 2 results in a win of $600. The second wager placed on Day 2 results in a win of $900.

(i) Under paragraphs (b)(2)(i)(D) and (b)(3) of this section, the winnings from one session of electronically tracked slot machine play are not combined with the winnings from another session of electronically tracked slot machine play for purposes of determining reportable gambling winnings. In this case, G engaged in electronically tracked slot machine play during two sessions, even though he played the same type of game on the same machine at the same gambling establishment. Therefore, each session must be analyzed to determine whether there were reportable gambling winnings from electronically tracked slot machine play.

(ii) During the session on Day 1, G won $800. Because no single win was $1,200 or more on Day 1, there were no reportable gambling winnings from electronically tracked slot machine play on Day 1 under paragraph (b)(2)(i)(D) of this section, and W does not have to report the winnings from electronically tracked slot machine play on Day 1 that it paid to G.

(iii) During the session on Day 2, G won $600 and $900. Because no single win was $1,200 or more on Day 2, there were no reportable gambling winnings from electronically tracked slot machine play on Day 2 under paragraph (b)(2)(i)(D) of this section, and W does not have to report the winnings from electronically tracked slot machine play on Day 2 that it paid to G.

(d) *Prescribed form; time and place for filing the return.* The return described in paragraph (a) of this section is a Form W–2G, ''Certain Gambling Winnings'' or successor form. The Form W–2G must be filed with the appropriate Internal Revenue Service location designated in the instructions to the form on or before February 28 (March 31, if filed electronically) of the year following the calendar year in which the reportable gambling winnings were paid. See section 6011 and § 1.6011–2 for requirements to file electronically.

(e) *Information included on the return.* Each return required by paragraph (a) of this section must contain:

(1) The name, address, and taxpayer identification number of the payor;

(2) The name, address, and taxpayer identification number of the payee;

(3) A general description of the two types of identification (as described in paragraph (f) of this section), one of which must have the payee's photograph on it, that the payor relied on to verify the payee's name, address, and taxpayer identification number;

(4) The date and amount of payment;

(5) The type of wagering transaction (bingo, keno, slot machine play, or electronically tracked slot machine play);

(6) In the case of a bingo or keno game, any number, color, or other designation assigned to the game for which the payment is made;

(7) In the case of slot machine play (including electronically tracked slot machine play), the identification number of the slot machine(s) (for example, location and asset number);

(8) Any other information required by the form, instructions, revenue procedure, or other applicable guidance published in the Internal Revenue Bulletin. In the case of aggregate reporting under paragraph (h) of this section, the amount of the payment in paragraphs (e)(4) is the aggregate amount of payments of reportable gambling winnings from the same type of game (bingo, keno, slot machine play, or electronically tracked slot machine play) made to the same payee during the same session (as defined in paragraph (b)(3) of this section). Unless otherwise provided in forms, instructions, or other guidance, in the case of aggregate reporting under paragraph (h) of this section the information required by paragraphs (e)(5), (6), (7) of this section, and this paragraph (e)(8) must be maintained by the payor as described in paragraph (h)(3) of this section.

(f) *Identification.* The following items are treated as identification for purposes of paragraph (e)(3) of this section—

(1) Government-issued identification (for example, a driver's license, passport, social security card, military identification card, or voter registration card) in the name of the payee; and

(2) A Form W–9, ''Request for Taxpayer Identification Number and Certification,'' signed by the payee, that includes the payee's name, address, taxpayer identification number, and other information required by the form. A Form W–9 is not acceptable for this purpose if the payee has modified the form (other than pursuant to instructions to the form) or if the payee has deleted the jurat or other similar provisions by which the payee certifies or affirms the correctness of the statements contained on the form.

(g) *Furnishing a statement to the payee.* Every payor required to make a return under paragraph (a) of this section must also make and furnish to each payee, with respect to each payment of reportable gambling winnings, a written statement that contains the information that is required to be included on the return under paragraph (e) of this section. The payor must furnish the statement to the payee on or before January 31st of the year following the calendar year in which payment of the reportable gambling winnings is made. The statement will be considered furnished to the payee if it is provided to the payee at the time of payment or if it is mailed to the payee on or before January 31st of the year following the calendar year in which payment was made.

(h) *Aggregate reporting of bingo, keno, and slot machine winnings*—(1) *In general.* In lieu of filing a separate information return for each payment of reportable gambling winnings as required by paragraph (a) of this section, a payor may use the aggregate reporting method (defined in paragraph (h)(2) of this section) to report reportable gambling winnings from bingo, keno, or slot machine play (including electronically tracked slot machine play). A payor using the aggregate reporting method to file information returns under paragraph (a) of this section must also furnish statements to the payee under paragraph (g) of this section using the aggregate reporting method.

(2) *Aggregate reporting method defined.* (i) The aggregate reporting method is a method of reporting more than one payment of reportable gambling winnings from the same type of game (bingo, keno, slot machine play, or electronically tracked slot machine play) made to the same payee during the same session (as defined in this paragraph (b)(3) of this section) on one information return or statement.

(ii) A payor may use the aggregate reporting method for payments to some payees and not others, at its own discretion. In addition, with respect to a single payee, the payor may use the aggregate reporting method to report

winnings from one type of game, but not for winnings from another type of game.

(iii) Failure to report some reportable gambling winnings from a particular type of game during one session to a particular payee under the aggregate reporting method (for whatever reason, including because the winnings are not permitted to be reported using the aggregate reporting method under paragraph (h)(4) of this section) will not disqualify the payor from using the aggregate reporting method to report other reportable gambling winnings from that type of game during that session to that payee.

(3) *Recordkeeping under the aggregate reporting method.* A payor using the aggregate reporting method must maintain a record of every payment of reportable gambling winnings from the same type of game made to the same payee during the session that will be reported using the aggregate reporting method. Every individual that the payor has determined is responsible for an entry in the record must confirm the information in the entry by signing the record in a manner that will enable the signature to be associated with the relevant entry. Each payment of a reportable gambling winning made to the same payee and reported under the aggregate reporting method must have its own entry in the record, however, the information required by paragraphs (e)(1), (2), and (3) of this section is not required to be recorded more than one time per session. A payor that uses the aggregate reporting method must retain a copy of the record in its files. The record (which may be electronic provided the requirements set forth in forms, instructions, or guidance published in the Internal Revenue Bulletin are met) must include the following information about each payment:

(i) The payee's signature confirming the information in the record;

(ii) The information required under paragraph (e) of this section;

(iii) The time of the win resulting in the reportable gambling winnings;

(iv) Except in the case of electronically tracked slot machine play, the total amount of reportable gambling winnings;

(v) In the case of electronically tracked slot machine play—

(A) The total amount of the winnings during the session from electronically tracked slot machine play; and

(B) The total amount of the wagers placed during the session on electronically tracked slot machine play;

(vi) The amount of reportable gambling winnings;

(vii) The method of payment to the payee (for example, cash, check, voucher, token, or chips); and

(viii) The name and gaming license number of the individual that the payor has determined is responsible for ensuring that the entry with respect to the reportable gambling winnings (including the general description of two types of identification used to verify the payee's name, address, and taxpayer identification number) is complete and accurate. Such individual may or may not be the same individual who prepared the entry.

(4) *When the aggregate reporting method may not be used.* A payor cannot use the aggregate reporting method if—

(i) The payee is a foreign person;

(ii) The payor knows or has reason to know that the person making the wager is not the person entitled to the winnings or is not the only person entitled to the winnings (regardless of whether the person making the wager furnishes a Form 5754, ''Statement by Person(s) Receiving Gambling Winnings,'' or successor form); or

(iii) Backup withholding under section 3406(a) applies to the payment.

(5) *Examples.* The following examples illustrate the provisions of this paragraph (h):

Example 1. On Day 1, C places five wagers at casino R on five different slot machines that are not electronically tracked. The first two wagers result in no win. The third wager results in a $1,500 win. The fourth wager results in a $2,500 win. The fifth wager results in an $800 win:

(i) Under paragraph (b)(2)(i)(C) of this section, there are reportable gambling winnings from the slot machine play that is not electronically tracked of $4,000 ($1,500 + $2,500). The $800 win is not a reportable gambling winning from slot machine play that is not electronically tracked because it does not equal or exceed the $1,200 threshold.

(ii) Because all of the amounts were won on the same type of game (even though each of the winnings occurred on different machines) during the same session, R is permitted to use the aggregate reporting method under this paragraph (h). If R decides not to use the aggregate reporting method and meets the requirements of paragraph (h), a separate Form W–2G would have to be filed and furnished for the payment of reportable gambling winnings of $1,500 and for the payment of reportable gambling winnings of $2,500. However, if R decides to use the aggregate reporting method, R may report total reportable gambling winnings from slot machine play that is not electronically tracked of $4,000 ($1,500 + $2,500) on one Form W–2G.

Example 2. Assume the same facts as *Example 1,* except that in addition to the winnings described in Example 1, at 1 a.m. on Day 2, C wins $3,250 from one slot machine play that is not electronically tracked at casino R. Even though C played the same type of game (slot machines that are not electronically tracked) on Day 1 and Day 2, because under paragraph (b)(3) of this section the win at 1 a.m. on Day 2 is a win during a new session, under paragraph (h)(2)(i) of this section the $3,250 of reportable gambling winnings cannot be aggregated with the reportable gambling winnings of $4,000 from Day 1 on a single Form W–2G. Accordingly, if R uses the aggregate reporting method, R must file two Forms W–2G with respect to C's reportable gambling winnings on Day 1 and Day 2. R must report $4,000 of reportable gambling winnings from slot machine play paid to C on Day 1 on the first Form W–2G, and $3,250 of reportable gambling winnings from slot machine play paid to C on Day 2 on the second Form W–2G.

Example 3. At 2 p.m. on Day 1, D won $2,000 (after reducing the amount of the win by the amount wagered) playing one keno game at casino S. D provides S with his driver's license. The driver's license has D's photograph on it, as well as D's name and address. The driver's license does not include D's social security number. D cannot remember his social security number and has no other identification at the time with his social security number on it. D does not provide S with his social security number before S pays the winnings to D. Because D cannot remember his social security number, D cannot complete and sign a Form W–9. S deducts and withholds $560 (28 percent of $2,000) under the backup withholding provisions of section 3406(a) and pays the remaining $1,440 in winnings to D. D returns to casino S and at 6 p.m. on Day 1 wins $1,500 (after reducing the amount of the win by the amount wagered) in one keno game. D provides S with his driver's license as well as D's social security card. S generally uses the aggregate reporting method and in all cases where it is used, S complies with the requirements of this paragraph (h). At 8 p.m. and 10 p.m. on Day 1, D wins an additional $1,800 and $1,700 (after reducing the amount of the win by the amount wagered), respectively, from two different keno games. For each of these two wins, an employee of S obtains the information from D required by this paragraph (h):

(i) Under paragraph (b)(2)(i)(B) of this section, each of D's wins from the four games of keno on Day 1 ($2,000, $1,500, $1,700, and $1,800) are reportable gambling winnings. Because D's first win on Day 1 was at 2 p.m. and D's last win on Day 1 was at 10 p.m., all of D's reportable gambling winnings from keno are won during the same session. Because S satisfies the requirements of paragraph (h)(2)(i), S may use the aggregate reporting method to report D's reportable gambling winnings from keno. However, pursuant to paragraph (h)(4)(iii) of this section, the $2,000 payment made to D at 2 p.m. cannot be reported under the aggregate reporting method because that payment was subject to backup withholding. Accordingly, if S uses the aggregate reporting method under this paragraph (h), S will have to file two Forms W–2G with respect to D's reportable gambling winnings from keno on

Day 1. On the first Form W–2G, S will report $2,000 of reportable gambling winnings and $560 of backup withholding with respect to the 2 p.m. win from keno, and on the second Form W–2G S will report $5,000 of reportable gambling winnings from keno (representing the three payments of $1,500, $1,700, and $1,800 that D won between 6 p.m. and 10 p.m. on Day 1).

Example 4. In one session on Day 1, E won five reportable gambling winnings from five different bingo games at a casino T. T generally uses the aggregate reporting method and in all cases where it is used, T complies with the requirements of this paragraph (h). Although E signed the entry in the record T maintains for payment of the first four reportable gambling winnings, E refuses to sign the entry in the record for the fifth payment of reportable gambling winnings. T may use the aggregate reporting method for the first four payments of reportable gambling winnings to E. However, because the entry in the record for the fifth payment of reportable gambling winnings does not include E's signature, that payment may not be reported under the aggregate reporting method. Accordingly, if T uses the aggregate reporting method under paragraph (h) of this section, T must prepare two Forms W–2G as follows: On the first Form W–2G, T must report the first four payments of reportable gambling winnings from bingo made to E on Day 1. On the second Form W–2G, T must report the fifth payment of reportable gambling winnings from bingo made to E on Day 1.

(i) *Payments to foreign persons.* See § 1.6041–4 regarding payments to foreign persons. See § 1.6049–5(d) for determining whether the payee is a foreign person.

(j) *Effective/applicability date.* This section applies to payments of reportable gambling winnings from bingo, keno, slot machine play, and electronically tracked slot machine play made on or after the date these regulations are published as final regulations in the **Federal Register**. For payments made before that date, other than payments from electronically tracked slot machine play, payors may rely on the provisions of these proposed regulations.

PART 31—EMPLOYMENT TAXES AND COLLECTION OF INCOME TAX AT SOURCE

■ **Par. 3.** The authority citation for part 31 continues to read in part as follows:

26 U.S.C. 7805 * * *

§ 31.3406(g)–2 [Amended]

■ **Par. 4.** In § 31.3406(g)–2, paragraph (d)(3) is amended by removing the text ''§ 7.6041–1'' and adding the text ''§ 1.6041–10'' in its place.

* * * * *

John Dalrymple,

Deputy Commissioner for Services and Enforcement.

[FR Doc. 2015–04437 Filed 3–3–15; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 165

[Docket Number USCG–2015–0024]

RIN 1625–AA00

Safety Zone; Rotary Club of Fort Lauderdale New River Raft Race, New River; Fort Lauderdale, FL

AGENCY: Coast Guard, DHS.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Coast Guard proposes to establish a temporary safety zone on the waters of the New River in Fort Lauderdale, Florida during the Rotary Club of Fort Lauderdale New River Raft Race, on Saturday, April 18, 2015. The safety zone will encompass the waters between Esplanade Park to just east of the Southeast 3rd Avenue Bridge. Approximately 100 participants will attend the race. The safety zone is necessary to ensure the safety of the participants, participant vessels, and the general public during the event. Persons and vessels, except those participating in the event, are prohibited from entering, transiting through, anchoring in, or remaining within the regulated area unless authorized by the Captain of the Port Miami or a designated representative.

DATES: Comments and related material must be received by the Coast Guard on or before April 3, 2015.

Requests for public meetings must be received by the Coast Guard on or before April 3, 2015.

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

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

(2) Fax: 202–493–2251.

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

See the ''Public Participation and Request for Comments'' portion of the **SUPPLEMENTARY INFORMATION** section below for further instructions on submitting comments. To avoid duplication, please use only one of these three methods.

FOR FURTHER INFORMATION CONTACT: If you have questions on this rule, call or email Petty Officer John K. Jennings, Sector Miami Prevention Department, Coast Guard; telephone (305) 535–4317, email *John.K.Jennings@uscg.mil.* If you have questions on viewing or submitting material to the docket, call Cheryl Collins, Program Manager, Docket Operations, telephone (202) 366–9826.

SUPPLEMENTARY INFORMATION:

Table of Acronyms

DHS Department of Homeland Security
FR Federal Register
NPRM Notice of Proposed Rulemaking

A. Public Participation and Request for Comments

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

1. Submitting Comments

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

To submit your comment online, go to *http://www.regulations.gov,* type the docket number USCG–2015–0024 in the ''SEARCH'' box and click ''SEARCH.'' Click on ''Submit a Comment'' on the line associated with this rulemaking.

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

2. Viewing Comments and Documents

To view comments, as well as documents mentioned in this preamble as being available in the docket, go to *http://www.regulations.gov,* type the docket number (USCG–2015–0024) in the ''SEARCH'' box and click ''SEARCH.'' Click on Open Docket Folder on the line associated with this rulemaking. You may also visit the Docket Management Facility in Room W12–140 on the ground floor of the Department of Transportation West Building, 1200 New Jersey Avenue SE., Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

3. Privacy Act

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

4. Public Meeting

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

B. Regulatory History and Information

Previously, a rule regarding this maritime event was published in the Code of Federal Regulations at 33 CFR part 100. No final rule has been published in regards to this event.

C. Basis and Purpose

The legal basis for the rule is the Coast Guard's authority to establish regulated navigation areas and other limited access areas: 33 U.S.C. 1231; 46 U.S.C. Chapter 701, 3306, 3703; 50 U.S.C. 191, 195 33 CFR 1.05–1, 6.04–6, and 160.5; Pub. L. 107–295, 116 Stat. 2064; Department of Homeland Security Delegation No. 0170.1. The purpose of the rule is to provide for the safety of life on navigable waters of the United States during the Rotary Club of Fort Lauderdale New River Raft Race.

D. Discussion of Proposed Rule

On April 18, 2015, Fort Lauderdale Rotary Club is hosting the Rotary Club of Fort Lauderdale New River Raft Race. The race will be held on the waters of the New River in Fort Lauderdale, Florida. Approximately 100 participants will attend the race. Minimal spectator vessels are expected.

The proposed rule will establish a safety zone that will encompass certain navigable waters of the New River in Fort Lauderdale, Florida from Esplanade Park to east of the Southeast 3rd Avenue Bridge. The safety zone will be enforced from 3 p.m. until 6 p.m. on April 18, 2015.

Non-participant persons and vessels may request authorization to enter, transit through, anchor in, or remain within the event area by contacting the Captain of the Port Miami by telephone at 305–535–4472, or a designated representative via VHF radio on channel 16. If authorization to enter, transit through, anchor in, or remain within the event area is granted by the Captain of the Port Miami or a designated representative, all persons and vessels receiving such authorization must comply with the instructions of the Captain of the Port Miami or a designated representative. The Coast Guard will provide notice of the safety zone by Local Notice to Mariners, Broadcast Notice to Mariners, and on-scene designated representatives.

E. Regulatory Analyses

We developed this proposed rule after considering numerous statutes and executive orders related to rulemaking. Below we summarize our analyses based on a number of these statutes or executive orders.

1. Regulatory Planning and Review

This proposed rule is not a significant regulatory action under section 3(f) of Executive Order 12866, Regulatory Planning and Review, as supplemented by Executive Order 13563, Improving Regulation and Regulatory Review, and does not require an assessment of potential costs and benefits under section 6(a)(3) of Executive Order 12866 or under section 1 of Executive Order 13563. The Office of Management and Budget has not reviewed it under those Orders. The economic impact of this proposed rule is not significant for the following reasons: (1) The safety zone will be enforced for only three hours; (2) although non-participant persons and vessels will not be able to enter, transit through, anchor in, or remain within the event area without authorization from the Captain of the Port Miami or a designated representative, they may operate in the surrounding area during the enforcement period; (3) non-participant persons and vessels may still enter, transit through, anchor in, or remain within the event area during the enforcement period if authorized by the Captain of the Port Miami or a designated representative; and (4) the Coast Guard will provide advance notification of the safety zone to the local maritime community by Local Notice to Mariners and Broadcast Notice to Mariners.

2. Impact on Small Entities

The Regulatory Flexibility Act (5 U.S.C. 601–612), we have considered the impact of this proposed rule on small entities. The Coast Guard certifies under 5 U.S.C. 605(b) that this proposed rule will not have a significant economic impact on a substantial number of small entities.

This rulemaking may affect the following entities, some of which may be small entities: The owners or operators of vessels intending to enter, transit through, anchor in, or remain within that portion of Biscayne Bay encompassed within the safety zone from 3 p.m. until 6 p.m. on April 18, 2015. For the reasons discussed in the Regulatory Planning and Review section above, this rulemaking will not have a significant economic impact on a substantial number of small entities.

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

3. Assistance for Small Entities

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

not retaliate against small entities that question or complain about this proposed rule or any policy or action of the Coast Guard.

4. Collection of Information

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

5. Federalism

A rule has implications for federalism under Executive Order 13132, Federalism, if it has a substantial direct effect on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. We have analyzed this proposed rule under that Order and determined that this rulemaking does not have implications for federalism.

6. Protest Activities

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

7. Unfunded Mandates Reform Act

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

8. Taking of Private Property

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

9. Civil Justice Reform

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

10. Protection of Children From Environmental Health Risks

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

11. Indian Tribal Governments

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

12. Energy Effects

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

13. Technical Standards

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

14. Environment

We have analyzed this proposed rule under Department of Homeland Security Management Directive 023–01 and Commandant Instruction M16475.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. This proposed rule involves the creation of a special local regulation issued in conjunction with a regatta or marine parade. This rulemaking is categorically excluded from further review under paragraph 34(g) of Figure 2–1 of the Commandant Instruction. Preliminary environmental analysis checklists supporting this determination are available in the docket where indicated under **ADDRESSES.** We seek any comments or information that may lead to the discovery of a significant environmental impact from this proposed rule.

List of Subjects in 33 CFR Part 165

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

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

PART 165—REGULATED NAVIGATION AREAS AND LIMITED ACCESS AREAS

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

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

■ 2. Add a temporary § 165.T07–0024 to read as follows: *§ 165.T07–0024 Safety Zone; Rotary Club of Fort Lauderdale New River Raft Race, New River, Fort Lauderdale, FL.*

(a) *Regulated Area.* The following regulated area is a safety zone. All waters of the New River between Esplanade Park east to just east of the Southeast 3rd Avenue Bridge, contained within the following points: starting at Point 1 in position 26°07′10″ N, 80°08′52″ W; thence southeast to Point 2 in position 26°07′05″ N, 80°08′34″ W; thence southwest to Point 3 in position 26°07′04″ N, 80°08′35″ W thence northwest to Point 4 in position 26°07′08″ N, 80°08′52″ W; thence north back to origin. All coordinates are North American Datum 1983.

(b) *Definition.* The term ''designated representative'' means Coast Guard Patrol Commanders, including Coast Guard coxswains, petty officers, and other officers operating Coast Guard vessels, and Federal, state, and local officers designated by or assisting the Captain of the Port Miami in the enforcement of the regulated area.

(c) *Regulations.*

(1) Non-participant persons and vessels are prohibited from entering, transiting through, anchoring in, or remaining within the regulated area unless authorized by Captain of the Port Miami or a designated representative. Non-participant persons and vessels may request authorization to enter, transit through, anchor in, or remain within the regulated area by contacting the Captain of the Port Miami by telephone at 305–535–4472, or a designated representative via VHF radio on channel 16. If authorization is granted by the Captain of the Port Miami or a designated representative, all persons and vessels receiving such authorization must comply with the

instructions of the Captain of the Port Miami or a designated representative.

(2) The Coast Guard will provide notice of the safety zone by Local Notice to Mariners, Broadcast Notice to Mariners and on-scene designated representatives.

(d) *Effective Date.* This rule will be enforced from 3 p.m. until 6 p.m. on April 18, 2015.

Dated: February 20, 2015.

A. J. Gould,

Captain, U.S. Coast Guard, Captain of the Port Miami.

[FR Doc. 2015–04284 Filed 3–3–15; 8:45 a.m.]

BILLING CODE 9110–04–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 52, 62 and 70

[EPA–R07–OAR–2015–0006; FRL 9923–67–Region 7]

Approval and Promulgation of Air Quality Implementation Plans, State Plans for Designated Facilities and Pollutants, and Operating Permits Program; State of Missouri

AGENCY: Environmental Protection Agency.

ACTION: Proposed rule.

SUMMARY: The Environmental Protection Agency (EPA) is proposing to approve revisions to the State Implementation Plan (SIP) and the operating permits program for the State of Missouri which were received on November 6, 2013, November 20, 2014, March 27, 2014, July 7, 2014, and July 14, 2014. The revisions submitted by the state include amendments to rules relating to reference methods, definitions and common reference tables, ambient air quality standards, and a rule rescission related to air quality control measures for sources clustered in small land areas. Many of the revisions are administrative in nature and either incorporate by reference or update state rules to match Federal regulations. Some are more substantive, but are non-controversial. In addition, they provide more clarity for the regulated public. This direct final action will amend the SIP to include revised regulations which will then be more consistent with Federal regulations. These revisions do not have an adverse effect on air quality. EPA's proposed approval of these rule revisions is being done in accordance with the requirements of the Clean Air Act (CAA).

DATES: Comments on this proposed action must be received in writing by April 3, 2015.

ADDRESSES: Submit your comments, identified by Docket ID No. EPA–R07–OAR–2015–0006, by mail to Amy Bhesania, Environmental Protection Agency, Air Planning and Development Branch, 11201 Renner Boulevard, Lenexa, Kansas 66219. Comments may also be submitted electronically or through hand delivery/courier by following the detailed instructions in the **ADDRESSES** section of the direct final rule located in the rules section of this **Federal Register**.

FOR FURTHER INFORMATION CONTACT: Amy Bhesania, Environmental Protection Agency, Air Planning and Development Branch, 11201 Renner Boulevard, Lenexa, Kansas 66219 at (913) 551–7147, or by email at *bhesania.amy@epa.gov.*

SUPPLEMENTARY INFORMATION: EPA is proposing to approve revisions to the State Implementation Plan (SIP), *the 40 CFR part 62* state plans (111(d)), and the *40 CFR part 70* operating permits program, for the State of Missouri's requests to amend the following rules:

1. 10 CSR 10–6.040, Reference Methods, received November 6, 2013.
2. 10 CSR 10–6.040, Reference Methods, received November 20, 2014.
3. 10 CSR 10–6.020, Definitions and Common Reference Tables, received March 27, 2014.
4. 10 CSR 10–5.240, Additional Air Quality Control Measures May be Required When Sources are Clustered in a Small Land Area, received July 7, 2014.
5. 10 CSR 10–6.010, Air Quality Standards, received July 14, 2014.

The revisions submitted by the state include revisions to update standards and reference methods, to clarify, add or amend definitions and reference tables, to rescind an outdated rule, and to update and clarify ambient air quality standards. For more information on the state's submissions, specific revisions to each rule and EPA's review of the revisions, see the Technical Support Document (TSD) that is a part of this docket.

In the final rules section of this **Federal Register**, EPA is approving the state's SIP revision as a direct final rule without prior proposal because the Agency views this as a noncontroversial revision amendment and anticipates no relevant adverse comments to this action. A detailed rationale for the approval is set forth in the direct final rule. If no relevant adverse comments are received in response to this action, no further activity is contemplated in relation to this action. If EPA receives relevant adverse comments, the direct final rule will be withdrawn and all public comments received will be addressed in a subsequent final rule based on this proposed action. EPA will not institute a second comment period on this action. Any parties interested in commenting on this action should do so at this time. Please note that if EPA receives adverse comment on part of this rule and if that part can be severed from the remainder of the rule, EPA may adopt as final those parts of the rule that are not the subject of an adverse comment. For additional information, see the direct final rule which is located in the rules section of this **Federal Register**.

List of Subjects

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.

40 CFR Part 62

Environmental protection, Air pollution control, Administrative practice and procedure, Intergovernmental relations, Reporting and recordkeeping requirements.

40 CFR Part 70

Environmental protection, Administrative practice and procedure, Air pollution control, Intergovernmental relations, Operating permits, Reporting and recordkeeping requirements.

Dated: February 13, 2015.

Karl Brooks,

Regional Administrator, Region 7.

For the reasons stated in the preamble, the Environmental Protection Agency proposes to amend 40 CFR parts 52, 62, and 70 as set forth below: Chapter I, title 40 of the Code of Federal Regulations is amended as follows:

PART 52—APPROVAL AND PROMULGATION OF IMPLEMENTATION PLANS

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

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

Subpart AA—MISSOURI

■ 2. In § 52.1320 the table in paragraph (c) is amended by:

■ a. Removing under Chapter 5, the entry for ''10–5.240''; and

■ b. Revising under Chapter 6, the entries for ''10–6.010'', ''10–6.020'', and ''10–6.040''.

The revisions 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 6—Air Quality Standards, Definitions, Sampling and Reference Methods, and Air Pollution Control Regulations for the State of Missouri				
10 CSR 10–6.010 ...	Ambient Air Quality Standards	7/30/14	[*date of publication of final rule*] and [Insert **Federal Register** *citation*].	Hydrogen Sulfide and Sulfuric Acid state standards are not SIP approved.
10 CSR 10–6.020 ...	Definitions and Common Reference Tables.	3/30/14	[*date of publication of final rule*] and [Insert **Federal Register** *citation*].	Many of the definitions pertain to Title V, 111(d) and asbestos programs and are approved in the SIP because they provide overall consistency in the use of terms in the air program. Similarly, the EPA has also approved this rule as part of the Title V program, and 111(d) even though many of the definitions pertain only to the SIP.
*	*	*	*	*
10 CSR 10–6.040 ...	Reference Methods	11/30/14	[*date of publication of final rule*] and [Insert **Federal Register** *citation*].	
*	*	*	*	*

* * * * *

PART 62—APPROVAL AND PROMULGATION OF STATE PLANS FOR DESIGNATED FACILITIES AND POLLUTANTS

■ 3. The authority citation for part 62 continues to read as follows:

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

Subpart AA—Missouri

* * * * *

■ 4. Section 62.6350 is amended by adding paragraph (b)(6) to read as follows:

§ 62.6350 Identification of plan.

* * * * *

(b) * * *

(6) A revision to Missouri's 111(d) plan to incorporate state regulation 10 CSR 10–6.020 Definitions and Common Reference Tables was state effective March 30, 2014. The effective date of the amended plan is [60 DAYS AFTER DATE OF PUBLICATION OF FINAL RULE IN THE **Federal Register**].

* * * * *

PART 70—STATE OPERATING PERMIT PROGRAMS

■ 5. The authority citation for part 70 continues to read as follows:

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

■ 6. Appendix A to part 70 is amended by adding paragraph (cc) under Missouri to read as follows:

Appendix A to Part 70—Approval Status of State and Local Operating Permits Programs

* * * * *

Missouri

* * * * *

(cc) The Missouri Department of Natural Resources submitted revisions to Missouri rule 10 CSR 10–6.020, ''Definitions and Common Reference Tables'' on March 27, 2014. The state effective date is March 30, 2014. This revision is effective [60 DAYS AFTER DATE OF PUBLICATION OF FINAL RULE IN THE **Federal Register**].

* * * * *

[FR Doc. 2015–04399 Filed 3–3–15; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 174 and 180

[EPA–HQ–OPP–2015–0032; FRL–9922–68]

Receipt of Several Pesticide Petitions Filed for Residues of Pesticide Chemicals in or on Various Commodities

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of filing of petitions and request for comment.

SUMMARY: This document announces the Agency's receipt of several initial filings of pesticide petitions requesting the establishment or modification of regulations for residues of pesticide chemicals in or on various commodities.

DATES: Comments must be received on or before April 3, 2015.

ADDRESSES: Submit your comments, identified by docket identification (ID) number and the pesticide petition number (PP) of interest as shown in the body of this document, by one of the following methods:

• *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the online

instructions for submitting comments. Do not submit electronically any information you consider to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute.

• *Mail:* OPP Docket, Environmental Protection Agency Docket Center (EPA/DC), (28221T), 1200 Pennsylvania Ave. NW., Washington, DC 20460–0001.

• *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: Susan Lewis, Registration Division (RD) (7505P), main telephone number: (703) 305–7090; email address: *RDFRNotices@epa.gov.* Robert McNally, Biopesticides and Pollution Prevention Division (BPPD), (7511P), main telephone number: (703) 305–7090; email address: *RDFRNotices@epa.gov.* The mailing address for each contact person is: Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave. NW., Washington, DC 20460–0001. As part of the mailing address, include the contact person's name, division, and mail code. The division to contact is listed at the end of each pesticide petition summary.

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this action apply to me?

You may be potentially affected by this action if you are an agricultural producer, food manufacturer, or pesticide manufacturer. The following list of North American Industrial Classification System (NAICS) codes is not intended to be exhaustive, but rather provides a guide to help readers determine whether this document applies to them. Potentially affected entities may include:

• Crop production (NAICS code 111).

• Animal production (NAICS code 112).

• Food manufacturing (NAICS code 311).

• Pesticide manufacturing (NAICS code 32532).

If you have any questions regarding the applicability of this action to a particular entity, consult the person listed under **FOR FURTHER INFORMATION CONTACT** for the division listed at the end of the pesticide petition summary of interest.

B. What should I consider as I prepare my comments for EPA?

1. *Submitting CBI.* Do not submit this information to EPA through regulations.gov or email. Clearly mark the part or all of the information that you claim to be CBI. For CBI information in a disk or CD–ROM that you mail to EPA, mark the outside of the disk or CD–ROM as CBI and then identify electronically within the disk or CD–ROM the specific information that is claimed as CBI. In addition to one complete version of the comment that includes information claimed as CBI, a copy of the comment that does not contain the information claimed as CBI must be submitted for inclusion in the public docket. Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2.

2. *Tips for preparing your comments.* When preparing and submitting your comments, see the commenting tips at *http://www.epa.gov/dockets/comments.html.*

3. *Environmental justice.* EPA seeks to achieve environmental justice, the fair treatment and meaningful involvement of any group, including minority and/or low-income populations, in the development, implementation, and enforcement of environmental laws, regulations, and policies. To help address potential environmental justice issues, the Agency seeks information on any groups or segments of the population who, as a result of their location, cultural practices, or other factors, may have atypical or disproportionately high and adverse human health impacts or environmental effects from exposure to the pesticides discussed in this document, compared to the general population.

II. What action is the Agency taking?

EPA is announcing its receipt of several pesticide petitions filed under section 408 of the Federal Food, Drug, and Cosmetic Act (FFDCA), 21 U.S.C. 346a, requesting the establishment or modification of regulations in 40 CFR part 180 for residues of pesticide chemicals in or on various food commodities. The Agency is taking public comment on the requests before responding to the petitioners. EPA is not proposing any particular action at this time. EPA has determined that the pesticide petitions described in this document contain the data or information prescribed in FFDCA section 408(d)(2), 21 U.S.C. 346a(d)(2); however, EPA has not fully evaluated the sufficiency of the submitted data at this time or whether the data support granting of the pesticide petitions. After considering the public comments, EPA intends to evaluate whether and what action may be warranted. Additional data may be needed before EPA can make a final determination on these pesticide petitions.

Pursuant to 40 CFR 180.7(f), a summary of each of the petitions that are the subject of this document, prepared by the petitioner, is included in a docket EPA has created for each rulemaking. The docket for each of the petitions is available at *http://www.regulations.gov.*

As specified in FFDCA section 408(d)(3), 21 U.S.C. 346a(d)(3), EPA is publishing notice of the petition so that the public has an opportunity to comment on this request for the establishment or modification of regulations for residues of pesticides in or on food commodities. Further information on the petition may be obtained through the petition summary referenced in this unit.

New Tolerance

1. *PP 4E8298.* (EPA–HQ–OPP–2014–0591). Interregional Research Project Number 4 (IR–4), 500 College Road East, Suite 201 W, Princeton, NJ 08540, requests to establish a tolerance in 40 CFR part 180 for residues of the insecticide methoxyfenozide, including its metabolites and degradates in or on the following raw agricultural commodities under paragraph (a): Chive, fresh leaves at 30.0 parts per million (ppm); fruit, stone, group 12–12, except plum, prune, fresh at 3.0 ppm; and nut, tree, group 14–12 at 0.10 ppm. It is also proposed that the following tolerances under paragraph (a) be removed upon approval of the proposed tolerances listed above: Fruit, stone, group 12, except plum, prune, fresh at 3.0 ppm; pistachio at 0.10 ppm; and nut, tree, group 14 at 0.10 ppm; and in paragraph (d), chive at 4.5 ppm be removed. Adequate methods are available for tolerance enforcement in primary crops and animal commodities. Contact: RD.

2. *PP 4E8304.* (EPA–HQ–OPP–2014–OPP–2014–0681). Sumitomo Chemical Latin America through U.S. Agent Valent USA Corporation, 1600 Riviera Avenue, Suite 200, Walnut Creek, CA 94596, requests to establish an import tolerance in 40 CFR part 180 for residues of the insecticide, etoxazole, 2-(2,6-difluorophenyl)-4-[4-(1,1-dimethylethyl)-2-ethoxyphenyl]-4,5-dihydrooxazole, in or on orange and orange oil at 0.08 ppm and 1.8 ppm. The gas chromatography with mass-selective detection (GC/MSD) enforcement

analytical method is used to measure and evaluate the chemical. Contact: RD.

3. *PP 4E8311.* (EPA–HQ–OPP–2014–0784). Interregional Research Project Number 4 (IR–4), 500 College Road East, Suite 201 W, Princeton, NJ 08540, requests to establish a tolerance in 40 CFR part 180 for residues of the insecticide, flubendiamide, (N2-1,1-dimethyl-2-(methylsulfonyl)ethyl-3-iodo-N1-2-methyl-4-1,2,2,2-tetrafluoro-1-(trifluoromethyl)ethylphenyl-1,2-benzenedicarboxamide) in or on the following: Bushberry subgroup 13–07B at 8.0 ppm; Vegetable, fruiting group 8–10 at 0.60 ppm; Fruit, pome, group 11–10 at 1.5 ppm; Fruit, stone, group 12–12 at 1.6 ppm; Nut, tree, group 14–12 at 0.06 ppm; and Sunflower, subgroup 20B at 5.0 ppm. Upon the approval of the aforementioned tolerances, the petitioner requests to remove the established tolerances for flubendiamide in or on Fruit, pome, group 11 at 1.5 ppm; Fruit, stone, group 12 at 1.6 ppm; Nut, tree, group 14 at 0.06 ppm; Safflower, seed at 5.0 ppm; and Sunflower, seed at 5.0 ppm. Independently validated, analytical methods for crop matrices have been submitted for measuring flubendiamide. Typically, plant matrices samples are extracted, concentrated, and quantified by Liquid Chromotography with tandem mass spectrometry (LC/MS/MS) using deuterated internal standards. Contact: RD.

4. *PP 4E8319.* (EPA–HQ–OPP–2014–0822). Interregional Research Project Number 4 (IR–4), 500 College Road East, Suite 201 W, Princeton, NJ 08540, requests to establish a tolerance in 40 CFR part 180 for residues of azoxystrobin (methyl (E)-2-{2-[6-(2-cyanophenoxy)pyrimidin-4-yloxy]phenyl}-3-methoxyacrylate) and the Z isomer of azoxystrobin, (methyl (Z)-2-{2-[6-(2-cyanophenoxy)pyrimidin-4-yloxy]pheny1}-3-methoxyacrylate) in or on the raw agricultural commodities Ti palm, leaves at 50 ppm; Ti palm, roots at 0.5 ppm; Fruit, stone, group 12–12 at 2.0 ppm; and Nut, tree, group 14–12 at 0.02 ppm. Upon the approval of the aforementioned tolerances, the petitioner requests to remove the established tolerances for azoxystrobin in or on the raw agricultural commodities Fruit, stone, group 12 at 1.5 ppm; and Nut, tree, group 14 at 0.02 ppm. An adequate analytical method, gas chromatography with nitrogen-phosphorus detection (GC–NPD) or in mobile phase by high performance liquid chromatography with ultra-violet detection (HPLC–UV), is available for enforcement purposes with a limit of detection that allows monitoring of food with residues at or above the levels set in these tolerances. Contact: RD

5. *PP 4E8330.* (EPA–HQ–OPP–2014–0879). Interregional Research Project No. 4 (IR–4), IR–4 Headquarters, 500 College Road East, Suite 201 W, Princeton, NJ, requests to establish a tolerance in 40 CFR part 180 for residues of the herbicide, penoxsulam (2-(2,2-difluoroethoxy)-N-(5,8-dimethoxy[1,2,4] triazolo[1,5-c]pyrimidin-2-yl)-6-(trifluoromethyl)benzenesulfonamide) in or on the following raw agricultural commodities: Fruit, pome, group 11–10 at 0.01 ppm, Fruit, stone, group 12–12 at 0.01 ppm, Fruit, small, vine climbing, subgroup 13–07F, except Fuzzy kiwifruit at 0.01 ppm, Nut, tree, group 14–12 at 0.01 ppm, Olive at 0.01 ppm, and Pomegranate at 0.01 ppm. In addition, the petitioner proposes based upon the establishment of the just mentioned new tolerances, removal of existing tolerances at 40 CFR 180.605 for Grape at 0.01 ppm, Nut, tree, group 14 at 0.01 ppm and Pistachio at 0.01 ppm. The residues of penoxsulam were determined using the analytical method GRM 04.09 which involves sample extraction and preparation procedures, and analyses by liquid chromatography with positive-ion electrospray tandem mass spectrometry (LC/MS/MS). Contact: RD

6. *PP 4F8239.* (EPA–HQ–OPP–2015–0031). Syngenta Crop Protection, LLC. 410 Swing Road. P.O. Box 18300. Greensboro, NC 27419, requests to establish a tolerance in 40 CFR 180.637 for residues of the fungicide, mandipropamid, in or on potato at 0.08 ppm. The RAM 415–02 is used to measure and evaluate the chemical mandipropamid. Contact: RD.

Amended Tolerance

1. *PP 4E8298.* (EPA–HQ–OPP–2014–0591). Interregional Research Project Number 4 (IR–4), 500 College Road East, Suite 201 W, Princeton, NJ 08540, requests to amend the tolerances in 40 CFR 180.544 for residues of the insecticide, methoxyfenozide in or on onion, green, subgroup 3–07B at 5.0 ppm to onion, green, subgroup 3–07B, except chive at 5.0 ppm; and herb subgroup 19A, except chive at 400 ppm to Herb subgroup 19A, except chive, fresh leaves at 400 ppm. Adequate methods are available for tolerance enforcement in primary crops and animal commodities. Contact: RD.

2. *PP 4F8329.* (EPA–HQ–OPP–2015–0031). Syngenta Crop Protection, LLC. 410 Swing Road. P.O. Box 18300. Greensboro, NC 27419, requests to amend the tolerance in 40 CFR 180.637 for residues of the fungicide, mandipropamid, in or on potato, wet peel at 0.12 parts per million (ppm), and amend the current tolerance commodity terminology which contains potato from ''vegetable, tuberous and corm, subgroup 1C'', to ''vegetable, tuberous and corm, subgroup 1C, except potato''. The RAM 415–02 analytical method is used to measure and evaluate the chemical mandipropamid. Contact: RD.

New Tolerance Exemption

1. *IN 10713.* (EPA–HQ–OPP–2014–0630). ISK Biosciences Corporation, 7470 Auburn Road, Suite A, Concord, OH 44077, requests to establish an exemption from the requirement of a tolerance for residues of dimethyl sulfoxide (CAS No.67–68–5), when used as a pesticide inert ingredient in pesticide formulations as a diluent in cyclaniliprole only formulations in accordance with 40 CFR 180.920. The petitioner believes no analytical method is needed because it is not required for the establishment of a tolerance exemption for inert ingredients. Contact: RD.

2. *IN–10720.* (EPA–HQ–OPP–2014–0633). BASF Corporation, 26 Davis Drive, P.O. Box 13528 Research Triangle Park, NC, 27709, requests to establish an exemption from the requirement of a tolerance for residues of methanesulfonic acid (CAS No. 75–75–2), when used as a pesticide inert ingredient in pesticide formulations for use on animals and in food contact surface sanitizing solutions. The petitioner believes no analytical method is needed because the request is for an exemption from the requirement of a tolerance. Contact: RD.

3. *IN–10748.* (EPA–HQ–OPP–2014–0783). Huntsman Corporation (8600 Gosling Road, The Woodlands, TX 77381, requests to establish an exemption from the requirement of a tolerance for residues of benzyl acetate (CAS No. 140–11–4), when used as a pesticide inert ingredient in pesticide formulations on growing crops under 40 CFR 180.920. The petitioner believes no analytical method is needed because the request is for an exemption from the requirement of a tolerance. Contact: RD.

4. IN 10766. (EPA–HQ–OPP–2014–0793). West Agro, Inc., 11100 N. Congress Ave., Kansas City, MO 64153, requests to establish an exemption from the requirement of a tolerance for residues of acetic acid (CAS No. 64–19–7) when used as a pesticide inert ingredient in pesticide formulations not to exceed a concentration of 1,200 ppm, in a sanitizing end use product for use on dairy processing equipment and food-processing equipment and utensils under 40 CFR 180.940(b) and

180.940(c). The petitioner believes no analytical method is needed because it is not required for the establishment of a tolerance exemption for inert ingredients. Contact: RD.

5. *PP 4F8287.* (EPA–HQ–OPP–2015–0023). CP Bio, Inc., 4802 Murrieta Street, Chino, CA 91710, requests to establish an exemption from the requirement of a tolerance in 40 CFR part 180 for residues of the biochemical plant growth regulator, Choline Chloride (Acetyl Choline), in or on all raw agricultural commodities, when applied pre-harvest. The analytical method High-Performance Liquid Chromatographic (HPLC) Analysis is available to EPA for the detection and measurement of the pesticide residue. Contact: BPPD.

6. *PP 4F8292.* (EPA–HQ–OPP–2015–0017). Suterra LLC, 20950 NE Talus Place, Bend, OR 97701, requests to establish an exemption from the requirement of a tolerance in 40 CFR part 180 for residues of the arthropod pheromone, lavandulyl senecioate, in or on all raw agricultural commodities when applied to growing crops at a rate not to exceed 150 grams active ingredient/acre/year in accordance with good agricultural practices. The petitioner believes no analytical method is needed because significant residues of the pheromone active ingredient are not possible if use rates are limited to 150 grams pheromone active ingredient per acre per year. Contact: BPPD.

7. *PP 4F8313.* (EPA–HQ–OPP–2014–0896). Technology Sciences Group, Inc., 712 Fifth St., Suite A, Davis, CA 95616 (on behalf of EctoPharma Ltd., Dunsdale Rd., Selkirk, TD7 5EB, United Kingdom), requests to establish an exemption from the requirement of a tolerance in 40 CFR part 180 for residues of the insecticide, 1,2-Octanediol, in or on all food commodities. The petitioner believes no analytical method is needed because it is expected that when the pesticide containing 1,2-Octanediol is used as proposed, it would not result in residues that are of toxicological concern. Contact: BPPD.

Authority: 21 U.S.C. 346a.

Dated: February 18, 2015.

Susan T. Lewis,

Director, Registration Division, Office of Pesticide Programs.

[FR Doc. 2015–04281 Filed 3–3–15; 8:45 am]

BILLING CODE 6560–50–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 74

[WT Docket No. 15–36; FCC 15–22]

Permitting Remote Pickup Broadcast Auxiliary Stations To Utilize Modern Digital Technologies

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: In this document, the Federal Communications Commission (Commission) seeks comment on its proposal to permit broadcasters to use modern digital technologies for Remote Pickup operations. Permitting this would further the Commission's goal of enabling broadcasters to use the same digital technologies for Remote Pickup operations as used by operators in the Private Land Mobile Radio Service.

DATES: Submit comments on or before April 3, 2015. Submit reply comments on or before April 20, 2015.

ADDRESSES: You may submit comments, identified by WT Docket No. 15–36, by any of the following methods:

- *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the instructions for submitting comments.
- *Federal Communications Commission's Electronic Comment Filing System (ECFS): http://fcc.gov/ecfs//.* Follow the instructions for submitting comments.
- *Commercial overnight mail (other than U.S. Postal Service Express Mail and Priority Mail):* Federal Communications Commission, 9300 East Hampton Dr., Capitol Heights, MD 20743.
- *U.S. Postal Service (First-class, Express, and Priority):* Federal Communications Commission, 445 12th St. SW., Washington, DC 20554.
- *Hand-delivered/Courier:* Federal Communications Commission, 445 12th St. SW., Room TW–A325, Washington, DC 20554. The filing hours are 8:00 a.m. to 7:00 p.m. All hand deliveries must be held together with rubber bands or fasteners. Any envelopes and boxes must be disposed of before entering the building.

Instructions: All submissions received must include the agency name and docket number or Regulatory Information Number (RIN) for the *Notice of Proposed Rulemaking.* All comments received will be posted without change to *http://fcc.gov/ecfs//,* including any personal information provided. For detailed instructions on submitting comments and additional information on the rulemaking process, *see* the *''Public Participation''* heading of the **SUPPLEMENTARY INFORMATION** section of this document.

Docket: For access to the docket to read background documents or comments received, go to *https://apps.fcc.gov/edocs_public/attachmatch/FCC-15-22A1.docx.*

FOR FURTHER INFORMATION CONTACT: For further information, please contact Nancy Zaczek of the Wireless Telecommunications Bureau, Broadband Division, at (202) 418–0274 or email to *nancy.zaczek@fcc.gov.*

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's *Notice of Proposed Rulemaking and Order,* WT Docket No. 15–36, RM–11648, and RM 11649 adopted on February 13, 2015 and released on February 18, 2015. The complete text of this document will be available for public inspection during regular business hours in the FCC Reference Center (CY–A257) at the Federal Communications Commission, 445 12th Street SW., Washington, DC 20554. Documents will be available electronically in ASCII, Microsoft Word, and/or Adobe Acrobat. The complete text of this document will also be available via ECFS.

Public Participation

Pursuant to §§ 1.415 and 1.419 of the Commission's rules, 47 CFR 1.415, 1.419, interested parties may file comments and reply comments on or before the dates indicated on the first page of this document. Comments may be filed using the Commission's Electronic Comment Filing System (ECFS). *See Electronic Filing of Documents in Rulemaking Proceedings,* 63 FR 24121 (1998).

- Paper Filers: Parties who choose to file by paper must file an original and one copy of each filing. If more than one docket or rulemaking number appears in the caption of this proceeding, filers must submit two additional copies for each additional docket or rulemaking number.

Filings can be sent by hand or messenger delivery, by commercial overnight courier, or by first-class or overnight U.S. Postal Service mail. All filings must be addressed to the Commission's Secretary, Office of the Secretary, Federal Communications Commission.

People with Disabilities: To request materials in accessible formats for people with disabilities (braille, large print, electronic files, audio format), send an email to *fcc504@fcc.gov* or call the Consumer & Governmental Affairs Bureau at 202–418–0530 (voice), 202–418–0432 (tty).

I. Order—Remote Pickup (RPU) Center Frequencies

A. Background

1. RPU stations may be authorized to operate within the 25.67–26.48 MHz band (HF RPU Band), the 152.855–154 MHz, 157.45–161.575 MHz, 161.625–161.775 MHz bands (collectively, VHF RPU Band), and the 450–451 MHz and 455–456 MHz bands (collectively, UHF RPU Band). These frequencies are also either available for assignment in the part 90 Private Land Mobile Radio Service (PLMRS) or are near frequencies available for PLMRS use. When the Commission established the current RPU service rules in 2002, its goal was to harmonize the RPU technical standards with the part 90 rules so that broadcasters could use radios developed for part 90 PLMRS use for RPU use, particularly for dispatch and operational traffic. At the same time, the Commission recognized that part 90 narrowband radios may not be suitable for transmitting audio program feeds, which require greater bandwidth to support high audio quality with no delay. Accordingly, the Commission allowed broadcasters to stack multiple RPU channel segments to create wider channels. Under the current rules, the VHF RPU and UHF RPU Bands are divided into segments with designated channel centers, but broadcasters may combine multiple segments to form wider RPU channels so long as they comply with the applicable bandwidth and emission requirements. Broadcasters using RPU stations to transmit program material have primary use of the wider channels.

2. The Engineers for the Integrity of Broadcast Auxiliary Services Spectrum (EIBASS) and the Society for Broadcast Engineers (SBE) have separately identified two obstacles that they argue have prevented broadcasters from using PLMRS equipment for RPU use in the VHF RPU and UHF RPU Bands. The first obstacle concerns a mismatch between PLMRS equipment and the channel centers for RPU stations specified in the Commission's rules. For analog equipment, the 25 kilohertz channel centers listed for RPU stations in the Commission's rules cannot be programmed into analog part 90 PLMRS equipment used by broadcasters. If a broadcaster attempted to combine four 6.25 kilohertz segments to form a 25 kilohertz RPU channel, the center frequency of the resultant channel would be offset from the RPU channel centers specified in the Commission's rules. Under this scenario, the only way to create an RPU channel with a center frequency that is specified in the Commission's rules is to request an odd number of RPU segments (*i.e.,* request an extra segment). Furthermore, while digital equipment can tune to the nearest Hertz, many, if not most, analog radios now in use cannot program frequencies with that degree of accuracy.

B. Discussion

3. As described above, EIBASS and SBE identify two issues relating to the designation of center frequencies for RPU stations: (1) The fact that when an applicant combines an even number of channels, the center frequency for the combined channels will fall in between frequencies listed in the Commission's rules; and (2) the inability of analog equipment to specify the center frequency with the level of precision set forth in the Commission's rules. With the clarification and guidance provided below, we conclude that no rule changes are necessary to address either of these issues.

4. We find that existing § 74.402 of the Commission's rules address the first issue. In its preamble, that rule provides, ''When an even number of channels are stacked in those sections [where] stacking is permitted, channel assignments may be made for the frequency halfway between those listed.'' Thus, to use EIBASS' example, a broadcaster wishing to combine the 6.25 kilohertz segments centered 455.48750 MHz, 455.49375 MHz, 455.50000 MHz, and 455.50625 MHz into a 25 kilohertz RPU channel could specify 455.496875 MHz as the center frequency of the combined segments because it is halfway between 455.49375 MHz and 455.5 MHz. Consistent with § 74.402, the current process of the Wireless Telecommunications Bureau has been to require applicants to stack the minimum number of segments necessary to accommodate the applicant's bandwidth needs. Applications that stack an odd number of segments must specify a center frequency consistent with the center of the segments listed in § 74.402, and applications that stack an even number of segments must specify a center frequency that falls in between the channel centers listed in § 74.402. The Wireless Telecommunications Bureau will continue to process applications specifying an even number of segments consistent with this interpretation of § 74.402.

5. With respect to the inability of analog equipment to precisely specify frequencies to six decimal places, no transmitter can operate on a specific frequency with absolute precision. The Broadcast Auxiliary Service (BAS) rules recognize this limitation by establishing permissible frequency tolerances for RPU equipment. In the VHF RPU Band, the tightest applicable frequency stability requirement is one part per million, which translates into an acceptable deviation of approximately 150 Hertz on those frequencies. For the UHF RPU Band, the tightest applicable frequency stability requirement is .5 parts per million, which translates into an acceptable deviation of approximately 225 Hertz on those frequencies. We note that the channel centers listed in the rules specify some frequencies in the UHF RPU Band to the nearest 10 Hertz, and neither EIBASS nor SBE has claimed that analog equipment cannot program those frequencies. So long as licensees comply with the applicable emission masks as measured from the center frequency specified in the authorization, and the licensee programs the center frequency as closely to the specified center frequency as the equipment will allow, we would view a licensee as being in compliance with the center frequency requirements of § 74.402 of the Commission's rules for the VHF RPU Band and UHF RPU Band.

II. Notice of Proposed Rulemaking

A. RPU Digital Emissions and Modulation Requirements

6. SBE and EIBASS point out another obstacle to using PLMRS equipment for RPU purposes, specifically the lack of authorization in the rules for use of specific digital technologies. SBE and EIBASS identify Time Division Multiple Access (TDMA), Next Generation Digital Network (NXDN), ANSI/TIA–102A (Project 25), Trans-European Trunked Radio (TETRA), Digital Private Mobile Radio (dPMR), and Digital Mobile Radio (DMR) as digital technologies used in PLMRS radios that could be suitable for RPU use. Section 74.462 of the Commission's rules ''requires that the 'equipment shall be operated in accordance with emissions specifications included in the grant of the certification and as prescribed in . . . this section'' and lists the authorized emissions for RPU stations. The only emissions currently authorized by the rule, however, are all analog emissions. No digital emissions are included in the list of authorized emissions.

7. We propose to change our rules to allow broadcasters to use modern digital technologies such as TDMA and NXDN for RPU operations. We believe it would be in the public interest to give broadcasters the opportunity to use the same digital technologies for RPU

stations as those used by part 90 PLMRS licensees. The Commission's intent in 2002 was to harmonize the RPU technical standards with the part 90 rules so that broadcasters could use radios developed for part 90 PLMRS use, particularly for dispatch and operational traffic. By allowing broadcasters to use the same digital technologies for RPU stations as those used by PLMRS licensees, we would further that goal and allow broadcasters to use equipment and technologies developed for PLMRS. We seek comment on the costs and benefits and advantages or disadvantages of allowing broadcasters to use the digital technology of their choice in the VHF and UHF RPU Bands.

8. SBE and EIBASS each propose that we amend § 74.462 of the Commission's rules to permit RPU stations to use any digital emissions that meets the applicable emissions mask and bandwidth limitations. We seek comment on amending § 74.462 in that fashion. We note that while SBE and EIBASS focus on the VHF and UHF RPU Bands, the proposed rule change would also allow digital emissions in the HF RPU Band. We seek comment on whether it is appropriate to also allow digital emissions in the HF RPU Band. We also seek comment on alternative means of amending our rules to reach the same result requested by EIBASS and SBE. Further, we seek comment on amending § 74.462 to specify a maximum authorized bandwidth of 50 kilohertz in the 450.03125–450.61875 MHz and 455.03125 455.061875 MHz bands, as opposed to the maximum authorized bandwidth of 25 kilohertz currently in the rule. This change would make § 74.462 consistent with § 74.402(b) of the Commission's rules, which allows up to eight 6.25 kilohertz segments to be stacked for a total RPU channel bandwidth of 50 kilohertz. We seek comment on the costs and benefits and advantages or disadvantages of the various proposed approaches.

9. We also seek comment on EIBASS's request that we amend § 74.463 of the Commission's rules to explicitly add the phrase ''digital modulation''. We seek comment on the proposed rule language and its attendant costs and benefits, and on any alternatives and their associated costs and benefits.

B. Station Identification Requirements

10. In addition, we seek comment on what changes to our station identification requirements are needed to accommodate digital RPU operations. EIBASS recommends that we amend the station identification requirements in § 74.482 of the Commission's rules to cover all forms of commercially available digital land mobile radios, using language that is broad enough to cover new forms of digital signals as they are developed. Although EIBASS specifically recommends that we adopt a method of identifying stations that uses a watermark ID, such as the protocol adopted in the Advanced Television Systems Committee (ATSC) A/82 Data Return Link (DRL) standard, it stresses that is more important that we adopt the same protocol for both RPU BAS and PLMRS stations. In 2010, the Commission sought comment on amending the PLMRS rules to allow station identification in the 150–170 MHz and 450–470 MHz bands in digital format. The proposed rule language in that proceeding would allow PLMRS stations to digitally transmit their call signs, subject to the requirement that the licensees provide the Commission with the means to decode the digital transmission. Adopting the same station identification rules for both RPU BAS and PLMRS stations, EIBASS argues, would enable RPU broadcasters to purchase COTS two-way radios whose transmissions could be universally decoded to identify interfering transmitters. Should we adopt the requirements proposed by the Commission in 2010 for PLMRS stations, or should the Commission adopt a specific standard, such as the A/82 DRL standard? Commenters should provide information on the costs and benefits and advantages or disadvantages of the different approaches.

C. 100 Kilohertz RPU Channels

11. SBE also raises a different but related issue with regard to § 74.402 of the Commission's rules. Specifically, SBE believes there is no current need for new RPU stations with a 100 kilohertz bandwidth. It therefore proposes that no new RPU stations proposing a 100 kilohertz bandwidth be authorized absent a showing of need in individual cases. SBE believes that existing 100 kilohertz RPU stations should be grandfathered.

12. Consistent with SBE's request, we propose to modify § 74.402 to eliminate a licensee's ability to create 100 kilohertz RPU channels in the future. Given the relatively small amount of spectrum available for RPU operations, and that the 100 kilohertz channels overlap the narrower channels, a license specifying 100 kilohertz bandwidth can make it difficult for other broadcasters to obtain spectrum for narrowband RPU operations, which are much more prevalent than 100 kilohertz operations. We note that in the past four years, the Wireless Telecommunications Bureau has received only one application requesting authorization for a 100 kilohertz bandwidth RPU channel. Accordingly, there appears to be little need for licenses with 100 kilohertz channels. If we eliminate the ability to create these channels, applicants would still be able to apply via a waiver of the rules to use 100 kilohertz channels. We emphasize that we are not proposing to change the rights of existing licensees with 100 kilohertz bandwidth RPU channels. Instead, we propose to grandfather existing licensees with 100 kilohertz RPU channel authorizations. These licensees will be permitted to renew their authorizations indefinitely and will be allowed to make modifications to their existing authorization without affecting their grandfathered status. We seek comment on these proposals, as well as their associated costs and benefits.

III. Waiver Request

13. SBE also seeks a temporary waiver of § 74.462 of the Commission's rules to permit broadcasters to use FCC-certified narrowband VHF and UHF RPU equipment, such as TDMA technology or NXDN technology, in the VHF and UHF RPU Bands while the rulemaking is pending. The Commission's rules provide that waivers will be granted if the petitioner shows that: (i) The underlying purpose of the rules(s) would not be served or would be frustrated by application to the instant case, and that a grant of the requested waiver would be in the public interest; or (ii) in view of the unique or unusual factual circumstances of the instant case, application of the rule(s) would be inequitable, unduly burdensome or contrary to the public interest, or the applicant has no reasonable alternative.

14. We decline to grant a blanket waiver of § 74.462 to permit use of digital emissions in the VHF and UHF RPU Bands while this rulemaking is pending. While we agree with SBE that it appears to be in the public interest to empower RPU broadcasters to use digital technologies, the instant rulemaking is designed to provide an opportunity for meaningful comment on this assessment and on important details about the implementation of such digital operations. For example, it is not clear based on the current record how broadcasters using digital equipment will comply with the station identification requirement. If we were to grant a general waiver, broadcasters might use any type of digital RPU equipment, some or all of which might be incompatible with the requirements that the Commission ultimately adopts.

Therefore, until the Commission has established rules for implementation of digital technologies in the VHF and UHF, and perhaps HF RPU Bands, we do not find it to be in the public interest to grant broadcasters a general waiver to do so. Under these circumstances, we believe the better course of action is to proceed through the rulemaking process and establish rules that all broadcasters can rely on going forward. Our denial of SBE's request for a general waiver does not preclude a broadcaster from invoking the Commission's waiver rules in a specific case in order to request appropriate individualized relief. Such cases will be considered on an ad hoc basis.

IV. Procedural Matters

A. Ex Parte Rules—Permit-but-Disclose Proceeding

15. Pursuant to § 1.1200(a) of the Commission's rules, the *Notice of Proposed Rulemaking and Order* shall be treated as a ''permit-but-disclose'' proceeding in accordance with the Commission's *ex parte* rules. Persons making *ex parte* presentations must file a copy of any written presentation or a memorandum summarizing any oral presentation within two business days after the presentation (unless a different deadline applicable to the Sunshine period applies). Persons making oral *ex parte* presentations are reminded that memoranda summarizing the presentation must (1) list all persons attending or otherwise participating in the meeting at which the *ex parte* presentation was made, and (2) summarize all data presented and arguments made during the presentation. If the presentation consisted in whole or in part of the presentation of data or arguments already reflected in the presenter's written comments, memoranda or other filings in the proceeding, the presenter may provide citations to such data or arguments in his or her prior comments, memoranda, or other filings (specifying the relevant page and/or paragraph numbers where such data or arguments can be found) in lieu of summarizing them in the memorandum. Documents shown or given to Commission staff during *ex parte* meetings are deemed to be written *ex parte* presentations and must be filed consistent with rule § 1.1206(b). In proceedings governed by rule § 1.49(f) or for which the Commission has made available a method of electronic filing, written *ex parte* presentations and memoranda summarizing oral *ex parte* presentations, and all attachments thereto, must be filed through the electronic comment filing system available for that proceeding, and must be filed in their native format (*e.g.,* .doc, .xml, .ppt, searchable .pdf). Participants in this proceeding should familiarize themselves with the Commission's *ex parte* rules.

B. Paperwork Reduction Analysis

16. This document does not contain proposed information collection(s) subject to the Paperwork Reduction Act of 1995 (PRA), 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).

C. Initial Regulatory Flexibility Analysis

17. As required by the Regulatory Flexibility Act of 1980, as amended (RFA), the Commission has prepared this present Initial Regulatory Flexibility Analysis (IRFA) of the possible significant economic impact on a substantial number of small entities by the policies and rules proposed in this *Notice of Proposed Rulemaking (NPRM).* Written public comments are requested on this IRFA. Comments must be identified as responses to the IRFA and must be filed by the deadlines specified in the *NPRM* for comments. The Commission will send a copy of this *NPRM,* including this IRFA, to the Chief Counsel for Advocacy of the Small Business Administration (SBA). In addition, the *NPRM* and IRFA (or summaries thereof) will be published in the **Federal Register.**

D. Need for, and Objectives of, the Proposed Rules

18. In the *NPRM,* we propose to amend our rules to allow broadcasters to use any type of digital equipment. In addition, permitting digital emissions in the RPU bands may also require us to amend §§ 74.402, 74.462, and 74.482 of the Commission's rules. These changes are supported by the commenters and will give RPU licensees the flexibility to choose from a wide variety of ''off-the-shelf'' digital equipment, which will, in turn, encourage RPU licensees to convert to digital systems and increase spectrum efficiency.

E. Legal Basis

19. The proposed action is authorized pursuant to sections 4 and 303 of the Communications Act of 1934, as amended, 47 U.S.C. 154, 303, and § 1.411 of the Commission's rules, 47 CFR 1.411.

F. Description and Estimate of the Number of Small Entities To Which the Proposed Rules Will Apply

20. The RFA directs agencies to provide a description of, and, where feasible, an estimate of the number of small entities that may be affected by the proposed rules and policies, if adopted. The RFA generally defines the term ''small entity'' as having the same meaning as the terms ''small business,'' ''small organization,'' and ''small governmental jurisdiction.'' In addition, the term ''small business'' has the same meaning as the term ''small business concern'' under the Small Business Act. A ''small business concern'' is one which: (1) Is independently owned and operated; (2) is not dominant in its field of operation; and (3) satisfies any additional criteria established by the SBA.

21. The proposals in the *NPRM* would affect BAS RPU licensees. Only licensees of broadcast stations, broadcast networks, and cable networks can hold RPU licenses. Additionally, the proposals affect manufacturers of equipment that supports the BAS Remote Pickup Service. BAS involves a variety of transmitters, generally used to relay broadcast programming to the public (through translator and booster stations) or within the program distribution chain (from a remote news gathering unit to the studio or from the studio to the transmitter). The Commission has not developed a definition of small entities applicable to these licensees. Therefore, the applicable definitions of small entities for each of these services under the SBA rules is as follows: for Remote pickup BAS we will use SIC code 4833 when used by a TV station or 4832 when used by a radio station and for BAS equipment manufacturers, we will use SIC code 3663 (Radio and Television Broadcasting and Communications Equipment) which are classified as small businesses if they employ no more than 750 people.

G. Radio Broadcasting

22. The subject rules and policies potentially will apply to all AM and FM radio broadcasting licensees and potential licensees. A radio broadcasting station is an establishment primarily engaged in broadcasting aural programs by radio to the public. Included in this industry are commercial, religious, educational, and other radio stations. Radio broadcasting stations, which primarily are engaged in radio broadcasting, and produce radio program materials are similarly included. However, radio stations that

are separate establishments and are primarily engaged in producing radio program material are classified under another NAICS number. The SBA has established a small business size standard for this category, which is: firms having $7 million or less in annual receipts. According to Commission staff review of the BIA Publications, Inc. Master Access Radio Analyzer Database as of August 2, 2013, about 10,811 (97 percent) of 11,162 commercial radio station have revenues of $7 million or less and thus qualify as small entities under the SBA definition. Therefore, the majority of such entities are small entities. We note, however, that many radio stations are affiliated with much larger corporations having much higher revenue. Our estimate, therefore, likely overstates the number of small entities that might be affected by any ultimate changes to the rules and forms.

H. Television Broadcasting

23. This economic census category ''comprises establishments primarily engaged in broadcasting images together with sound. These establishments operate television broadcasting studios and facilities for the programming and transmission of programs to the public.'' The SBA has created the following small business size standard for Television Broadcasting firms: those having $14 million or less in annual receipts. The Commission has estimated the number of licensed commercial television stations to be 1,388. In addition, according to Commission staff review of the BIA Advisory Services, LLC's Media Access Pro Television Database on March 28, 2012, about 950 of an estimated 1,300 commercial television stations (or approximately 73 percent) had revenues of $14 million or less. We therefore estimate that the majority of commercial television broadcasters are small entities.

24. We note, however, that in assessing whether a business concern qualifies as small under the above definition, business (control) affiliations must be included. Our estimate, therefore, likely overstates the number of small entities that might be affected by our action because the revenue figure on which it is based does not include or aggregate revenues from affiliated companies. In addition, an element of the definition of ''small business'' is that the entity not be dominant in its field of operation. We are unable at this time to define or quantify the criteria that would establish whether a specific television station is dominant in its field of operation. Accordingly, the estimate of small businesses to which rules may apply does not exclude any television station from the definition of a small business on this basis and is therefore possibly over-inclusive to that extent.

25. In addition, the Commission has estimated the number of licensed noncommercial educational (''NCE'') television stations to be 396. These stations are non-profit, and therefore considered to be small entities.

26. There are also 2,414 LPTV stations, including Class A stations, and 4,046 TV translator stations. Given the nature of these services, we will presume that all of these entities qualify as small entities under the above SBA small business size standard.

I. Description of Projected Reporting, Recordkeeping, and Other Compliance Requirements

27. The *NPRM* proposes no new reporting or recordkeeping requirements.

J. Steps Taken To Minimize Significant Economic Impact on Small Entities, and Significant Alternatives Considered

28. The RFA requires an agency to describe any significant alternatives that it has considered in reaching its proposed approach, which may include the following four alternatives (among others): (1) The establishment of differing compliance or reporting requirements or timetables that take into account the resources available to small entities; (2) the clarification, consolidation, or simplification of compliance or reporting requirements under the rule for small entities; (3) the use of performance, rather than design, standards; and (4) an exemption from coverage of the rule, or any part thereof, for small entities.

29. The actions proposed in the *NPRM* would give RPU licensees the flexibility to use off-the-shelf digital equipment, thus reducing their costs. This action will serve the public interest by enabling RPU licensees to use spectrum more efficiently. The rules will therefore open up beneficial economic opportunities to a variety of spectrum users, including small businesses. Because the actions proposed in the *NPRM* will improve beneficial economic opportunities for all businesses, including small businesses, a detailed discussion of alternatives is not required.

30. Generally, the alternative approach would be to maintain the existing rules. Under that approach, however, Remote Pickup Service licensees would not have the opportunity to use digital off-the-shelf equipment.

K. Federal Rules That May Duplicate, Overlap, or Conflict With the Proposed Rules

31. None.

V. Ordering Clauses

32. Accordingly, *it is ordered,* pursuant to sections 4 and 303 of the Communications Act of 1934, 47 U.S.C. 154, 303, and § 1.411 of the Commission's rules, 47 CFR 1.411, that the *Notice of Proposed Rulemaking* is hereby *adopted.*

33. *It is further ordered,* pursuant to sections 4 and 303 of the Communications Act of 1934, 47 U.S.C. 154, 303, and § 1.407 of the Commission's rules, 47 CFR 1.407, that the petitions for rulemaking filed by the Engineers for the Integrity of Broadcast Auxiliary Services on October 7, 2011 and by Society of Broadcast Engineers, Incorporated on November 7, 2011 *are granted* to the extent indicated herein and are otherwise *denied.*

34. For the reasons stated above, *it is further ordered,* pursuant to section 4(i) of the Communications Act of 1934, as amended, 47 U.S.C. 154(i), and § 1.925(b)(3) of the Commission's rules, 47 CFR 1.925(b)(3), that the waiver request filed by the Society for Broadcast Engineers on November 7, 2011 *is denied.*

35. *It is further ordered* that the Commission's Consumer and Governmental Affairs Bureau, Reference Information Center, *shall send* a copy of the *NPRM,* including the IRFA, to the Chief Counsel for Advocacy of the Small Business Administration.

List of Subjects in 47 CFR Part 74

Communications equipment.

Federal Communications Commission.

Sheryl D. Todd,

Deputy Secretary.

For the reasons discussed in the preamble, the Federal Communications Commission proposes to amend 47 CFR part 74 as follows:

PART 74—EXPERIMENTAL RADIO, AUXILIARY, SPECIAL BROADCAST AND OTHER PROGRAM DISTRIBUTION SERVICES

■ 1. The authority citation for part 74 continues to read as follows:

Authority: 47 U.S.C. 154, 302a, 303, 307, 309, 336 and 554.

■ 2. Amend § 74.402 by revising the introductory text in paragraph (d) to read as follows:

§ 74.402 Frequency assignment.

* * * * *

(d) Up to two of the following 50 kilohertz segments may be stacked to form a channel which may be assigned for use by broadcast remote pickup stations using any emission contained within the resultant channel in accordance with the provisions of § 74.462. Users committed to 100 kilohertz bandwidths and transmitting program material will have primary use of these channels. After [insert effective date of rule], initial authorizations with 100 kilohertz bandwidth will not be issued.

* * * * *

■ 3. Amend § 74.462 by revising paragraphs (a) and (b) to read as follows:

§ 74.462 Authorized Bandwidth and Emissions.

(a) Each authorization for a new remote pickup broadcast station or system shall require the use of certificated equipment and such equipment shall be operated in accordance with emission specifications included in the grant of certification and as prescribed in paragraphs (b), (c), and (d) of this section. Any form of modulation may be used.

(b) The maximum authorized bandwidth of emissions corresponding to the types of emissions specified below, and the maximum authorized frequency deviation in the case of frequency or phase modulated emission, shall be as follows:

Frequencies	Maximum authorized bandwidth (kilohertz)	Maximum frequency deviation (kilohertz) [1]
MHz:		
25.87 to 26.03	40	10
26.07 to 26.47	20	5
152.8625 to 153.3575 [2]	30/60	5/10
160.860 to 161.400	60	10
161.625 to 161.775	30	5
166.25 and 170.15 [3]	12.5	2.5
450.00625 to 450.99375	25	5
455.00625 to 455.99375	25	5
450.03125 to 450.61875	50	
455.03125 to 455.61875	50	5
450.6375 to 450.8625.		
455.6375 to 455.8625	50	10
450.900, 450.950.		
455.900, 455.950 [4]	100	35

[1] Applies where F1A, F1B, F1D, F1E, F2A, F2B, F2D, F2E, F3E, or F9E emissions are used.
[2] New or modified licenses for use of the frequencies will not be granted to utilize transmitters on board aircraft, or to use a bandwidth in excess of 30 kilohertz and maximum deviation exceeding 5 kilohertz.
[3] For stations licensed or applied for before April 16, 2003, the sum of the bandwidth of emission and tolerance on frequencies 166.25 MHz or 170.15 MHz shall not exceed 25 kilohertz, and such operation may continue until January 1, 2005. For new stations licensed or applied for on or after April 16, 2003, the sum of the bandwidth of emission and tolerance on these frequencies shall not exceed 12.5 kilohertz. For all remote pickup broadcast stations, the sum of the bandwidth of emission and tolerance on these frequencies shall not exceed 12.5 kilohertz on or after January 1, 2005.
[4] After [insert effective date of rule], new authorizations with 100 kilohertz bandwidth will not be issued.

* * * * *

■ 4. Amend § 74.463 by revising paragraph (c) to read as follows:

§ 74.463 Modulation Requirements.

* * * * *

(c) If frequency modulation or digital modulation is employed, the emission shall conform to the requirements specified in § 74.462.

* * * * *

■ 5. Amend § 74.482 by adding a new paragraph (f) to read as follows:

§ 74.482 Station Identification.

* * * * *

(f) Stations that normally employ digital signals for the transmission of data, text, control codes, or digitized voice, may also be identified by digital transmission of the call sign. A licensee that identifies its call sign in this manner must provide the Commission, upon request, information sufficient to decode the digital transmission and ascertain the call sign transmitted.

* * * * *

[FR Doc. 2015–04155 Filed 3–3–15; 8:45 am]

BILLING CODE 6712–01–P

GENERAL SERVICES ADMINISTRATION

48 CFR Parts 501, 516, 538 and 552

[GSAR Case 2013–G504; Docket 2014–0020; Sequence 1]

RIN 3090–AJ51

General Services Administration Acquisition Regulation (GSAR); Transactional Data Reporting

AGENCY: Office of Acquisition Policy, General Services Administration.

ACTION: Notice of a public meeting and request for comments on proposed rule.

SUMMARY: The General Services Administration (GSA) announces a public meeting and request for comment on its proposal to amend the General Services Administration Acquisition Regulation (GSAR) to include clauses that would require vendors to report transactional data from orders and prices paid by ordering activities. This includes orders placed against both Federal Supply Schedule (FSS) contract vehicles and GSA's non-FSS contract vehicles—Governmentwide Acquisition Contracts (GWACs) and Governmentwide Indefinite-Delivery, Indefinite-Quality (IDIQ) contracts. For FSS vehicles, the clause would be introduced in phases, beginning with a pilot for select products and commoditized services. The new clause will be paired with changes to the basis of award monitoring requirement of the existing price reductions clause, resulting in a burden reduction for participating FSS contractors. This rulemaking does not apply to the Department of Veterans Affairs (VA) FSS contract holders.

GSA is interested in conducting a dialogue with industry and interested

parties in Government about the proposed change. GSA is seeking feedback on potential impacts to agency customers and contractors alike. Feedback will be used to help inform the revisions to the proposed clauses, provisions, and prescriptions and other guidance to implement the proposed rule.

DATES: Interested parties may offer oral and/or written comments at a public meeting to be held on Friday, April 17, 2015, at 9:00 a.m. Eastern Standard Time. Parties are also encouraged to provide all written comments, including those to be delivered at the public meeting, directly to *www.regulations.gov.* As explained in this notice, other tools will also be used to elicit public input.

Interested parties should submit written comments to the Regulatory Secretariat on or before Monday, May 4, 2015 to be considered in the formulation of a final rule.

The public meeting will be conducted on Friday, April 17, 2015, at 9:00 a.m. Eastern Standard Time. Information for the public meeting may be found under the heading **SUPPLEMENTARY INFORMATION**.

ADDRESSES: Submit comments identified by GSAR Case 2013–G504, Transactional Data Reporting, by any of the following methods:

- *Regulations.gov: http://www.regulations.gov.*

Submit comments by searching for ''GSAR Case 2013–G504''. Select the link ''Comment Now'' and follow the instructions provided at the ''You are commenting on'' screen. Please include your name, company name (if any), and ''GSAR Case 2013–G504'', on your attached document.

- *Fax:* 202–501–4067.
- *Mail:* U.S. General Services Administration, Regulatory Secretariat Division (MVCB), 1800 F Street NW., 2nd Floor, ATTN: Hada Flowers, Washington, DC 20405–0001.

Instructions: Please submit comments only and cite GSAR Case 2013–G504 in all correspondence related to this case. All comments received will be posted without change to *http://www.regulations.gov,* including any personal and/or business confidential information provided.

FOR FURTHER INFORMATION CONTACT: Ms. Dana Munson, General Services Acquisition Policy Division, GSA, 202–357–9652 or Mr. Matthew McFarland, General Services Acquisition Policy Division, GSA, 202–690–9232 or email *gsar@gsa.gov,* for clarification of content, public meeting information and submission of comment. For information pertaining to status or publication schedules, contact the Regulatory Secretariat at 202–501–4755. Please cite GSAR Case 2013–G504.

SUPPLEMENTARY INFORMATION:

I. Public Meeting

GSA is holding a public meeting on Friday, April 17, 2015. The meeting will start at 9:00 a.m. Eastern Standard Time. The meeting end time will depend on the final number of registered oral presentations. Attendees can attend the meeting in person at GSA Central Office or virtually through GSA's Internet meeting platform, Adobe Connect.

In-person Attendance: Interested parties may attend the public meeting to be held in the GSA Auditorium at GSA Headquarters, located at 1800 F St. NW., Washington, DC 20405. The public is asked to pre-register by Wednesday April 1, 2015, due to security and seating limitations. To pre-register, use the following link: *https://meet.gsa.gov/e5rpxxbrh14/event/event_info.html.* Registration check-in will begin at 8:00 a.m. Eastern Standard Time Friday, April 17, 2015, and the meeting will start at 9:00 a.m. Eastern Standard Time. Attendees must be prepared to present a form of government issued photo identification.

Virtual Attendance: Interested parties may also attend virtually through GSA's Internet meeting platform, hosted by Adobe Connect. Virtual attendees must register in advance at *https://meet.gsa.gov/e5rpxxbrh14/event/event_info.html.*

Meeting Accommodations: The public meeting is physically accessible to people with disabilities. Request for sign language interpretation or other auxiliary aids should be directed to Ms. Munson at *dana.munson@gsa.gov* or 202–357–9652 by Wednesday, April 1, 2015.

The TTY number for further information is: 1–800–877–8339. When the operator answers the call, let them know the agency is the General Services Administration; the point-of-contact is Dana Munson at 202–357–9652 or Matthew McFarland 202–690–9232.

Oral Public Comments: Parties wishing to make formal oral presentations at the public meeting should indicate so during the registration process. Presentations must be provided to Ms. Dana Munson by electronic mail at *gsar@gsa.gov* no later than Wednesday, April 8, 2015. Time allocations for oral presentations will be limited to fifteen minutes. All formal oral public comments should also be followed-up in writing and submitted to *www.regulations.gov* no later than Monday, May 4, 2015. When submitting your comments, search for ''GSAR Case 2013–G504'' and reference ''Public Meeting, Public Comments on Transactional Data Reporting.'' **Note:** Requests made after the deadline for formal oral presentations will be permitted as time permits and assigned based on the order the requests are received.

Written Comments/Statements: In lieu of, or in addition to, participating in the public meeting, interested parties may submit written comments to *www.regulations.gov* by Monday, May 4, 2015. When submitting your comments, search for ''GSAR Case 2013–G504'' and reference ''Public Comments on Transactional Data Reporting.'' Parties wishing to share written statements at the public meeting must submit such statements to Ms. Dana Munson at *gsar@gsa.gov* by Wednesday, April 8, 2015.

II. Overview

The Office of Federal Procurement Policy (OFPP) recently announced a new vision for Federal purchasing, one that fundamentally shifts from managing purchases and price individually across thousands of procurement units to managing entire categories of purchases across Government collaboratively (see *Transforming the Marketplace: Simplifying Federal Procurement to Improve Performance, Drive Innovation and Increase Savings,* December 4, 2014, available at *http://www.whitehouse.gov/sites/default/files/omb/procurement/memo/simplifying-federal-procurement-to-improve-performance-drive-innovation-increase-savings.pdf*). Category management involves buying and managing commonly-purchased goods and services through categories like information technology (IT) hardware and IT software. Categories will be managed by experts with in-depth market expertise who understand buying trends, industry cost drivers, new innovations on the horizon and emerging companies. Category managers will also share information with agencies across government to support smarter buying decisions.

GSA is creating a Common Acquisition Platform (CAP), an online marketplace to identify best-in-class contracts issued by GSA or other agencies, best practices, and other information agencies need to reduce the proliferation of duplicative contract vehicles and deliver the best value possible to federal customers and the American people. A critical component of the CAP, and smarter buying in general, is the availability of the prices previously paid by other government

buyers for a similar product or service under similar terms and conditions. Government buyers will be able to use that data, in combination with other relevant information—such as customer satisfaction with the performance of the contractor-furnished solution—to determine fair and reasonable pricing as part of a best value solution.

The current lack of transparency on prices paid by government customers has led to significant price variation, sometimes 300 percent or more, for identical purchases by federal agencies from the same commercial vendor as well as the unnecessary duplication of contract vehicles. A recent pilot where contractors were required to furnish prices paid on GSA's strategically sourced Office Supplies 2 (OS2) vehicle demonstrated the power of such a tool in producing market driven pricing throughout the life of the contract.

Accordingly, this proposed rule would create a transactional data reporting clause to improve GSA's ability to conduct meaningful price analysis and more efficiently and effectively validate fair and reasonable pricing on both its non-FSS and FSS vehicles. It would also allow GSA's customers to improve their ability to compare prices prior to placing orders under its vehicles. Under the transactional data reporting clause, contractors would report prices paid for products and services delivered during the performance of the contract, including under orders and blanket purchase agreements (BPAs) through a user-friendly, online reporting system. The report would include transactional data elements such as unit measure, quantity of item sold, universal product code, if applicable, prices paid per unit, and total price.

The transactional data reporting clause would be applied immediately to GSA's government-wide non-FSS vehicles, where transactional data is not already collected through other methods. For FSS vehicles, the clause would be introduced in phases, beginning with a pilot for select products and commoditized services. Under the pilot, FSS customers would take advantage of prices paid information and the more rigorous order level competition it generates to establish pricing. To ensure these prices remain competitive with commercial pricing, GSA would evaluate prices paid under the pilot to commercial benchmarks and other available data on commercial pricing, as well as prices previously paid prior to the pilot where such data is available. Vendors would not be subject to the ''tracking customer'' provisions of the price reductions clause that require them to monitor their pricing, and provide the government with the same price reductions that they give to the class of the contractor's commercial customers upon which the original contract was awarded. However, GSA would maintain the right throughout the life of the FSS contract to ask a vendor for updates to the disclosures on its commercial sales format—which is used to negotiate pricing on FSS vehicles—where commercial benchmarks or other available data on commercial pricing is insufficient to establish price reasonableness. Price and quality metrics would be established, and commercial benchmarks identified, prior to the launch of the pilot so that GSA could perform these analyses and measure the results and impact of the pilot. GSA would also seek vendor feedback to compare experience with the transactional data clause to the tracking requirements of the price reductions clause. GSA would use all relevant information and analysis to determine, in consultation with OMB, whether use of the clause is beneficial. If the results of the pilot confirm that using transactional data is an effective pricing model, its use would be broadened using the authorities provided by this rule. If the results of the pilot reveal that using transactional data is not an effective pricing model, contracts would be modified to revert back to using the tracking customer provisions of the price reductions clause. Additional details regarding the scope of the pilot will be announced through an open dialog on GSA's Interact platform at *interact.gsa.gov.* This public input will be considered prior to the launch of the pilot.

GSA recognizes that use of prices paid information must be done within the context of seeking to obtain the best value for the taxpayer. GSA believes the clause will be especially impactful when combined with the insight and expertise of category managers to provide agency buyers across government with market intelligence, expertise, and deep-dive analysis to improve supply chain management, pricing variances, innovation, redundancies, and unnecessary duplication of effort. Tools and training deployed in connection with the implementation of this rule would emphasize the importance of considering total cost (not just unit price) in the context of each procurement, taking into account desired terms and conditions, performance levels, past customer satisfaction, and other relevant information.

III. Background

In Fiscal Year 2014, government agencies ordered nearly $39 billion in goods and services through GSA's FSS contracts GWACs, and Governmentwide IDIQs. While GSA has a number of policies in place to help its buyers and agency users to secure best value for the taxpayer, two limitations in current pricing practices make achievement of this goal unnecessarily challenging: (1) Lack of visibility into prices paid by other customers; and (2) insufficient attention on ''horizontal pricing'' under the FSS program—*i.e.,* the ability to compare one vendor's pricing to that of other vendors.

Lack of Transparency in Prices Previously Paid

The Federal Acquisition Regulation (FAR) has long emphasized the need for contracting officers to conduct price analysis as part of their responsibility to establish that offered prices are fair and reasonable. Price analysis requires contracting officers to obtain and analyze data on the prices at which the same or similar items have been sold. At GSA, like most agencies, collection of this information has rested largely on the shoulders of each contracting officer. Until recently, little effort was made to share prices previously paid by agencies throughout the government. Over the years, this lack of transparency contributed to large price disparities, where one agency may pay a significant amount more for the exact same product or commoditized service as another agency under the same or substantially similar terms and conditions, sometimes even from the same vendor. GSA has already seen examples where price variability has decreased through the collection of transactional data such as with its Office Supplies 2 (OS2) government-wide strategic sourcing vehicle, and others, saving taxpayers approximately $370 million.

GSA proposes to address this weakness through the use of a transactional data reporting clause. Under the clause contractors would be required to report historical information encompassing the products and services delivered during the performance of the contract, including under orders and BPAs. Contractors would be required to electronically report contract sales monthly through a user-friendly online reporting system. The report would include transactional data elements such as unit measures, quantity of item sold, universal product code, if

applicable, price paid per unit, and total price.

GSA believes there are multiple benefits to use of the transactional data reporting clause, including better pricing, administrative savings, increased opportunities for small business participation, and standardization of practice.

• *Better pricing:* The availability of prices paid information will lead to better prices for the taxpayer by improving the agency's ability to conduct price analysis. It will also improve the quality of both contract and order level competition because vendors will know that their customers have greater market intelligence on what other agencies have paid in similar situations. For example, GSA initiated a dynamic pricing model, where prices are adjusted based on transactional data, on its Office Supplies 2 vehicle between November 2012 and January 2013. Prior to the implementation of dynamic pricing, the average OS2 savings were 13.5 percent. However, since fully implementing dynamic pricing in June 2013, savings rates have averaged approximately 18 percent, or roughly 4.5 percent higher than pre-dynamic pricing.

• *Administrative savings:* GSA expects the added value of transactional data to GSA contract vehicles to ultimately reduce duplicative contract vehicles as both FSS and non-FSS contracts will demonstrably offer best value, reducing transactional costs to both agencies and contractors. GSA estimates that more than 600,000 open market actions overlap with existing GSA contract vehicles. With better pricing on GSA contracts, agencies will have less incentive to establish separate contracts. Additionally, GSA believes replacing the price reduction clause's tracking customer requirement with transactional data reporting could reduce the annual burden on contractors by more than 85 percent, or approximately $51 million in administrative costs to contractors, when compared to the burden hours associated with the tracking customer requirement under the price reductions clause in its current configuration.

• *Reduction of barriers to small business participation:* The reduction in duplicative and inefficient procurement transactions removes barriers to entry into the Federal marketplace, particularly for small businesses. The GAO reports the costs of being on multiple contract vehicles ranged from $10,000 to $1,000,000 due to increased bid and proposal, and administrative costs (see GAO report # GAO–10–367, *Contracting Strategies, Data and Oversight Problems Hamper Opportunities to Leverage Value of Interagency and Enterprisewide Contracts*).

• *Standardization:* Significant GSA non-FSS contracts include a requirement for transactional data. Though the specifics vary, GSA's Alliant, Alliant Small Business, 8(a) Streamlined Technology Acquisition Resources for Services (STARS) II, and Veterans Technology Services (VETS) GWACs, Connections II, Custom SATCOM Solutions (CS2), Custom SATCOM Solutions—Small Business (CS2–SB), Office Supply Third Generation (OS3), and One Acquisition Solution for Integrated Services (OASIS) Govermentwide IDIQs, all have built-in vendor requirements for submission of transactional data. Currently, these requirements are communicated in solicitations without the benefit of a dedicated GSAR clause. The creation of a uniform clause to be used across GSA's non-FSS programs would facilitate consistency and transparency by allowing the public to comment on the proposed new clause.

Use of Vertical Pricing and Movement Toward Both Vertical and Horizontal Pricing in the FSS Program

The FSS program is currently built around a vertical pricing model where pricing offered to the government from a potential vendor is compared to the pricing that the same vendor offers to its commercial customers. When vendors first submit an FSS offer, minimal consideration is given to the relative competitiveness of the vendor's prices to other vendors (*i.e.,* horizontal pricing). Instead, the FSS program primarily collects aggregate sales information, including a broad disclosure of discounts vendors offer to commercial customers for similar products and services (see the ''Commercial Sales'' disclosure guidance at GSAR 515.408). The Government's negotiation objective is to achieve a company's best price—*i.e.,* the price given to its most favored customer (see GSAR 538.270(a)) who buys in quantities and under conditions similar to those of the government. Contractors are then required, under the ''price reductions'' clause (PRC), to monitor their pricing over the life of the contract and provide the government with the same price reductions that they give to the class of the contractor's commercial customers upon which the original contract award was predicated (see GSAR 552.238–75). In addition to the ''tracking customer'' requirement, the price reductions clause allows vendors to voluntarily reduce prices to the Government and for the Government to request a price reduction at any time during the contract period such as where market analysis indicates that lower prices are being offered or paid for the same items under similar conditions.

The required disclosure of commercial sales practices and the PRC were first introduced into the FSS program in the 1980s as a way to ensure fair and reasonable pricing through the life of a contract with the goal of achieving most favored customer pricing. For many years, the tracking customer feature of the PRC was a critical mechanism for enabling GSA and its customers to maintain good pricing from original equipment manufacturers who held the vast majority of FSS contracts. However, changes in the Federal market have lessened the impact of the tracking customer mechanism over time. Of particular note, an increasing percentage of FSS contractors are resellers with little or no commercial sales. The GSA Inspector General (IG) recently reported that resellers represent more than one-third of FSS vendors (See *Major Issues from Multiple Award Schedules Audits,* Audit Memorandum Numbers A120050–3, available at *http://www.gsaig.gov* under Office of Inspector General (OIG) Reports and Audit Reports).

Moreover, due to the various exceptions included in the PRC the tracking customer feature ties pricing for reductions to sales of single items and plays little role in blanket purchase agreement and order purchases reflecting volume sales. Further, many products sold under the FSS program are commercial-off-the-shelf (COTS) products or other commercial items for which the government is not a market driver. The government, and other customers in the category to which the government is most typically aligned under the price reductions clause, tend to receive voluntary price reductions from the vendor as a result of general market forces (*e.g.,* intense competition and small profit margins within the IT hardware arena that cause vendors to lower their prices for all customers voluntarily to maintain market share). In other words, prices are reduced under the voluntary provisions of the price reduction clause as a result of market rate pricing changes, not under the mandatory tracking customer provisions. GSA recently analyzed modifications issued between October 1, 2013 and August 4, 2014 under nine of its FSS contracts, including Schedule 70 (Information Technology), Schedule 874 (Mission Oriented Business Integrated

Solutions (MOBIS)), Schedule 66 (Scientific Equipment and Services), Schedule 84 (Total Solutions for Law Enforcement, Security, Facilities Management, Fire, Rescue, Clothing, Marine Craft and Emergency/Disaster Response), Schedule 899 (Environmental Services), Schedule 738 II (Language Services), 874 V (Logistics Worldwide), Schedule 871 (Professional Engineering Services), and Schedule 00CORP (The Consolidated Schedule). GSA found that only about 3 percent of the total price reductions received under the price reduction clause were tied to the ''tracking customer'' feature. The vast majority (approximately 78 percent) came as a result of commercial pricelist adjustments and market rate changes, with the balance for other reasons. This finding supports attempting a different means of making better pricing available.

Simultaneous with these trends, significant improvements in technology now make it possible to collect transactional data and display it in a way that government customers can see the prices paid by other FSS customers along with other data to determine whether prices offered to them represent the best value to the taxpayer. As explained above, the required disclosure and sharing of prices paid information through the use of a transactional data reporting clause and portal under the OS2 pilot led to savings rates averaging approximately 18 percent, or about 4.5 percent higher than pre-dynamic pricing.

GSA believes the collection and use of transactional data may be a more efficient and effective way for driving price reductions on FSS buys than through use of the tracking customer mechanism. In addition to avoiding the challenges associated with the tracking customer mechanism described above, the transactional data reporting clause would allow for greater reliance on horizontal pricing in the FSS program so that GSA and its customers can easily evaluate the relative competitiveness of prices between FSS vendors. Moreover, the transactional data reporting clause, if used as an alternative to tracking customer mechanism, could significantly reduce contractor burden. The Chief Acquisition Officers Council recently conducted an Open Dialogue through an online platform on improving how to do business with the Federal Government. Contractors pointed to the price reductions clause as one of the most complicated and burdensome requirements in Federal contracting, and GSA's own estimates suggest FSS contractors spend over 860,000 hours a year (at a cost of approximately $58.5 million) on compliance with this clause. Several conversations in this dialogue identified the need to reform FSS pricing policies, particularly requesting the removal of GSAR clause 552.238–75, Price Reductions requirements. Over the years, GSA has made adjustments to address burdens and improve the use of these tools. In particular, on March 4, 1996 (GSAR Change 70), GSA modified the sales disclosure form to require only summary information and recognize that the terms and conditions of commercial sales vary and there may be legitimate reasons why the best price is not achieved. Despite these significant adjustments to the FSS pricing model, contractors continue to struggle to comply with the sales practice disclosure requirements and the price reduction clause. In two separate reports, the GSA IG found that over two-thirds of vendors reviewed in fiscal year (FY) 2011 and 84 percent in FY 2012 provided commercial sales practice disclosures that are not current, accurate, and/or complete and nearly half of the vendors in FY 2012 had inadequate sales monitoring systems and billing systems to ensure proper administration of the price reduction and billing provisions. See *Major Issues from Multiple Award Schedules Audits, Audit Memorandum Numbers* A120050–3 and A120050–4, available at *http://www.gsaig.gov* under OIG Reports and Audit Reports.

As stated above, GSA believes that the transactional data reporting clause could reduce the annual burden on contractors by more than 85 percent, or approximately $51 million in administrative costs to contractors, when compared to the burden hours associated with monitoring pricing under the price reductions clause in its current configuration. GSA further believes that use of the transactional data reporting clause as an alternative to the price reduction clause addresses recommendations made by independent reviewers of the FSS program over the past several years. In particular, the Multiple Award Schedule (MAS) Blue Ribbon Advisory Panel, which included representatives from the largest buying agencies, the Department of the Defense, Department of Homeland Security, Department of the Interior, Department of the Treasury, and U.S. Department of Education and industry, recommended in 2010 that ''the GSA Administrator remove the Price Reduction Clause from the MAS program supply contracts for products in phases as the GSA Administrator implements recommendations for competition and price transparency at the Schedule contract level and the order level.'' The same year, the Government Accountability Office (GAO) issued a report recommending that GSA collect ''prices paid'' data on FSS orders and make this information available to FSS contract negotiators and customer agencies. See *Data and Oversight Problems Hamper Opportunities to Leverage Value of Interagency and Enterprisewide Contracts,* GAO–10–367 (April 2010), available at *http://www.gao.gov/products/GAO-10-367.*

Transitioning to Transactional Data Reporting

GSA recognizes that use of prices paid information must be done within the context of seeking to obtain the best value for the taxpayer and envisions that this information would be used as one information point in conjunction with other considerations, such as total cost, desired performance levels, delivery schedule, unique terms and conditions, time considerations, and customer satisfaction. Training to support the implementation of this rule would emphasize that prices paid information must be considered within the context of each individual procurement. More importantly, related efforts, such as the development of category hallways—an online marketplace tool—and the appointment of category managers with in-depth market expertise, will help agencies gain market intelligence to make smarter and well-informed buying decisions.

GSA further recognizes that its government-wide non-FSS and FSS contract vehicles require separate implementation strategies taking into account differences in the pricing models currently used by these vehicles.

Government-wide Non-FSS contract vehicles. To implement the transactional data reporting requirement, this proposed rule would add a new GSAR clause for non-FSS contract vehicles, 552.216–75 Sales Reporting and Fee Remittance, which would require the submission of transactional data from vendors on orders and prices paid by ordering activities. Government-wide non-FSS contract vehicles account for approximately $3.9 billion in federal contract spending each year. As explained above, a significant number of GSA's non-FSS contract vehicles, including all GWAC vehicles, already include a requirement for transactional data. This proposed rule would standardize this practice for non-FSS contract vehicles and allow GSA to collect data on fixed-price, time-and-material, labor-hour, and cost-

reimbursement contracts, consistent with requirements currently in GWAC vehicles.

FSS contract vehicles. GSA proposes a phased-in implementation of the transactional data reporting clause to the FSS program, beginning with a pilot chosen from FSS product offerings and commoditized services where obtaining such data has the greatest potential impact to reduce price variability and help agencies secure better value for the taxpayer through category management. Application of the transactional data reporting clause, including the proposed pilot, would be limited to FSS contracts managed by GSA's Federal Acquisition Service. This rule would not apply to FSS contracts managed by the Department of Veterans Affairs pursuant to a delegation provided by GSA.

Details regarding the pilot will be provided by separate notice, including through social media tools already in place such as GSA Interact (*https://interact.gsa.gov*), as well as updates to GSA's Web site where current information is displayed and access and links to other sites are provided. Respondents will be invited to provide feedback through these mechanisms as well as at the public meeting announced in this notice. Respondents are also invited to provide written feedback in response to this notice regarding the preliminary pilot design features described below:

- *Scope.* The pilot would focus on commercial-off-the-shelf and related commercial products and commoditized services that experience high volume of repetitive purchasing under identical or substantially similar terms and conditions.
- *Participation:* Vendor participation in the pilot would be mandatory. Covered vendors would not be subject to the tracking customer requirements of the price reduction clause.

However, vendors would still be subject to the commercial sales disclosure requirements, including the requirement to disclose commercial sales practices when requesting a contract modification for additional items or additional Special Item Numbers. In addition, GSA would maintain the right throughout the life of the FSS contract to ask a vendor for updates to the disclosures made on its commercial sales format (which is used to negotiate pricing on FSS vehicles) if and as necessary to ensure that prices remain fair and reasonable in light of changing market conditions. The government could request price reductions and vendors could voluntarily provide price reductions. GSA would modify select existing contracts and conduct solicitation refreshes under the FSS program to implement the new transactional data reporting requirements.

- *Evaluation:* Similar to best practices used in strategic sourcing efforts, GSA would establish clearly defined metrics prior to the launch of the pilot, such as savings rates, customer satisfaction, small business utilization, and benchmark results against available commercial data sources within categories of spend to evaluate the impact of the transactional data reporting clause. Pilot results would be evaluated before applying the transactional data reporting clause to additional FSS contracts and making usage mandatory more broadly. Pilot results would also be used to evaluate the comparative efficiency and effectiveness of the tracking customer requirement. If GSA determines using transactional data is not an effective pricing model within the FSS program, contracts would be modified to revert back to using the provisions described in the basic GSAR clause 552.238–75, Price Reductions.

Software, Tools, and Training

GSA intends to update its systems in order to collect and analyze transactional data. Data submission will be enabled through multiple electronic interfaces (*e.g.,* secure data entry, electronic file submission, or an application programming interface (API)). The goal is to make the reporting process as streamlined, secure and efficient as possible for contractors, requiring them to submit only the transactional data GSA cannot access via other means (*e.g.,* GSA contract management systems or Federal reporting systems such as the System for Award Management (SAM) or the Federal Procurement Data System (FPDS)).

GSA also plans to implement an API for buyers to benefit from using transactional data. Through the API, GSA will make this information accessible online for all Government buyers. This data will help buyers better understand the universe of GSA purchases; helping them to drive down prices, reduce price variability, and make smarter purchases.

Prior to implementation of transactional data reporting requirements, GSA's Vendor Support Center (*https://vsc.gsa.gov*) will provide instructions and offer training to vendors on how to report transactional data for FSS and non-FSS orders.

Additionally, GSA will update its relevant courseware on the Federal Acquisition Institute (FAI) and Defense Acquisition University (DAU) portals to educate both customers and GSA contracting officers on how to use the data. The Federal Acquisition Service (FAS) has an internal training course aimed at GSA contracting officers awarding and administering FSS contracts—this course will be updated to educate contracting officers on how to conduct analysis on transactional data, as well as how to use these analyses to achieve better pricing on the contracts. Similarly, the external-facing courseware on how to use the FSS program and other non-FSS GWACs and MACs will be updated to educate customers on the new requirements and how they can use the data collected (to be shared by GSA) to buy smarter. The external courseware will also highlight the additional value the collected data offers to GSA's FSS and non-FSS contracting programs.

IV. Executive Orders 12866 and 13356

Executive Orders (E.O.s) 12866 and 13563 direct agencies to assess all costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects, distributive impacts, and equity). E.O. 13563 emphasizes the importance of quantifying both costs and benefits, of reducing costs, of harmonizing rules, and of promoting flexibility. This is not a significant regulatory action and, therefore, was not subject to review under section 6(b) of E.O. 12866, Regulatory Planning and Review, dated September 30, 1993. This rule is not a major rule under 5 U.S.C. 804.

V. Regulatory Flexibility Act

GSA expects this proposed rule to have a significant economic impact on a substantial number of small entities within the meaning of the Regulatory Flexibility Act, 5 U.S.C. 601, *et seq.,* because the proposed rule involves providing transactional data on FSS and non-FSS orders and transactional data that may ultimately affect the end pricing of products offered through GSA. However, the cost to comply with the additional reporting requirement may be offset by the benefits provided by the transactional data, such as greater insight and visibility into customer buying habits and knowledge of market competition.

An additional benefit to FSS contractors is that the addition of the transactional data reporting clause would be coupled with an alternate version of GSAR clause 552.238–75

Price Reductions that does not require customer tracking where the vendor monitors and provides price reductions to the Government when the customer or category of customer upon which the contract was predicated receives a discount. GSAR clause 552.238–75, Price Reductions has long been the mechanism through which GSA ensures prices on contract remained fair and reasonable. However, with transactional data, contracting officers will have a new, potentially more effective and less burdensome mechanism through which to ensure contract pricing is competitive and fair and reasonable, although vertical pricing analysis techniques can still be used.

Providing the required transactional data will impose significant economic impact on all contractors, both small and other than small, doing business on GSA-managed contracts. Therefore, an Initial Regulatory Flexibility Analysis (IRFA) has been prepared consistent with 5 U.S.C. 603, and is summarized as follows:

The General Services Administration (GSA) is proposing to amend General Services Administration Acquisition Regulation (GSAR) to add an alternate to clause 552.238–74 Industrial Funding Fee (IFF) and Sales Reporting, and new clause 552.216–75 Sales Reporting and Fee Remittance to require transactional data reporting in FSS and non-FSS contract vehicles. The clause will require GSA contractors to provide transactional data, which is equivalent to information found on an itemized invoice, to GSA. This will further the objective to improve category management and negotiate better pricing on all GSA acquisition vehicles. Collecting transactional data on orders and prices paid will allow customers to analyze spending patterns and develop new acquisition strategies to fully leverage the Government's spend.

GSA is undertaking a major modernization initiative aimed at enabling customers to drive better value and achieve taxpayer savings by setting the stage for pricing reform. A major characteristic of modernization is collecting and using transactional data for units under most GSA acquisition vehicles to serve as a basis for price analysis and category management.

This rule will apply to all contractors who hold non-FSS contract vehicles as well as to all FSS contract holders, contingent on beneficial results being demonstrated through a pilot conducted on a subset of FSS contracts for products and commoditized services. As of Fiscal Year 2013, there are 15,738 vendors holding 18,598 FSS and non-FSS contract vehicles. Of the 15,738 vendors, 12,590 are small entities to which the rule will apply. Only those contracts with sales would have data to report. Department of Veteran Affairs FSS holders are not affected.

During the development of the rule, GSA considered using one of its many internal applications that support pre-award and post-award actions for GSA contracts to pull the transactional data necessary for more robust price analysis. These internal applications facilitate data exchanges between GSA and its vendors to provide business intelligence, create procurement sources, facilitate acquisitions, execute deliveries, and provide customer care. GSA uses this information to update systems architecture, to develop new applications for contract administration, and to enhance business intelligence for suppliers and ordering activities. Unfortunately, most of these systems do not collect transactional data at a level that would be of benefit for spend analysis and/or do not possess the most accurate and timely information regarding purchasing activity. Approximately 13 percent of GSA-controlled sales, which includes purchases made by GSA's Assisted Acquisition Services activity on behalf of customer agencies, can capture transactional data; for the remaining majority of purchases (87 percent), the customer and supplier are the only sources of detailed transaction-level data.

Another option for transactional data sourcing would be to enhance or combine existing GSA systems to collect the data. GSA would incur significant IT development costs for the effort. Were GSA to invest the time and resources into an enterprise-wide system that could handle procurement functions and spend analysis, then customers and suppliers would need to commit to use electronic commercial tools such as eBuy and Advantage!®. Without the 100 percent commitment of individual customers, the data will be incomplete—possibly to a large extent—and may significantly skew any subsequent analysis on cost savings and/or purchasing decisions.

GSA's SmartPay program (the program that manages the governmentwide purchase card) is another source where transactional data could be collected, and has been on a limited basis following commercial standards for the past several years on sub-sets of several FSS contracts. However, with less than 1 percent of procurements being made through the purchase card, this method would not provide a complete set of data to achieve the full benefits of capturing transactional data.

Finally, FPDS could be upgraded to collect transactional data. However, this would require Federal Acquisition Regulation revisions, tens of millions of dollars in system changes, and years to implement. Additionally, ordering activities do not normally collect transactional data, so agency financial procedures and systems would have to be overhauled in order to accommodate transactional data collection.

The Regulatory Secretariat has submitted a copy of the Initial Regulatory Flexibility Analysis (IRFA) to the Chief Counsel for Advocacy of the Small Business Administration. A copy of the IRFA may be obtained from the Regulatory Secretariat. GSA invites comments from small business concerns and other interested parties on the expected impact of this rule on small entities.

GSA will also consider comments from small entities concerning the existing regulations in subparts affected by this rule in accordance with 5 U.S.C. 610. Interested parties must submit such comments separately and should cite 5 U.S.C. 601, *et seq.* (GSAR Case 2013–G504), in correspondence.

VI. Paperwork Reduction Act

The Paperwork Reduction Act (44 U.S.C. Chapter 35) applies. The proposed rule contains information collection requirements. Accordingly, the Regulatory Secretariat will be submitting a request for approval of a new information collection requirement concerning this rule to the Office of Management and Budget under 44 U.S.C. 3501, *et seq.*

GSA estimates the proposed rule will result in a net burden reduction of approximately 757,000 hours per year based on the difference in current reporting requirement (*i.e.* GSAR clause 552.238–75) and the proposed reporting requirements (*i.e.* clause 552.238–74 Industrial Funding Fee and Sales Reporting (Federal Supply Schedule) Alternate I and clause 552.216–75 Sales Reporting and Fee Remittance). The analysis of this calculation as well as the assumptions made to support this analysis is presented below.

A. New Reporting Requirements

GSA estimates the public reporting burden for contractors to set-up transactional data reporting systems to average a one-time initial set-up burden of 6 hours. The estimated time includes the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. GSA also took into consideration training, compliance systems, negotiations, and audit preparation the new clause may require, when estimating the one-time initial set-up of 6 hours.

Thereafter, the monthly burden estimate to report data is approximately .52 of an hour or 31 minutes. This number takes into consideration the distribution of contract values (*i.e.* sales) and assumes monthly reporting burden rises with vendor sales based on the distribution of sales and obligations within FSS contracts and non-FSS contracts. There is a wide variation in contract sales, therefore monthly reporting burden ranges between 2 minutes (for contractors with $0 in sales) and 4 hours (for contractors with greater than $50 million in sales). GSA estimates that only the top 0.6 percent of FSS contractors and top 4 percent of non-FSS contractors will be affected the

most. The average GSA contractor will see little or no effect of the new reporting requirement.

A weighted average was used, based on distribution of sales, to calculate a reporting burden. To arrive at the weighted average, vendors were broken up into six categories, based on contract values. The characteristics of these categories of contracts in FY 2013 are as follows:

Category 1: Contract value is less than $0. The estimated burden for this category per contractor is 0.03 hours (2 minutes) a month, or 0.36 hours (21.8 minutes) annually. This makes up 37 percent of FSS contractors and 8 percent of non-FSS vendors. The total annual burden for this category is estimated as 2,620 hours.

Category 2: Contract value is $1–$500,000. The estimated burden for this category per contractor is 0.5 hours (30 minutes) a month, or 6 hours annually. This category makes up 41 percent of FSS contractors and 24 percent of non-FSS vendors. The total annual burden for this category is estimated as 44,884 hours.

Category 3: Contract value is $500,000–$5,000,000. The estimated burden for this category per contractor is 1 hour per month, or 12 hours annually. This category makes up 17 percent of FSS contractors and 43 percent of non-FSS vendors. The total annual burden for this category is estimated as 38,956 hours.

Category 4: Contract value is $5,000,000–$20,000,000. The estimated burden for this category per contractor is 2 hours per month, or 24 hours annually. This category makes up 4 percent of FSS contractors and 17 percent of non-FSS vendors. The total annual burden for this category is estimated as 17,293 hours.

Category 5: Contract value is $20,000,000–$50,000,000. The estimated burden for this category per contractor is 3 hours per month, or 36 hours annually. This category makes up 1 percent of FSS contractors and 5 percent of non-FSS vendors. The total annual burden for this category is estimated as 6,785 hours.

Category 6: Contract value is greater than $50,000,000. The estimated burden for this category per contractor is 4 hours per month, or 48 hours annually. This category makes up 1 percent of FSS contractors and 4 percent of non-FSS vendors. The total annual burden for this category is estimated as 5,094 hours.

Taking the above into consideration, a weighted average was used to calculate an annual burden of 6.3 hours or 0.52 hours per month since reporting will be required monthly.

The cost of reporting was quantified by multiplying the level of effort in hours by an assumed fully loaded hourly rate for contractors ($50 × 136 percent = $68). The annual reporting burden is estimated as follows:

552.216–75 Sales Reporting and Fee Remittance (Transactional Data Reporting Requirement) and 552.238–74 Industrial Funding Fee and Sales Reporting (FEDERAL SUPPLY SCHEDULE) Alternate I

The total public annual burden hours for setup and reporting are 223,906.32 based on the following:

Non-FSS Contracts
(One-time initial setup)
Respondents: 477.
Responses Per Respondent: × 1.
Total Responses: 477.
Hours Per Response: × 6.
Total Burden Hours: 2,862.

Non-FSS Contracts
(Reporting)
Respondents: 477.
Responses Per Respondent: × 12.
Total Responses: 5,724.
Hours Per Response: × 0.52.
Total Burden Hours: 2,976.48.

The annual estimated total burden hours for non-FSS contracts are 5,838.48 for year one and 2,976.48 for every year thereafter.

FSS Contracts
(One-time initial setup)
Respondents: 17,816.
Responses Per Respondent: × 1.
Total Responses: 17,816.
Hours Per Response: × 6.
Total Burden Hours: 106,896.

FSS Contracts
(Reporting)
Respondents: 17,816.
Responses Per Respondent: × 12.
Total Responses: 213,792.
Hours Per Response: × 0.52.
Total Burden Hours: 111,171.84.

The annual estimated total burden hours for FSS contracts are 218,067.84 for year one and 111,171.84 for every year thereafter.

The total annual estimated cost to the public for the Transactional Data Reporting GSAR clauses (552.216–75 and 552.238–74 Alternate I) and is estimated to be $15,225,629.76 based on the following:

Non-FSS
(One-time initial setup)
Respondents: 477.
Responses per respondent: × 1.
Total annual responses: 477.
Preparation hours per response: × 6.
Total response burden hours: 2,862.
Average hourly wages ($50.00+36 percent overhead): × 68.
Estimated cost to the public: $194,616.

Non-FSS
(Reporting)
Respondents: 477.
Responses per respondent: × 12.
Total annual responses: 5,724.
Preparation hours per response: × .52.
Total response burden hours: 2,976.48
Average hourly wages ($50.00+36 percent overhead): × 68.
Estimated cost to the public: $202,400.64.

Estimated cost to the public for Non-MAS contracts is: $397,016.64 for year one and $202,400.64 for every year thereafter.

FSS Contracts
(One-time initial set up)
Respondents: 17,816.
Responses per respondent: × 1.
Total annual responses: 17,816.
Preparation hours per response: × 6.
Total response burden hours: 106,896.00
Average hourly wages ($50.00+36 percent overhead): × 68.00.
Estimated cost to the public: $7,268,928.

FSS
(Reporting)
Respondents: 17,816.
Responses per respondent: × 12.
Total annual responses: 213,792.
Preparation hours per response: × .52.
Total response burden hours: 111,171.84.
Average hourly wages ($50.00+36 percent overhead): 68.00.
Estimated cost to the public: $7,559,685.12.

The total estimated cost to the public for FSS contracts is $14,828,613.12 for year one and $7,559,687.12 for every year thereafter.

There are 18,293 contracts containing the transactional data reporting requirement. Data submitted by respondents is submitted and stored electronically. Retrieval of cumulative data requires approximately 1 hour each month (1*12) for a total of 12 hours annually; and costs the Government $9,015,522.12 annually.

Requests per year 18,293.
Reviewing Time (1*12) × 12.
Total Review Time/year 219,516.
Average Cost/hr × 41.07.
Total Government Cost $9,015,522.12.

The cost of $41.07 per hour is based on GS–12, step 5 salary (Salary Table 2014–DCB Washington-Baltimore, DC–MD–VA–WV–PA, Effective January 2014).

Difference in Reporting Requirements

Acceptance of GSAR Alternate I, 552.238–74 Industrial Funding Fee and

Sales Reporting (Federal Supply Schedule), also triggers the inclusion of Alternate II, 552.238–75 Price Reductions. Unlike the basic Price Reductions GSAR clause, Alternate II of 552.238–75 does not require the vendor to monitor and provide price reductions to the Government when the customer or category of customer upon which the contract was predicated receives a discount. In other words, there will be no reporting burden for GSAR Alternate II, 552.238–75 Price Reductions.

The current total estimated reporting burden hours for GSAR clause 552.238–75 Price Reductions is 868,150 with annual burden cost of approximately $58.5 million (see OMB control number 3090–0235). The total annual estimated reporting burden hours for the new Transactional Data Reporting clause is 111,171.84 with annual burden cost of $7,559,685.12. Therefore, the net annual burden reduction is 756,978.16 hours with annual burden savings of approximately $51 million.

B. Request for Comments Regarding Paperwork Burden

Submit comments, including suggestions for reducing this burden, not later than Monday, May 4, 2015 to: General Services Administration, Regulatory Secretariat Division (MVCB), ATTN: Hada Flowers, 1800 F Street NW., 2nd Floor, Washington, DC 20405–0001.

Public comments are particularly invited on: Whether this collection of information is necessary for the proper performance of functions of the GSAR, and will have practical utility; whether our estimate of the public burden of this collection of information is accurate, and based on valid assumptions and methodology; ways to enhance the quality, utility, and clarity of the information to be collected; and ways in which we can minimize the burden of the collection of information on those who are to respond, through the use of appropriate technological collection techniques or other forms of information technology.

Requesters may obtain a copy of the supporting statement from the General Services Administration, Regulatory Secretariat (MVCB), ATTN: Hada Flowers, 1800 F Street NW., 2nd Floor, Washington, DC 20407. Please cite OMB Control Number 3090–0306, Transactional Data Reporting: GSAR Part Affected: 552.238–74, Industrial Funding Fee and Sales in all correspondence.

List of Subjects in 48 CFR Parts 501, 516, 538 and 552

Government procurement.

Dated: February 25, 2015.

Jeffrey A. Koses,

Senior Procurement Executive, Office of Acquisition Policy, Office of Government-wide Policy, General Services Administration.

Therefore, GSA proposes to amend 48 CFR parts 501, 516, 538, and 552 as set forth below:

■ 1. The authority citation for 48 CFR parts 501, 516, 538, and 552 continues to read as follows:

Authority: 40 U.S.C 121(c).

PART 501—GENERAL SERVICES ADMINISTRATION ACQUISITION REGULATION SYSTEM

501.106 [Amended]

■ 2. Amend section 501.106 in the table, by adding in numerical sequence, GSAR Reference ''552.216–75'' and its corresponding OMB Control Number ''3090–XXXX''.

PART 516—TYPES OF CONTRACTS

■ 3. Amend section 516.506 by adding paragraph (d) to read as follows:

516.506 Solicitation provisions and contract clauses.

* * * * *

(d) The contracting officer may insert clause 552.216–75 in solicitations and GSA-awarded IDIQ contracts. This clause should be included in all GSA-awarded Governmentwide acquisition contracts and multi-agency contracts.

PART 538—FEDERAL SUPPLY SCHEDULE CONTRACTING

■ 4. Amend section 538.273 by revising paragraphs (b)(1) and (2) to read as follows:

538.273 Contract clauses.

* * * * *

(b) * * *

(1) 552.238–74, Industrial Funding Fee and Sales Reporting. Use Alternate I for Federal Supply Schedules with Transactional Data Reporting Requirements. Clause 552.238–75 Alternate II should also be used when vendors agree to include clause 552.238–74 Alternate I in the contract.

(2) 552.238–75, Price Reductions (May 2004).

(i) Except in cases where Alternate II is used, use Alternate I in solicitations and contracts for:

(A) Federal Supply Schedule 70;

(B) The Consolidated Schedule containing information technology Special Item Numbers;

(C) Federal Supply Schedule 84; and

(D) Federal Supply Schedules for recovery purchasing (see 538.7102).

(ii) Use Alternate II for Federal Supply Schedules with Transactional Data Reporting Requirements. This alternate clause is used when vendors agree to include clause 552.238–74 Alternate I;

(iii) Federal Supply Schedule 84; and

(iv) Federal Supply Schedules for recovery purchasing (see 538.7102).

* * * * *

PART 552—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

■ 5. Amend section 552.212–71 by revising the introductory text to read as follows:

552.212–71 Contract Terms and Conditions Applicable to GSA Acquisition of Commercial Items.

As prescribed in 512.301(a)(1), insert the following clause:

* * * * *

■ 6. Add section 552.216–75 to read as follows:

552.216–75 Transactional Data Reporting.

As prescribed in 516.506(d), insert the following provision:

Transactional Data Reporting (Date)

(a) *Definitions:*

(1) *Contract sale* is the price paid by the ordering activity for the product or service on the task or delivery order placed against this contract. Contract sales include contract items sold to authorized users unless the purchase was conducted pursuant to a separate contracting authority, such a separately awarded FAR part 12, FAR part 13, FAR part 14, or FAR part 15 procurement; or a non-FAR contract.

(2) *Transactional data* is historical information encompassing the products and services delivered during the performance of a contract.

(b) *Reporting of Contract Sales.* The Contractor shall report all contract sales under this contract as follows:

(1) The Contractor shall electronically report contract sales monthly, including ''zero'' sales, by utilizing the automated reporting system at an Internet Web site designated by the General Services Administration (GSA) or by uploading the data according to GSA instructions. Each report shall be submitted within 15 calendar days of the applicable monthly reporting period. The Web site address, as well as registration instructions and reporting procedures, will be provided at the time of award.

(2) The Contractor shall provide, at no cost to the Government, the following transactional data elements, as applicable—

(i) Contract or BPA Number;

(ii) Order Number/Procurement Instrument Identifier (PIID);

(iii) Non Federal Entity, if applicable;

(iv) Description of Deliverable;

(v) Manufacturer Name;

(vi) Manufacturer Part Number;

(vii) Unit Measure (each, hour, case, lot);

(viii) Quantity of Item Sold;

(ix) Universal Product Code (UPC), if applicable;

(x) Price Paid per Unit; and

(xi) Total Price.

(3) GSA will post reporting instructions at *https://vsc.gsa.gov/*. GSA reserves the unilateral right to change reporting instructions, including data submission requirements, following 60 days advance notification to the Contractor.

(4) The Contractor shall report contract sales in U.S. dollars.

(5) The reported contract sales value shall include the Contractor Access Fee (CAF).

(6) The Contractor shall maintain a consistent accounting method of contract sales reporting, based on the Contractor's established commercial accounting practice.

(7) The acceptable points at which contract sales may be reported include—

(i) Issuance of an invoice; or

(ii) Receipt of payment.

(8) The Contractor shall continue to furnish reports, including ''zero'' sales, through physical completion of the last outstanding task or delivery order of the contract.

(9) Orders that contain classified information are exempt from this reporting requirement (See FAR 4.606(c)).

(c) *Contractor Access Fee (CAF).* (1) The CAF represents a percentage of the total quarterly sales reported. This percentage is set at the discretion of GSA. GSA has the unilateral right to change the percentage at any time, but not more than once per year. GSA provides reasonable notice prior to the effective date of the change. The CAF reimburses GSA for operating costs. Offerors must include the CAF in their prices. The fee is included in the awarded price(s) and reflected in the total amount charged to ordering activities.

(2) Within 60 days of award, a GSA representative will provide the Contractor with specific written procedural instructions on remitting the CAF. GSA reserves the unilateral right to change such instructions following notification to the Contractor.

(3) The Contractor shall remit the CAF at the rate set by GSA within 15 calendar days after the end of the calendar month. Final payment shall be remitted within 30 days after physical completion of the last outstanding task order or delivery order of the contract.

(4) The Contractor shall remit the CAF to GSA in U.S. dollars.

(5) Failure to remit the full amount of the CAF within 15 calendar days after the end of the applicable reporting period constitutes a contract debt to the United States Government under the terms of FAR Subpart 32.6. The Government may exercise all rights under the Debt Collection Improvement Act of 1996, including withholding or setting off payments and interest on the debt (see FAR clause 52.232–17, Interest). Should the Contractor fail to submit the required sales reports, falsify them, or fail to timely pay the CAF, this is sufficient cause for the Government to terminate the contract for cause.

(End of Clause)

■ 7. Amend section 552.238–74 by revising the date of the clause; and adding Alternate I to read as follows:

552.238–74 Industrial Funding Fee and Sales Reporting.

* * * * *

Industrial Funding Fee and Sales Reporting (Date)

* * * * *

Alternate I (*Date*): As prescribed in 538.273(b)(1), substitute the following paragraphs (a), (b), and (c) for paragraphs (a), (b), and (c) of the basic clause:

(a) *Definitions.*

(1) *Contract sale* is the price paid by the ordering activity for the product or service on the task or delivery order placed against this contract. Contract sales include contract items sold to authorized users unless the purchase was conducted pursuant to a separate contracting authority, such as a Governmentwide Acquisition Contract (GWAC); a separately awarded FAR part 12, FAR part 13, FAR part 14, or FAR part 15 procurement; or a non-FAR contract. Sales made to state and local governments under Cooperative Purchasing authority shall be counted as reportable sales.

(2) *Transactional data* is historical information encompassing the products and services delivered during the performance of a contract.

(b) *Reporting of Contract Sales.* The Contractor shall report all contract sales under this contract as follows:

(1) The Contractor shall electronically report contract sales monthly, including ''zero'' sales, by utilizing the automated reporting system at an Internet Web site designated by the General Services Administration (GSA) or by uploading the data according to GSA instructions. Each report shall be submitted within 15 calendar days of the applicable monthly reporting period. The Web site address, as well as registration instructions and reporting procedures, will be provided at the time of award.

(2) The Contractor shall provide, at no cost to the Government, the following transactional data elements, as applicable—

(i) Contract or BPA Number;

(ii) Order Number/Procurement Instrument Identifier (PIID);

(iii) Non Federal Entity, if applicable;

(iv) Description of Deliverable;

(v) Manufacturer Name;

(vi) Manufacturer Part Number;

(vii) Unit Measure (each, hour, case, lot);

(viii) Quantity of Item Sold;

(ix) Universal Product Code (UPC), if applicable;

(x) Price Paid per Unit; and

(xi) Total Price.

(3) GSA will post reporting instructions at *vsc.gsa.gov.* GSA reserves the unilateral right to change reporting instructions, including data submission requirements, following 60 days advance notification to the Contractor.

(4) The Contractor shall report contract sales in U.S. dollars.

(5) The reported contract sales value shall include the Industrial Funding Fee (IFF).

(6) The Contractor shall maintain a consistent accounting method of contract sales reporting, based on the Contractor's established commercial accounting practice.

(7) The acceptable points at which contract sales may be reported include—

(i) Issuance of an invoice; or

(ii) Receipt of payment.

(8) The Contractor shall continue to furnish reports, including ''zero'' sales, through physical completion of the last outstanding task or delivery order of the contract.

(9) Orders that contain classified information are exempt from this reporting requirement (See FAR 4.606(c)).

(c) *Industrial Funding Fee.* The Contractor shall remit the IFF at the rate set by GSA's FAS.

(1) The Contractor shall remit the IFF to FAS in U.S. dollars within 30 calendar days after the end of the reporting quarter; final payment shall be remitted within 30 days after physical completion of the last outstanding task order or delivery order of the contract.

(2) The IFF remittance Web site address, as well as registration procedures and remittance instructions, will be provided at the time of award or acceptance of this clause. FAS reserves the unilateral right to change such instructions from time to time, following notification to the Contractor.

(3) The IFF represents a percentage of the total quarterly sales reported. This percentage is set at the discretion of GSA's FAS. GSA's FAS has the unilateral right to change the percentage at any time, but not more than once per year. FAS will provide reasonable notice prior to the effective date of the change. The IFF reimburses FAS for the costs of operating the Federal Supply Schedules Program. FAS recoups its operating costs from ordering activities as set forth in 40 U.S.C. 321: Acquisition Services Fund. Net operating revenues generated by the IFF are also applied to fund initiatives benefitting other authorized FAS programs, in accordance with 40 U.S.C. 321. Offerors must include the IFF in their prices. The fee is included in the awarded price(s) and reflected in the total amount charged to ordering activities. FAS will post notice of the current IFF at *https://72a.gsa.gov/* or successor Web site as appropriate.

■ 8. Amend section 552.238–75 by revising the date of the clause; and adding Alternate II to read as follows:

552.238–75 Price Reductions.

* * * * *

Price Reductions (Date)

* * * * *

Alternate II (*Date*). As prescribed in 538.273(b)(2)(ii), substitute the following paragraph (a) for paragraphs (a), (b), (c), (d), (f) and (g) of the basic clause, and paragraph (e) of the basic clause will become paragraph (b) in Alternate II.

The Government may request from the contractor a price reduction at any time during the contract period.

[FR Doc. 2015–04349 Filed 3–3–15; 8:45 am]

BILLING CODE 6820–61–P

Notices

Federal Register

Vol. 80, No. 42

Wednesday, March 4, 2015

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

Forest Service

Eldorado National Forest; California; Eldorado National Forest Over-Snow Vehicle (OSV) Use Designation Environmental Impact Statement

AGENCY: Forest Service, USDA.

ACTION: Notice of intent to prepare an environmental impact statement.

SUMMARY: The Forest Service, U.S. Department of Agriculture will prepare an Environmental Impact Statement (EIS) on a proposal to designate over-snow vehicle (OSV) use on National Forest System roads, National Forest System trails, and Areas on National Forest System lands within the Eldorado National Forest; and to identify snow trails for grooming within the Eldorado National Forest. In addition, the Forest Service proposes to:

1. Formally adopt California State Parks' Off-Highway Motor Vehicle Recreation (OHMVR) Division snow depth standards for grooming to occur;
2. Implement a forest-wide snow depth requirement for OSV use that would provide for public safety and natural and cultural resource protection by allowing off-trail, cross-country OSV use in designated Areas when there is a minimum of 12 inches of continuous and supportable snow covering the landscape;
3. Allow OSV use on designated National Forest System snow trails when there is a minimum of 6 inches of snow, regardless of the underlying surface; and
4. Prohibit OSV use in selected Areas and on non-motorized trails.

This proposal would be implemented on all of the Eldorado National Forest.

DATES: Comments concerning the scope of the analysis must be received by April 3, 2015. The draft environmental impact statement is expected in February 2016 and the final environmental impact statement is expected in October 2016.

ADDRESSES: Send written comments to Micki D. Smith, on behalf of Laurence Crabtree, Forest Supervisor, Eldorado National Forest, 100 Forni Road Placerville, CA 95667. Comments may also be sent via facsimile to 530–621–5297. Comments may also be submitted on the Eldorado National Forest OSV Designation Web page: *http://www.fs.usda.gov/project/?project=46034.*

Individuals who use telecommunication devices for the deaf (TTY) may call the Federal Information Relay Service (FIRS) at (800) 877–8339 TTY, 24 hours a day, 7 days a week.

FOR FURTHER INFORMATION CONTACT: Micki D. Smith, Amador Resource and Recreation Staff Officer, USDA Forest Service, Eldorado National Forest, 100 Forni Road, Placerville, CA 95667; phone: 209–295–5960; *mdsmith@fs.fed.us.*

SUPPLEMENTARY INFORMATION: The following summarizes how the Forest Service currently manages OSV use on the approximately 606,260-acre Eldorado National Forest:

1. Approximately 56 miles of National Forest System OSV trails exist on the Eldorado National Forest; all of which are groomed for OSV use;
2. Approximately 159 miles of National Forest System trails are closed to OSV use, but accessible from Areas otherwise open to off-trail, cross-country OSV use;
3. Approximately 452,140 acres of National Forest System land are open to off-trail, cross-country OSV use; and
4. Approximately 154,120 acres of National Forest System land are closed to OSV use.

Travel Management Rule Subpart C: The Forest Service issued a final rule governing OSV management (Subpart C of the Travel Management Rule, 36 CFR part 212) in the **Federal Register** on January 18, 2015, and this rule went into effect on February 27, 2015 (80 FR 4500, Jan. 28, 2015). Subpart C of the Travel Management Rule states,

''Over-snow vehicle use on National Forest System roads, on National Forest System trails, and in areas on National Forest System lands shall be designated by the Responsible Official on administrative units or Ranger Districts, or parts of administrative units or Ranger Districts, of the National Forest System where snowfall is adequate for that use to occur, and, if appropriate, shall be designated by class of vehicle and time of year, provided that the following uses are exempted from these decisions:

1. Limited administrative use by the Forest Service;
2. Use of any fire, military, emergency, or law enforcement vehicle for emergency purposes;
3. Authorized use of any combat or combat support vehicle for national defense purposes;
4. Law enforcement response to violations of law, including pursuit; and
5. Over-snow vehicle use that is specifically authorized under a written authorization issued under Federal law or regulations'' (36 CFR 212.81(a)).

The designations resulting from this analysis would only apply to the use of OSVs. An OSV is defined in the Forest Service's Travel Management Rule as ''a motor vehicle that is designed for use over snow and that runs on a track or tracks and/or a ski or skis, while in use over snow'' (36 CFR 212.1). OSV use designations made as a result of the analysis in this environmental impact statement would conform to Subpart C of the Travel Management Rule. OSV use that is inconsistent with the OSV use designations made under this decision would be prohibited under 36 CFR 261.14.

These designations would not affect valid existing rights held by federally recognized tribes, counties, or private individuals, including treaty rights, other statutory rights, or private rights-of-way.

Snow Trail Grooming Program: For over 30 years, the Forest Service, Pacific Southwest Region, in cooperation with the California Department of Parks and Recreation (California State Parks) Off-highway Motor Vehicle Division has enhanced winter recreation, and more specifically, snowmobiling recreation by maintaining National Forest System trails (snow trails) by grooming snow for snowmobile use. Most groomed snow trails are co-located on underlying National Forest System roads and trails. Some grooming occurs on county roads and closed snow-covered highways, and some routes are designated cross-country over snow. Grooming activities are funded by the state off-highway vehicle trust fund.

In 2013, the Forest Service entered into a Settlement Agreement with

Snowlands Network et al., to ''complete appropriate NEPA [National Environmental Policy Act] analysis(es) to identify snow trails for grooming'' on the Eldorado National Forest and four other national forests in California. The Forest Service will comply with the terms of the Settlement Agreement for the Eldorado National Forest by completing this analysis. Other requirements of the Settlement Agreement are listed in the ''Need for Analysis'' section, below.

Purpose and Need for Action

One purpose of this project is to effectively manage OSV use on the Eldorado National Forest to provide access, ensure that OSV use occurs when there is adequate snow, promote the safety of all users, enhance public enjoyment, minimize impacts to natural and cultural resources, and minimize conflicts among the various uses.

There is a need to provide a manageable, designated OSV system of trails and Areas within the Eldorado National Forest, that is consistent with and achieves the purposes of the Forest Service Travel Management Rule at 36 CFR part 212. This action responds to direction provided by the Forest Service's Travel Management Rule.

The existing system of available OSV trails and Areas on the Eldorado National Forest is the culmination of multiple agency decisions over recent decades. Public OSV use of the majority of this available system continues to be manageable and consistent with current travel management regulations. Exceptions have been identified, based on internal and public input and the criteria for designating roads, trails, and Areas listed at 36 CFR 212.55. These include needs to provide improved access for OSV users and enact prohibitions required by the Eldorado National Forest Land and Resource Management Plan (Forest Plan) and other management direction. These exceptions represent additional needs for change, and in these cases, changes are proposed to meet the overall objectives.

The Forest Service has identified trails and Areas in which OSV use should be prohibited based on management direction in the Forest Plan. These trails and areas are currently managed as closed to OSV use through temporary closure orders to comply with Forest Plan direction. However, those closure orders will eventually expire. Therefore, the proposed action will prohibit OSV use on these trails and in these Areas on a more permanent basis to be consistent with the Forest Plan.

A second purpose of this project is to identify snow trails where the Forest Service or its contractors would conduct grooming for OSV use. Under the terms of the Settlement Agreement between the Forest Service and Snowlands Network et al., the Forest Service is required to complete the appropriate NEPA analysis to identify snow trails for grooming on the Eldorado National Forest.

The snow trail grooming analysis would also address the need to provide a safe, high-quality snowmobile trail system on the Eldorado National Forest that is smooth and stable for the rider. Groomed trails are designed so that the novice rider can use them safely and without difficulty.

Need for Analysis

Subpart C of the Forest Service Travel Management Regulation requires the Forest Service to designate over-snow vehicle (OSV) use on National Forest System roads, National Forest System trails, and Areas on National Forest System lands. Both decisions will be informed by an analysis as required by the National Environmental Policy Act (42 U.S.C. 4321 *et seq.*).

Subpart C of the Travel Management Regulation specifies that all requirements of subpart B of the Travel Management Regulations will continue to apply to the designation decision, including:

1. Public involvement as required by the National Environmental Policy Act (36 CFR 212.52);
2. Coordination with Federal, State, county, and other local governmental entities and tribal governments (36 CFR 212.53);
3. Revision of designations (36 CFR 212.54);
4. Consideration of the criteria for designation of roads, trails, and Areas (36 CFR 212.55);
5. Identification of designated uses on a publicly available use map of roads, trails, and Areas (36 CFR 212.56); and
6. Monitoring of effects (36 CFR 212.57).

Pursuant to the Settlement Agreement, the Forest Service is required to complete an appropriate NEPA analysis to identify snow trails for grooming. Furthermore, additional terms of the Settlement Agreement require the Forest Service to:

1. Analyze ancillary activities such as the plowing of related parking lots and trailheads as part of the effects analysis;
2. Consider a range of alternative actions that would result in varying levels of snowmobile use; and
3. Consider an alternative submitted by Plaintiffs and/or Interveners during the scoping period in the NEPA analysis so long as the alternative meets the purpose and need, and is feasible and within the scope of the NEPA analysis.

Proposed Action

The Forest Service proposes several actions on the Eldorado National Forest to be analyzed as required by the National Environmental Policy Act (NEPA). The actions proposed are as follows:

1. To designate OSV use on National Forest System roads, National Forest System trails, and Areas on National Forest System lands within the Eldorado National Forest where snowfall depth is adequate for that use to occur. This would result in no change in the number of miles of snow trail and acres of OSV Areas on the Eldorado National Forest where OSV use would be allowed, subject to snow depth restrictions. All existing OSV prohibitions applying to Areas or trails would continue. OSV use that is inconsistent with the designations made under this project would be prohibited under 36 CFR 261.14.

2. To enact OSV prohibitions of a more permanent nature than the temporary closures that currently exist in the following Areas and trails, consistent with management direction in the Forest Plan:

a. Caples Creek Recommended Wilderness;

b. Primitive High Country;

c. Areas within Semi-primitive Non-motorized High Country: Little McKinstry, Shadow Lake, Rockbound, July Flat, Bryan Meadow, Devils Lake, Hidden Lake, and Little Indian;

d. Research Natural Areas (RNAs): Peavine RNA, and Station Creek RNA;

e. Special Use permitted areas: Kirkwood Mountain and Kirkwood Nordic Ski Resorts, Sierra-at-Tahoe Resort, Adventure Mountain, and Echo Summit Nordic area;

f. Rock Creek Critical Deer Winter Range;

g. Loon Lake Winter Recreation Area (including forest developed roads);

h. Emigrant Lake Trail;

i. Carson-Emigrant National Recreation Trail from Horse Canyon Saddle to Caples Lake Trailhead; and

j. Rock Creek Trails (including Mar Det).

3. To identify approximately 56 miles of designated snow trails that would be groomed on the Eldorado National Forest for OSV use. Our trail mileages are estimates only and we are currently reviewing the status of trails where there is uncertainty regarding Forest Service jurisdiction or grooming authorization, such as trails located on

private property, or county roads that groomed trails have historically passed through.

4. To groom trails consistent with historical grooming practices, when there are 12 or more inches of snow, and formally adopt California State Parks' Off-Highway Motor Vehicle Recreation (OHMVR) Division snow depth standards for grooming to occur.

5. To implement a forest-wide snow depth requirement for OSV use that would provide for public safety and natural and cultural resource protection by allowing off-trail, cross-country OSV use in designated Areas when there is a minimum of 12 inches of continuous and supportable snow covering the landscape; and allow OSV use on designated National Forest System snow trails when there is a minimum of 6 inches of snow, regardless of the underlying surface. When the snow-depth requirement is not met, OSV use would be prohibited.

These actions would begin immediately upon the issuance of the record of decision, which is expected in October of 2016. The Forest Service would produce an OSV use map (OSVUM) that would look like the existing motor vehicle use map (MVUM) for the Eldorado National Forest. Such a map would allow OSV enthusiasts to identify the routes and Areas where OSV use would be allowed on the Eldorado National Forest.

Responsible Official

The Eldorado National Forest Supervisor will issue the decision.

Nature of Decision To Be Made

This decision will designate OSV use on National Forest System roads, on National Forest System trails, and in Areas on National Forest System lands on the Eldorado National Forest where snowfall is adequate for that use to occur. It will also identify the National Forest System trails where grooming would occur. The decision would only apply to the use of over-snow vehicles as defined in the Forest Service's Travel Management Regulations (36 CFR 212.1). The Forest Supervisor will consider all reasonable alternatives and decide whether to continue current management of OSV uses on the Eldorado National Forest, implement the proposed action, or select an alternative for the management of OSV uses.

Scoping Process

This notice of intent initiates the scoping process, which guides the development of the environmental impact statement.

It is important that reviewers provide their comments at such times and in such manner that they are useful to the agency's preparation of the environmental impact statement. Written comments should be within the scope of the proposed action, have a direct relationship to the proposed action, and must include supporting reasons for the responsible official to consider. Therefore, comments should be provided prior to the close of the comment period and should clearly articulate the reviewer's concerns and contentions. The preferred format for attachments to electronically submitted comments would be as an MS Word document. Attachments in portable document format (pdf) are not preferred, but are acceptable.

Comments received in response to this solicitation, including names and addresses of those who comment, will be part of the public record for this proposed action. Comments submitted anonymously will be accepted and considered, however.

The Eldorado National Forest Over-Snow Vehicle (OSV) Use Designation is an activity implementing a land management plan. It is not an activity authorized under the Healthy Forests Restoration Act of 2003 (Pub. L. 108–148). Therefore, this activity is subject to pre-decisional administrative review consistent with the Consolidated Appropriations Act of 2012 (Pub. L. 112–74) as implemented by subparts A and B of 36 CFR part 218.

Dated: February 26, 2015.

Laurence Crabtree,

Forest Supervisor, Eldorado National Forest.

[FR Doc. 2015–04459 Filed 3–3–15; 8:45 am]

BILLING CODE 3410–11–P

DEPARTMENT OF COMMERCE

Economic Development Administration

Notice of Petitions by Firms for Determination of Eligibility To Apply for Trade Adjustment Assistance

AGENCY: Economic Development Administration, Department of Commerce.

ACTION: Notice and opportunity for public comment.

Pursuant to Section 251 of the Trade Act 1974, as amended (19 U.S.C. 2341 *et seq.*), the Economic Development Administration (EDA) has received petitions for certification of eligibility to apply for Trade Adjustment Assistance from the firms listed below. Accordingly, EDA has initiated investigations to determine whether increased imports into the United States of articles like or directly competitive with those produced by each of these firms contributed importantly to the total or partial separation of the firm's workers, or threat thereof, and to a decrease in sales or production of each petitioning firm.

LIST OF PETITIONS RECEIVED BY EDA FOR CERTIFICATION ELIGIBILITY TO APPLY FOR TRADE ADJUSTMENT ASSISTANCE

[2/12/2015 through 2/26/2015]

Firm name	Firm address	Date accepted for investigation	Product(s)
LFI, Inc.	1 Industrial Drive South, Smithfield, RI 02917 ..	2/25/2015	The firm manufactures high precision minimally invasive surgical instruments.

Any party having a substantial interest in these proceedings may request a public hearing on the matter. A written request for a hearing must be submitted to the Trade Adjustment Assistance for Firms Division, Room 71030, Economic Development Administration, U.S. Department of Commerce, Washington, DC 20230, no later than ten (10) calendar days following publication of this notice.

Please follow the requirements set forth in EDA's regulations at 13 CFR 315.9 for procedures to request a public hearing. The Catalog of Federal Domestic Assistance official number and title for the program under which these petitions are submitted is 11.313, Trade Adjustment Assistance for Firms.

Dated: February 26, 2015.

Michael S. DeVillo,

Eligibility Examiner.

[FR Doc. 2015–04455 Filed 3–3–15; 8:45 am]

BILLING CODE 3510–WH–P

DEPARTMENT OF COMMERCE

Foreign-Trade Zones Board

[B–80–2014]

Foreign-Trade Zone (FTZ) 127—West Columbia, South Carolina; Authorization of Production Activity; Komatsu America Corporation (Material Handling, Construction and Forestry Machinery); Newberry, South Carolina

On October 28, 2014, Komatsu America Corporation submitted a notification of proposed production activity to the Foreign-Trade Zones (FTZ) Board for its facility within FTZ 127—Site 3, located in Newberry, South Carolina.

The notification was processed in accordance with the regulations of the FTZ Board (15 CFR part 400), including notice in the **Federal Register** inviting public comment (79 FR 67414–67415, 11–13–2014). The FTZ Board has determined that no further review of the activity is warranted at this time. The production activity described in the notification is authorized, subject to the FTZ Act and the Board's regulations, including Section 400.14.

Dated: February 25, 2015.

Andrew McGilvray,

Executive Secretary.

[FR Doc. 2015–04494 Filed 3–3–15; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

Foreign-Trade Zones Board

[B–14–2015]

Foreign-Trade Zone 21—Charleston, South Carolina Application for Reorganization/Expansion Under Alternative Site Framework

An application has been submitted to the Foreign-Trade Zones (FTZ) Board by the South Carolina State Ports Authority, grantee of FTZ 21, requesting authority to reorganize and expand the zone under the alternative site framework (ASF) adopted by the FTZ Board (15 CFR 400.2(c)). The ASF is an option for grantees for the establishment or reorganization of zones and can permit significantly greater flexibility in the designation of new subzones or ''usage-driven'' FTZ sites for operators/users located within a grantee's ''service area'' in the context of the FTZ Board's standard 2,000-acre activation limit for a zone. The application was submitted pursuant to the Foreign-Trade Zones Act, as amended (19 U.S.C. 81a–81u), and the regulations of the Board (15 CFR part 400). It was formally docketed on February 25, 2015.

FTZ 21 was approved by the FTZ Board on June 12, 1975 (Board Order 106, 40 FR 25613, June 17, 1975), and expanded on February 28, 1995 (Board Order 734, 60 FR 12735, March 8, 1995), on June 20, 1996 (Board Order 832, 61 FR 33491, June 27, 1996), on October 23, 1996 (Board Order 850, 61 FR 57383–57384, November 6, 1996), on June 20, 1997 (Board Order 905, 62 FR 36044–36045, July 3, 1997), on September 5, 1997 (Board Order 918, 62 FR 48591, September 16, 1997), on July 25, 2000 (Board Order 1112, 65 FR 47953, August 4, 2000) and on April 1, 2010 (Board Order 1675, 75 FR 24583–24584, May 5, 2010).

The current zone includes the following sites: *Site 5* (267 acres)—terminal complex at the Port of Charleston, 1 Immigration St., Charleston; *Site 6* (19 acres)—Meadow Street Business Park, 4 Meadow St., Loris; *Site 9* (548 acres)—Charleston Business Park, Clements Ferry Road, Charleston; *Site 15* (24 acres)—Robert Bosch Inc., 3298 Benchmark Drive and 4597 Appian Way, North Charleston; *Site 16* (343 acres)—Bushy Park Industrial Park, 1588 Bushy Park Rd., Goose Creek; *Site 17* (190 acres, sunset 4/30/15)—Jedburg Industrial Park, 1090 Newton Way, Summerville; *Site 18* (291 acres, sunset 4/30/15)—Rockefeller Foreign-Trade Zone, Drop Off Road and Interstate 26, Summerville; *Site 21* (445 acres, sunset 4/30/15)—Orangeburg City/County Industrial Park, 348 Millennium Drive, Orangeburg; *Site 22* (284 acres, expires 4/30/15)—Southern Patio Industrial Park, 1000 Southern Patio Parkway, Rowesville; *Site 23* (178 acres, sunset 4/30/15)—Colleton County Commerce Park, Interstate 95 and McLeod Road, Walterboro; *Site 26* (7.98 acres, expires 12/31/15)—MAHLE Behr Charleston, Inc., 4500 Leeds Avenue, Charleston; *Site 27* (2 acres, expires 12/31/15)—Tides Trading Enterprises, 578 Meeting St., Charleston; *Site 28* (4 acres, expires 12/31/15)—Tides Trading Enterprises, 2509 Clements Ferry Road, Charleston; *Site 29* (8 acres, expires 12/31/15)—PTR Industries, 101 Cool Springs Drive, Aynor; *Site 30* (5.5 acres, expires 12/31/15)—CMMC, LLC, 1210 Truxtun Avenue, N. Charleston; *Site 31* (6 acres, expires 12/31/15)—American Tactical Imports, Inc., 231 Deming Way, Summerville; and, *Site 32* (12 acres, expires 12/31/15)—Alkane Trucks/CLG–SC, Inc., 2725 W. 5th North Street, Summerville.

The grantee's proposed service area under the ASF would be: The Counties of Charleston, Berkeley, Dorchester and Orangeburg within and adjacent to the Charleston Customs and Border Protection port of entry; the Counties of Williamsburg and Georgetown in their entirety and portions of Horry, Florence, and Marion Counties within and adjacent to the Georgetown, South Carolina Customs and Border Protection port of entry; and, the Counties of Colleton, Jasper, Hampton and Beaufort adjacent to the Savannah, Georgia Customs and Border Protection port of entry, as described in the application. If approved, the grantee would be able to serve sites throughout the service area based on companies' needs for FTZ designation.

The applicant is requesting authority to reorganize and expand its existing zone as follows: Modify Site 5 by restoring 109 acres at Parcel 5—Coal Tipple and by including 109 acres at Parcel 7—Columbus Street Terminal on a permanent basis (new total acreage = 376 acres); Sites 5 (modified), 9, 16, 17, 18, 21, 22 and 23 would become ''magnet'' sites; and, Sites 6, 15, 26, 27, 28, 29, 30, 31 and 32 would become ''usage-driven'' sites. The ASF allows for the possible exemption of one magnet site from the ''sunset'' time limits that generally apply to sites under the ASF, and the applicant proposes that Site 5 be so exempted. No subzones/usage-driven sites are being requested at this time. The application would have no impact on FTZ 21's previously authorized subzones.

In accordance with the FTZ Board's regulations, Kathleen Boyce of the FTZ Staff is designated examiner to evaluate and analyze the facts and information presented in the application and case record and to report findings and recommendations to the FTZ Board.

Public comment is invited from interested parties. Submissions shall be addressed to the FTZ Board's Executive Secretary at the address below. The closing period for their receipt is May 4, 2015. Rebuttal comments in response to material submitted during the foregoing period may be submitted during the subsequent 15-day period to May 18, 2015.

A copy of the application will be available for public inspection at the Office of the Executive Secretary, Foreign-Trade Zones Board, Room 21013, U.S. Department of Commerce, 1401 Constitution Avenue NW., Washington, DC 20230–0002, and in the ''Reading Room'' section of the FTZ Board's Web site, which is accessible via *www.trade.gov/ftz.* For further information, contact Kathleen Boyce at *Kathleen.Boyce@trade.gov* or (202) 482–1346.

Dated: February 26, 2015.

Andrew McGilvray,

Executive Secretary.

[FR Doc. 2015–04505 Filed 3–3–15; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

Proposed Information Collection; Comment Request; Reporting of Sea Turtle Incidental Take in Virginia Chesapeake Bay Pound Net Operations

AGENCY: National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Notice.

SUMMARY: The Department of Commerce, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995.

DATES: Written comments must be submitted on or before May 4, 2015.

ADDRESSES: Direct all written comments to Jennifer Jessup, Departmental Paperwork Clearance Officer, Department of Commerce, Room 6616, 14th and Constitution Avenue NW., Washington, DC 20230 (or via the Internet at *JJessup@doc.gov*).

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the information collection instrument and instructions should be directed to Carrie Upite, Greater Atlantic Regional Fisheries Office, National Marine Fisheries Service, 55 Great Republic Drive, Gloucester, MA, 01930; (978) 282–8475; or *carrie.upite@noaa.gov.*

SUPPLEMENTARY INFORMATION:

I. Abstract

This request is for extension of a current information collection.

This action would continue the reporting measure requiring all Virginia Chesapeake Bay pound net fishermen to report interactions with endangered and threatened sea turtles, found both live and dead, in their pound net operations. When a live or dead sea turtle is discovered during a pound net trip, the Virginia pound net fisherman is required to report the incidental take to National Marine Fisheries Service (NMFS) and, if necessary, the appropriate rehabilitation and stranding network. This information will be used to monitor the level of incidental take in the state-managed Virginia pound net fishery and ensure that the seasonal pound net leader restrictions (50 CFR 223.206(d)(10)) are adequately protecting listed sea turtles. Based on the number of sea turtle takes anticipated in the Virginia pound net fishery and the available number of Virginia pound net fishermen and pound nets, the number of responses anticipated on an annual basis is 483.

II. Method of Collection

Reports may be made either by telephone or fax.

III. Data

OMB Control Number: 0648–0470.

Form Number(s): None.

Type of Review: Regular submission (extension of a current information collection).

Affected Public: Individuals or households.

Estimated Number of Respondents: 37.

Estimated Time per Response: 10 minutes.

Estimated Total Annual Burden Hours: 81 hours.

Estimated Total Annual Cost to Public: $111 in recordkeeping/reporting costs.

IV. Request for Comments

Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden (including hours and cost) of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology.

Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval of this information collection; they also will become a matter of public record.

Dated: February 27, 2015.

Sarah Brabson,

NOAA PRA Clearance Officer.

[FR Doc. 2015–04474 Filed 3–3–15; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

Proposed Information Collection; Comment Request; Certification Requirements for Distributors of NOAA Electronic Navigational Charts/NOAA Hydrographic Products

AGENCY: National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Notice.

SUMMARY: The Department of Commerce, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995.

DATES: Written comments must be submitted on or before May 4, 2015.

ADDRESSES: Direct all written comments to Jennifer Jessup, Departmental Paperwork Clearance Officer, Department of Commerce, Room 6616, 14th and Constitution Avenue NW., Washington, DC 20230 (or via the Internet at *JJessup@doc.gov*).

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the information collection instrument and instructions should be directed to Julia Powell (301) 713–0388, ext. 169 or *Julia.Powell@noaa.gov.*

SUPPLEMENTARY INFORMATION:

I. Abstract

This request is for extension of a currently approved information collection.

NOS Office of Coast Survey manages the Certification Requirements for Distributors of NOAA Electronic Navigational Charts (NOAA ENCs®). The certification allows entities to download, redistribute, repackage, or in some cases reformat, official NOAA ENCs and retain the NOAA ENC's official status. The regulations for implementing the Certification are at 15 CFR part 995. The recordkeeping and reporting requirements of 15 CFR part 995 form the basis for this collection of information. This information allows the Office of Coast Survey to administer the regulation, and to better understand the marketplace resulting in products to that meet the needs of the customer in a timely and efficient manner.

II. Method of Collection

Responses from the Certified ENC Distributors are all electronic and sent

via email. All distributors have an Excel spreadsheet which they submit for the twice-yearly report.

III. Data

OMB Control Number: 0648–0508.

Form Number(s): None.

Type of Review: Regular submission (extension of a currently approved information collection).

Affected Public: Not-for-profit institutions; business or other for-profits organizations.

Estimated Number of Respondents: 8.

Estimated Time per Response: 1 hour to provide a distribution report twice a year, 12 hours for reporting of errors in the ENC (approximately 4 per month, usually each distributor will catch the same issue).

Estimated Total Annual Burden Hours: 88.

Estimated Total Annual Cost to Public: $0 in recordkeeping/reporting costs.

IV. Request for Comments

Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden (including hours and cost) of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology.

Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval of this information collection; they also will become a matter of public record.

Dated: February 27, 2015.

Sarah Brabson,

NOAA PRA Clearance Officer.

[FR Doc. 2015–04475 Filed 3–3–15; 8:45 am]

BILLING CODE 3520–JE–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

RIN 0648–XD792

Caribbean 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 Caribbean Fishery Management Council's (Council) Scientific and Statistical Committee (SSC) will hold a meeting.

DATES: The SSC meeting will be held on March 24–26, 2015, from 9 a.m. to 5 p.m.

ADDRESSES: The SSC will meet at the Caribbean Fishery Management Council headquarters, located at 270 Muñoz Rivera Avenue, Suite 401, San Juan, Puerto Rico.

SUPPLEMENTARY INFORMATION: The SSC will meet to discuss the items contained in the following agenda:

March 24–26, 2015

- ○ Call to Order
- ○ Selection Criteria for Exclusion/Inclusion of Species in the Island-Based FMPs
  - A. Brief Review of criteria selection—Status to date
  - B. Continuation of determining selection criteria
  - 1. Data available
  - a. Commercial Landings Data—SEFSC Update
  - i. Overview of Landings Data: Species List Ranked by Poundage and Value—Puerto Rico, St. Thomas/St. John, St. Croix
  - ii. Monthly landings
  - iii. Spatial distribution of landings (EEZ-State)
  - iv. Landings by Coast for Puerto Rico as a Proxy to Differentiate Species that Might be Restricted to the State Waters
  - v. Landings by Fishing Center-Town: Puerto Rico
  - b. SEFSC/DNER revision of the 2005 East Coast Correction Factor Update
  - c. Recreational Landings Data—MRIP Update
  - i. Overview of Landings Data: Species List Ranked by Poundage.
  - ii. Spatial distribution of recreational landings
  - iii. Recommendation to CFMC
  - 2. District Advisory Panels Reports
- ○ New ABC control rule dealing with data poor stocks.
- ○ FMUs ACL Overages—SERO Update Accountability Measures
- ○ Red Hind Data Review to develop a separate ACL for red hind
  - 1. Data review SEFSC
  - 2. Recommendation to CFMC
- ○ National SSC V (February 23–25, 2015): Report
- ○ Discussion of 5-year Research Plan
- ○ Federal Permits Options Paper
- ○ Other Business

The meetings are open to the public, and will be conducted in English.

Special Accommodations: These meetings are physically accessible to people with disabilities. For more information or request for sign language interpretation and/other auxiliary aids, please contact Mr. Miguel A. Rolón, Executive Director, Caribbean Fishery Management Council, 270 Muñoz Rivera Avenue, Suite 401, San Juan, Puerto Rico, 00918, telephone (787) 766–5926, at least 5 days prior to the meeting date.

Dated: February 26, 2015.

Tracey L. Thompson,

Acting Deputy Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. 2015–04414 Filed 3–3–15; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

RIN 0648–XD732

Takes of Marine Mammals Incidental to Specified Activities; Taking Marine Mammals Incidental to Shell Ice Overflight Surveys in the Beaufort and Chukchi Seas, Alaska

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

ACTION: Notice; proposed incidental harassment authorization; request for comments.

SUMMARY: NMFS received an application from Shell Gulf of Mexico Inc. (Shell) for an Incidental Harassment Authorization (IHA) to take marine mammals, by harassment, incidental to ice overflight surveys in the Chukchi and Beaufort Seas, Alaska. Pursuant to the Marine Mammal Protection Act (MMPA), NMFS is requesting comments on its proposal to issue an IHA to Shell to take, by Level B harassment only, seven species of marine mammals during the specified activity.

DATES: Comments and information must be received no later than April 3, 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. The mailbox address for providing email comments is *ITP.Guan@noaa.gov.* NMFS is not responsible for email comments sent to addresses other than

the one provided here. Comments sent via email, including all attachments, must not exceed a 10-megabyte file size.

Instructions: All comments received are a part of the public record and will generally be posted to *http://www.nmfs.noaa.gov/pr/permits/incidental.htm* without change. All Personal Identifying Information (for example, name, address, etc.) voluntarily submitted by the commenter may be publicly accessible. Do not submit Confidential Business Information or otherwise sensitive or protected information.

A copy of the application, which contains several attachments used in this document, including Shell's marine mammal mitigation and monitoring plan (4MP) and Plan of Cooperation, may be obtained by writing to the address specified above, telephoning the contact listed below (see **FOR FURTHER INFORMATION CONTACT**), or visiting the Internet at: *http://www.nmfs.noaa.gov/pr/permits/incidental.htm.* Documents cited in this notice may also be viewed, by appointment, during regular business hours, at the aforementioned address.

FOR FURTHER INFORMATION CONTACT: Shane Guan, Office of Protected Resources, NMFS, (301) 427–8401.

SUPPLEMENTARY INFORMATION:

Background

Sections 101(a)(5)(A) and (D) of the MMPA (16 U.S.C. 1361 *et seq.*) direct the Secretary of Commerce to allow, upon request, the incidental, but not intentional, taking of small numbers of marine mammals by U.S. citizens who engage in a specified activity (other than commercial fishing) within a specified geographical region if certain findings are made and either regulations are issued or, if the taking is limited to harassment, a notice of a proposed authorization is provided to the public for review.

An authorization for incidental takings shall be granted if NMFS finds that the taking will have a negligible impact on the species or stock(s), will not have an unmitigable adverse impact on the availability of the species or stock(s) for subsistence uses (where relevant), and if the permissible methods of taking and requirements pertaining to the mitigation, monitoring and reporting of such takings are set forth. NMFS has defined ''negligible impact'' in 50 CFR 216.103 as ''an impact resulting from the specified activity that cannot be reasonably expected to, and is not reasonably likely to, adversely affect the species or stock through effects on annual rates of recruitment or survival.''

Except with respect to certain activities not pertinent here, the MMPA defines ''harassment'' as: Any act of pursuit, torment, or annoyance which (i) has the potential to injure a marine mammal or marine mammal stock in the wild [Level A harassment]; or (ii) has the potential to disturb a marine mammal or marine mammal stock in the wild by causing disruption of behavioral patterns, including, but not limited to, migration, breathing, nursing, breeding, feeding, or sheltering [Level B harassment].

Summary of Request

On December 2, 2014, Shell submitted an application to NMFS for the taking of marine mammals incidental to ice overflight surveys the Chukchi and Beaufort Seas, Alaska. After receiving comments and questions from NMFS, Shell revised its IHA application on January 13, 2015. NMFS determined that the application was adequate and complete on January 15, 2015.

The proposed activity would occur between May 1, 2015 and April 30, 2016. The following specific aspects of the proposed activities are likely to result in the take of marine mammals: Ice overflight surveys using fixed and rotate winged aircraft when flying at low altitudes.

Shell has requested an authorization to take seven marine mammal species by Level B harassment. These species include: Beluga whale (*Delphinapterus leucas*); bowhead whale (*Balaena mysticetus*); gray whale (*Eschrichtius robustus*); bearded seal (*Erignathus barbatus*); ringed seal (*Phoca hispida*); spotted seal (*P. largha*); and ribbon seal (*Histriophoca fasciata*).

Description of the Specified Activity

Overview

Shell plans to conduct two periods of ice overflight surveys during May 2015–April 2016: Break-up surveys and freeze-up surveys.

Shell plans to conduct the overflight surveys from fixed wing and rotary aircraft. The aircraft to be used for the surveys are not currently under contract to Shell or a contractor to Shell. Ice and weather conditions will influence when and where the surveys can be conducted.

Dates and Duration

For initial planning purposes, Shell proposes to conduct the overflight surveys during May 1, 2015 to April 30, 2016.

Specified Geographic Region

The ice overflight survey areas are the Chukchi and Beaufort Seas, Alaska, as indicated in Figure 1–1 of Shell's IHA application. Aircraft supporting these surveys will operate out of Barrow and Deadhorse, Alaska.

Detailed Description of Activities

(1) Proposed Break-Up Surveys

The break-up surveys will occur between June and July in either the Chukchi or Beaufort Sea and will include:

- Up to five fixed-wing flights of approximately 1,500 nm total for up to approximately 13 hours total;
- One helicopter flight totaling of approximately 200 nm total for up to approximately 3 hours total.

Flight altitudes for fixed wing surveys will range from 30 to 610 m (100 to 2,000 ft) but will mostly be at or above 152 m (500 ft). For helicopter flights, the altitude will range from 15 to 152 m (50 to 500 ft) but will mostly be at or above 61 m (200 ft). Flights will occur when there is daylight. Aircraft are not scheduled to fly at the same time.

(2) Proposed Freeze-Up Surveys

The freeze-up surveys will occur between November 2015 and March 2016 in either the Chukchi or Beaufort Sea and will include:

- Up to seven fixed-wing flights of approximately 2,500 nautical miles (nm) total in early winter for up to approximately 21 hours total;
- One helicopter flight in the Beaufort of approximately 200 nm that will include approximately 4 landings to collect ice measurements during late freeze-up including sampling with a battery powered ice auger for up to approximately 3 hours total.

Flight altitudes for fixed wing surveys will range from 30 to 610 m (100 to 2,000 ft) but will mostly be at or above 152 m (500 ft). For helicopter flights, the altitude will range from 15 to 152 m (50 to 500 ft) but will mostly be at or above 61 m (200 ft). Helicopter flights will also include landings. Flights will occur when there is daylight. Aircraft are not scheduled to fly at the same time.

Proposed Aircraft To Conduct Ice Overflight Surveys

Shell plans to conduct the ice overflight surveys with an Aero Commander (or similar) fixed winged aircraft and a Bell 412, AW 139, EC 145 (or similar) helicopter.

Shell will also have a dedicated helicopter for Search and Rescue (SAR) for the spring 2015 surveys. The SAR helicopter is expected to be a Sikorsky S–92 (or similar). This aircraft will stay grounded at the Barrow shorebase location except during training drills,

emergencies, and other non-routine events.

Description of Marine Mammals in the Area of the Specified Activity

The Chukchi and Beaufort Seas support a diverse assemblage of marine mammals, including: Bowhead, gray, beluga, killer, minke, humpback, and fin whales; harbor porpoise; ringed, ribbon, spotted, and bearded seals; narwhals; polar bears; and walruses. Both the walrus and the polar bear are managed by the U.S. Fish and Wildlife Service (USFWS) and are not considered further in this proposed IHA notice.

Among the rest of marine mammal species, only beluga, bowhead, and gray whales, and ringed, spotted, bearded, and ribbon seals could potentially be affected by the proposed ice overflight activity. The remaining cetacean species are rare and not likely to be encountered during Shell's ice overflight surveys, which are planned either during winter when nearly 10/10 ice coverage is present, or during spring when sea ice also pre-dominants the study area. Therefore, these species are not further discussed.

The bowhead whale is listed as ''endangered'' under the Endangered Species Act (ESA) and as depleted under the MMPA. The ringed seal is listed as ''threatened'' under the ESA. Certain stocks or populations of gray and beluga whales and spotted seals are listed as endangered under the ESA; however, none of those stocks or populations occur in the proposed activity area.

Shell's application contains information on the status, distribution, seasonal distribution, abundance, and life history of each of the species under NMFS' jurisdiction mentioned in this document. When reviewing the application, NMFS determined that the species descriptions provided by Shell correctly characterized the status, distribution, seasonal distribution, and abundance of each species. Please refer to the application for that information (see **ADDRESSES**). Additional information can also be found in the NMFS Stock Assessment Reports (SAR). The Alaska 2013 SAR is available at: *http://www.nmfs.noaa.gov/pr/sars/pdf/ak2013_final.pdf.*

Table 1 lists the seven marine mammal species under NMFS' jurisdiction with confirmed or possible occurrence in the proposed project area.

TABLE 1—MARINE MAMMAL SPECIES AND STOCKS THAT COULD BE AFFECTED BY SHELL'S ICE OVERFLIGHT SURVEYS IN THE BEAUFORT AND CHUKCHI SEAS

Common name	Scientific name	Status	Occurrence	Seasonality	Range	Abundance
Odontocetes						
Beluga whale (Eastern Chukchi Sea stock).	*Dephinapterus leucas.*	.....	Common	Mostly spring and fall with some in summer.	Russia to Canada.	3,710
Beluga whale (Beaufort Sea stock).	*Delphinapterus leucas.*	.....	Common	Mostly spring and fall with some in summer.	Russia to Canada.	39,258
Mysticetes						
Bowhead whale	*Balaena mysticetus.*	Endangered; Depleted.	Common	Mostly spring and fall with some in summer.	Russia to Canada.	19,534
Gray whale	*Eschrichtius robustus.*	.....	Somewhat common.	Mostly summer	Mexico to the U.S. Arctic Ocean.	19,126
Pinnipeds						
Bearded seal (Beringia distinct population segment).	*Erigathus barbatus.*	Candidate	Common	Spring and summer ..	Bering, Chukchi, and Beaufort Seas.	155,000
Ringed seal (Arctic stock)	*Phoca hispida*	Threatened; Depleted.	Common	Year round	Bering, Chukchi, and Beaufort Seas.	300,000
Spotted seal	*Phoca largha* ...	.....	Common	Summer	Japan to U.S. Arctic Ocean.	141,479
Ribbon seal	*Histriophoca fasciata.*	Species of concern.	Occasional	Summer	Russia to U.S. Arctic Ocean.	49,000

Potential Effects of the Specified Activity on Marine Mammals

This section includes a summary and discussion of the ways that the types of stressors associated with the specified activity (*e.g.,* aircraft overflight) have been observed to or are thought to impact marine mammals. This section may include a discussion of known effects that do not rise to the level of an MMPA take (for example, with acoustics, we may include a discussion of studies that showed animals not reacting at all to sound or exhibiting barely measurable avoidance). The discussion may also include reactions that we consider to rise to the level of a take and those that we do not consider to rise to the level of a take. This section is intended as a background of potential effects and does not consider either the specific manner in which this activity will be carried out or the mitigation that will be implemented or how either of those will shape the anticipated impacts from this specific activity. The ''Estimated Take by Incidental Harassment'' section later in this document will include a quantitative analysis of the number of individuals that are expected to be taken by this activity. The ''Negligible Impact Analysis'' section will include the analysis of how this specific activity will impact marine mammals and will

consider the content of this section, the ''Estimated Take by Incidental Harassment'' section, the ''Mitigation'' section, and the ''Anticipated Effects on Marine Mammal Habitat'' section to draw conclusions regarding the likely impacts of this activity on the reproductive success or survivorship of individuals and from that on the affected marine mammal populations or stocks.

The reasonably expected or reasonably likely impacts of the specified activities on marine mammals will be related primarily to localized, short-term acoustic disturbance from aircraft flying primarily over areas covered by sea ice with limited flight activity over open water and adjacent ice edges. The acoustic sense of marine mammals probably constitutes their most important distance receptor system. Potential acoustic effects relate to sound produced by helicopters and fixed-wing aircraft.

Dominant tones in noise spectra from helicopters are generally below 500 Hz (Greene and Moore 1995). Harmonics of the main rotor and tail rotor usually dominate the sound from helicopters; however, many additional tones associated with the engines and other rotating parts are sometimes present. Because of Doppler shift effects, the frequencies of tones received at a stationary site diminish when an aircraft passes overhead. The apparent frequency is increased while the aircraft approaches and is reduced while it moves away.

Aircraft flyovers are not heard underwater for very long, especially when compared to how long they are heard in air as the aircraft approaches an observer. Very few cetaceans, including the species in the proposed ice overflight survey areas, are expected to be encountered during ice overflights due to the low density of cetacean species in the winter survey area and small area to be flown over open water during spring. Most of these effects are expected in open-water where limited aircraft noise could penetrate into the water column. For cetaceans under the ice, the noise levels from the aircraft are expected to be dramatically reduced by floating ice. Long-term or population level effects are not expected.

Evidence from flyover studies of ringed and bearded seals suggests that a reaction to helicopters is more common than to fixed wing aircraft, all else being equal (Born *et al.* 1999; Burns and Frost 1979). Under calm conditions, rotor and engine sounds are coupled into the water through ice within a 26° cone beneath the aircraft (Richardson *et al.* 1995). Scattering and absorption, however, will limit lateral propagation in the shallow water (Greene and Moore 1995). The majority of seals encountered by fixed wing aircraft are unlikely to show a notable disturbance reaction, and approximately half of the seals encountered by helicopters may react by moving from ice into the water (Born *et al.* 1999). Any potential disturbance from aircraft to seals in the area of ice overflights will be localized and short-term in duration with no population level effects.

Historically, there have been far greater levels of aviation activity in the offshore Chukchi and Beaufort Seas compared with that of the proposed ice overflights. None of this previous offshore aviation activity is believed to have resulted in long-term impacts to marine mammals, as demonstrated by results from a wide range of monitoring programs and scientific studies. Impacts to marine mammals from aviation activities in Arctic offshore habitats have been shown to be, at most, short-term and highly-localized in nature (*e.g.,* Funk *et al.* 2013; Richardson *et al.* 1985a, b; Patenaude *et al.* 2002; Born *et al.* 1999).

The effect of aircraft overflight on marine mammals will depend on the behavior of the animal at the time of reception of the stimulus, as well as the distance from the aircraft and received level of sound. Cetaceans (such as bowhead, gray, and beluga whales) will only be present, and thus have the potential to be disturbed, when aircraft fly over open water in between ice floes; seals may be disturbed when aircraft are over open water or over ice on which seals may be present. Disturbance reactions are likely to vary among some of the seals in the general vicinity, and not all of the seals present are expected to react to fixed wing aircraft and helicopters.

Behavioral distances from marine mammals also depend on the altitudes of the aircraft overflight. Marine mammals are not likely to be affected by aircraft overflights that are above 1,000 ft. Therefore, behavioral harassments discussed above are only limited to those aircraft flying at lower altitudes. Proposed monitoring measures discussed below would further reduce potential affects from Shell's proposed ice overflight surveys.

In light of the nature of the activities, and for the reasons described below, NMFS does not expect marine mammals will be injured or killed as a result of ice overflight surveys. In addition, due to the low received noise levels from aircraft overflights, NMFS does not expect marine mammals will experience hearing impairment such as TTS or PTS.

Of the seal species which may be encountered, only ringed seals are abundant in the Chukchi and Beaufort Seas during the winter and early spring when the overflights are scheduled to occur. In March–April, ringed seals give birth in subnivean lairs established on shorefast and stable pack ice (Smith and Stirling 1975; Smith 1973). Ringed seals in subnivean layers have been known to react to aircraft overhead by entering the water in some instances (Kelly *et al.* 1986); however, there is no evidence to indicate injurious effects to adults or pups from such a response.

Bearded seals spend the winter season in the Bering Sea, and then follow the ice edge as it retreats in spring (MacIntyre and Stafford 2011). Large numbers of bearded seals are unlikely to be present in the project area during the time of planned operations. However, some individuals may be encountered. Spotted seals are found in the Bering Sea in winter and spring where they breed, molt, and pup in large groups (Quakenbush 1988; Rugh *et al.* 1997). Few spotted seals are expected to be encountered in the Chukchi and Beaufort seas until July. Even then, they are rarely seen on pack ice but are commonly observed hauled out on land or swimming in open water (Lowry *et al.* 1998). The ice overflights are designed to maximize flying over ice, avoiding coastal and terrestrial areas. Haul outs for spotted seals are generally known, and Shell will avoid these areas during the break up surveys.

Based on extensive analysis of digital imagery taken during aerial surveys in support of Shell's 2012 operations in the Chukchi and Beaufort Seas, ice seals are very infrequently observed hauled out on the ice in groups of greater than one individual (Shell 2015). Tens of thousands of images from 17 flights that took place from July through October were reviewed in detail. Of 107 total observations of spotted or ringed seals on ice, only three of those sightings were of a group of two individuals (Shell 2015). Since seals typically are found as individuals or in very small groups when they are in the project area, the chance of a stampede event is very unlikely. Finally, ice seals are well adapted to move between ice and water without injury, including ''escape reactions'' to avoid predators.

Ringed and bearded seals sometimes, but not always, dive when approached by low-flying aircraft (Burns and Frost 1979; Burns *et al.* 1982). Ringed and bearded seals may be more sensitive to helicopter sounds than to fixed-wing aircraft (Burns and Frost 1979). In 2000, during a study on e impacts of pipe-driving sounds on pinnipeds at

Northstar in the Beaufort Sea which involved helicopter, only some of the ringed seals present exhibited a reaction to an approaching helicopter (Blackwell et al. 2001). Of 23 individuals, only 11 reacted; of those 11, 10 increased alertness and only 1 moved into the water (when the helicopter was 100 m away; Blackwell et al. 2004). Reactions of ringed seals while they are in subnivean lairs vary with the characteristics of the flyover, including lateral distance and altitude of aircraft (Kelly *et al.* 1986).

The sound of aircraft is also reduced by the snow of the lair (Cummings and Holliday 1983). Spotted seals are sensitive to aircraft, reacting erratically at considerable distances which may result in mother-pup separation or injury to pups (Frost et al 1993, Rugh *et al.* 1993). However, as previously noted, few spotted seals are expected to be present in the project area during the time of planned ice overflights, and overflights will focus on offshore areas as opposed to terrestrial habitat with potential spotted seal haulouts.

Anticipated Effects on Marine Mammal Habitat

Shell's planned 2015/16 ice overflight surveys will not result in any permanent impact on habitats used by marine mammals, or to their prey sources. The primary potential impacts on marine mammal habitat and prey resources that are reasonably expected or reasonably likely are associated with elevated sound levels from the aircraft passing overhead. Effects on marine mammal habitat from the generation of sound from the planned surveys would be negligible and temporary, lasting only as long as the aircraft is overhead. Water column effects will be localized and ephemeral, lasting only the duration of the aircrafts presence. All effects on marine mammal habitat from the planned surveys are expected to be negligible and confined to very small areas within the Chukchi and Beaufort Seas.

The primary effect of the sound energy generated by ice overflight survey activities on marine mammal habitat will be the ensonification of the water column and air at the surface. Sound energy can also affect invertebrates and fish that are marine mammal prey, and thereby indirectly impact the marine mammals.

Levels and duration of sounds received by marine mammals underwater from a passing helicopter or fixed-wing aircraft are a function of the type of aircraft, orientation and altitude of the aircraft, depth of the animal, and water depth. Aircraft sounds are detectable underwater at greater distances when the receiver is in shallow rather than deep water. Generally, sound levels received underwater decrease as the altitude of the aircraft increases (Richardson *et al.* 1995a). The nature of sounds produced by aircraft activities does not pose a direct threat to the underwater marine mammal habitat or prey.

Aircraft sounds are audible for much greater distances in air than in water. Under calm conditions, rotor and engine sounds are coupled into the water within a 26° cone beneath the aircraft. Some of the sound will transmit beyond the immediate area, and some sound will enter the water outside the 26 degree area when the sea surface is rough. However, scattering and absorption will limit lateral propagation in shallow water. Dominant tones in noise spectra from helicopters are generally below 500 Hz (Greene and Moore 1995). Because of Doppler shift effects, the frequencies of tones received at a stationary site diminish when an aircraft passes overhead. The apparent frequency is increased while the aircraft approaches and is reduced while it moves away. Sounds generated underwater from aircraft flyovers are of short duration.

Helicopters will generally maintain straight-line routes, thereby limiting the sound levels at and below the surface. Given the timing and location of the proposed ice overflight activities, as well as the mitigation measures that will be implemented as a part of the program, any impacts from aircraft traffic on marine mammal habitat or prey will be localized and temporary with no anticipated population level effects.

Proposed Mitigation

In order to issue an incidental take authorization (ITA) under sections 101(a)(5)(A) and (D) of the MMPA, NMFS must, where applicable, set forth the permissible methods of taking pursuant to such activity, and other means of effecting the least practicable impact on such species or stock and its habitat, paying particular attention to rookeries, mating grounds, and areas of similar significance, and on the availability of such species or stock for taking for certain subsistence uses (where relevant). This section summarizes the contents of Shell's Marine Mammal Monitoring and Mitigation Plan (4MP). Later in this document in the ''Proposed Incidental Harassment Authorization'' section, NMFS lays out the proposed conditions for review, as they would appear in the final IHA (if issued).

Shell submitted a 4MP as part of its application (see **ADDRESSES**). Shell proposes a suite of mitigation measures to minimize any adverse impacts associated with the ice overflight surveys in the Chukchi and Beaufort Sea. These include, among others discussed in the 4MP (See Attachment A of Shell's IHA application), the following: (1) The timing and locations for active survey acquisition work; and (2) increasing altitude or deviating from survey tract when the protected species observers sight visually (from the aircraft) the presence of marine mammals. The mitigation measures are presented in the 4MP. To summarize:

- A PSO will be aboard all flights recording all sightings/observations (*e.g.* including number of individuals, approximate age (when possible to determine), and any type of potential reaction to the aircraft). Environmental information the observer will record includes weather, air temperature, cloud and ice cover, visibility conditions, and wind speed.
- The aircraft will maintain a 1 mi radius when flying over areas where seals appear to be concentrated in groups of ≥5 individuals;
- The aircraft will not land on ice within 0.5 mi of hauled out pinnipeds or polar bears;
- The aircraft will avoid flying over polynyas and along adjacent ice margins as much as possible to minimize potential disturbance to cetaceans; and
- Shell will routinely engage with local communities and subsistence groups to ensure no disturbance of whaling or other subsistence activities.

Mitigation Conclusions

NMFS has carefully evaluated the applicant's proposed mitigation measures and considered a range of other measures in the context of ensuring that NMFS prescribes the means of effecting the least practicable impact on the affected marine mammal species and stocks and their habitat. Our evaluation of potential measures included consideration of the following factors in relation to one another:

- The manner in which, and the degree to which, the successful implementation of the measure is expected to minimize adverse impacts to marine mammals
- The proven or likely efficacy of the specific measure to minimize adverse impacts as planned, and
- The practicability of the measure for applicant implementation.

Any mitigation measure(s) prescribed by NMFS should be able to accomplish, have a reasonable likelihood of

accomplishing (based on current science), or contribute to the accomplishment of one or more of the general goals listed below:

1. Avoidance or minimization of injury or death of marine mammals wherever possible (goals 2, 3, and 4 may contribute to this goal).

2. A reduction in the numbers of marine mammals (total number or number at biologically important time or location) exposed to received levels of noises generated from ice overflight surveys, or other activities expected to result in the take of marine mammals (this goal may contribute to 1, above, or to reducing harassment takes only).

3. A reduction in the number of times (total number or number at biologically important time or location) individuals would be exposed to received levels of noises generated from ice overflight surveys, or other activities expected to result in the take of marine mammals (this goal may contribute to 1, above, or to reducing harassment takes only).

4. A reduction in the intensity of exposures (either total number or number at biologically important time or location) to received levels of noises generated from ice overflight surveys, or other activities expected to result in the take of marine mammals (this goal may contribute to a, above, or to reducing the severity of harassment takes only).

5. Avoidance or minimization of adverse effects to marine mammal habitat, paying special attention to the food base, activities that block or limit passage to or from biologically important areas, permanent destruction of habitat, or temporary destruction/disturbance of habitat during a biologically important time.

6. For monitoring directly related to mitigation—an increase in the probability of detecting marine mammals, thus allowing for more effective implementation of the mitigation.

Based on our evaluation of the applicant's proposed measures, as well as other measures considered by NMFS, NMFS has preliminarily determined that the proposed mitigation measures provide the means of effecting the least practicable impact on marine mammals species or stocks and their habitat, paying particular attention to rookeries, mating grounds, and areas of similar significance.

Proposed measures to ensure availability of such species or stock for taking for certain subsistence uses are discussed later in this document (see ''Impact on Availability of Affected Species or Stock for Taking for Subsistence Uses'' section).

Proposed Monitoring and Reporting

In order to issue an ITA for an activity, section 101(a)(5)(D) of the MMPA states that NMFS must set forth, ''requirements pertaining to the monitoring and reporting of such taking.'' The MMPA implementing regulations at 50 CFR 216.104(a)(13) indicate that requests for ITAs must include the suggested means of accomplishing the necessary monitoring and reporting that will result in increased knowledge of the species and of the level of taking or impacts on populations of marine mammals that are expected to be present in the proposed action area. Shell submitted a marine mammal monitoring plan as part of the IHA application. It can be found in Appendix B of the Shell's IHA application. The plan may be modified or supplemented based on comments or new information received from the public during the public comment period or from the peer review panel (see the ''Monitoring Plan Peer Review'' section later in this document).

Monitoring measures prescribed by NMFS should accomplish one or more of the following general goals:

1. An increase in the probability of detecting marine mammals, both within the mitigation zone (thus allowing for more effective implementation of the mitigation) and in general to generate more data to contribute to the analyses mentioned below;

2. An increase in our understanding of how many marine mammals are likely to be exposed to levels of noises generated from ice overflight surveys that we associate with specific adverse effects, such as behavioral harassment, TTS, or PTS;

3. An increase in our understanding of how marine mammals respond to stimuli expected to result in take and how anticipated adverse effects on individuals (in different ways and to varying degrees) may impact the population, species, or stock (specifically through effects on annual rates of recruitment or survival) through any of the following methods:

- Behavioral observations in the presence of stimuli compared to observations in the absence of stimuli (need to be able to accurately predict received level, distance from source, and other pertinent information);
- Physiological measurements in the presence of stimuli compared to observations in the absence of stimuli (need to be able to accurately predict received level, distance from source, and other pertinent information);
- Distribution and/or abundance comparisons in times or areas with concentrated stimuli versus times or areas without stimuli;

4. An increased knowledge of the affected species; and

5. An increase in our understanding of the effectiveness of certain mitigation and monitoring measures.

Proposed Monitoring Measures

(1) Protected Species Observers

Aerial monitoring for marine mammals will be conducted by a trained protected species observer (PSO) aboard each flight. PSO duties will include watching for and identifying marine mammals, recording their numbers, distances from, and potential reactions to the presence of the aircraft, in addition to working with the helicopter pilots to identify areas for landings on ice that is clear of marine mammals.

(2) Observer Qualifications and Training

Observers will have previous marine mammal observation experience in the Chukchi and Beaufort Seas. All observers will be trained and familiar with the marine mammals of the area, data collection protocols, reporting procedures, and required mitigation measures.

(3) Specialized Field Equipment

The following specialized field equipment for use by the onboard PSO: Fujinon 7×50 binoculars for visual monitoring, a GPS unit to document the route of each ice overflight, a laptop computer for data entry, a voice recorder to capture detailed observations and data for post flight entry into the computer, and digital still cameras.

(4) Field Data-Recording

The observer on the aircraft will record observations directly into computers using a custom software package. The accuracy of the data entry will be verified in the field by computerized validity checks as the data are entered, and by subsequent manual checking following the flight. Additionally, observers will capture the details of sightings and other observations with a voice recorder, which will maximize observation time and the collection of data. These procedures will allow initial summaries of data to be prepared during and shortly after the surveys, and will facilitate transfer of the data to statistical, graphical or other programs for further processing.

During the course of the flights, the observer will record information for each sighting including number of individuals, approximate age (when

possible to determine), and any type of potential reaction to the aircraft. Environmental information the observer will record includes weather, air temperature, cloud and ice cover, visibility conditions, and wind speed.

Monitoring Plan Peer Review

The MMPA requires that monitoring plans be independently peer reviewed ''where the proposed activity may affect the availability of a species or stock for taking for subsistence uses'' (16 U.S.C. 1371(a)(5)(D)(ii)(III)). Regarding this requirement, NMFS' implementing regulations state, ''Upon receipt of a complete monitoring plan, and at its discretion, [NMFS] will either submit the plan to members of a peer review panel for review or within 60 days of receipt of the proposed monitoring plan, schedule a workshop to review the plan'' (50 CFR 216.108(d)).

NMFS has established an independent peer review panel to review Shell's 4MP for ice overflight survey in the Beaufort and Chukchi Seas. The panel is scheduled to meet in early March 2015, and will provide comments to NMFS shortly after they meet. After completion of the peer review, NMFS will consider all recommendations made by the panel, incorporate appropriate changes into the monitoring requirements of the IHA (if issued), and publish the panel's findings and recommendations in the final IHA notice of issuance or denial document.

Reporting Measures

(1) Final Report

The results of Shell's ice overflight monitoring report will be presented in the ''90-day'' final report, as required by NMFS under the proposed IHA. The initial final report is due to NMFS within 90 days after the expiration of the IHA (if issued). The report will include:

- Summaries of monitoring effort: Total hours, total distances flown, and environmental conditions during surveys;
- Summaries of occurrence, species composition, and distribution of all marine mammal sightings including date, numbers, age/size/gender categories (when discernible), group sizes, ice cover and other environmental variables; data will be visualized by plotting sightings relative to the position of the aircraft; and
- Analyses of the potential effects of ice overflights on marine mammals and the number of individuals that may have been disturbed by aircraft.

The ''90-day'' report will be subject to review and comment by NMFS. Any recommendations made by NMFS must be addressed in the final report prior to acceptance by NMFS.

(2) Notification of Injured or Dead Marine Mammals

Shell will be required to notify NMFS' Office of Protected Resources and NMFS' Stranding Network of any sighting of an injured or dead marine mammal. Based on different circumstances, Shell may or may not be required to stop operations upon such a sighting. Shell will provide NMFS with the species or description of the animal(s), the condition of the animal(s) (including carcass condition if the animal is dead), location, time of first discovery, observed behaviors (if alive), and photo or video (if available). The specific language describing what Shell must do upon sighting a dead or injured marine mammal can be found in the ''Proposed Incidental Harassment Authorization'' section of this document.

Estimated Take by Incidental Harassment

Except with respect to certain activities not pertinent here, the MMPA defines ''harassment'' as: Any act of pursuit, torment, or annoyance which (i) has the potential to injure a marine mammal or marine mammal stock in the wild [Level A harassment]; or (ii) has the potential to disturb a marine mammal or marine mammal stock in the wild by causing disruption of behavioral patterns, including, but not limited to, migration, breathing, nursing, breeding, feeding, or sheltering [Level B harassment]. Only take by Level B behavioral harassment is anticipated as a result of the proposed ice overflight surveys.

As discussed earlier in this document, potential noise impacts to marine mammals from ice overflight surveys would be limited in a 26° cone under the flight path. The intensity of noise enters the water depends on the altitude of the aircraft (Richardson *et al.* 1995). Scattering and absorption, however, will limit lateral propagation in the shallow water (Greene and Moore 1995).

Basis for Estimating ''Take by Harassment''

Exposures were calculated in the following sections for cetaceans and seals. The methods used to estimate exposure for each species group was fundamentally the same with minor differences as described below. Exposure estimates for cetaceans were calculated by multiplying the anticipated area to be flown over open water each season (winter and spring) by the expected densities of cetaceans that may occur in the survey area.

Exposures of seals were calculated by multiplying the anticipated area to be flown over open water and ice in each season (winter and spring) by the expected densities of seals that may occur in the survey area by the proportion of seals on ice that may actually show a disturbance reaction to each type of aircraft (Born *et al.* 1999).

Marine Mammal Density Estimates

Marine mammal density estimates in the Chukchi and Beaufort Seas have been derived for two time periods: the winter period covering November through April, and the spring period including May through early July.

There is some uncertainty about the representativeness of the data and assumptions used in the calculations. To provide some allowance for uncertainties, ''average'' as well as ''maximum'' estimates of the numbers of marine mammals potentially affected have been derived. For a few species, several density estimates were available. In those cases, the mean and maximum estimates were determined from the reported densities or survey data. In other cases, only one or no applicable estimate was available, so correction factors were used to arrive at ''average'' and ''maximum'' estimates. These are described in detail in the following sections.

In Polar Regions, most pinnipeds are associated with sea ice and typical census methods involve counting pinnipeds when they are hauled out on ice. In the Beaufort Sea, abundance surveys typically occur in spring when ringed seals emerge from their lairs (Frost *et al.* 2004). Depending on the species and study, a correction factor for the proportion of animals hauled out at any one time may or may not have been applied (depending on whether an appropriate correction factor was available for the particular species, area, and time period). By applying a correction factor, the density of the pinniped species in an area can be estimated.

Detectability bias, quantified in part by f(0), is associated with diminishing sightability with increasing lateral distance from the survey trackline. Availability bias, g(0), refers to the fact that there is <100 percent probability of sighting an animal that is present along the survey trackline. Some sources below included these correction factors in the reported densities (*e.g.* ringed seals in Bengtson *et al.* 2005) and the best available correction factors were applied to reported results when they

had not already been included (*e.g.* bearded seals in Bengtson et al. 2005).

(1) Cetaceans: Winter

(A) Beluga Whales

Beluga whale density estimates were calculated based on aerial survey data collected in October in the eastern Alaskan Beaufort Sea by the NMML (as part of the BWASP program funded by BOEMRE) in 2007–2010. They reported 31 sightings of 66 individual whales during 1597 km of on-transect effort over waters 200–2000 m deep. An f(0) value of 2.326 was applied and it was calculated using beluga whale sightings data collected in the Canadian Beaufort Sea (Innes *et al.* 2002). A g(0) value of 0.419 was used that represents a combination of ga(0) = 0.55 (Innes *et al.* 2002) and gd(0) = 0.762 (Harwood et al. 1996). The resulting densities were then multiplied by 0.10 because the Beaufort Sea and north-eastern Chukchi Sea is believed to be at the edge of the species' range in by November. Belugas typically migrate into the Bering Sea for the winter (Allen and Angliss 2014) and are not expected to be present in the study area in the winter. Satellite tagging data support this and indicate belugas migrate out of the Beaufort Sea in the October–November period (Suydam *et al.* 2005).

(B) Bowhead Whales

Bowhead whale density estimates in the winter in the planned ice overflight area are expected to be quite low. Miller *et al.* (2002) presented a 10-day moving average of bowhead whale abundance in the eastern Beaufort Sea using data from 1979–2000 that showed a decrease of ~90% from early to late October. Based on these data, it is expected that almost all whales that had been in the Chukchi Sea during early October would likely have migrated beyond the survey areas by November–December. In addition, kernel density estimates and animal tracklines generated from satellite-tagged bowhead whales, along with acoustic monitoring data, suggest that few bowhead whales are present in the proposed survey area in November (near Point Barrow), and no whales were present in December (ADFG 2010; Moore *et al.* 2010). Therefore, minimal density estimates (0.0001whales/km^2) were used.

(C) Gray whales

Gray whales may be encountered as they have been detected near Pt. Barrow throughout the winter (Moore *et al.* 2006, Stafford *et al.* 2007), but they are expected to be very rare. Thus no density estimate is available.

(2) Cetaceans: Spring

(A) Beluga Whales

Spring densities of beluga whales in offshore waters are expected to be low, with somewhat higher densities in ice-margin and nearshore areas. Past aerial surveys have recorded few belugas in the offshore Chukchi Sea during the summer months and belugas are most likely encountered in offshore waters of the eastern Alaskan Beaufort Sea (Moore *et al.* 2000). More recent aerial surveys from 2008–2012 flown by the National Marine Mammal Laboratory (NMML) as part of the Chukchi Offshore Monitoring in Drilling Area (COMIDA) project, now part of the Aerial Surveys of Arctic Marine Mammals (ASAMM) project, reported 10 beluga sightings (22 individuals) in offshore waters during 22,154 km of on-transect effort. Larger groups of beluga whales were recorded in nearshore areas, especially in June and July during the spring migration (Clarke and Ferguson in prep; Clarke *et al.* 2012, 2013). Effort and sightings reported by Clarke and Ferguson (in prep.) and Clarke *et al.* (2012, 2013) were used to calculate the average open-water density estimate.

Those aerial surveys recorded 10 on-transect beluga sightings (22 individuals) during 22,154 km of on transect effort in waters 36–50 m deep in the Chukchi Sea during July and August. The mean group size of the sightings was 2.2. An f(0) value of 2.841 and g(0) value of 0.58 from Harwood et al. (1996) were also used in the density calculation resulting in an average open-water density of 0.0024 belugas/km^2. Specific data on the relative abundance of beluga whales in open-water versus ice-margin habitat during the summer in the Chukchi Sea is not available. However, belugas are commonly associated with ice, particularly ice edges and adjacent polynyas, so an inflation factor of 4 was used to estimate the ice-margin densities from the open-water densities.

(B) Bowhead Whales

Eastward migrating bowhead whales were recorded during industry aerial surveys of the continental shelf near Camden Bay in 2008 until 12 July (Christie *et al.* 2010). No bowhead sightings were recorded again, despite continued flights, until 19 August. Aerial surveys by industry operators did not begin until late August of 2006 and 2007, but in both years bowheads were also recorded in the region before the end of August (Lyons *et al.* 2009). The late August sightings were likely of bowheads beginning their fall migration so the densities calculated from those surveys were not used to estimate summer densities in this region. The three surveys in July of 2008 resulted in density estimates of 0.0099, 0.0717, and 0.0186 bowhead whales/km^2, respectively (Christie *et al.* 2010). The estimate of 0.0186 whales/km^2 was used as the average nearshore density and the estimate of 0 0.0717 whales/km2 was used as the maximum. Sea ice was not present during these surveys. Moore *et al.* (2000) reported that bowhead whales in the Alaskan Beaufort Sea were distributed uniformly relative to sea ice.

(C) Gray Whales

Gray whales are expected to be present in the Chukchi Sea but are unlikely in the Beaufort Sea. Moore et al. (2000) found the distribution of gray whales in Chukchi Sea was scattered and limited to nearshore areas where most whales were observed in water less than 35m deep. The average open-water summer density (Table 2) was calculated from 2008–2012 aerial survey effort and sightings in Clarke and Ferguson (in prep) and Clarke *et al.* (2012, 2013) for water depths 36–50 m including 98 sightings (137 individuals) during 22,154 km of on-transect effort. The average group size of those sightings was 1.4. Correction factors f(0) = 2.49 (Forney and Barlow 1998) and g(0) = 0.30 (Forney and Barlow 1998, Mallonee 1991) were used to calculate and average open-water density of 0.0253 gray whales/km^2 (Table 2). The highest density from the survey periods reported in Clarke and Ferguson (in prep) and Clarke *et al.* (2012, 2013) was 0.0268 gray whales/km^2 in 2012 and this was used as the maximum open-water density.

(3) Pinnipeds: Winter

(A) Ringed Seals

Ringed seal densities were taken from offshore aerial surveys of the pack ice zone conducted in spring 1999 and 2000 (Bengtson *et al.* 2005). Seal distribution and density in spring, prior to break-up, are thought to reflect distribution patterns established earlier in the year (*i.e.,* during the winter months; Frost et al. 2004). The average density from those two years (weighted by survey effort) was 0.4892 seals/km^2. This value served as the average density while the highest density from the two years (0.8100 seals/km^2 in 1999) was used as the maximum density.

(B) Other Seal Species

Other seal species are not expected to be present in the ice overflight survey area in large numbers during the winter period of the ice overflights. Bearded, spotted, and ribbon seals would be

present in the area in smaller numbers than ringed seals during spring through fall summer, but these less common seal species generally migrate into the southern Chukchi and Bering Seas during fall and remain there through the winter (Allen and Angliss 2014). Few satellite-tagging studies have been conducted on these species in the Beaufort Sea, winter surveys have not been conducted, and a few bearded seals have been reported over the continental shelf in spring prior to general break-up. However, the tracks of three bearded seals tagged in 2009 moved south into the Bering Sea along the continental shelf by November (Cameron and Boveng 2009). These species would be more common in the area during spring through fall, but it is possible that some individuals, bearded seals in particular, may be present in the area surveyed in winter. Ribbon seals are unlikely to be present in the survey area during winter as they also migrate southward from the northeastern Chukchi Sea during this period. In the absence of better information from the published literature or other sources that would indicate that significant numbers of any of these species might be present during winter, minimal density estimates were used for these species. Estimates for bearded seals were assumed to be slightly higher than those for spotted and ribbon seals.

(4) Pinnipeds: Spring

Three species of pinnipeds under NMFS' jurisdiction are likely to be encountered in the Chukchi and Beaufort Seas during planned ice overflights in spring of 2015: ringed, bearded, and spotted seals. Ringed and bearded seals are associated with both the ice margin and the nearshore open water area during spring. Spotted seals are often considered to be predominantly a coastal species except in the spring when they may be found in the southern margin of the retreating sea ice. However, satellite tagging has shown that some individuals undertake long excursions into offshore waters during summer (Lowry *et al.* 1994, 1998). Ribbon seals have been reported in very small numbers within the Chukchi Sea by observers on industry vessels (Patterson *et al.* 2007, Hartin *et al.* 2013).

(A) Ringed Seal and Bearded Seal

Ringed seal and bearded seal ''average'' and ''maximum'' spring densities were available in Bengtson et al. (2005) from spring surveys in the offshore pack ice zone (zone 12P) of the northern Chukchi Sea. However, corrections for bearded seal availability, g(0), based on haulout and diving patterns were not available.

(B) Spotted Seal

Little information on spotted seal densities in offshore areas of the Alaskan Arctic is available. Spotted seal densities in the spring were estimated by multiplying the ringed seal densities by 0.02. This was based on the ratio of the estimated occurrence of the two species during ice overflight surveys and the assumption that the vast majority of seals present in areas of pack ice would be ringed seals (Funk et al., 2010; 2013).

(C) Ribbon Seal

Four ribbon seal sightings were reported during industry vessel operations in the Chukchi Sea in 2006–2010 (Hartin *et al.* 2013). The resulting density estimate of 0.0007/km^2 was used as the average density and 4 times that was used as the maximum for the spring season.

Estimated Areas Where Cetaceans May Be Encountered by Aircraft

Encounters that may result in potential disturbance of cetaceans will likely occur only in open water. Flight paths over open water and adjacent ice edges will be minimized by the objectives of the program as an effort to reduce encounters with cetaceans. It is estimated that five to ten percent of distance flown in winter will be over open water, and ten to twenty percent of distance flown in spring will be over open water. We applied the most conservative of these percentages to the proposed tracklines in winter and spring to estimate the area of open water exposed by planned ice overflights.

The potential disturbance area for each season was based on flight altitude and lateral distance of cetaceans from the center trackline. Based on known air-to-water propagation paths, cetaceans may be exposed to sounds produced by the aircraft when individuals are up to 13 degrees from the aircraft's center (Snell's law; Urick 1972 in Richardson *et al.* 1995). It was assumed that cetaceans in open water could be disturbed within 13 degrees of vertical (*i.e.,* a 26-degree cone) from the location of an aircraft when aircraft are 305 m (1,000 ft) or lower. NMFS considers aircraft above this altitude would not appreciably disturb cetaceans in open water below. This 305-m maximum disturbance altitude and Snell's law results in a maximum potential disturbance radius of approximately 70 m. Based on Snell's law (Richardson *et al.* 1995) and a 305 m flight altitude, we used a conservative radius of 75 m to calculate the potential disturbance area beneath an aircraft for cetaceans in open-water conditions.

Table 2 summarizes potential disturbance radii, maximum flight distances over open water, and potential disturbance areas for cetaceans from fixed wing aircraft and helicopters during Shell's proposed ice overflights program in winter (November through April) and spring (May through early July). Maximum percentage of total trackline over open water, as based on previous surveys, is 10% and 20% of the total trackline for winter and spring, respectively. Based on maximum flight distances, percent open water, and a potential disturbance radius of 75 m for fixed wing aircraft and helicopters, a total of 169 km2 of open-water could be disturbed. Approximately 45% of this total estimated open-water area would be surveyed in winter and the remaining 55% would be surveyed during spring.

TABLE 2—POTENTIAL DISTURBANCE RADII, MAXIMUM FLIGHT DISTANCES OVER OPEN WATER, AND POTENTIAL DISTURBANCE AREAS FOR CETACEANS IN OPEN WATER FROM FIXED WING AIRCRAFT AND HELICOPTERS IN THE CHUKCHI AND BEAUFORT SEAS, ALASKA, DURING THE PROPOSED 2015–2016 ICE OVERFLIGHT SURVEY PROGRAM

Aircraft	Potential disturbance radius (km)	Maximum open water flight distance (km)		Potential disturbance area (km^2)	
		Winter	Spring	Winter	Spring
Fixed Wing	0.075	463	556	69	83
Helicopter	0.075	37	74	6	11
Grand Totals	.....	500	630	75	94

Estimated Areas Where Seals May Be Encountered by Aircraft

Fixed wing and helicopter flights over ice at ice overflight survey altitudes have the potential to disturb seals hauled out on ice, although the flight altitude and lateral distances at which seals may react to aircraft are highly variable (Born et al. 1999; Burns *et al.* 1982; Burns and Frost 1979). The probability of a seal hauled out on ice reacting to a fixed wing aircraft or helicopter is influenced by a combination of variables such as flight altitude, lateral distance from the aircraft, ambient conditions (*e.g.,* wind chill), activity, and time of day (Born *et al.* 1999). Evidence from flyover studies of ringed and bearded seals suggests that a reaction to helicopters is more common than to fixed wing aircraft, all else being equal (Born et al. 1999; Burns and Frost 1979).

Born *et al.* (1999) investigated the reactions of ringed seals hauled out on ice to aircraft. The threshold lateral distances from the aircraft trackline out to which the vast majority of reactions were observed were 600 and 1500 m for fixed wing aircraft and helicopters, respectively. Many individual ringed seals within these distances; however, did not react (Born *et al.* 1999). Results indicated ~6% and ~49% of total seals observed reacted to fixed wing aircraft and helicopters, respectively, by entering the water when aircraft were flown over ice at altitudes similar to those proposed for Shell's ice overflight surveys as described in the Description of the Specific Activity section. These lateral distances and reaction probabilities were used as guidelines for estimating the area of sea ice habitat within which hauled out seals may be disturbed by aircraft and the number of seals that might react. Born et al. 1999, also was used as a guideline in a similar fashion for estimating the numbers of seals that would react to helicopters during US Fish and Wildlife Service polar bear tagging in 2011 and 2012, in which an IHA was issued by NMFS (NMFS 2011).

Table 3 summarizes potential disturbance radii, maximum flight distances, and potential disturbance areas for seals from fixed wing aircraft and helicopters during Shell's proposed ice overflights program in winter (November through April) and spring (May through early July). Based on maximum flight distances and potential disturbance radii of 600 and 1500 m for fixed wing aircraft and helicopters, respectively, a total of 11,112 km² (of sea ice could be disturbed. Based on Born *et al.'s* (1999) observations, however, it is estimated that only ~6 and ~49% of seals in these areas will exhibit a notable reaction to fixed wing aircraft and helicopters, respectively, by entering the water. Approximately 60% of this total area would be surveyed in winter and the remaining 40% would be surveyed during spring.

TABLE 3—POTENTIAL DISTURBANCE RADII, MAXIMUM FLIGHT DISTANCES OVER OPEN WATER, AND POTENTIAL DISTURBANCE AREAS FOR SEALS IN OPEN WATER FROM FIXED WING AIRCRAFT AND HELICOPTERS IN THE CHUKCHI AND BEAUFORT SEAS, ALASKA, DURING THE PROPOSED 2015–2016 ICE OVERFLIGHT SURVEY PROGRAM

Aircraft	Potential disturbance radius (km)	Maximum flight distance (km)		Potential disturbance area (km²)	
		Winter	Spring	Winter	Spring
Fixed Wing	0.6	4,630	2,778	5,557	3,335
Helicopter	1.5	370	370	1,110	1,110
Grand Totals	.....	5,000	3,148	6,667	4,445

Potential Number of ''Takes by Harassment''

(1) Cetaceans

This subsection provides estimates of the number of individual cetaceans that could potentially be disturbed by aircraft during Shell's proposed ice overflights. The estimates are based on an estimate of the anticipated open-water area that could be subjected to disturbance from overflights, proximity of cetaceans in open water to the aircraft, and expected cetacean densities in those areas during each season.

The number of individuals of each cetacean species potentially disturbed by fixed wing aircraft or helicopters was estimated by multiplying:

- The potential disturbance area from each aircraft (fixed wing and helicopter) for each season (winter and spring), by
- The percentage of survey area expected to be over open water as opposed to ice in each season, by
- The expected cetacean density for each season.

The numbers of individual cetaceans potentially disturbed were then summed for each species across the two seasons.

Estimates of the average and maximum number of individual cetaceans that may be disturbed are shown by season in Table 4. Less than one individual of each cetacean species was estimated to be disturbed in winter. This was due to the low density of cetaceans in the survey area in winter and extensive ice cover during this period. In spring, a few beluga whales, bowhead whales, and gray whales are estimated to potentially be disturbed during ice overflights when aircraft transit over open water for short periods. The numbers of individuals exposed represent very small proportions of their populations.

(2) Pinnipeds

This subsection provides estimates of the number of individual ice seals that could potentially be disturbed by aircraft during Shell's proposed ice overflights. The estimates are based on a consideration of the proposed flight distances, proximity of seals to the aircraft trackline, and the proportion of ice seals present that might actually be disturbed appreciably (*i.e.* moving from the ice into the water) by flight operations in the Chukchi and Beaufort Seas and the anticipated area that could be subjected to disturbance from overflights.

The number of individuals of each ice seal species potentially disturbed by fixed wing aircraft or helicopters was estimated by multiplying:

- The potential disturbance area from each aircraft (fixed wing and helicopter) for each season (winter and spring), by
- The expected seal density in each season, and by
- The expected proportion of seals expected to react to each type of aircraft in a way that could be interpreted as disturbance.

The numbers of individuals potentially disturbed were then summed for each species across the two seasons.

Estimates of the average number of individual seals that may be disturbed are shown by season in Table 4. The estimates shown represent proportions of the total number of seals encountered that may actually demonstrate a disturbance reaction to each type of aircraft. Estimates shown in Table 4 were based on Born *et al.* 1999, which assumed that ~6 and ~49% of seals would react within lateral distances of 600 and 1,500 m of fixed wing aircraft and helicopters, respectively.

Ringed seal is by far the most abundant species expected to be encountered during the planned ice overflights. The best (average) estimate of the numbers of ringed seals potentially disturbed during ice overflights is 793 individuals, which represents only a small proportion of the estimated population of ringed seals in the Chukchi and Beaufort Seas. Fewer individuals of other pinniped species are estimated to be encountered during ice overflights, also representing very small proportions of their populations.

TABLE 4—THE TOTAL NUMBER OF POTENTIAL EXPOSURES OF MARINE MAMMALS DURING THE SHELL'S PROPOSED ICE OVERFLIGHT SURVEYS IN THE CHUKCHI AND BEAUFORT SEAS, ALASKA, 2015–2016. ESTIMATES ARE ALSO SHOWN AS A PERCENT OF EACH POPULATION

Species	Abundance	Number potential exposure	Percent estimated population
Beluga (E. Chukchi Sea)	3,710	1	0.027
Beluga whale (Beaufort Sea)	39,258	1	0.003
Bowhead whale	19,534	2	0.010
Gray whale	19,126	2	0.010
Bearded seal	155,000	11	0.007
Ribbon seal	49,000	1	0.002
Ringed seal	300,000	793	0.264
Spotted seal	141,479	7	0.005

Analysis and Preliminary Determinations

Negligible Impact

Negligible impact is ''an impact resulting from the specified activity that cannot be reasonably expected to, and is not reasonably likely to, adversely affect the species or stock through effects on annual rates of recruitment or survival'' (50 CFR 216.103). A negligible impact finding is based on the lack of likely adverse effects on annual rates of recruitment or survival (*i.e.,* population-level effects). An estimate of the number of Level B harassment takes, alone, is not enough information on which to base an impact determination. In addition to considering estimates of the number of marine mammals that might be ''taken'' through behavioral harassment, NMFS must consider other factors, such as the likely nature of any responses (their intensity, duration, etc.), the context of any responses (critical reproductive time or location, migration, etc.), as well as the number and nature of estimated Level A harassment takes, the number of estimated mortalities, effects on habitat, and the status of the species.

No injuries or mortalities are anticipated to occur as a result of Shell's proposed ice overflight surveys in the Beaufort and Chukchi Seas, and none are proposed to be authorized. Additionally, animals in the area are not expected to incur hearing impairment (*i.e.,* TTS or PTS) or non-auditory physiological effects. Instead, any impact that could result from Shell's activities is most likely to be behavioral harassment and is expected to be of brief duration and the aircraft flies by. Although it is possible that some individuals may be exposed to sounds from aircraft overflight more than once, during the migratory periods it is less likely that this will occur since animals will continue to move across the Chukchi Sea towards their wintering grounds.

Aircraft flyovers are not heard underwater for very long, especially when compared to how long they are heard in air as the aircraft approaches an observer. Very few cetaceans are expected to be encountered during ice overflights due to the low density of cetacean species in the winter survey area and small area to be flown over open water during spring. Long-term or population level effects are not expected. The majority of seals encountered by fixed wing aircraft will unlikely show a notable disturbance reaction, and approximately half of the seals encountered by helicopters may react by moving from ice into the water. Any potential disturbance from aircraft to seals in the area of ice overflights will be localized and short-term in duration with no population level effects

Of the seven marine mammal species likely to occur in the proposed ice overflight survey area, only the bowhead whale and ringed seal are listed as endangered under the ESA. These two species are also designated as ''depleted'' under the MMPA. Despite these designations, the Bering-Chukchi-Beaufort stock of bowheads has been increasing at a rate of 3.4% annually for nearly a decade (Allen and Angliss, 2011), even in the face of ongoing industrial activity. Additionally, during the 2001 census, 121 calves were counted, which was the highest yet recorded. The calf count provides corroborating evidence for a healthy and increasing population (Allen and Angliss, 2011). Certain stocks or populations of gray and beluga whales and spotted seals are listed as endangered or are proposed for listing under the ESA; however, none of those stocks or populations occur in the proposed activity area. Ringed seals were recently listed under the ESA as threatened species. On July 25, 2014 the U.S. District Court for the District of Alaska vacated the rule listing to the Beringia bearded seal DPS and remanded the rule to NMFS to correct the deficiencies identified in the opinion. None of the other species that may occur in the project area is listed as threatened or endangered under the ESA or designated as depleted under the MMPA. There is currently no established critical habitat in the proposed project area for any of these seven species.

Potential impacts to marine mammal habitat were discussed previously in this document (see the ''Anticipated Effects on Habitat'' section). Although some disturbance is possible to food sources of marine mammals, the impacts are anticipated to be minor. Based on the vast size of the Arctic Ocean where feeding by marine

mammals occurs versus the localized area of the ice overflight surveys, any missed feeding opportunities in the direct project area would be of little consequence, as marine mammals would have access to other feeding grounds.

Based on the analysis contained herein of the likely effects of the specified activity on marine mammals and their habitat, and taking into consideration the implementation of the proposed monitoring and mitigation measures, NMFS preliminarily finds that the total marine mammal take from Shell's proposed 2015 ice overflight surveys in the Chukchi and Beaufort Seas will have a negligible impact on the affected marine mammal species or stocks.

Small Numbers

The estimated takes proposed to be authorized represent less than 0.3% of the affected population or stock for all species in the survey area.

Based on the analysis contained herein of the likely effects of the specified activity on marine mammals and their habitat, and taking into consideration the implementation of the mitigation and monitoring measures, NMFS preliminarily finds that small numbers of marine mammals will be taken relative to the populations of the affected species or stocks.

Impact on Availability of Affected Species or Stock for Taking for Subsistence Uses

Potential Impacts to Subsistence Uses

NMFS has defined ''unmitigable adverse impact'' in 50 CFR 216.103 as: ''an impact resulting from the specified activity: (1) That is likely to reduce the availability of the species to a level insufficient for a harvest to meet subsistence needs by: (i) Causing the marine mammals to abandon or avoid hunting areas; (ii) Directly displacing subsistence users; or (iii) Placing physical barriers between the marine mammals and the subsistence hunters; and (2) That cannot be sufficiently mitigated by other measures to increase the availability of marine mammals to allow subsistence needs to be met.

Subsistence hunting continues to be an essential aspect of Inupiat Native life, especially in rural coastal villages. The Inupiat participate in subsistence hunting activities in and around the Beaufort and Chukchi Seas. The animals taken for subsistence provide a significant portion of the food that will last the community through the year. Marine mammals represent on the order of 60–80% of the total subsistence harvest. Along with the nourishment necessary for survival, the subsistence activities strengthen bonds within the culture, provide a means for educating the younger generation, provide supplies for artistic expression, and allow for important celebratory events.

Bowhead Whale

Activities associated with Shell's planned ice overflight survey program is not likely to have an un-mitigable adverse impact on the availability of bowhead whales for taking for subsistence uses. Ice overflight surveys that may occur near Point Lay, Wainwright, Barrow, Nuiqsut, and Kaktovik would traverse bowhead subsistence areas. Most flights would take place after the date of fall and prior to spring bowhead whale hunting from the villages. The most commonly observed reactions of bowheads to aircraft traffic are hasty dives, but changes in orientation, dispersal, and changes in activity are sometimes noted. Such reactions could potentially affect subsistence hunts if the flights occurred near and at the same time as the hunt. Shell has developed and proposes to implement a number of mitigation measures to avoid such impacts. These mitigation measures include minimum flight altitudes, use of Village Community Liaison Officers (CLOs), Subsistence Advisors (SAs), and Communication Centers in order to avoid conflicts with subsistence activities. SA calls will be held while subsistence activities are underway during the ice overflight survey program and are attended by operations staff, logistics staff, and CLOs. Aircraft flights are adjusted as needed and planned in a manner that avoids potential impacts to bowhead whale hunts and other subsistence activities. With these mitigation measures any effects on the bowhead whale as a subsistence resource, or effects on bowhead subsistence hunts would be minimal.

Beluga Whale

Activities associated with Shell's planned ice overflight survey program will not have an un-mitigable adverse impact on the availability of beluga whales for taking for subsistence uses.

Ice overflight surveys may occur near Point Lay, Wainwright, Barrow, Nuiqsut, and Kaktovik would and traverse beluga whale hunt subsistence areas. Most flights would take place when belugas are not typically harvested. Survey activities could potentially affect subsistence hunts if the flights occurred near and at the same time as the hunt. Shell has developed and proposes to implement a number of mitigation measures to avoid such impacts. These mitigation measures include minimum flight altitudes, use of CLOs, SAs, and Communication Centers. SA calls will be held while subsistence activities are underway during the ice overflight survey program and are attended by operations staff, logistics staff, and CLOs. Aircraft flights are adjusted as needed and planned in a manner that avoids potential impacts to beluga whale hunts and other subsistence activities. With these mitigation measures any effects on the beluga whale as a subsistence resource, or effects on beluga subsistence hunts would be minimal.

Seals

Seals are an important subsistence resource with ringed and bearded seals making up the bulk of the seal harvest. The survey areas are far outside of areas reportedly utilized for the harvest of seals by the villages of Point Hope, thus the ice overflight surveys will not have an un-mitigable adverse impact on the availability of ice seals for taking for subsistence uses. The survey areas encompass some areas utilized by residents of Point Lay, Wainwright, Barrow, Nuiqsut and Kaktovik for the harvest of seals. Most ringed and bearded seals are harvested in the winter and a harvest of seals could possibly be affected by Shell's planned activities. Spotted seals are harvested during the summer and may overlap briefly with Shell's planned activities. Most seals are harvested in coastal waters, with available maps of recent and past subsistence use areas indicating that seal harvests have occurred only within 30–40 mi (48–64 km) off the coastline. Some of the planned ice overflight surveys would take place in areas used by the village residents for the harvest of seals. The survey aircraft could potentially travel over areas used by residents for seal hunting and could potentially disturb seals and, therefore, subsistence hunts for seals. Any such effects from the survey activities would be minimal due to the infrequency of the planned surveys. Shell has developed and proposes to implement a number of mitigation measures which include a proposed 4MP, use of CLOs, SAs, operation of Communication Centers, and minimum altitude requirements. SA calls will be held while subsistence activities are underway during the ice overflight survey program and are attended by operations staff, logistics staff, and CLO's. Aircraft movements and activities are adjusted as needed and planned in a manner that avoids potential impacts to subsistence

activities. With these mitigation measures any effects on ringed, bearded, and spotted seals as subsistence resources, or effects on subsistence hunts for seals, would be minimal.

Plan of Cooperation or Measures To Minimize Impacts to Subsistence Hunts

Regulations at 50 CFR 216.104(a)(12) require IHA applicants for activities that take place in Arctic waters to provide a Plan of Cooperation (POC) or information that identifies what measures have been taken and/or will be taken to minimize adverse effects on the availability of marine mammals for subsistence purposes.

Shell is preparing to implement a POC in accordance with NMFS' regulations. The POC relies upon the Chukchi Sea Communication Plans to identify the measures that Shell has developed in consultation with North Slope subsistence communities and will implement during its planned 2015/2016 ice overflight surveys to minimize any adverse effects on the availability of marine mammals for subsistence uses. In addition, the POC will detail Shell's communications and consultations with local subsistence communities concerning its planned 2015/2016 program, potential conflicts with subsistence activities, and means of resolving any such conflicts (50 CFR 216.104(a) (12) (i), (ii), and (iv)). Shell continues to document its contacts with the North Slope subsistence communities, as well as the substance of its communications with subsistence stakeholder groups.

The POC identifies and documents potential conflicts and associated measures that will be taken to minimize any adverse effects on the availability of marine mammals for subsistence use. Outcomes of POC meetings are typically included in updates attached to the POC as addenda and distributed to federal, state, and local agencies as well as local stakeholder groups that either adjudicate or influence mitigation approaches for Shell's activities.

Shell will engage with the villages potentially impacted by the 2015/2016 ice overflight surveys in the Chukchi and Beaufort Seas in 2014 and early 2015. Meetings were held in Barrow and Point Lay in early November 2014 and additional engagements are scheduled with other villages in early 2015. Throughout 2015, and 2016 Shell anticipates continued engagement with the marine mammal commissions and committees active in the subsistence harvests and marine mammal research.

Following the 2015/2016 season, Shell intends to have a post-season co-management meeting with the commissioners and committee heads to discuss results of mitigation measures and outcomes of the preceding season. The goal of the post-season meeting is to build upon the knowledge base, discuss successful or unsuccessful outcomes of mitigation measures, and possibly refine plans or mitigation measures if necessary.

In addition to the POC, the following subsistence mitigation measures will be implemented for Shell's proposed ice overflight surveys.

(1) Communications

- Shell has developed a Communication Plan and will implement this plan before initiating ice overflight survey operations to coordinate activities with local subsistence users, as well as Village Whaling Captains' Associations, to minimize the risk of interfering with subsistence hunting activities, and keep current as to the timing and status of the bowhead whale hunt and other subsistence hunts.
- Shell will employ local CLOs and/or SAs from the Chukchi Sea villages that are potentially impacted by Shell's ice overflight surveys. The CLOs and SAs will provide consultation and guidance regarding the whale migration and subsistence activities. There will be one per village. The CLO and/or SA will use local knowledge (Traditional Knowledge) to gather data on the subsistence lifestyle within the community and provide advice on ways to minimize and mitigate potential negative impacts to subsistence resources during the survey season. Responsibilities include reporting any subsistence concerns or conflicts; coordinating with subsistence users; reporting subsistence-related comments, concerns, and information; and advising how to avoid subsistence conflicts.

(2) Aircraft Travel

- The aircraft will maintain a 1 mi (1.6 km) radius when flying over areas where seals appear to be concentrated in groups of ≥ 5 individuals.
- The aircraft will not land on ice within 0.5 mi (805 m) of hauled out pinnipeds.
- The aircraft will avoid flying over polynyas and along adjacent ice margins as much as possible to minimize potential disturbance to cetaceans.
- Aircraft shall not operate below 1,500 ft (457 m) in areas of active whale hunting; such areas to be identified through communications with the Com Centers and SAs.
- Shell will routinely engage with local communities and subsistence groups to ensure no disturbance of whaling or other subsistence activities.

Unmitigable Adverse Impact Analysis and Preliminary Determination

NMFS considers that these mitigation measures including measures to reduce overall impacts to marine mammals in the vicinity of the proposed ice overflight survey area and measures to mitigate any potential adverse effects on subsistence use of marine mammals are adequate to ensure subsistence use of marine mammals in the vicinity of Shell's proposed ice overflight surveys in the Chukchi and Beaufort Seas.

Based on the description of the specified activity, the measures described to minimize adverse effects on the availability of marine mammals for subsistence purposes, and the proposed mitigation and monitoring measures, NMFS has preliminarily determined that there will not be an unmitigable adverse impact on subsistence uses from Shell's proposed activities.

Endangered Species Act (ESA)

There are two marine mammal species listed as endangered under the ESA with confirmed or possible occurrence in the proposed project area: the bowhead whale and ringed seal. NMFS' Permits and Conservation Division will initiate consultation with NMFS' Endangered Species Division under section 7 of the ESA on the issuance of an IHA to Shell under section 101(a)(5)(D) of the MMPA for this activity. Consultation will be concluded prior to a determination on the issuance of an IHA.

National Environmental Policy Act (NEPA)

NMFS is preparing an Environmental Assessment (EA), pursuant to NEPA, to determine whether the issuance of an IHA to Shell for its 2015/2016 ice overflight surveys may have a significant impact on the human environment. NMFS has released a draft of the EA for public comment along with this proposed IHA.

Proposed Authorization

As a result of these preliminary determinations, NMFS proposes to issue an IHA to Shell for conducting ice overflight surveys in the Chukchi and Beaufort Seas during 2015/2016, provided the previously mentioned mitigation, monitoring, and reporting requirements are incorporated. The proposed IHA language is provided next.

This section contains a draft of the IHA itself. The wording contained in

this section is proposed for inclusion in the IHA (if issued).

(1) This Authorization is valid from May 1, 2015, through April 30, 2016.

(2) This Authorization is valid only for activities associated with Shell's 2015/2016 Chukchi and Beaufort Seas ice overflight surveys. The specific areas where Shell's ice overflight surveys will be conducted are the Chukchi and Beaufort Seas, Alaska, as indicated in Figure 1–1 of Shell's IHA application.

(3)(a) The incidental taking of marine mammals, by Level B harassment only, is limited to the following species: bowhead whale; gray whale; beluga whale; ringed seal; bearded seal; spotted seal; and ribbon seal.

(3)(b) The taking by injury (Level A harassment), serious injury, or death of any of the species listed in Condition 3(a) or the taking of any kind of any other species of marine mammal is prohibited and may result in the modification, suspension or revocation of this Authorization.

(4) The authorization for taking by harassment is limited to the following activities: Ice overflight surveys during freeze-up, winter, and break-up periods in 2015 and 2016 by aircraft.

(5) The taking of any marine mammal in a manner prohibited under this Authorization must be reported immediately to the Chief, Permits and Conservation Division, Office of Protected Resources, NMFS or her designee.

(6) The holder of this Authorization must notify the Chief of the Permits and Conservation Division, Office of Protected Resources, at least 48 hours prior to the start of ice overflight surveys (unless constrained by the date of issuance of this Authorization in which case notification shall be made as soon as possible).

(7) Ice Overflight Mitigation and Monitoring Requirements: The Holder of this Authorization is required to implement the following mitigation and monitoring requirements when conducting the specified activities to achieve the least practicable impact on affected marine mammal species or stocks:

(a) A PSO will be aboard all flights recording all sightings/observations (*e.g.* including number of individuals, approximate age (when possible to determine)), and any type of potential reaction to the aircraft. Environmental information the observer will record includes weather, air temperature, cloud and ice cover, visibility conditions, and wind speed.

(b) The aircraft will maintain a 1 mi radius when flying over areas where seals appear to be concentrated in groups of ≥ 5 individuals;

(c) The aircraft will not land on ice within 0.5 mi of hauled out pinnipeds or polar bears; and

(d) The aircraft will avoid flying over polynyas and along adjacent ice margins as much as possible to minimize potential disturbance to cetaceans.

(8) Subsistence Mitigation Measures: To ensure no unmitigable adverse impact on subsistence uses of marine mammals, the Holder of this Authorization shall:

(a) Develop and implement a Communication Plan before initiating ice overflight survey operations to coordinate activities with local subsistence users, as well as Village Whaling Captains' Associations, to minimize the risk of interfering with subsistence hunting activities, and keep current as to the timing and status of the bowhead whale hunt and other subsistence hunts.

(b) Employ local Community Liaison Officers (CLOs) and/or Subsistence Advisors (SAs) from the Chukchi Sea villages that are potentially impacted by the ice overflight surveys.

(A) The CLOs and SAs will provide consultation and guidance regarding the whale migration and subsistence activities.

(B) The CLOs and SAs will also report any subsistence concerns or conflicts; coordinate with subsistence users; report subsistence-related comments, concerns, and information; and advise how to avoid subsistence conflicts.

(c) Routinely engage with local communities and subsistence groups to ensure no disturbance of whaling or other subsistence activities.

(9) Monitoring Measures:

(a) Protected Species Observers:

(A) Aerial monitoring for marine mammals will be conducted by a trained protected species observer (PSO) aboard each flight.

(B) PSO duties will include watching for and identifying marine mammals, recording their numbers, distances from, and potential reactions to the presence of the aircraft, in addition to working with the helicopter pilots to identify areas for landings on ice that is clear of marine mammals.

(b) Observer Qualifications and Training

(A) Observers will have previous marine mammal observation experience in the Chukchi and Beaufort Seas.

(B) All observers will be trained and familiar with the marine mammals of the area, data collection protocols, reporting procedures, and required mitigation measures.

(c) Specialized Field Equipment:

(A) Fujinon 7 X 50 binoculars for visual monitoring,

(B) GPS unit to document the route of each ice overflight,

(C) Laptop computer for data entry,

(D) Voice recorder to capture detailed observations and data for post flight entry into the computer,

(E) Digital still cameras.

(d) Field Data-Recording

(A) The observer on the aircraft will record observations directly into computers using a custom software package.

(B) The accuracy of the data entry will be verified in the field by computerized validity checks as the data are entered, and by subsequent manual checking following the flight.

(C) Observers will capture the details of sightings and other observations with a voice recorder, which will maximize observation time and the collection of data.

(D) During the course of the flights, the observer will record information for each sighting including:

- Number of individuals,
- Approximate age (when possible to determine),
- Any type of potential reaction to the aircraft.
- Weather, air temperature, wind speed, cloud and ice cover, and
- Visibility conditions.

(10) Reporting Requirements:

(a) Final Report: The results of Shell's ice overflight monitoring report will be presented in the ''90-day'' final report, as required by NMFS under the proposed IHA. The initial final report is due to NMFS within 90 days after the expiration of the IHA. The report will include:

(A) Summaries of monitoring effort: total hours, total distances flown, and environmental conditions during surveys;

(B) Summaries of occurrence, species composition, and distribution of all marine mammal sightings including date, numbers, age/size/gender categories (when discernible), group sizes, ice cover and other environmental variables; data will be visualized by plotting sightings relative to the position of the aircraft; and

(C) Analyses of the potential effects of ice overflights on marine mammals and the number of individuals that may have been disturbed by aircraft.

(b) The ''90-day'' report will be subject to review and comment by NMFS. Any recommendations made by NMFS must be addressed in the final report prior to acceptance by NMFS.

(11)(a) In the unanticipated event that the ice overflight surveys clearly cause the take of a marine mammal in a

manner prohibited by this Authorization, such as an injury (Level A harassment), serious injury or mortality, Shell shall immediately cease operations and immediately report the incident to the Chief of the Permits and Conservation Division, Office of Protected Resources, NMFS, by phone or email and the Alaska Regional Stranding Coordinators. The report must include the following information: (i) Time, date, and location (latitude/longitude) of the incident; (ii) the name and type of vessel involved; (iii) the vessel's speed during and leading up to the incident; (iv) description of the incident; (v) status of all sound source use in the 24 hours preceding the incident; (vi) water depth; (vii) environmental conditions (*e.g.,* wind speed and direction, Beaufort sea state, cloud cover, and visibility); (viii) description of marine mammal observations in the 24 hours preceding the incident; (ix) species identification or description of the animal(s) involved; (x) the fate of the animal(s); (xi) and photographs or video footage of the animal (if equipment is available).

Activities shall not resume until NMFS is able to review the circumstances of the prohibited take. NMFS shall work with Shell to determine what is necessary to minimize the likelihood of further prohibited take and ensure MMPA compliance. Shell may not resume their activities until notified by NMFS via letter, email, or telephone.

(b) In the event that Shell discovers an injured or dead marine mammal, and the lead PSO determines that the cause of the injury or death is unknown and the death is relatively recent (*i.e.,* in less than a moderate state of decomposition as described in the next paragraph), Shell will immediately report the incident to the Chief of the Permits and Conservation Division, Office of Protected Resources, NMFS, by phone or email and the NMFS Alaska Stranding Hotline and/or by email to the Alaska Regional Stranding Coordinators. The report must include the same information identified in Condition 12(a) above. Activities may continue while NMFS reviews the circumstances of the incident. NMFS will work with Shell to determine whether modifications in the activities are appropriate.

(c) In the event that Shell discovers an injured or dead marine mammal, and the lead PSO determines that the injury or death is not associated with or related to the activities authorized in Condition 2 of this Authorization (*e.g.,* previously wounded animal, carcass with moderate to advanced decomposition, or scavenger damage), Shell shall report the incident to the Chief of the Permits and Conservation Division, Office of Protected Resources, NMFS, by phone or email and the NMFS Alaska Stranding Hotline and/or by email to the Alaska Regional Stranding Coordinators, within 24 hours of the discovery. Shell shall provide photographs or video footage (if available) or other documentation of the stranded animal sighting to NMFS and the Marine Mammal Stranding Network. Activities may continue while NMFS reviews the circumstances of the incident.

(12) The Plan of Cooperation outlining the steps that will be taken to cooperate and communicate with the native communities to ensure the availability of marine mammals for subsistence uses must be implemented.

(13) Shell is required to comply with the Terms and Conditions of the Incidental Take Statement (ITS) corresponding to NMFS's Biological Opinion issued to NMFS's Office of Protected Resources.

(14) A copy of this Authorization and the ITS must be in the possession of all contractors and PSOs operating under the authority of this Incidental Harassment Authorization.

(15) Penalties and Permit Sanctions: Any person who violates any provision of this Incidental Harassment Authorization is subject to civil and criminal penalties, permit sanctions, and forfeiture as authorized under the MMPA.

(16) This Authorization may be modified, suspended or withdrawn if the Holder fails to abide by the conditions prescribed herein or if the authorized taking is having more than a negligible impact on the species or stock of affected marine mammals, or if there is an unmitigable adverse impact on the availability of such species or stocks for subsistence uses.

Request for Public Comment

As noted above, NMFS requests comment on our analysis, the draft authorization, and any other aspect of the Notice of Proposed IHA for Shell's 2015/2016 Chukchi and Beaufort Seas ice overflight surveys. Please include, with your comments, any supporting data or literature citations to help inform our final decision on Shell's request for an MMPA authorization.

Dated: February 25, 2015.

Donna S. Wieting,

Director, Office of Protected Resources, National Marine Fisheries Service.

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DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

RIN 0648–XD741

Taking of Marine Mammals Incidental to Specified Activities; Anacortes Tie-Up Slips Dolphin and Wingwall Replacement

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

ACTION: Notice; proposed incidental harassment authorization; request for comments and information.

SUMMARY: NMFS has received a request from the Washington State Department of Transportation (WSDOT) for an authorization to take small numbers of 11 species of marine mammals, by Level B harassment, incidental to proposed construction activities for a tie-up slips dolphin and wingwall replacement project in Anacortes, Washington State. Pursuant to the Marine Mammal Protection Act (MMPA), NMFS is requesting comments on its proposal to issue an authorization to WDOT to incidentally take, by harassment, small numbers of marine mammals for a period of 1 year.

DATES: Comments and information must be received no later than April 3, 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. The mailbox address for providing email comments is *itp.guan@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 25-megabyte file size.

Instructions: All comments received are a part of the public record and will generally be posted to *http://www.nmfs.noaa.gov/pr/permits/incidental.htm* without change. All Personal Identifying Information (for example, name, address, etc.) voluntarily submitted by the commenter may be publicly accessible. Do not submit Confidential Business Information or otherwise sensitive or protected information.

A copy of the application may be obtained by writing to the address specified above or visiting the internet at: *http://www.nmfs.noaa.gov/pr/permits/incidental.htm.* Documents

cited in this notice may also be viewed, by appointment, during regular business hours, at the aforementioned address.

FOR FURTHER INFORMATION CONTACT: Shane Guan, Office of Protected Resources, NMFS, (301) 427–8401.

SUPPLEMENTARY INFORMATION:

Background

Sections 101(a)(5)(A) and (D) of the MMPA (16 U.S.C. 1361 *et seq.*) direct the Secretary of Commerce to allow, upon request, the incidental, but not intentional, taking of small numbers of marine mammals by U.S. citizens who engage in a specified activity (other than commercial fishing) within a specified geographical region if certain findings are made and either regulations are issued or, if the taking is limited to harassment, a notice of a proposed authorization is provided to the public for review.

An authorization for incidental takings shall be granted if NMFS finds that the taking will have a negligible impact on the species or stock(s), will not have an unmitigable adverse impact on the availability of the species or stock(s) for subsistence uses (where relevant), and if the permissible methods of taking and requirements pertaining to the mitigation, monitoring and reporting of such takings are set forth. NMFS has defined ''negligible impact'' in 50 CFR 216.103 as ''. . . an impact resulting from the specified activity that cannot be reasonably expected to, and is not reasonably likely to, adversely affect the species or stock through effects on annual rates of recruitment or survival.''

Section 101(a)(5)(D) of the MMPA established an expedited process by which citizens of the U.S. can apply for a one-year authorization to incidentally take small numbers of marine mammals by harassment, provided that there is no potential for serious injury or mortality to result from the activity. Section 101(a)(5)(D) establishes a 45-day time limit for NMFS review of an application followed by a 30-day public notice and comment period on any proposed authorizations for the incidental harassment of marine mammals. Within 45 days of the close of the comment period, NMFS must either issue or deny the authorization.

Summary of Request

On April 1, 2014, WSDOT submitted a request to NOAA requesting an IHA for the possible harassment of small numbers of 11 marine mammal species incidental to construction associated with the Anacortes Tie-up Slips Dolphin and Wingwall Replacement in the city of Anacortes, on Fidalgo Island, adjacent to Guemes Channel, Skagit County, Washington, between September 1, 2015, and February 15, 2016. NMFS determined that the IHA application was complete on July 1, 2014. NMFS is proposing to authorize the Level B harassment of the following marine mammal species/stocks: Harbor seal, California sea lion, Steller sea lion (eastern Distinct Population Segment, or DPS), northern elephant seal, killer whale (transient and Southern Resident stocks), gray whale, humpback whale, minke whale, harbor porpoise, Dall's porpoise, and Pacific white-sided dolphin.

Description of the Specified Activity

Overview

The purpose of this project is to replace the aging timber wingwalls and dolphins in Tie-up Slips 3 and 4 (Figures 1–3, 1–4 and 1–5 in WSDOT's IHA application) with standard steel and concrete designs. The aging timber facilities are beginning to deteriorate from combined docking operations, salt water infusion and wood rot organisms. Replacement of these facilities will allow the ferries to safely moor at the terminal and provide the necessary protection of the terminal from the docking of ferries. The timber piles that will be permanently removed are listed Table 1.

WSDOT plans to re-use eight existing 36-inch steel piles (remove and relocate) and install 52 new permanent steel piles (24-, 30-, and 36-inch) with a vibratory hammer. In addition, WSDOT may install one temporary dolphin consisting of one 24-inch steel pile and/or the contractor may elect to temporarily install four 24-inch steel piles at the location of each dolphin and wingwall to be used as a pile driving template for the permanent piles (Table 2). These four temporary piles will be removed once the corresponding landing aid is completed, then installed at the location of the next structure, and completely removed at the end of the project. Between one and five temporary piles will be installed at any given time during the project.

A vibratory hammer will be used for pile removal and driving. No impact pile driving or proofing is necessary. Existing timber piles may also be removed by direct pull. Pile driving and removal will be conducted from a barge containing a derrick, crane, and other necessary equipment. The barge will be anchored and/or spudded. No barge dynamic positioning system (DPS) will be used on this project.

TABLE 1—TIMBER PILES TO BE REMOVED

Structure	Number of piles removed
Slip 3 Wingwalls	46
Slip 3 Left Dolphin	35
Slip 3 Right Inner	35
Slip 3 Right Outer	51
Slip 4 Wing Dolphins	70
Slip 4 Right Outer	35
Total	272

TABLE 2—PROJECT PILES TO BE INSTALLED

Structure name	Location	Depth (ft)	Existing steel piles	Temporary steel piles*	New permanent steel piles			Total
			36″	24″	36″	30″	24″	
Dolphin 1	Slip 3 left intermediate	−28		4	1	4		9
Dolphin 2	Slip 3 right inner (double sided)	−28		4	2	4		10
Dolphin 3	Slip 3 right outer (double sided)	−30		4	10	6		20
Dolphin 4	Slip 4 right outer	−27		4	3	6		13
Wingwall 1	Slip 3	−28	8				4	12
Wingwall 2	Slip 4	−25			4		8	16
Temporary Dolphin	Protective Dolphin	−34		1				1
Total			8	5 [1]	20	20	12	81

[1] No more than five temporary piles will be in place at any one time.

Dates and Duration

In-water construction is planned to take place between September 2015 and February 2016. The on-site work will last approximately 135 days with pile removal and driving taking place over approximately 36 days. All work will occur in water depths between −25 and −34 feet mean low low water (MLLW).

Duration estimates of each of the pile driving elements follow:

• The daily construction window for pile removal or driving will begin no sooner than 30 minutes after sunrise to allow for initial marine mammal monitoring, and will end 30 minutes before sunset to allow for post-construction marine mammal monitoring.

• Vibratory pile removal of the existing timber piles will take approximately 10 to 15 minutes per pile. Vibratory removal will take less time than driving, because piles are vibrated to loosen them from the soil, and then pulled out with the vibratory hammer turned off. Assuming the worst case of 15 minutes per pile (with no direct pull or clamshell removal), removal of 272 piles at the Anacortes terminal will take 68 hours over nine days of pile removal.

• Vibratory pile driving of the steel piles will take approximately 20 minutes per pile, with three to five piles installed per day. Assuming 20 minutes per pile, and three piles per day, driving of 81 piles at the Anacortes terminal will take 27 hours over 27 days.

The total worst-case time for pile removal is nine days, and 27 days for pile installation. The actual number of pile-removal/driving days is expected to be less.

Specified Geographic Region

The proposed activities will occur at the Anacortes ferry terminal located in Anacortes, Washington (see Figures 1–1 and 1–2 of WSDOT's IHA application). The terminal is adjacent to Guemes Channel, tributary to the Georgia Basin.

The Anacortes ferry terminal, serving State Route 20, is located in the city of Anacortes, on Fidalgo Island, adjacent to Guemes Channel, Skagit County, Washington. Guemes Channel is tributary to the Georgia Basin. The terminal is located in Section 22, Township 35 North, Range 1 East. This is the primary terminal for all WSDOT ferry departures to the San Juan Islands and Vancouver Island. Land use in the area is a mix of residential, business, and local parks.

Detailed Description of Anacortes Tie-up Slips Dolphin and Wingwall Replacement

The following construction activities are anticipated:

• Remove three 35-pile dolphins, one 51-pile dolphin, 70 piles associated with wing-dolphins, and 46 piles associated with wingwalls. These piles will be removed with a vibratory hammer or by direct pull and clamshell removal.

• If necessary, vibratory pile-drive one to five 24-inch steel piles for use as a temporary template at each structure location.

• Vibratory pile-drive up to six 30-inch steel piles and up to ten 36-inch steel piles for each new dolphin.

• Place precast concrete diaphragm on new dolphins.

• Attach fender panel to new fender pile.

• Remove temporary piles.

• At Slip 3 wingwalls, vibratory pile-drive up to four 24-inch steel piles (two per wingwall).

• At Slip 4 wingwalls, vibratory pile-drive and up to four 24-inch steel piles (two per wingwall), and eight 36-inch steel piles (four per wingwall).

• Attach rubber fenders between plumb piles.

Approximately 441 tons of creosote-treated timbers will be removed from the marine environment. The total mudline footprint of the existing dolphins is 258 square feet (ft2). The total mudline footprint of the new dolphins will be 263 ft2, an increase of five square feet. However, the footprint of the new steel dolphins will be more open, allowing fish movement between the piles. The new dolphins and wingwalls will have 52 piles, compared to the existing structures, which have 272 tightly clustered piles with no space between them. Detailed descriptions of these activities are provided below.

(1) Vibratory Hammer Pile Removal

Vibratory hammer extraction is a common method for removing timber piling. A vibratory hammer is a large mechanical device mostly constructed of steel (weighing 5 to 16 tons) that is suspended from a crane by a cable. It is attached to a derrick and positioned on the top of a pile. The pile is then unseated from the sediments by engaging the hammer, creating a vibration that loosens the sediments binding the pile, and then slowly lifting up on the hammer with the aid of the crane.

Once unseated, the crane will continue to raise the hammer and pull the pile from the sediment. When the pile is released from the sediment, the vibratory hammer is disengaged and the pile is pulled from the water and placed on a barge for transfer upland. Vibratory removal will take approximately 10 to 15 minutes per pile, depending on sediment conditions.

The piling will be loaded onto the barge or into a container and disposed of offsite in accordance with State of Washington Administrative Code (WAC) 173–304 Minimum Functional Standards for Solid Waste Handling and mitigation.

(2) Direct Pull and Clamshell Pile Removal

Older timber pilings are particularly prone to breaking at the mudline because of damage from marine borers and vessel impacts, and must be removed because they can interfere with the installation of new pilings. In some cases, removal with a vibratory hammer is not possible if the pile is too fragile to withstand the hammer force.

Broken or damaged piles may be removed by wrapping the piles with a cable and pulling them directly from the sediment with a crane. If the piles break below the waterline, the pile stubs may be removed with a clamshell bucket, a hinged steel apparatus that operates like a set of steel jaws. The bucket will be lowered from a crane and the jaws will grasp the pile stub as the crane pulls up. The broken piling and stubs will be loaded onto the barge for off-site disposal. Clamshell removal will be used only if necessary. Direct pull and clamshell removal do not produce noise that could impact marine mammals.

(3) Vibratory Hammer Pile Installation

Vibratory hammers are commonly used in steel pile installation where sediments allow and may involve the same vibratory hammer used in pile extraction. The pile is placed into position using a choker and crane, and then vibrated between 1,200 and 2,400 vibrations per minute. The vibrations liquefy the sediment surrounding the pile allowing it to penetrate to the required seating depth. The type of vibratory hammer that will be used for the project will likely be an APE 400 King Kong (or equivalent) with a drive force of 361 tons.

Description of Marine Mammals in the Area of the Specified Activity

The marine mammal species under NMFS jurisdiction most likely to occur in the proposed construction area include Pacific harbor seal (*Phoca vitulina richardsi*), northern elephant seal (*Mirounga angustirostris*), California sea lion (*Zalophus*

californianus), Steller sea lion (*Eumetopias jubatus*), killer whale (*Orcinus orca*) (transient and Southern Resident stocks), gray whale (*Eschrichtius robustus*), humpback whale (*Megaptera novaeangliae*), minke whale (*Balaenoptera acutorostrata*), harbor porpoise (*Phocoena phocoena*), Dall's porpoise (*P. dali*), and Pacific white-sided dolphin (*Lagenorhynchus obliquidens*).

TABLE—MARINE MAMMAL SPECIES POTENTIALLY PRESENT IN REGION OF ACTIVITY

Species	ESA Status	MMPA Status	Occurrence
Harbor Seal	Not listed	Non-depleted	Frequent.
California Sea Lion	Not listed	Non-depleted	Frequent.
Northern Elephant Seal	Not listed	Non-depleted	Occasional.
Steller Sea Lion (eastern DPS)	Not listed	Under review	Rare.
Harbor Porpoise	Not listed	Non-depleted	Frequent.
Dall's Porpoise	Not listed	Non-depleted	Occasional.
Pacific White-sided dolphin	Not listed	Non-depleted	Occasional.
Killer Whale	Endangered (Southern Resident)	Depleted	Occasional.
Gray Whale	Delisted	Unclassified	Occasional.
Humpback Whale	Endangered	Depleted	Rare.
Minke Whale	Not listed	Non-depleted	Rare.

General information on the marine mammal species found in Washington coastal waters can be found in Caretta *et al.* (2014), which is available at the following URL: *http://www.nmfs.noaa.gov/pr/sars/pdf/po2013.pdf.* Refer to that document for information on these species. A list of marine mammals in the vicinity of the action and their status are provided in Table 3. Specific information concerning these species in the vicinity of the proposed action area is provided in detail in the WSDOT's IHA application.

Potential Effects of the Specified Activity on Marine Mammals

This section includes a summary and discussion of the ways that the types of stressors associated with the specified activity (*e.g.,* pile removal and pile driving) have been observed to impact marine mammals. This discussion may also include reactions that we consider to rise to the level of a take and those that we do not consider to rise to the level of a take (for example, with acoustics, we may include a discussion of studies that showed animals not reacting at all to sound or exhibiting barely measurable avoidance). This section is intended as a background of potential effects and does not consider either the specific manner in which this activity will be carried out or the mitigation that will be implemented, and how either of those will shape the anticipated impacts from this specific activity. The ''Estimated Take by Incidental Harassment'' section later in this document will include a quantitative analysis of the number of individuals that are expected to be taken by this activity. The ''Negligible Impact Analysis'' section will include the analysis of how this specific activity will impact marine mammals and will consider the content of this section, the ''Estimated Take by Incidental Harassment'' section, the ''Proposed Mitigation'' section, and the ''Anticipated Effects on Marine Mammal Habitat'' section to draw conclusions regarding the likely impacts of this activity on the reproductive success or survivorship of individuals and from that on the affected marine mammal populations or stocks.

When considering the influence of various kinds of sound on the marine environment, it is necessary to understand that different kinds of marine life are sensitive to different frequencies of sound. Based on available behavioral data, audiograms have been derived using auditory evoked potentials, anatomical modeling, and other data, Southall *et al.* (2007) designate ''functional hearing groups'' for marine mammals and estimate the lower and upper frequencies of functional hearing of the groups. The functional groups and the associated frequencies are indicated below (though animals are less sensitive to sounds at the outer edge of their functional range and most sensitive to sounds of frequencies within a smaller range somewhere in the middle of their functional hearing range):

- Low frequency cetaceans (13 species of mysticetes): Functional hearing is estimated to occur between approximately 7 Hz and 22 kHz (however, a study by Au et al., (2006) of humpback whale songs indicate that the range may extend to at least 24 kHz);
- Mid-frequency cetaceans (32 species of dolphins, six species of larger toothed whales, and 19 species of beaked and bottlenose whales): Functional hearing is estimated to occur between approximately 150 Hz and 160 kHz;
- High frequency cetaceans (eight species of true porpoises, six species of river dolphins, Kogia, the franciscana, and four species of cephalorhynchids): Functional hearing is estimated to occur between approximately 200 Hz and 180 kHz; and
- Pinnipeds in Water: Functional hearing is estimated to occur between approximately 75 Hz and 75 kHz, with the greatest sensitivity between approximately 700 Hz and 20 kHz.

As mentioned previously in this document, 11 marine mammal species (7 cetacean and 4 pinniped species) are likely to occur in the proposed seismic survey area. Of the 7 cetacean species likely to occur in the proposed project area, 3 are classified as low-frequency cetaceans (*i.e.,* humpback, gray, and minke whales), 2 are classified as mid-frequency cetaceans (*i.e.,* killer whale and Pacific white-sided dolphin), and 2 are classified as high-frequency cetaceans (*i.e.,* harbor and Dall's porpoises) (Southall *et al.,* 2007). A species' functional hearing group is a consideration when we analyze the effects of exposure to sound on marine mammals.

Marine mammals exposed to high-intensity sound repeatedly or for prolonged periods can experience hearing threshold shift (TS), which is the loss of hearing sensitivity at certain frequency ranges (Kastak *et al.* 1999; Schlundt *et al.* 2000; Finneran *et al.* 2002; 2005). TS can be permanent (PTS), in which case the loss of hearing sensitivity is unrecoverable, or temporary (TTS), in which case the animal's hearing threshold will recover over time (Southall *et al.* 2007). Since marine mammals depend on acoustic cues for vital biological functions, such as orientation, communication, finding prey, and avoiding predators, hearing impairment could result in the reduced

ability of marine mammals to detect or interpret important sounds. Repeated noise exposure that causes TTS could lead to PTS.

Experiments on a bottlenose dolphin (*Tursiops truncates*) and beluga whale (*Delphinapterus leucas*) showed that exposure to a single watergun impulse at a received level of 207 kPa (or 30 psi) peak-to-peak (p-p), which is equivalent to 228 dB (p-p) re 1 μPa, resulted in a 7 and 6 dB TTS in the beluga whale at 0.4 and 30 kHz, respectively. Thresholds returned to within 2 dB of the pre-exposure level within 4 minutes of the exposure (Finneran *et al.* 2002). No TTS was observed in the bottlenose dolphin. Although the source level of one hammer strike for pile driving is expected to be much lower than the single watergun impulse cited here, animals being exposed for a prolonged period to repeated hammer strikes could receive more noise exposure in terms of sound exposure level (SEL) than from the single watergun impulse (estimated at 188 dB re 1 $\mu Pa^2 - s$) in the aforementioned experiment (Finneran *et al.* 2002).

Chronic exposure to excessive, though not high-intensity, noise could cause masking at particular frequencies for marine mammals that utilize sound for vital biological functions (Clark *et al.* 2009). Masking is the obscuring of sounds of interest by other sounds, often at similar frequencies. Masking generally occurs when sounds in the environment are louder than, and of a similar frequency as, auditory signals an animal is trying to receive. Masking can interfere with detection of acoustic signals, such as communication calls, echolocation sounds, and environmental sounds important to marine mammals. Therefore, under certain circumstances, marine mammals whose acoustical sensors or environment are being severely masked could also be impaired.

Masking occurs at the frequency band which the animals utilize. Since noise generated from in-water vibratory pile removal and driving is mostly concentrated at low frequency ranges, it may have little effect on high-frequency echolocation sounds by odontocetes (toothed whales), which may hunt California sea lion and harbor seal. However, the lower frequency man-made noises are more likely to affect the detection of communication calls and other potentially important natural sounds, such as surf and prey noise. The noises may also affect communication signals when those signals occur near the noise band, and thus reduce the communication space of animals (*e.g.,* Clark *et al.* 2009) and cause increased stress levels (*e.g.,* Foote *et al.* 2004; Holt *et al.* 2009).

Unlike TS, masking can potentially impact the species at community, population, or even ecosystem levels, as well as individual levels. Masking affects both senders and receivers of the signals and could have long-term chronic effects on marine mammal species and populations. Recent science suggests that low frequency ambient sound levels in the world's oceans have increased by as much as 20 dB (more than 3 times, in terms of SPL) from pre-industrial periods, and most of these increases are from distant shipping (Hildebrand 2009). All anthropogenic noise sources, such as those from vessel traffic and pile removal and driving, contribute to the elevated ambient noise levels, thus intensifying masking.

Finally, in addition to TS and masking, exposure of marine mammals to certain sounds could lead to behavioral disturbance (Richardson et al. 1995), such as: Changing durations of surfacing and dives, number of blows per surfacing, or moving direction and/or speed; reduced/increased vocal activities; changing/cessation of certain behavioral activities, such as socializing or feeding; visible startle response or aggressive behavior, such as tail/fluke slapping or jaw clapping; avoidance of areas where noise sources are located; and/or flight responses (*e.g.,* pinnipeds flushing into water from haulouts or rookeries). The onset of behavioral disturbance from anthropogenic noise depends on both external factors (characteristics of noise sources and their paths) and the receiving animals (hearing, motivation, experience, demography), and is therefore difficult to predict (Southall *et al.* 2007).The activities of workers in the project area may also cause behavioral reactions by marine mammals, such as pinnipeds flushing from the jetty or pier or moving farther from the disturbance to forage. However, observations of the area show that it is unlikely that more than 10 to 20 individuals of pinnipeds would be present in the project vicinity at any one time. Therefore, even if pinnipeds were flushed from the haul-out, a stampede is very unlikely, due to the relatively low number of animals onsite. In addition, proposed mitigation and monitoring measures would minimize the startle behavior of pinnipeds and prevent the animals from flushing into the water.

The biological significance of many of these behavioral disturbances is difficult to predict, especially if the detected disturbances appear minor. However, the consequences of behavioral modification could be expected to be biologically significant if the change affects growth, survival, or reproduction. Some of these types of significant behavioral modifications include: Drastic change in diving/surfacing patterns (such as those thought to be causing beaked whale strandings due to exposure to military mid-frequency tactical sonar); habitat abandonment due to loss of desirable acoustic environment; and cessation of feeding or social interaction.

Potential Effects on Marine Mammal Habitat

The primary potential impacts to marine mammal habitat are associated with elevated sound levels produced by vibratory pile removal and pile driving in the area. However, other potential impacts to the surrounding habitat from physical disturbance are also possible.

Potential Impacts on Prey Species

With regard to fish as a prey source for cetaceans and pinnipeds, fish are known to hear and react to sounds and to use sound to communicate (Tavolga *et al.* 1981) and possibly avoid predators (Wilson and Dill 2002). Experiments have shown that fish can sense both the strength and direction of sound (Hawkins 1981). Primary factors determining whether a fish can sense a sound signal, and potentially react to it, are the frequency of the signal and the strength of the signal in relation to the natural background noise level.

The level of sound at which a fish will react or alter its behavior is usually well above the detection level. Fish have been found to react to sounds when the sound level increased to about 20 dB above the detection level of 120 dB (Ona 1988); however, the response threshold can depend on the time of year and the fish's physiological condition (Engas *et al.* 1993). In general, fish react more strongly to pulses of sound rather than non-pulse signals (such as noise from pile driving) (Blaxter *et al.* 1981), and a quicker alarm response is elicited when the sound signal intensity rises rapidly compared to sound rising more slowly to the same level.

During the coastal construction only a small fraction of the available habitat would be ensonified at any given time. Disturbance to fish species would be short-term and fish would return to their pre-disturbance behavior once the pile driving activity ceases. Thus, the proposed construction would have little, if any, impact on the abilities of marine mammals to feed in the area where construction work is planned.

Finally, the time of the proposed construction activity would avoid the

spawning season of the ESA-listed salmonid species.

Water and Sediment Quality

Short-term turbidity is a water quality effect of most in-water work, including pile driving. WSDOT must comply with state water quality standards during these operations by limiting the extent of turbidity to the immediate project area.

Roni and Weitkamp (1996) monitored water quality parameters during a pier replacement project in Manchester, Washington. The study measured water quality before, during and after pile driving. The study found that construction activity at the site had ''little or no effect on dissolved oxygen, water temperature and salinity'', and turbidity (measured in nephelometric turbidity units [NTU]) at all depths nearest the construction activity was typically less than 1 NTU higher than stations farther from the project area throughout construction.

Similar results were recorded during pile removal operations at two WSDOT ferry facilities. At the Friday Harbor terminal, localized turbidity levels (from three timber pile removal events) were generally less than 0.5 NTU higher than background levels and never exceeded 1 NTU. At the Eagle Harbor maintenance facility, local turbidity levels (from removal of timber and steel piles) did not exceed 0.2 NTU above background levels. In general, turbidity associated with pile installation is localized to about a 25-foot radius around the pile (Everitt *et al.* 1980).

Cetaceans are not expected to be close enough to the Anacortes ferry terminal to experience turbidity, and any pinnipeds will be transiting the terminal area and could avoid localized areas of turbidity. Therefore, the impact from increased turbidity levels is expected to be discountable to marine mammals.

Passage Obstructions

Pile removal and driving operations at the Anacortes ferry terminal will not obstruct movements of marine mammals. The operations at Anacortes will occur within 152 m (500 ft) of the shoreline, leaving 3.2 km (2.0 mi) of Puget Sound for marine mammals to pass.

A construction barge will be used during the project. The barge will be anchored and/or spudded. No dynamic positioning system (DPS) will be used.

Proposed Mitigation Measures

In order to issue an incidental take authorization under section 101(a)(5)(D) of the MMPA, NMFS must set forth the permissible methods of taking pursuant to such activity, and other means of effecting the least practicable adverse impact on such species or stock and its habitat, paying particular attention to rookeries, mating grounds, and areas of similar significance, and on the availability of such species or stock for taking for certain subsistence uses.

For WSDOT's proposed Anacortes tie-up slips dolphin and wingwall replacement project, WSDOT worked with NMFS and proposed the following mitigation measures to minimize the potential impacts to marine mammals in the project vicinity. The primary purposes of these mitigation measures are to minimize sound levels from the activities, to monitor marine mammals within designated zones of influence (ZOI) corresponding to NMFS' current Level B harassment thresholds and, if marine mammals with the ZOI appear disturbed by the work activity, to initiate immediate shutdown or power down of the piling hammer, making it very unlikely potential injury or TTS to marine mammals would occur and ensuring that Level B behavioral harassment of marine mammals would be reduced to the lowest level practicable.

No Impact Pile Driving

To avoid potential injury to marine mammals, only vibratory pile hammer will be used for pile removal and pile driving.

Time Restriction

Work would occur only during daylight hours, when visual monitoring of marine mammals can be conducted. In addition, all in-water construction will be limited to the period between September 1, 2015, and February 15, 2016.

Establishment of Level B Harassment Zones of Influence

Because WSDOT will not use impact pile driving for the proposed construction work, no Level A exclusion zone exists for marine mammals. NMFS currently uses received level of 120 dB as the onset of Level B harassment from non-impulse sources such as vibratory pile driving and pile removal. However, the in-water background noise data taken within the functional hearing group of relevant species showed that at the Anacortes ferry terminal area, the median day-time cumulative distribution function (CDF) for ambient noise levels range between 123 and 133 dB_{RMS} re 1 μPa (WSDOT 2014). Therefore, the 123-dB level will be used as the onset of Level B behavioral harassment at the Anacortes project area because this level will include marine mammals in all functional hearing groups.

Before the commencement of in-water pile driving activities, WSDOT shall establish Level B behavioral harassment zones of influence (ZOIs) where received underwater sound pressure levels (SPLs) are higher than 123 dB (rms) re 1 μPa for vibratory pile driving.

The 123-dB Level B harassment ZOIs from in-water vibratory pile removal and pile driving are modeled based on in-water measurements at the WSDOT Port Townsend Ferry Terminal (Laughlin 2011) and Friday Harbor Ferry Terminal (Laughlin 2010) constructions. These modeled results are presented in Table 4 below.

TABLE 4—MODELED ZOI DISTANCES TO LEVEL B BEHAVIORAL HARASSMENT FROM THE PILE DRIVING AND PILE REMOVAL AT WSDOT'S ANACORTES PROJECT AREA

Vibratory pile type/method	Threshold	In-water ZOI (km)	In-air ZOI (m)
12-inch timber removal	123 dB_{RMS} re 1 μPa	1.6	
24-inch steel removal/driving	123 dB_{RMS} re 1 μPa	4.0	
30-inch steel driving	123 dB_{RMS} re 1 μPa	26	
36-inch steel driving	123 dB_{RMS} re 1 μPa	40	
All piles/in-air (harbor seals)	90 dB_{RMS} re 20 μPa		30
All piles/in-air (other pinnipeds)	100 dB_{RMS} re 20 μPa		10

Soft Start

WSDOT will implement ''soft start'' (or ramp up) to reduce potential startling behavioral responses from marine mammals. Soft start requires contractors to initiate noise from the vibratory hammer for 15 seconds at reduced energy followed by a 1-minute waiting period. The procedure will be repeated two additional times. Each day, WSDOT will use the soft-start technique at the beginning of pile driving, or if pile driving has ceased for more than one hour.

Shutdown Measures

WSDOT shall implement shutdown measures if southern resident killer whales are sighted within the vicinity of the project area and are approaching the Level B harassment zone (zone of influence, or ZOI) during in-water construction activities.

If a killer whale approaches the ZOI during pile driving or removal, and it is unknown whether it is a Southern Resident killer whale or a transient killer whale, it shall be assumed to be a Southern Resident killer whale and WSDOT shall implement the shutdown measure.

If a Southern Resident killer whale or an unidentified killer whale enters the ZOI undetected, in-water pile driving or pile removal shall be suspended until the whale exits the ZOI to avoid further level B harassment.

Further, WSDOT shall implement shutdown measures if the number of any allotted marine mammal takes reaches the limit under the IHA (if issued), if such marine mammals are sighted within the vicinity of the project area and are approaching the Level B harassment zone during in-water construction activities.

Coordination With Local Marine Mammal Research Network

Prior to the start of pile driving, the Orca Network and/or Center for Whale Research will be contacted to find out the location of the nearest marine mammal sightings. The Orca Sightings Network consists of a list of over 600 (and growing) residents, scientists, and government agency personnel in the U.S. and Canada. Sightings are called or emailed into the Orca Network and immediately distributed to other sighting networks including: The Northwest Fisheries Science Center of NOAA Fisheries, the Center for Whale Research, Cascadia Research, the Whale Museum Hotline and the British Columbia Sightings Network.

'Sightings' information collected by the Orca Network includes detection by hydrophone. The SeaSound Remote Sensing Network is a system of interconnected hydrophones installed in the marine environment of Haro Strait (west side of San Juan Island) to study orca communication, in-water noise, bottom fish ecology and local climatic conditions. A hydrophone at the Port Townsend Marine Science Center measures average in-water sound levels and automatically detects unusual sounds. These passive acoustic devices allow researchers to hear when different marine mammals come into the region. This acoustic network, combined with the volunteer (incidental) visual sighting network allows researchers to document presence and location of various marine mammal species.

With this level of coordination in the region of activity, WSDOT will be able to get real-time information on the presence or absence of whales before starting any pile driving.

Mitigation Conclusions

NMFS has carefully evaluated the applicant's proposed mitigation measures and considered a range of other measures in the context of ensuring that NMFS prescribes the means of effecting the least practicable impact on the affected marine mammal species and stocks and their habitat. Our evaluation of potential measures included consideration of the following factors in relation to one another:

- The manner in which, and the degree to which, the successful implementation of the measure is expected to minimize adverse impacts to marine mammals
- The proven or likely efficacy of the specific measure to minimize adverse impacts as planned
- The practicability of the measure for applicant implementation

Any mitigation measure(s) prescribed by NMFS should be able to accomplish, have a reasonable likelihood of accomplishing (based on current science), or contribute to the accomplishment of one or more of the general goals listed below:

(1) Avoidance or minimization of injury or death of marine mammals wherever possible (goals 2, 3, and 4 may contribute to this goal).

(2) A reduction in the numbers of marine mammals (total number or number at biologically important time or location) exposed to received levels of pile driving and pile removal or other activities expected to result in the take of marine mammals (this goal may contribute to 1, above, or to reducing harassment takes only).

(3) A reduction in the number of times (total number or number at biologically important time or location) individuals would be exposed to received levels of pile driving and pile removal, or other activities expected to result in the take of marine mammals (this goal may contribute to 1, above, or to reducing harassment takes only).

(4) A reduction in the intensity of exposures (either total number or number at biologically important time or location) to received levels of pile driving, or other activities expected to result in the take of marine mammals (this goal may contribute to a, above, or to reducing the severity of harassment takes only).

(5) Avoidance or minimization of adverse effects to marine mammal habitat, paying special attention to the food base, activities that block or limit passage to or from biologically important areas, permanent destruction of habitat, or temporary destruction/disturbance of habitat during a biologically important time.

(6) For monitoring directly related to mitigation—an increase in the probability of detecting marine mammals, thus allowing for more effective implementation of the mitigation.

Based on our evaluation of the applicant's proposed measures, as well as other measures considered by NMFS, NMFS has preliminarily determined that the proposed mitigation measures provide the means of effecting the least practicable impact on marine mammals species or stocks and their habitat, paying particular attention to rookeries, mating grounds, and areas of similar significance.

Proposed Monitoring and Reporting

In order to issue an incidental take authorization (ITA) for an activity, section 101(a)(5)(D) of the MMPA states that NMFS must set forth, ''requirements pertaining to the monitoring and reporting of such taking.'' The MMPA implementing regulations at 50 CFR 216.104 (a)(13) indicate that requests for ITAs must include the suggested means of accomplishing the necessary monitoring and reporting that will result in increased knowledge of the species and of the level of taking or impacts on populations of marine mammals that are expected to be present in the proposed action area. WSDOT submitted a marine mammal monitoring plan as part of the IHA application. It can be found at *http://www.nmfs.noaa.gov/pr/permits/incidental.htm.* The plan may be modified or supplemented based on comments or new information received

from the public during the public comment period.

Monitoring measures prescribed by NMFS should accomplish one or more of the following general goals:

(1) An increase in the probability of detecting marine mammals, both within the mitigation zone (thus allowing for more effective implementation of the mitigation) and in general to generate more data to contribute to the analyses mentioned below;

(2) An increase in our understanding of how many marine mammals are likely to be exposed to levels of pile driving that we associate with specific adverse effects, such as behavioral harassment, TTS, or PTS;

(3) An increase in our understanding of how marine mammals respond to stimuli expected to result in take and how anticipated adverse effects on individuals (in different ways and to varying degrees) may impact the population, species, or stock (specifically through effects on annual rates of recruitment or survival) through any of the following methods:

- Behavioral observations in the presence of stimuli compared to observations in the absence of stimuli (need to be able to accurately predict received level, distance from source, and other pertinent information);
- Physiological measurements in the presence of stimuli compared to observations in the absence of stimuli (need to be able to accurately predict received level, distance from source, and other pertinent information);
- Distribution and/or abundance comparisons in times or areas with concentrated stimuli versus times or areas without stimuli;

(4) An increased knowledge of the affected species; and

(5) An increase in our understanding of the effectiveness of certain mitigation and monitoring measures.

Proposed Monitoring Measures

WSDOT shall employ NMFS-approved protected species observers (PSOs) to conduct marine mammal monitoring for its Anacortes tie-up dolphins and wingwall replacement project. The PSOs will observe and collect data on marine mammals in and around the project area for 30 minutes before, during, and for 30 minutes after all pile removal and pile installation work. If a PSO observes a marine mammal within a ZOI that appears to be disturbed by the work activity, the PSO will notify the work crew to initiate shutdown measures.

Monitoring of marine mammals around the construction site shall be conducted using high-quality binoculars (*e.g.,* Zeiss, 10 × 42 power). Due to the different sizes of ZOIs from different pile sizes, two different ZOIs and monitoring protocols corresponding to a specific pile size will be established. Specifically, during vibratory timber removal, and 24″ steel vibratory pile driving and removal, one land-based PSO will monitor the area from the terminal work site, and one boat with a driver and a PSO will travel through the monitoring area. During 30/36″ vibratory pile driving, one land-based PSO will monitor the area from the terminal work site, and two boats with two drivers and two PSOs will travel through the monitoring area (see Figures 2 and 3 in WSDOT's Marine Mammal Monitoring Plan).

Data collection during marine mammal monitoring will consist of a count of all marine mammals by species, a description of behavior (if possible), location, direction of movement, type of construction that is occurring, time that pile replacement work begins and ends, any acoustic or visual disturbance, and time of the observation. Environmental conditions such as weather, visibility, temperature, tide level, current, and sea state would also be recorded.

Proposed Reporting Measures

WSDOT would be required to submit a final monitoring report within 90 days after completion of the construction work or the expiration of the IHA (if issued), whichever comes earlier. This report would detail the monitoring protocol, summarize the data recorded during monitoring, and estimate the number of marine mammals that may have been harassed. NMFS would have an opportunity to provide comments on the report, and if NMFS has comments, WSDOT would address the comments and submit a final report to NMFS within 30 days.

In addition, NMFS would require WSDOT to notify NMFS' Office of Protected Resources and NMFS' Stranding Network within 48 hours of sighting an injured or dead marine mammal in the vicinity of the construction site. WSDOT shall provide NMFS with the species or description of the animal(s), the condition of the animal(s) (including carcass condition, if the animal is dead), location, time of first discovery, observed behaviors (if alive), and photo or video (if available).

In the event that WSDOT finds an injured or dead marine mammal that is not in the vicinity of the construction area, WSDOT would report the same information as listed above to NMFS as soon as operationally feasible.

Estimated Take by Incidental Harassment

Except with respect to certain activities not pertinent here, the MMPA defines ''harassment'' as: any act of pursuit, torment, or annoyance which (i) has the potential to injure a marine mammal or marine mammal stock in the wild [Level A harassment]; or (ii) has the potential to disturb a marine mammal or marine mammal stock in the wild by causing disruption of behavioral patterns, including, but not limited to, migration, breathing, nursing, breeding, feeding, or sheltering [Level B harassment].

As discussed above, in-water pile removal and pile driving (vibratory and impact) generate loud noises that could potentially harass marine mammals in the vicinity of WSDOT's proposed Anacortes Ferry Terminal tie-up slip dolphin and wingwall replacement project.

As mentioned earlier in this document, currently NMFS uses 120 dB re 1 μPa and 160 dB re 1 μPa at the received levels for the onset of Level B harassment from non-impulse (vibratory pile driving and removal) and impulse sources (impact pile driving) underwater, respectively. Table 3 summarizes the current NMFS marine mammal take criteria.

TABLE 3—CURRENT ACOUSTIC EXPOSURE CRITERIA FOR NON-EXPLOSIVE SOUND UNDERWATER

Criterion	Criterion definition	Threshold
Level A Harassment (Injury)	Permanent Threshold Shift (PTS) (Any level above that which is known to cause TTS).	180 dB re 1 μPa (cetaceans) 190 dB re 1 μPa (pinnipeds) root mean square (rms)
Level B Harassment	Behavioral Disruption (for impulse noises)	160 dB re 1 μPa (rms)
Level B Harassment	Behavioral Disruption (for non-impulse noise)	120 dB re 1 μPa (rms)

As explained above, ZOIs will be established that encompass the areas where received underwater sound pressure levels (SPLs) exceed the applicable thresholds for Level B harassment. In the case of WSDOT's proposed Anacortes construction project, the Level B harassment ZOI for non-impulse noise sources will be at the received level at 123 dB, which is the median ambient noise level for the high-frequency cetacean. There will not be a zone for Level A harassment in this case, because source levels from vibratory hammer do not exceed the threshold for Level A harassment, and no impact hammer will be used in the proposed project.

Sound Levels From Proposed Construction Activity

As mentioned earlier, the 123-dB Level B harassment ZOIs are modeled based on in-water measurements at the WSDOT Port Townsend Ferry Terminal (Laughlin 2011) and Friday Harbor Ferry Terminal (Laughlin 2010) constructions (Table 4). Incidental take is calculated for each species by estimating the likelihood of a marine mammal being present within a ZOI during active pile removal/driving. Expected marine mammal presence is determined by past observations and general abundance near the Anacortes ferry terminal during the construction window. Ideally, potential take is estimated by multiplying the area of the ZOI by the local animal density. This provides an estimate of the number of animals that might occupy the ZOI at any given moment. However, there are no density estimates for any Puget Sound population of marine mammal.

As a result, the take requests were estimated using local marine mammal data sets, and information from state and federal agencies. All haulout and observation data available are summarized in Section 3 of WSDOT's IHA application. Project duration is presented in Section 2 of WSDOT's IHA application.

The calculation for marine mammal exposures is estimated by:

Exposure estimate = N (number of animals in the area) * Number of days of pile removal/driving activity

Estimates include Level B acoustical harassment during vibratory pile removal and driving. All estimates are conservative, as pile removal/driving will not be continuous during the work day. Using this approach, a summary of estimated takes of marine mammals incidental to WSDOT's Anacortes Ferry Terminal tip-up dolphins and wingwall replacement work are provided in Table 5.

TABLE 5—ESTIMATED NUMBERS OF MARINE MAMMALS THAT MAY BE EXPOSED TO RECEIVED PILE REMOVAL LEVELS ABOVE 123 DB RE 1 μPA (RMS)

Species	Estimated marine mammal takes	Abundance	Percentage
Pacific harbor seal	900	14,612	6.0
California sea lion	180	296,750	0.06
Steller sea lion	360	52,847	0.7
Northern elephant seal	72	124,000	0.06
Harbor porpoise	612	10,682	5.7
Dall's porpoise	108	42,000	0.3
Killer whale, transient	70	354	20
Killer whale, Southern Resident	4	81	5.0
Pacific white-sided dolphin	360	25,233	1.4
Gray whale	36	18,017	0.2
Humpback whale	30	2,043	1.5
Minke whale	10	202–600	1.7–5

Analysis and Preliminary Determinations

Negligible Impact

Negligible impact is ''an impact resulting from the specified activity that cannot be reasonably expected to, and is not reasonably likely to, adversely affect the species or stock through effects on annual rates of recruitment or survival'' (50 CFR 216.103). A negligible impact finding is based on the lack of likely adverse effects on annual rates of recruitment or survival (*i.e.,* population-level effects). An estimate of the number of Level B harassment takes, alone, is not enough information on which to base an impact determination. In addition to considering estimates of the number of marine mammals that might be ''taken'' through behavioral harassment, NMFS must consider other factors, such as the likely nature of any responses (their intensity, duration, etc.), the context of any responses (critical reproductive time or location, migration, etc.), as well as the number and nature of estimated Level A harassment takes, the number of estimated mortalities, and effects on habitat.

WSDOT's proposed Anacortes Ferry Terminal tie-up dolphins and wingwall replacement project would involve vibratory pile removal and pile driving activities. Elevated underwater noises are expected to be generated as a result of these activities; however, these noises are expected to result in no mortality or Level A harassment and limited Level B harassment of marine mammals. WSDOT would not use impact hammer for pile driving, thus eliminating the potential for injury (including PTS) and TTS from noise impact. For vibratory pile removal and pile driving, noise levels are not expected to reach the level that may cause TTS, injury (including PTS), or mortality to marine mammals. Therefore, NMFS does not expect that any animals would experience Level A harassment (including injury or PTS) or Level B harassment in the form of TTS from being exposed to in-water pile removal and pile driving associated with WSDOT's construction project.

Additionally, the sum of noise from WSDOT's proposed Anacortes Ferry Terminal tie-up dolphins and wingwall replacement construction activities is confined to a limited area by surrounding landmasses; therefore, the noise generated is not expected to contribute to increased ocean ambient noise. In addition, due to shallow water depths in the project area, underwater sound propagation of low-frequency sound (which is the major noise source from pile driving) is expected to be poor.

In addition, WSDOT's proposed activities are localized and of short duration. The entire project area is limited to WSDOT's Anacortes Ferry Terminal construction work. The entire

project would involve the removal of 272 existing piles and installation of 81 piles. The duration for the construction would involve 68 hours in 9 days for pile removal and 27 hours in 27 days for pile installation. These low-intensity, localized, and short-term noise exposures may cause brief startle reactions or short-term behavioral modification by the animals. These reactions and behavioral changes are expected to subside quickly when the exposures cease. Moreover, the proposed mitigation and monitoring measures are expected to reduce potential exposures and behavioral modifications even further. Additionally, no important feeding and/or reproductive areas for marine mammals are known to be near the proposed action area. Therefore, the take resulting from the proposed Anacortes Ferry Terminal tie-up dolphins and wingwall replacement work is not reasonably expected to, and is not reasonably likely to, adversely affect the marine mammal species or stocks through effects on annual rates of recruitment or survival.

The proposed project area is not a prime habitat for marine mammals, nor is it considered an area frequented by marine mammals. Therefore, behavioral disturbances that could result from anthropogenic noise associated with WSDOT's construction activities are expected to affect only a small number of marine mammals on an infrequent and limited basis.

The project also is not expected to have significant adverse effects on affected marine mammals' habitat, as analyzed in detail in the ''Anticipated Effects on Marine Mammal Habitat'' section. The project activities would not modify existing marine mammal habitat. The activities may cause some fish to leave the area of disturbance, thus temporarily impacting marine mammals' foraging opportunities in a limited portion of the foraging range; but, because of the short duration of the activities and the relatively small area of the habitat that may be affected, the impacts to marine mammal habitat are not expected to cause significant or long-term negative consequences.

Based on the analysis contained herein of the likely effects of the specified activity on marine mammals and their habitat, and taking into consideration the implementation of the proposed monitoring and mitigation measures, NMFS preliminarily finds that the total marine mammal take from WSDOT's Anacortes Ferry Terminal tie-up dolphins and wingwall replacement project will have a negligible impact on the affected marine mammal species or stocks.

Small Number

Based on analyses provided above, it is estimated that approximately 900 harbor seals, 180 California sea lions, 360 Steller sea lions, 72 northern elephant seals, 612 harbor porpoises, 108 Dall's porpoises, 70 transient killer whales, 4 Southern Resident killer whales, 360 Pacific white-sided dolphins, 36 gray whales, 30 humpback whales, and 10 minke whales could be exposed to received noise levels that could cause Level B behavioral harassment from the proposed construction work at the Anacortes Ferry Terminal in Washington State. These numbers represent approximately 0.06% to 20% of the populations of these species that could be affected by Level B behavioral harassment, respectively (see Table 5 above), which are small percentages relative to the total populations of the affected species or stocks.

Based on the analysis contained herein of the likely effects of the specified activity on marine mammals and their habitat, and taking into consideration the implementation of the mitigation and monitoring measures, which are expected to reduce the number of marine mammals potentially affected by the proposed action, NMFS preliminarily finds that small numbers of marine mammals will be taken relative to the populations of the affected species or stocks.

Impact on Availability of Affected Species for Taking for Subsistence Uses

There are no subsistence uses of marine mammals in the proposed project area; and, thus, no subsistence uses impacted by this action. Therefore, NMFS has determined that the total taking of affected species or stocks would not have an unmitigable adverse impact on the availability of such species or stocks for taking for subsistence purposes.

Endangered Species Act (ESA)

The humpback whale and the Southern Resident stock of killer whale are the only marine mammal species currently listed under the ESA that could occur in the vicinity of WSDOT's proposed construction projects. NMFS' Permits and Conservation Division has initiated consultation with NMFS' Protected Resources Division under section 7 of the ESA on the issuance of an IHA to WSDOT under section 101(a)(5)(D) of the MMPA for this activity. Consultation will be concluded prior to a determination on the issuance of an IHA.

National Environmental Policy Act (NEPA)

NMFS prepared a draft Environmental Assessment (EA) for the proposed issuance of an IHA, pursuant to NEPA, to determine whether or not this proposed activity may have a significant effect on the human environment. This analysis will be completed prior to the issuance or denial of this proposed IHA.

Proposed Authorization

As a result of these preliminary determinations, NMFS proposes to issue an IHA to WSDOT for conducting the Anacortes Ferry Terminal tie-up dolphins and wingwall replacement project, provided the previously mentioned mitigation, monitoring, and reporting requirements are incorporated. The proposed IHA language is provided next.

1. This Authorization is valid from September 1, 2015, through August 31, 2016.

2. This Authorization is valid only for activities associated in-water construction work at the Anacortes Ferry Terminal tie-up dolphins and wingwall replacement project in the State of Washington.

3. (a) The species authorized for incidental harassment takings, Level B harassment only, are: Pacific harbor seal (*Phoca vitulina richardsi*), California sea lion (*Zalophus californianus*), Steller sea lion (*Eumetopias jubatus*), northern elephant seals (*Mirounga angustirostris*), transient and Southern Resident killer whales (*Orcinus orca*), Pacific white-sided dolphin (*Lagenorhynchus obliquidens*), gray whale (*Eschrichtius robustus*), humpback whale (*Megaptera novaeangliae*), harbor porpoise (*Phocoena phocoena*), and Dall's porpoise (*Phocoena dali*).

(b) The authorization for taking by harassment is limited to the following acoustic sources and from the following activities:

- Vibratory pile driving;
- Vibratory pile removal; and
- Work associated with above piling activities.

(c) The taking of any marine mammal in a manner prohibited under this Authorization must be reported within 24 hours of the taking to the West Coast Administrator (206–526–6150), National Marine Fisheries Service (NMFS) and the Chief of the Permits and Conservation Division, Office of Protected Resources, NMFS, at (301) 427–8401, or her designee (301–427–8418).

4. The holder of this Authorization must notify the Chief of the Permits and Conservation Division, Office of Protected Resources, at least 48 hours prior to the start of activities identified in 3(b) (unless constrained by the date of issuance of this Authorization in which case notification shall be made as soon as possible).

5. Prohibitions

(a) The taking, by incidental harassment only, is limited to the species listed under condition 3(a) above and by the numbers listed in Table 5. The taking by Level A harassment, injury or death of these species or the taking by harassment, injury or death of any other species of marine mammal is prohibited and may result in the modification, suspension, or revocation of this Authorization.

(b) The taking of any marine mammal is prohibited whenever the required protected species observers (PSOs), required by condition 7(a), are not present in conformance with condition 7(a) of this Authorization.

6. Mitigation

(a) Time Restriction

In-water construction work shall occur only during daylight hours, when visual monitoring of marine mammals can be conducted.

(b) Establishment of Level B Harassment Zones of Influence

Before the commencement of in-water pile driving activities, WSDOT shall establish Level B behavioral harassment zones of influence (ZOIs) where received underwater sound pressure levels (SPLs) are higher than 123 dB (rms) re 1 μPa. The modeled isopleths for ZOIs are listed in Table 4.

(c) Monitoring of marine mammals shall take place starting 30 minutes before pile driving begins until 30 minutes after pile driving ends.

(d) Soft Start

(i) When there has been downtime of 30 minutes or more without pile driving, the contractor will initiate the driving with ramp-up procedures described below.

(ii) Soft start requires contractors to initiate noise from the vibratory hammer for 15 seconds at reduced energy followed by a 1-minute waiting period. The procedure will be repeated two additional times. Each day, WSDOT will use the soft-start technique at the beginning of pile driving, or if pile driving has ceased for more than one hour.

(e) Shutdown Measures

(i) WSDOT shall implement shutdown measures if southern resident killer whales (SRKWs) are sighted within the vicinity of the project area and are approaching the Level B harassment zone (zone of influence, or ZOI) during in-water construction activities.

(ii) If a killer whale approaches the ZOI during pile driving or removal, and it is unknown whether it is a SRKW or a transient killer whale, it shall be assumed to be a SRKW and WSDOT shall implement the shutdown measure identified in 6(e)(i).

(iii) If a SRKW enters the ZOI undetected, in-water pile driving or pile removal shall be suspended until the SRKW exits the ZOI to avoid further level B harassment.

(iv) WSDOT shall implement shutdown measures if the number of any allotted marine mammal takes reaches the limit under the IHA, if such marine mammals are sighted within the vicinity of the project area and are approaching the Level B harassment zone during pile removal activities.

(v) WSDOT shall implement shutdown measures if marine mammals with the ZOI appear disturbed by the work activity.

(f) Coordination With Local Marine Mammal Research Network

Prior to the start of pile driving, WSDOT will contact the Orca Network and/or Center for Whale Research to get real-time information on the presence or absence of whales before starting any pile driving.

7. Monitoring:

(a) Protected Species Observers

WSDOT shall employ NMFS-approved PSOs to conduct marine mammal monitoring for its construction project.

(i) Visual acuity in both eyes (correction is permissible) sufficient for discernment of moving targets at the water's surface with ability to estimate target size and distance. Use of binoculars will be required to correctly identify the target.

(ii) Experience or training in the field identification of marine mammals (cetaceans and pinnipeds).

(iii) Sufficient training, orientation or experience with the construction operation to provide for personal safety during observations.

(iv) Ability to communicate orally, by radio or in person, with project personnel to provide real time information on marine mammals observed in the area as necessary.

(v) Experience and ability to conduct field observations and collect data according to assigned protocols (this may include academic experience).

(vi) Writing skills sufficient to prepare a report of observations that would include such information as the number and type of marine mammals observed; the behavior of marine mammals in the project area during construction, dates and times when observations were conducted; dates and times when in-water construction activities were conducted; and dates and times when marine mammals were present at or within the defined ZOI.

(b) Monitoring Protocols: PSOs shall be present on site at all times during pile removal and driving.

(i) A range finder or hand-held global positioning system device will be used to ensure that the 123 dB_{rms} re 1 μPa Level B behavioral harassment ZOI is monitored.

(ii) A 30-minute pre-construction marine mammal monitoring will be required before the first pile driving or pile removal of the day. A 30-minute post-construction marine mammal monitoring will be required after the last pile driving or pile removal of the day. If the constructors take a break between subsequent pile driving or pile removal for more than 30 minutes, then additional pre-construction marine mammal monitoring will be required before the next start-up of pile driving or pile removal.

(iii) Marine mammal visual monitoring will be conducted for different ZOIs based on different sizes of piles being driven or removed.

(A) For vibratory timber removal, and 24″ steel vibratory pile driving and removal, one land-based PSO will monitor the area from the terminal work site, and one boat with a driver and a PSO will travel through the monitoring area.

(B) For 30″/36″ vibratory pile driving, one land-based PSO will monitor the area from the terminal work site, and two boats with two drivers and two PSOs will travel through the monitoring area.

(iv) If marine mammals are observed, the following information will be documented:

(A) Species of observed marine mammals;

(B) Number of observed marine mammal individuals;

(C) Behavioral of observed marine mammals;

(D) Location within the ZOI; and

(E) Animals' reaction (if any) to pile-driving activities.

8. Reporting:

(a) WSDOT shall provide NMFS with a draft monitoring report within 90 days of the conclusion of the construction work or within 90 days of the expiration of the IHA, whichever comes first. This report shall detail the monitoring protocol, summarize the data recorded during monitoring, and estimate the number of marine mammals that may have been harassed.

(b) If comments are received from the NMFS West Coast Regional Administrator or NMFS Office of Protected Resources on the draft report, a final report shall be submitted to NMFS within 30 days thereafter. If no comments are received from NMFS, the draft report will be considered to be the final report.

(c) In the unanticipated event that the construction activities clearly cause the take of a marine mammal in a manner prohibited by this Authorization (if issued), such as an injury, serious injury, or mortality, WSDOT shall immediately cease all operations and immediately report the incident to the Chief, Permits and Conservation Division, Office of Protected Resources, NMFS, and the West Coast Regional Stranding Coordinators. The report must include the following information:

(i) Time, date, and location (latitude/longitude) of the incident;

(ii) Description of the incident;

(iii) Status of all sound source use in the 24 hours preceding the incident;

(iv) Environmental conditions (*e.g.,* wind speed and direction, sea state, cloud cover, visibility, and water depth);

(v) Description of marine mammal observations in the 24 hours preceding the incident;

(vi) Species identification or description of the animal(s) involved;

(vii) The fate of the animal(s); and

(viii) Photographs or video footage of the animal (if equipment is available).

Activities shall not resume until NMFS is able to review the circumstances of the prohibited take. NMFS shall work with WSDOT to determine what is necessary to minimize the likelihood of further prohibited take and ensure MMPA compliance. WSDOT may not resume their activities until notified by NMFS via letter, email, or telephone.

(E) In the event that WSDOT discovers an injured or dead marine mammal, and the lead PSO determines that the cause of the injury or death is unknown and the death is relatively recent (*i.e.,* in less than a moderate state of decomposition as described in the next paragraph), WSDOT will immediately report the incident to the Chief, Permits and Conservation Division, Office of Protected Resources, NMFS, and the West Coast Regional Stranding Coordinators. The report must include the same information identified above. Activities may continue while NMFS reviews the circumstances of the incident. NMFS will work with WSDOT to determine whether modifications in the activities are appropriate.

(F) In the event that WSDOT discovers an injured or dead marine mammal, and the lead PSO determines that the injury or death is not associated with or related to the activities authorized in the IHA (*e.g.,* previously wounded animal, carcass with moderate to advanced decomposition, or scavenger damage), WSDOT shall report the incident to the Chief, Permits and Conservation Division, Office of Protected Resources, NMFS, and the West Coast Regional Stranding Coordinators, within 24 hours of the discovery. WSDOT shall provide photographs or video footage (if available) or other documentation of the stranded animal sighting to NMFS and the Marine Mammal Stranding Network. WSDOT can continue its operations under such a case.

9. This Authorization may be modified, suspended or withdrawn if the holder fails to abide by the conditions prescribed herein or if the authorized taking is having more than a negligible impact on the species or stock of affected marine mammals, or if there is an unmitigable adverse impact on the availability of such species or stocks for subsistence uses.

10. A copy of this Authorization and the Incidental Take Statement must be in the possession of each contractor who performs the construction work at the Anacortes Ferry Terminals.

11. WSDOT is required to comply with the Terms and Conditions of the Incidental Take Statement corresponding to NMFS' Biological Opinion.

Dated: February 25, 2015.

Donna S. Wieting,

Director, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. 2015–04425 Filed 3–3–15; 8:45 am]

BILLING CODE 3510–22–P

BUREAU OF CONSUMER FINANCIAL PROTECTION

Credit Union Advisory Council Meeting

AGENCY: Bureau of Consumer Financial Protection.

ACTION: Notice of public meeting.

SUMMARY: This notice sets forth the announcement of a public meeting of the Credit Union Advisory Council (CUAC or Council) of the Consumer Financial Protection Bureau (Bureau). The notice also describes the functions of the Council. Notice of the meeting is permitted by section 6 of the CUAC Charter and is intended to notify the public of this meeting. Specifically, section X of the CUAC Charter states: (1) Each meeting of the Council shall be open to public observation, to the extent that a facility is available to accommodate the public, unless the Bureau, in accordance with paragraph (4) of this section, determines that the meeting shall be closed. The Bureau also will make reasonable efforts to make the meetings available to the public through live recording. (2) Notice of the time, place and purpose of each meeting, as well as a summary of the proposed agenda, shall be published in the **Federal Register** not more than 45 or less than 15 days prior to the scheduled meeting date. Shorter notice may be given when the Bureau determines that the Council's business so requires; in such event, the public will be given notice at the earliest practicable time. (3) Minutes of meetings, records, reports, studies, and agenda of the Council shall be posted on the Bureau's Web site (*www.consumerfinance.gov*). (4) The Bureau may close to the public a portion of any meeting, for confidential discussion. If the Bureau closes a meeting or any portion of a meeting, the Bureau will issue, at least annually, a summary of the Council's activities during such closed meetings or portions of meetings.

DATES: The meeting date is Thursday, March 12, 2014, 3:00 p.m. to 5:00 p.m. Eastern Standard Time.

ADDRESSES: The meeting location is Consumer Financial Protection Bureau, 1275 First Street NE., Washington, DC 20002.

FOR FURTHER INFORMATION CONTACT: Jennifer Draper, Consumer Advisory Board & Councils, External Affairs, 1700 G Street NW., Washington, DC 20552; telephone: 202–435–7176; *CFPB_CABandCouncilsEvents@cfpb.gov.*

SUPPLEMENTARY INFORMATION:

I. Background

Section 1014(a) of the Dodd-Frank Wall Street Reform and Consumer Protection Act (*http://www.sec.gov/about/laws/wallstreetreform-cpa.pdf*) (Dodd-Frank Act) provides: ''The Director shall establish a Credit Union Advisory Board to advise and consult with the Bureau in the exercise of its functions under the Federal consumer financial laws, and to provide information on emerging practices in the consumer financial products or services industry, including regional trends, concerns, and other relevant information.'' 12 U.S.C. 5494.

(a) The purpose of the Council is outlined in section 1014(a) of the Dodd-Frank Act (*http://www.sec.gov/about/laws/wallstreetreform-cpa.pdf*), which

states that the Council shall ''advise and consult with the Bureau in the exercise of its functions under the Federal consumer financial laws'' and ''provide information on emerging practices in the consumer financial products or services industry, including regional trends, concerns, and other relevant information.'' (b) To carry out the Council's purpose, the scope of its activities shall include providing information, analysis, and recommendations to the Bureau. The Council will generally serve as a vehicle for market intelligence and expertise for the Bureau. Its objectives will include identifying and assessing the impact on consumers and other market participants of new, emerging, and changing products, practices, or services. (c) The Council will also be available to advise and consult with the Director and the Bureau on other matters related to the Bureau's functions under the Dodd-Frank Act.

II. Agenda

The Credit Union Advisory Council will discuss financial education and financial capability.

Persons who need a reasonable accommodation to participate should contact *CFPB_504Request@cfpb.gov,* 202–435–9EEO, 1–855–233–0362, or 202–435–9742 (TTY) at least ten business days prior to the meeting or event to request assistance. The request must identify the date, time, location, and title of the meeting or event, the nature of the assistance requested, and contact information for the requester. CFPB will strive to provide, but cannot guarantee that accommodation will be provided for late requests.

Individuals who wish to attend the Credit Union Advisory Council meeting must RSVP to *cfpb_cabandcouncilsevents@cfpb.gov* by noon, Tuesday, March 10, 2015. Members of the public must RSVP by the due date and must include ''CUAC'' in the subject line of the RSVP.

III. Availability

The Council's agenda will be made available to the public on Friday, February 27, 2015, via consumerfinance.gov. Individuals should express in their RSVP if they require a paper copy of the agenda.

A recording and transcript of this meeting will be available after the meeting on the CFPB's Web site consumerfinance.gov.

Dated: February 25, 2015.

Christopher D'Angelo,

Chief of Staff, Bureau of Consumer Financial Protection.

[FR Doc. 2015–04360 Filed 3–3–15; 8:45 am]

BILLING CODE 4810–AM–P

DEPARTMENT OF EDUCATION

[Docket No. ED–2015–ICCD–0021]

Agency Information Collection Activities; Comment Request; 2015–16 National Teacher and Principal Survey (NTPS) Full-Scale Data Collection

AGENCY: Department of Education (ED), Institute of Education Sciences/National Center for Education Statistics (IES).

ACTION: Notice.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. chapter 3501 *et seq.*), ED is proposing a revision of an existing information collection.

DATES: Interested persons are invited to submit comments on or before May 4, 2015.

ADDRESSES: Comments submitted in response to this notice should be submitted electronically through the Federal eRulemaking Portal at *http://www.regulations.gov* by selecting Docket ID number ED–2015–ICCD–0021 or via postal mail, commercial delivery, or hand delivery. If the regulations.gov site is not available to the public for any reason, ED will temporarily accept comments at *ICDocketMgr@ed.gov.* Please note that comments submitted by fax or email and those submitted after the comment period will not be accepted; ED will only accept comments during the comment period in this mailbox when the regulations.gov site is not available. Written requests for information or comments submitted by postal mail or delivery should be addressed to the Director of the Information Collection Clearance Division, U.S. Department of Education, 400 Maryland Avenue SW., LBJ, Mailstop L–OM–2–2E319, Room 2E103, Washington, DC 20202.

FOR FURTHER INFORMATION CONTACT: For specific questions related to collection activities, please contact Kashka Kubzdela, 202–502–7411.

SUPPLEMENTARY INFORMATION: The Department of Education (ED), in accordance with the Paperwork Reduction Act of 1995 (PRA) (44 U.S.C. 3506(c)(2)(A)), provides the general public and Federal agencies with an opportunity to comment on proposed, revised, and continuing collections of information. This helps the Department assess the impact of its information collection requirements and minimize the public's reporting burden. It also helps the public understand the Department's information collection requirements and provide the requested data in the desired format. ED is soliciting comments on the proposed information collection request (ICR) that is described below. The Department of Education is especially interested in public comment addressing the following issues: (1) Is this collection necessary to the proper functions of the Department; (2) will this information be processed and used in a timely manner; (3) is the estimate of burden accurate; (4) how might the Department enhance the quality, utility, and clarity of the information to be collected; and (5) how might the Department minimize the burden of this collection on the respondents, including through the use of information technology. Please note that written comments received in response to this notice will be considered public records.

Title of Collection: 2015–16 National Teacher and Principal Survey (NTPS) Full-Scale Data Collection.

OMB Control Number: 1850–0598.

Type of Review: A revision of an existing information collection.

Respondents/Affected Public: Individuals.

Total Estimated Number of Annual Responses: 44,916.

Total Estimated Number of Annual Burden Hours: 26,616.

Abstract: The National Teacher and Principal Survey (NTPS) is a redesign of the Schools and Staffing Survey (SASS) and is ED's primary source of information on the teacher and principal labor market and on what is happening in K–12 public schools from teachers' and principals' perspectives. NTPS is an in-depth, nationally representative survey of first through twelfth grade public school teachers, principals, and schools. Kindergarten teachers in schools with at least a first grade are also eligible for NTPS. Starting in 2015–2016, the NTPS will be conducted every two years utilizing core content and a series of rotating modules to allow timely collection of important education trends and conducting trend analyses. The NTPS is the Department's regular source of data on salaries, out-of-pocket expenses, qualifications, and race/ethnic and age distribution of teachers; along with salaries and race/ethnic and age distribution of principals; and school start times and student teacher ratios. This request is to conduct the 2015–16 NTPS full-scale data collection.

Dated: February 27, 2015.

Kate Mullan,

Acting Director, Information Collection Clearance Division, Privacy, Information and Records Management Services, Office of Management.

[FR Doc. 2015–04439 Filed 3–3–15; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF ENERGY

[OE Docket No. EA–368–A]

Application To Export Electric Energy; Brookfield Energy Marketing LP

AGENCY: Office of Electricity Delivery and Energy Reliability, DOE.

ACTION: Notice of application.

SUMMARY: Brookfield Energy Marketing LP (Applicant or BEMLP) has applied to renew its authority to transmit electric energy from the United States to Canada pursuant to section 202(e) of the Federal Power Act.

DATES: Comments, protests, or motions to intervene must be submitted on or before April 3, 2015.

ADDRESSES: Comments, protests, motions to intervene, or requests for more information should be addressed to: Office of Electricity Delivery and Energy Reliability, Mail Code: OE–20, U.S. Department of Energy, 1000 Independence Avenue SW., Washington, DC 20585–0350. Because of delays in handling conventional mail, it is recommended that documents be transmitted by overnight mail, by electronic mail to *Electricity.Exports@hq.doe.gov,* or by facsimile to 202–586–8008.

SUPPLEMENTARY INFORMATION: Exports of electricity from the United States to a foreign country are regulated by the Department of Energy (DOE) pursuant to sections 301(b) and 402(f) of the Department of Energy Organization Act (42 U.S.C. 7151(b), 7172(f)) and require authorization under section 202(e) of the Federal Power Act (16 U.S.C. 824a(e)).

On August 12, 2010, DOE issued Order No. EA–368 to the Applicant, which authorized BEMLP to transmit electric energy from the United States to Canada as a power marketer for a five-year term using existing international transmission facilities. That authority expires on August 12, 2015. On January 29, 2015, the Applicant filed an application with DOE for renewal of the export authority contained in Order No. EA–368 for an additional five-year term.

In its application, the Applicant states that it does not own or operate any electric generation or transmission facilities, and it does not have a franchised service area. The electric energy that the Applicant proposes to export to Canada would be surplus energy purchased from third parties such as electric utilities and Federal power marketing agencies pursuant to voluntary agreements. The existing international transmission facilities to be utilized by the Applicant have previously been authorized by Presidential permits issued pursuant to Executive Order 10485, as amended, and are appropriate for open access transmission by third parties.

Procedural Matters: Any person desiring to be heard in this proceeding should file a comment or protest to the application at the address provided above. Protests should be filed in accordance with Rule 211 of the Federal Energy Regulatory Commission's (FERC) Rules of Practice and Procedures (18 CFR 385.211). Any person desiring to become a party to these proceedings should file a motion to intervene at the above address in accordance with FERC Rule 214 (18 CFR 385.214). Five copies of such comments, protests, or motions to intervene should be sent to the address provided above on or before the date listed above.

Comments and other filings concerning the BEMLP application to export electric energy to Canada should be clearly marked with OE Docket No. EA–368–A. An additional copy is to be provided directly to Shaun Logue, Brookfield Energy Marketing LP, 480 de la Cite Blvd., Gatineau, Quebec J8T 8R3.

A final decision will be made on this application after the environmental impacts have been evaluated pursuant to DOE's National Environmental Policy Act Implementing Procedures (10 CFR part 1021) and after a determination is made by DOE that the proposed action will not have an adverse impact on the sufficiency of supply or reliability of the U.S. electric power supply system.

Copies of this application will be made available, upon request, for public inspection and copying at the address provided above, by accessing the program Web site at *http://energy.gov/node/11845,* or by emailing Angela Troy at *Angela.Troy@hq.doe.gov.*

Issued in Washington, DC, on February 25, 2015.

Brian Mills,

Director, Permitting and Siting, Office of Electricity Delivery and Energy Reliability.

[FR Doc. 2015–04473 Filed 3–3–15; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

[OE Docket No. EA–408]

Application To Export Electric Energy; Nalcor Energy Marketing Corporation

AGENCY: Office of Electricity Delivery and Energy Reliability, DOE.

ACTION: Notice of Application.

SUMMARY: Nalcor Energy Marketing Corporation (Applicant or NEMC) has applied for authority to transmit electric energy from the United States to Canada pursuant to section 202(e) of the Federal Power Act.

DATES: Comments, protests, or motions to intervene must be submitted on or before April 3, 2015.

ADDRESSES: Comments, protests, motions to intervene, or requests for more information should be addressed to: Office of Electricity Delivery and Energy Reliability, Mail Code: OE–20, U.S. Department of Energy, 1000 Independence Avenue SW., Washington, DC 20585–0350. Because of delays in handling conventional mail, it is recommended that documents be transmitted by overnight mail, by electronic mail to *Electricity.Exports@hq.doe.gov,* or by facsimile to 202–586–8008.

SUPPLEMENTARY INFORMATION: Exports of electricity from the United States to a foreign country are regulated by the Department of Energy (DOE) pursuant to sections 301(b) and 402(f) of the Department of Energy Organization Act (42 U.S.C. 7151(b), 7172(f)) and require authorization under section 202(e) of the Federal Power Act (16 U.S.C. 824a(e)).

On February 20, 2015, DOE received an application from NEMC for authority to transmit electric energy from the United States to Canada as a power marketer for five years using existing international transmission facilities.

In its application, NEMC states that it does not own or control any electric generation or transmission facilities, and it does not have a franchised service area. The electric energy that NEMC proposes to export to Canada would be surplus energy purchased from wholesale energy markets operated by NYISO, ISO–NE., electric utilities and other entities within the United States. The existing international transmission facilities to be utilized by NEMC have previously been authorized by Presidential permits issued pursuant to Executive Order 10485, as amended, and are appropriate for open access transmission by third parties.

Procedural Matters: Any person desiring to be heard in this proceeding

should file a comment or protest to the application at the address provided above. Protests should be filed in accordance with Rule 211 of the Federal Energy Regulatory Commission's (FERC) Rules of Practice and Procedures (18 CFR 385.211). Any person desiring to become a party to these proceedings should file a motion to intervene at the above address in accordance with FERC Rule 214 (18 CFR 385.214). Five copies of such comments, protests, or motions to intervene should be sent to the address provided above on or before the date listed above.

Comments and other filings concerning the NEMC application to export electric energy to Canada should be clearly marked with OE Docket No. EA–408. An additional copy is to be provided directly to both Greg Jones, Nalcor Energy Marketing Corporation, 500 Columbus Drive—Hydro Place, P.O. Box 15200, St. John's, NL, A1B0P5 Canada and to Joseph B. Nelson, Van Ness Feldman, LLP, 1050 Thomas Jefferson St. NW., Washington, DC 20007.

A final decision will be made on this application after the environmental impacts have been evaluated pursuant to DOE's National Environmental Policy Act Implementing Procedures (10 CFR part 1021) and after a determination is made by DOE that the proposed action will not have an adverse impact on the sufficiency of supply or reliability of the U.S. electric power supply system.

Copies of this application will be made available, upon request, for public inspection and copying at the address provided above, by accessing the program Web site at *http://energy.gov/node/11845,* or by emailing Angela Troy at *Angela.Troy@hq.doe.gov.*

Issued in Washington, DC, on February 25, 2015.

Brian Mills,

Director, Permitting and Siting, Office of Electricity Delivery and Energy Reliability.

[FR Doc. 2015–04456 Filed 3–3–15; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

[OE Docket No. EA–364–A]

Application To Export Electric Energy; Noble Americas Gas & Power Corporation

AGENCY: Office of Electricity Delivery and Energy Reliability, DOE.

ACTION: Notice of Application.

SUMMARY: Noble Americas Gas & Power Corporation (Applicant or NAG&P) has applied to renew its authority to transmit electric energy from the United States to Canada pursuant to section 202(e) of the Federal Power Act.

DATES: Comments, protests, or motions to intervene must be submitted on or before April 3, 2015.

ADDRESSES: Comments, protests, motions to intervene, or requests for more information should be addressed to: Office of Electricity Delivery and Energy Reliability, Mail Code: OE–20, U.S. Department of Energy, 1000 Independence Avenue SW., Washington, DC 20585–0350. Because of delays in handling conventional mail, it is recommended that documents be transmitted by overnight mail, by electronic mail to *Electricity.Exports@hq.doe.gov,* or by facsimile to 202–586–8008.

SUPPLEMENTARY INFORMATION: Exports of electricity from the United States to a foreign country are regulated by the Department of Energy (DOE) pursuant to sections 301(b) and 402(f) of the Department of Energy Organization Act (42 U.S.C. §§ 7151(b), 7172(f)) and require authorization under section 202(e) of the Federal Power Act (16 U.S.C. § 824a(e)).

On April 22, 2010, DOE issued Order No. EA–364 to the Applicant, which authorized NAG&P to transmit electric energy from the United States to Canada as a power marketer for a five-year term using existing international transmission facilities. That authority expires on April 22, 2015. On February 18, 2015, the Applicant filed an application with DOE for renewal of the export authority contained in Order No. EA–364 for an additional five-year term.

In its application, the Applicant states that it does not own or operate any electric generation or transmission facilities, and it does not have a franchised service area. The electric energy that the Applicant proposes to export to Canada would be surplus energy purchased from third parties such as electric utilities and Federal power marketing agencies pursuant to voluntary agreements. The existing international transmission facilities to be utilized by the Applicant have previously been authorized by Presidential permits issued pursuant to Executive Order 10485, as amended, and are appropriate for open access transmission by third parties.

Procedural Matters: Any person desiring to be heard in this proceeding should file a comment or protest to the application at the address provided above. Protests should be filed in accordance with Rule 211 of the Federal Energy Regulatory Commission's (FERC) Rules of Practice and Procedures (18 CFR 385.211). Any person desiring to become a party to these proceedings should file a motion to intervene at the above address in accordance with FERC Rule 214 (18 CFR 385.214). Five copies of such comments, protests, or motions to intervene should be sent to the address provided above on or before the date listed above.

Comments and other filings concerning the NAG&P's application to export electric energy to Canada should be clearly marked with OE Docket No. EA–364–A. An additional copy is to be provided directly to Joseph P. Limone, Noble Americas Corporation, 107 Elm Street, Four Stamford Plaza, Stamford, CT 06902.

A final decision will be made on this application after the environmental impacts have been evaluated pursuant to DOE's National Environmental Policy Act Implementing Procedures (10 CFR part 1021) and after a determination is made by DOE that the proposed action will not have an adverse impact on the sufficiency of supply or reliability of the U.S. electric power supply system.

Copies of this application will be made available, upon request, for public inspection and copying at the address provided above, by accessing the program Web site at *http://energy.gov/node/11845,* or by emailing Angela Troy at *Angela.Troy@hq.doe.gov.*

Issued in Washington, DC, on February 25, 2015.

Brian Mills,

Director, Permitting and Siting, Office of Electricity Delivery and Energy Reliability.

[FR Doc. 2015–04457 Filed 3–3–15; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

[OE Docket No. EA–363–A]

Application To Export Electric Energy; Noble Americas Gas & Power Corporation

AGENCY: Office of Electricity Delivery and Energy Reliability, DOE.

ACTION: Notice of Application.

SUMMARY: Noble Americas Gas & Power Corporation (Applicant or NAG&P) has applied to renew its authority to transmit electric energy from the United States to Mexico pursuant to section 202(e) of the Federal Power Act.

DATES: Comments, protests, or motions to intervene must be submitted on or before April 3, 2015.

ADDRESSES: Comments, protests, motions to intervene, or requests for more information should be addressed to: Office of Electricity Delivery and

Energy Reliability, Mail Code: OE–20, U.S. Department of Energy, 1000 Independence Avenue SW., Washington, DC 20585–0350. Because of delays in handling conventional mail, it is recommended that documents be transmitted by overnight mail, by electronic mail to *Electricity.Exports@hq.doe.gov,* or by facsimile to 202–586–8008.

SUPPLEMENTARY INFORMATION: Exports of electricity from the United States to a foreign country are regulated by the Department of Energy (DOE) pursuant to sections 301(b) and 402(f) of the Department of Energy Organization Act (42 U.S.C. 7151(b), 7172(f)) and require authorization under section 202(e) of the Federal Power Act (16 U.S.C. 824a(e)).

On April 26, 2010, DOE issued Order No. EA–363 to the Applicant, which authorized NAG&P to transmit electric energy from the United States to Mexico as a power marketer for a five-year term using existing international transmission facilities. That authority expires on April 26, 2015. On February 18, 2015, the Applicant filed an application with DOE for renewal of the export authority contained in Order No. EA–363 for an additional five-year term.

In its application, the Applicant states that it does not own or operate any electric generation or transmission facilities, and it does not have a franchised service area. The electric energy that the Applicant proposes to export to Mexico would be surplus energy from third parties such as electric utilities and Federal power marketing agencies pursuant to voluntary agreements. The existing international transmission facilities to be utilized by the Applicant have previously been authorized by Presidential permits issued pursuant to Executive Order 10485, as amended, and are appropriate for open access transmission by third parties.

Procedural Matters: Any person desiring to be heard in this proceeding should file a comment or protest to the application at the address provided above. Protests should be filed in accordance with Rule 211 of the Federal Energy Regulatory Commission's (FERC) Rules of Practice and Procedures (18 CFR 385.211). Any person desiring to become a party to these proceedings should file a motion to intervene at the above address in accordance with FERC Rule 214 (18 CFR 385.214). Five copies of such comments, protests, or motions to intervene should be sent to the address provided above on or before the date listed above.

Comments and other filings concerning the NAG&P application to export electric energy to Mexico should be clearly marked with OE Docket No. EA–363–A. An additional copy is to be provided directly to Joseph P. Limone, Noble Americas Corporation, 107 Elm Street, Four Stamford Plaza, Stamford, CT 06902.

A final decision will be made on this application after the environmental impacts have been evaluated pursuant to DOE's National Environmental Policy Act Implementing Procedures (10 CFR part 1021) and after a determination is made by DOE that the proposed action will not have an adverse impact on the sufficiency of supply or reliability of the U.S. electric power supply system.

Copies of this application will be made available, upon request, for public inspection and copying at the address provided above, by accessing the program Web site at *http://energy.gov/node/11845,* or by emailing Angela Troy at *Angela.Troy@hq.doe.gov.*

Issued in Washington, DC, on February 25, 2015.

Brian Mills,

Director, Permitting and Siting, Office of Electricity Delivery and Energy Reliability.

[FR Doc. 2015–04500 Filed 3–3–15; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

[OE Docket No. EA–406]

Application To Export Electric Energy; Sempra Generation, LLC

AGENCY: Office of Electricity Delivery and Energy Reliability, DOE.

ACTION: Notice of Application.

SUMMARY: Sempra Generation, LLC (Sempra or Applicant) has applied for authority to transmit electric energy from the United States to Mexico pursuant to section 202(e) of the Federal Power Act.

DATES: Comments, protests, or motions to intervene must be submitted on or before April 3, 2015.

ADDRESSES: Comments, protests, motions to intervene, or requests for more information should be addressed to: Office of Electricity Delivery and Energy Reliability, Mail Code: OE–20, U.S. Department of Energy, 1000 Independence Avenue SW., Washington, DC 20585–0350. Because of delays in handling conventional mail, it is recommended that documents be transmitted by overnight mail, by electronic mail to *Electricity.Exports@hq.doe.gov,* or by facsimile to 202–586–8008.

SUPPLEMENTARY INFORMATION: Exports of electricity from the United States to a foreign country are regulated by the Department of Energy (DOE) pursuant to sections 301(b) and 402(f) of the Department of Energy Organization Act (42 U.S.C. 7151(b), 7172(f)) and require authorization under section 202(e) of the Federal Power Act (16 U.S.C. 824a(e)).

On February 10, 2015, DOE received an application from the Applicant for authority to transmit electric energy from the United States to Mexico as a power marketer for a five-year term using existing international transmission facilities.

In its application, Sempra states that it does not own or operate an integrated transmission or distribution system, and it does not have a franchised service area. The electric energy that Sempra proposes to export to Mexico would be surplus energy purchased from third parties such as electric utilities and Federal power marketing agencies pursuant to voluntary agreements. The existing international transmission facilities to be utilized by the Applicant have previously been authorized by Presidential permits issued pursuant to Executive Order 10485, as amended, and are appropriate for open access transmission by third parties.

Procedural Matters: Any person desiring to be heard in this proceeding should file a comment or protest to the application at the address provided above. Protests should be filed in accordance with Rule 211 of the Federal Energy Regulatory Commission's (FERC) Rules of Practice and Procedures (18 CFR 385.211). Any person desiring to become a party to these proceedings should file a motion to intervene at the above address in accordance with FERC Rule 214 (18 CFR 385.214). Five copies of such comments, protests, or motions to intervene should be sent to the address provided above on or before the date listed above.

Comments and other filings concerning the Sempra application to export electric energy to Mexico should be clearly marked with OE Docket No. EA–406. An additional copy is to be provided directly to Daniel A. King, Sempra U.S. Gas & Power, LLC, 101 Ash Street, HQ15C, San Diego, CA 92101 and to Emily Shults, Sempra U.S. Gas & Power, LLC, 101 Ash Street, HQ13, San Diego, CA 92101.

A final decision will be made on this application after the environmental impacts have been evaluated pursuant to DOE's National Environmental Policy Act Implementing Procedures (10 CFR part 1021) and after a determination is made by DOE that the proposed action will not have an adverse impact on the

sufficiency of supply or reliability of the U.S. electric power supply system.

Copies of this application will be made available, upon request, for public inspection and copying at the address provided above, by accessing the program Web site at *http://energy.gov/node/11845,* or by emailing Angela Troy at *Angela.Troy@hq.doe.gov.*

Issued in Washington, DC, on February 25, 2015.

Brian Mills,

Director, Permitting and Siting, Office of Electricity Delivery and Energy Reliability.

[FR Doc. 2015–04497 Filed 3–3–15; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

[OE Docket No. EA–407]

Application To Export Electric Energy; Vitol Inc.

AGENCY: Office of Electricity Delivery and Energy Reliability, DOE.

ACTION: Notice of Application.

SUMMARY: Vitol Inc. (Vitol or Applicant) has applied for authority to transmit electric energy from the United States to Mexico pursuant to section 202(e) of the Federal Power Act.

DATES: Comments, protests, or motions to intervene must be submitted on or before April 3, 2015.

ADDRESSES: Comments, protests, motions to intervene, or requests for more information should be addressed to: Office of Electricity Delivery and Energy Reliability, Mail Code: OE–20, U.S. Department of Energy, 1000 Independence Avenue SW., Washington, DC 20585–0350. Because of delays in handling conventional mail, it is recommended that documents be transmitted by overnight mail, by electronic mail to *Electricity.Exports@hq.doe.gov,* or by facsimile to 202–586–8008.

SUPPLEMENTARY INFORMATION: Exports of electricity from the United States to a foreign country are regulated by the Department of Energy (DOE) pursuant to sections 301(b) and 402(f) of the Department of Energy Organization Act (42 U.S.C. 7151(b), 7172(f)) and require authorization under section 202(e) of the Federal Power Act (16 U.S.C. 824a(e)).

On February 10, 2015, DOE received an application from Vitol for authority to transmit electric energy from the United States to Mexico as a power marketer for a five-year term using existing international transmission facilities. The Applicant is also requesting an expedited review of the Application and for DOE to issue the requested authorization within 60 days.

In its application, Vitol states that it does not own or control any electric generation or transmission facilities, and it does not have a franchised service area. The electric energy that Vitol proposes to export to Mexico would be surplus energy purchased from third parties such as electric utilities and Federal power marketing agencies pursuant to voluntary agreements. The existing international transmission facilities to be utilized by the Applicant have previously been authorized by Presidential permits issued pursuant to Executive Order 10485, as amended, and are appropriate for open access transmission by third parties.

Procedural Matters: Any person desiring to be heard in this proceeding should file a comment or protest to the application at the address provided above. Protests should be filed in accordance with Rule 211 of the Federal Energy Regulatory Commission's (FERC) Rules of Practice and Procedures (18 CFR 385.211). Any person desiring to become a party to these proceedings should file a motion to intervene at the above address in accordance with FERC Rule 214 (18 CFR 385.214). Five copies of such comments, protests, or motions to intervene should be sent to the address provided above on or before the date listed above.

Comments and other filings concerning the Vitol application to export electric energy to Mexico should be clearly marked with OE Docket No. EA–407. An additional copy is to be provided directly to both Robert F. Viola and Kolby Kettler, Vitol Inc., 1100 Louisiana Street, Suite 5500, Houston, TX 77002.

A final decision will be made on this application after the environmental impacts have been evaluated pursuant to DOE's National Environmental Policy Act Implementing Procedures (10 CFR part 1021) and after a determination is made by DOE that the proposed action will not have an adverse impact on the sufficiency of supply or reliability of the U.S. electric power supply system.

Copies of this application will be made available, upon request, for public inspection and copying at the address provided above, by accessing the program Web site at *http://energy.gov/node/11845,* or by emailing Angela Troy at *Angela.Troy@hq.doe.gov.*

Issued in Washington, DC, on February 25, 2015.

Brian Mills,

Director, Permitting and Siting, Office of Electricity Delivery and Energy Reliability.

[FR Doc. 2015–04499 Filed 3–3–15; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Notice of Procedure Requiring Designation of U.S. Resident Agent for Applicants and Authorization Holders That Neither Reside in Nor Have a Place of Business or Other Corporate Presence in the United States

AGENCY: Office of Fossil Energy, DOE.

ACTION: Notice of procedure.

SUMMARY: The Office of Fossil Energy (FE) of the Department of Energy (DOE) is hereby notifying both applicants for authorizations to import or export natural gas, including liquefied natural gas (LNG), and the current holders of such authorizations that neither reside in nor have a place of business or other corporate presence in the United States that they must identify an agent resident within the United States to receive service of legal process. This notice applies to any such applicant and/or authorization holder that has not already identified a U.S. agent in its existing proceeding in a filing or other correspondence with DOE/FE.

DATES: This procedural change is effective March 4, 2015. Those affected by the change must comply by April 3, 2015.

ADDRESSES: Submissions of information required by this procedure can be made using one of the following:

Electronic Filing by Email

fergas@hq.doe.gov.

Regular Mail

U.S. Department of Energy (FE–34), Office of Oil and Gas Global Security and Supply, Office of Fossil Energy, P.O. Box 44375, Washington, DC 20026–4375.

Hand Delivery or Private Delivery Services (e.g., FedEx, UPS, etc.)

U.S. Department of Energy (FE–34), Office of Oil and Gas Global Security and Supply, Office of Fossil Energy, Forrestal Building, Room 3E–042, 1000 Independence Avenue SW., Washington, DC 20585.

FOR FURTHER INFORMATION CONTACT: Larine Moore or Beverly Howard, U.S. Department of Energy (FE–34), Office of Oil and Gas Global Security and Supply, Office of Fossil Energy, Forrestal

Building, Room 3E–042, 1000 Independence Avenue SW., Washington, DC 20585, (202) 586–9478; (202) 586–9387.

Edward B. Myers, Cassandra S. Bernstein, U.S. Department of Energy, Office of the Assistant General Counsel for Electricity and Fossil Energy, Forrestal Building, 1000 Independence Ave. SW., Washington, DC 20585, (202) 586–3397, (202) 586–9793.

SUPPLEMENTARY INFORMATION: DOE is authorized under the Natural Gas Act, 15 U.S.C. 717b(a), (c), to regulate the import and export of natural gas to or from the United States.[1] As the number of applicants and authorization holders regulated under these statutory provisions continues to increase, DOE/FE is aware that many such applicants and authorization holders neither reside in nor have a place of business or other corporate presence in the United States. Applications to import or export natural gas are informal adjudications conducted in accordance with DOE regulations, 10 CFR part 590, and the Administrative Procedure Act, 5 U.S.C. 551, *et seq.* Applicants therefore must be available to receive and respond to timely service of process of DOE/FE orders and other filings, including pleadings submitted by parties in application proceedings. Additionally, authorization holders are subject to continuing agency jurisdiction and to terms, conditions, and reporting and recordkeeping requirements set forth in each authorization. To monitor and enforce compliance with its authorizations, DOE/FE must have the means to serve legal process on authorization holders within the United States.

Accordingly, DOE/FE has determined that applicants and authorization holders that neither reside in nor have a place of business or other corporate presence in the United States must identify an agent within the jurisdiction of the United States to receive service of process regarding their pending application or existing authorization, respectively. As noted above, this action will help to ensure that all applicants and authorization holders are notified promptly of any agency or party filing in their proceeding, and that DOE/FE has the means to monitor and enforce compliance with the terms, conditions, and other requirements of its authorizations.

Compliance with this procedural change shall be accomplished in the following manner: Within 30 days of the date of publication of this Notice in the **Federal Register**, all applicants and authorization holders that do not reside in the United States and do not have a place of business or other corporate presence in the United States must provide DOE/FE with the name, address, and telephone number of an agent in the United States designated to receive service of legal process in connection with their pending application(s) and/or existing authorization(s). This requirement does not apply to any such applicant and/or authorization holder that has already identified a U.S. agent in its existing proceeding in a filing or other correspondence with DOE/FE.

For purposes of complying with this procedural requirement, the U.S. agent may be a natural person residing in the United States, a U.S. corporation, or a foreign corporation registered to conduct business in the United States (including the applicant or authorization holder itself), provided that the domestic or foreign corporation has a business address in the United States and is authorized by its articles of incorporation to act as agent.

Submissions shall include the docket number and the order number(s) (if appropriate), the agent's name and complete U.S. address, and the consent of the applicant or authorization holder to service of process on the designated agent as long as the authority of the agent continues. This requirement shall be a continuing obligation of applicants and authorization holders. Accordingly, it shall be incumbent upon applicants and authorization holders to designate a new agent in the event an agent discontinues its service as agent.

Issued in Washington, DC, on February 26, 2015.

John A. Anderson,

Director, Office of Oil and Gas Global Security and Supply, Office of Oil and Natural Gas.

[FR Doc. 2015–04461 Filed 3–3–15; 8:45 am]

BILLING CODE 6450–01–P

[1] The authority to regulate the imports and exports of natural gas, including liquefied natural gas, under section 3 of the NGA (15 U.S.C. 717b) has been delegated to the Assistant Secretary for FE in Redelegation Order No. 00–006.02 issued on November 17, 2014.

DEPARTMENT OF ENERGY

Secretary of Energy Advisory Board; Notice of Open Meeting

AGENCY: Department of Energy.

ACTION: Notice of Open Meeting.

SUMMARY: This notice announces an open meeting of the Secretary of Energy Advisory Board (SEAB). SEAB was reestablished pursuant to the Federal Advisory Committee Act (Pub. L. 92–463, 86 Stat. 770) (the Act). This notice is provided in accordance with the Act.

DATES: Tuesday, March 31, 2015—11:30 a.m.–2:30 p.m.

ADDRESSES: Department of Energy, 1000 Independence Avenue SW., Room 8E–089, Washington, DC 20585.

FOR FURTHER INFORMATION CONTACT: Karen Gibson, Designated Federal Officer, U.S. Department of Energy, 1000 Independence Avenue SW., Washington, DC 20585; telephone: (202) 586–3787; email: *seab@hq.doe.gov.*

SUPPLEMENTARY INFORMATION:

Background: The Board was established to provide advice and recommendations to the Secretary on the Department's basic and applied research, economic and national security policy, educational issues, operational issues, and other activities as directed by the Secretary.

Purpose of the Meeting: This meeting is the quarterly meeting of the Board.

Tentative Agenda: The meeting will start at 11:30 a.m. on March 31st. The tentative meeting agenda includes consideration of the reports of the SEAB task forces on nuclear nonproliferation and the national laboratories, a briefing on Quadrennial Energy Review (QER), and an opportunity for comments from the public. The meeting will conclude at 2:30 p.m. Agenda updates and the draft task force reports will be posted on the SEAB Web site prior to the meeting: *www.energy.gov/seab.*

Public Participation: The meeting is open to the public. Individuals who would like to attend must RSVP to Karen Gibson no later than 5:00 p.m. on Wednesday, March 25, 2015 at *seab@hq.doe.gov.* Please provide your name, organization, citizenship, and contact information. Anyone attending the meeting will be required to present government-issued identification. Please note that the Department of Homeland Security (DHS) has determined that regular driver's licenses (and ID cards) from the following jurisdictions are not acceptable: Alaska, American Samoa, Arizona, Louisiana, Maine, Massachusetts, Minnesota, New York, Oklahoma, and Washington. Acceptable alternate forms of Photo-ID include:

U. S. Passport or Passport Card

An Enhanced Driver's License or Enhanced ID-Card issued by the states of Minnesota, New York or Washington

(Enhanced licenses issued by these states are clearly marked Enhanced or Enhanced Driver's License)

A military ID or other government issued Photo-ID card

Individuals and representatives of organizations who would like to offer

comments and suggestions may do so during the meeting. Approximately 30 minutes will be reserved for public comments. Time allotted per speaker will depend on the number who wish to speak but will not exceed 5 minutes. The Designated Federal Officer is empowered to conduct the meeting in a fashion that will facilitate the orderly conduct of business. Those wishing to speak should register to do so beginning at 11:30 a.m. on March 31st.

Those not able to attend the meeting or who have insufficient time to address the committee are invited to send a written statement to Karen Gibson, U.S. Department of Energy, 1000 Independence Avenue SW., Washington DC 20585, email to *seab@hq.doe.gov.*

Minutes: The minutes of the meeting will be available on the SEAB Web site or by contacting Ms. Gibson. She may be reached at the postal address or email address above, or by visiting SEAB's Web site at *www.energy.gov/seab.*

Issued in Washington, DC on February 25, 2015.

LaTanya R. Butler,

Deputy Committee Management Officer.

[FR Doc. 2015–04501 Filed 3–3–15; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP15–87–000]

Columbia Gas Transmission, LLC; Notice of Application

Take notice that on February 12, 2015, Columbia Gas Transmission, LLC (Columbia), 5151 San Felipe, Suite 2500, Houston, Texas 77056, filed in Docket No. CP15–87–000, an application pursuant to section 7(c) of the Natural Gas Act and Part 157 of the Commission's regulations, for a certificate of public convenience and necessity to construct and operate its Utica Access Project. Specifically, Columbia request to construct a 5-mile 24-inch diameter pipeline from Dominion Transmission, Inc's (DTI) Cornwell Compressor station to an intersection with Columbia's existing line X–52–M1 in Kanawha and Clay Counties, West Virginia. The proposal will provide 205 million cubic feet (MMcf) per day of firm transportation capacity to deliver natural gas to the proposed facilities to be constructed by DTI in Docket No. CP15–7–000. The estimated cost of the project is $45.3 million, all as more fully set forth in the application, which is on file with the Commission and open to public inspection. The filing may also be viewed on the web at *http://www.ferc.gov* using the ''eLibrary'' link. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, contact FERC at *FERCOnlineSupport@ferc.gov* or call toll-free, (866) 208–3676 or TTY, (202) 502–8659.

Any questions regarding this application should be directed to S. Diane Neal, Assistant General Counsel, Columbia Gas Transmission, LLC, 5151 San Felipe, Suite 2500, Houston, Texas 77056 or phone: (713) 386–3745.

Pursuant to section 157.9 of the Commission's rules, 18 CFR 157.9, within 90 days of this Notice the Commission staff will either: Complete its environmental assessment (EA) and place it into the Commission's public record (eLibrary) for this proceeding; or issue a Notice of Schedule for Environmental Review. If a Notice of Schedule for Environmental Review is issued, it will indicate, among other milestones, the anticipated date for the Commission staff's issuance of the final environmental impact statement (FEIS) or EA for this proposal. The filing of the EA in the Commission's public record for this proceeding or the issuance of a Notice of Schedule for Environmental Review will serve to notify federal and state agencies of the timing for the completion of all necessary reviews, and the subsequent need to complete all federal authorizations within 90 days of the date of issuance of the Commission staff's FEIS or EA.

There are two ways to become involved in the Commission's review of this project. First, any person wishing to obtain legal status by becoming a party to the proceedings for this project should, on or before the comment date stated below, file with the Federal Energy Regulatory Commission, 888 First Street NE., Washington, DC 20426, a motion to intervene in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.214 or 385.211) and the Regulations under the NGA (18 CFR 157.10). A person obtaining party status will be placed on the service list maintained by the Secretary of the Commission and will receive copies of all documents filed by the applicant and by all other parties. A party must submit 7 copies of filings made with the Commission and must mail a copy to the applicant and to every other party in the proceeding. Only parties to the proceeding can ask for court review of Commission orders in the proceeding.

However, a person does not have to intervene in order to have comments considered. The second way to participate is by filing with the Secretary of the Commission, as soon as possible, an original and two copies of comments in support of or in opposition to this project. The Commission will consider these comments in determining the appropriate action to be taken, but the filing of a comment alone will not serve to make the filer a party to the proceeding. The Commission's rules require that persons filing comments in opposition to the project provide copies of their protests only to the party or parties directly involved in the protest.

Persons who wish to comment only on the environmental review of this project should submit an original and two copies of their comments to the Secretary of the Commission. Environmental commentors will be placed on the Commission's environmental mailing list, will receive copies of the environmental documents, and will be notified of meetings associated with the Commission's environmental review process. Environmental commentors will not be required to serve copies of filed documents on all other parties. However, the non-party commentors will not receive copies of all documents filed by other parties or issued by the Commission (except for the mailing of environmental documents issued by the Commission) and will not have the right to seek court review of the Commission's final order.

The Commission strongly encourages electronic filings of comments, protests and interventions in lieu of paper using the ''eFiling'' link at *http://www.ferc.gov.* Persons unable to file electronically should submit an original and 5 copies of the protest or intervention to the Federal Energy Regulatory Commission, 888 First Street NE., Washington, DC 20426.

There is an ''eSubscription'' link on the Web site that enables subscribers to receive email notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please email *FERCOnlineSupport@ferc.gov,* or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Comment Date: 5:00 p.m. Eastern Time on March 19, 2015.

Dated: February 26, 2015.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. 2015–04448 Filed 3–3–15; 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: EG15–55–000.
Applicants: Nueces Bay WLE, LP.
Description: Notice of Self-Certification of Exempt Wholesale Generator Status of Nueces Bay WLE, LP.
Filed Date: 2/26/15.
Accession Number: 20150226–5123.
Comments Due: 5 p.m. ET 3/19/15.

Take notice that the Commission received the following electric rate filings:

Docket Numbers: ER15–536–001
Applicants: PJM Interconnection, L.L.C., Baltimore Gas and Electric Company.
Description: Compliance filing per 35: BGE submits Compliance Filing per 1/30/15 Order in Docket No. ER15–536–000 to be effective 2/2/2015.
Filed Date: 2/26/15.
Accession Number: 20150226–5090.
Comments Due: 5 p.m. ET 3/19/15.

Docket Numbers: ER15–1123–000.
Applicants: New York State Electric & Gas Corporation, New York Independent System Operator, Inc.
Description: § 205(d) rate filing per 35.13(a)(2)(iii): Amended & Restated LGIA No. 1396 NYISO, NYSEG & Sheldon Energy to be effective 2/18/2015.
Filed Date: 2/25/15.
Accession Number: 20150225–5313.
Comments Due: 5 p.m. ET 3/18/15.

Docket Numbers: ER15–1124–000.
Applicants: California Independent System Operator Corporation.
Description: § 205(d) rate filing per 35.13(a)(2)(iii): 2015–02–25_NextEraLGIA_Concurrence to be effective 2/19/2015.
Filed Date: 2/25/15.
Accession Number: 20150225–5315.
Comments Due: 5 p.m. ET 3/18/15.

Docket Numbers: ER15–1125–000.
Applicants: Entergy Arkansas, Inc.
Description: Tariff Withdrawal per 35.15: EAI Notice of Cancellation of SA 644 to be effective 1/26/2015.
Filed Date: 2/25/15.
Accession Number: 20150225–5326.
Comments Due: 5 p.m. ET 3/18/15.

Docket Numbers: ER15–1126–000.
Applicants: Pacific Gas and Electric Company.
Description: § 205(d) rate filing per 35.13(a)(2)(iii): CCSF IA—2015 Annual Adjustment to Traffic Light Costs to be effective 2/1/2015.
Filed Date: 2/25/15.
Accession Number: 20150225–5331.
Comments Due: 5 p.m. ET 3/18/15.

Docket Numbers: ER15–1127–000.
Applicants: ITC Midwest LLC.
Description: § 205(d) rate filing per 35.13(a)(2)(iii): CIAC Agreement Between ITC Midwest and Dairyland Power Cooperative to be effective 4/27/2015.
Filed Date: 2/26/15.
Accession Number: 20150226–5221.
Comments Due: 5 p.m. ET 3/19/15.

Docket Numbers: ER15–1128–000.
Applicants: Arizona Public Service Company.
Description: § 205(d) rate filing per 35.13(a)(2)(iii): Rate Schedule No. 260—Fully Executed Version to be effective 10/21/2011.
Filed Date: 2/26/15.
Accession Number: 20150226–5247.
Comments Due: 5 p.m. ET 3/19/15.

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: February 26, 2015.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. 2015–04447 Filed 3–3–15; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. AD10–12–006]

Increasing Market and Planning Efficiency Through Improved Software; Notice of Technical Conference: Increasing Real-Time and Day-Ahead Market Efficiency Through Improved Software

Take notice that Commission staff will convene a technical conference on June 22, 23, and 24, 2015 to discuss opportunities for increasing real-time and day-ahead market efficiency through improved software. A detailed agenda with the list of and times for the selected speakers will be published on the Commission's Web site [1] after April 24, 2015.

This conference will bring together experts from diverse backgrounds and experiences, including electric system operators, software developers, government, research centers and academia for the purposes of stimulating discussion, sharing information, and identifying fruitful avenues for research concerning the technical aspects of improved software for increasing efficiency. This conference is intended to build on the discussions initiated in the previous Commission staff technical conferences on increasing market and planning efficiency through improved software. As such, staff will be facilitating a discussion to explore research and operational advances with respect to market modeling that appear to have significant promise for potential efficiency improvements. Broadly, such topics fall into the following categories:

(1) Improvements to the representation of physical constraints that are either not currently modeled or currently modeled using mathematical approximations (*e.g.,* modeling voltage and reactive power though alternating current (AC) optimal power flow modeling, modeling contingencies or events beyond first contingencies);

(2) Consideration of uncertainty to better maximize expected market surplus (*e.g.,* stochastic modeling, or other improved modeling approaches to energy and reserve dispatch that efficiently manage uncertainty);

(3) Improvements to the ability to identify and use flexibility in the existing systems (*e.g.,* optimal transmission switching, active or dynamic transmission ratings, and modeling ramping capability needs); and

(4) Other improvements in algorithms, model formulations, or hardware that may allow for increases in market efficiency.

Within these or related subject areas, we encourage presentations that discuss best modeling practices, existing modeling practices that need improvement, any advances made since last year's conference, or related perspectives on increasing market efficiency through improved power systems modeling.

[1] *http://www.ferc.gov/industries/electric/indus-act/market-planning.asp.*

The technical conference will be held at the Federal Energy Regulatory Commission headquarters, 888 First Street NE., Washington, DC 20426. All interested participants are invited to attend, and participants with ideas for relevant presentations are invited to nominate themselves to speak at the conference.

Speaker nominations must be submitted on or before March 25, 2015 through the Commission's Web site [2] by providing the proposed speaker's contact information along with a title, abstract, and list of contributing authors for the proposed presentation. Proposed presentations should be related to the topics discussed above. Speakers and presentations will be selected to ensure relevant topics and to accommodate time constraints.

Although registration is not required for general attendance by United States citizens, we encourage those planning to attend the conference to register through the Commission's Web site.[3] We will provide nametags for those who register on or before June 19, 2015.

Due to new security procedures, we strongly encourage attendees who are not citizens of the United States to register for the conference by June 1, 2015, in order to avoid any delay associated with being processed by FERC security.

The Commission will accept comments following the conference, with a deadline of July 31, 2015.

There is an ''eSubscription'' link on the Web site that enables subscribers to receive email notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please email *FERCOnlineSupport@ferc.gov,* or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

A WebEx will be available. Off-site participants interested in listening via teleconference or listening and viewing the presentations through WebEx must register at *https://www.ferc.gov/whats-new/registration/real-market-6–22–15-form.asp,* and do so by 5:00 p.m. EST on June 15, 2015. WebEx and teleconferencing may not be available to those who do not register.

FERC conferences are accessible under section 508 of the Rehabilitation Act of 1973. For accessibility accommodations please send an email to *accessibility@ferc.gov* or call toll free (866) 208–3372 (voice) or (202) 502–8659 (TTY), or send a fax to (202) 208–2106 with the required accommodations.

For further information about these conferences, please contact: Sarah McKinley (Logistical Information), Office of External Affairs, (202) 502–8004, *Sarah.McKinley@ferc.gov.*; Daniel Kheloussi (Technical Information), Office of Energy Policy and Innovation, (202) 502–6391, *Daniel.Kheloussi@ferc.gov.*

Dated: February 26, 2015.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. 2015–04446 Filed 3–3–15; 8:45 am]

BILLING CODE 6717–01–P

[2] The speaker nomination form is located at *https://www.ferc.gov/whats-new/registration/real-market-6-22-15-speaker-form.asp.*

[3] The registration form is located at *https://www.ferc.gov/whats-new/registration/real-market-6-22-15-form.asp.*

ENVIRONMENTAL PROTECTION AGENCY

[FRL–9923–99–OAR]

Inventory of U.S. Greenhouse Gas Emissions and Sinks: 1990–2013; Correction

AGENCY: U.S. Environmental Protection Agency.

ACTION: Notice of document availability and request for comments; correction.

SUMMARY: On February 24, 2015, the U.S. Environmental Protection Agency (EPA) published a document in the **Federal Register** regarding the notice of availability and request for public comment on U.S. quantification and reporting of greenhouse gas emissions and sinks. The Web site link was inadvertently omitted and this notice corrects that omission.

FOR FURTHER INFORMATION CONTACT: Mr. Leif Hockstad, (202) 343–9432.

Correction:

In the **Federal Register** of February 24, 2015, in FR Doc. 2015–03729, on page 9718, in the second column, correct the last sentence of the **ADDRESSES** caption to read:

''The draft report can be obtained by visiting the U.S. EPA's Climate Change Site at: *http://www.epa.gov/climate change/ghgemissions/usinventory report.html.''*

Dated: February 24, 2015.

Sarah Dunham,

Director, Office of Atmospheric Programs.

[FR Doc. 2015–04487 Filed 3–3–15; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL 9923–97–OECA]

National Environmental Justice Advisory Council; Notification of Public Teleconference Meeting and Public Comment

AGENCY: Environmental Protection Agency.

ACTION: Notification of Public Teleconference Meeting and Public Comment.

SUMMARY: Pursuant to the Federal Advisory Committee Act (FACA), Public Law 92–463, the U.S. Environmental Protection Agency (EPA) hereby provides notice that the National Environmental Justice Advisory Council (NEJAC) will host a public teleconference meeting on Thursday, March 19, 2015, from 2:00 p.m. to 4:00 p.m. Eastern Time. The primary discussion will focus on letters regarding the following topics: (1) Chemical Safety Policy; (2) Farmworker Protection Standards; (3) Refinery Rule; (4) Clean Power Rule and (5) Title VI.

There will be a public comment period from 3:30 p.m. to 4:00 p.m. Eastern Time. Members of the public are encouraged to provide comments relevant to the topics of the meeting.

For additional information about registering to attend the meeting or to provide public comment, please see the ''REGISTRATION'' and **SUPPLEMENTARY INFORMATION** sections below. Due to a limited number of telephone lines, attendance will be on a first-come, first served basis. Pre-registration is required. Registration for the teleconference meeting closes at Noon, Eastern Time on Monday, March 16, 2015. The deadline to sign up to speak during the public comment period, or to submit written public comments, is also Noon, Monday, March 16, 2015.

DATES: The NEJAC teleconference meeting on Thursday, March 19, 2015, will begin promptly at 2:00 p.m. Eastern Time.

Registration: Registrations will be processed at *http://nejac-teleconference-march2015.eventbrite.com.* When registering, please provide your name, organization, city and state, email address, and telephone number for follow up. Please also state whether you would like to be put on the list to provide public comment, and whether you are submitting written comments before the Monday, March 16, 2015, noon deadline. Non-English speaking attendees wishing to arrange for a foreign language interpreter may also

make appropriate arrangements using the email address or telephone/fax number.

FOR FURTHER INFORMATION CONTACT: Questions or correspondence concerning the teleconference meeting should be directed to Jasmin Muriel, U.S. Environmental Protection Agency, by mail at 1200 Pennsylvania Avenue NW., (MC2201A), Washington, DC 20460; by telephone at 202–564–4287; via email at *Muriel.Jasmin@epa.gov;* or by fax at 202–564–1624. Additional information about the NEJAC is available at: *www.epa.gov/environmentaljustice/nejac.*

SUPPLEMENTARY INFORMATION: The Charter of the NEJAC states that the advisory committee shall provide independent advice to the Administrator on areas that may include, among other things, ''advice about broad, cross-cutting issues related to environmental justice, including environment-related strategic, scientific, technological, regulatory, and economic issues related to environmental justice.''

A. Public Comment: Members of the public who wish to provide public comment during the Thursday, March 19, 2015, public teleconference meeting must pre-register by Noon, Eastern Time on Monday, March 16, 2015. Individuals or groups making remarks during the public comment period will be limited to seven (7) minutes. To accommodate the number of people who want to address the NEJAC, only one representative of a particular community, organization, or group will be allowed to speak. Written comments can also be submitted for the record. The suggested format for individuals providing public comments is as follows: Name of speaker; name of organization/community; city and state; and email address; brief description of the concern, and what you want the NEJAC to advise EPA to do. Written comments received by Noon, Eastern Time on Monday, March 16, 2015, will be included in the materials distributed to the NEJAC prior to the teleconference. Written comments received after that time will be provided to the NEJAC as time allows. All written comments should be sent to Jasmin Muriel, EPA, via email at *Muriel.jasmin@epa.gov.*

B. Information About Services for Individuals With Disabilities: For information about access or services for individuals with disabilities, please contact Jasmin Muriel, at (202) 564–4287 or via email at *Muriel.Jasmin@EPA.gov.* To request special accommodations for a disability, please contact Ms. Muriel at least four working days prior to the meeting, to give EPA sufficient time to process your request. All requests should be sent to the address, email, or phone/fax number listed in the **FOR FURTHER INFORMATION CONTACT** section above.

Dated: February 26, 2015.

Sherri P. White,

Designated Federal Officer, Office of Environmental Justice, U.S. EPA.

[FR Doc. 2015–04471 Filed 3–3–15; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[EPA–HQ–OPP–2015–0062; FRL–9923–41]

Notice of Intent To Suspend Certain Pesticide Registrations

AGENCY: Environmental Protection Agency, EPA.

ACTION: Notice.

SUMMARY: This notice, pursuant the Federal Insecticide, Fungicide and Rodenticide Act (FIFRA), publishes three Notices of Intent to Suspend certain pesticide registrations issued by EPA. Each Notice of Intent to Suspend was issued following the Agency's issuance of a Data Call-In Notice (DCI), which required the registrants of the affected pesticide products containing a certain pesticide active ingredient to take appropriate steps to secure certain data, and following the registrants' failure to submit these data or to take other appropriate steps to secure the required data. The subject data were determined to be required to maintain in effect the existing registrations of the affected products. Failure to comply with the data requirements of a DCI is a basis for suspension of the affected registrations under FIFRA.

DATES: Each Notice of Intent to Suspend included in this **Federal Register** notice will become a final and effective suspension order automatically by operation of law 30 days after the date of the registrant's receipt of the mailed Notice of Intent to Suspend or, if the mailed Notice of Intent to Suspend is returned to the EPA Administrator as undeliverable, if delivery is refused, or if the EPA Administrator otherwise is unable to accomplish delivery to the registrant after making reasonable efforts to do so, the Notice of Intent to Suspend becomes effective 30 days after the date of publication of this notice in the **Federal Register**, unless, during that time, a timely and adequate request for a hearing is made by a person adversely affected by the Notice of Intent to Suspend, or the registrant has satisfied the EPA Administrator that the registrant has complied fully with the requirements that served as a basis for the Notice of Intent to Suspend. Unit IV. explains what must be done to avoid suspension under this notice (*i.e.,* how to request a hearing or how to comply fully with the requirements that served as a basis for the Notice of Intent to Suspend).

FOR FURTHER INFORMATION CONTACT: Moana Appleyard, Pesticide Re-evaluation Division (7508P), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave. NW., Washington, DC 20460–0001; telephone number: (703) 308–8175; email address: *appleyard.moana@epa.gov.*

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this action apply to me?

This action is directed to the public in general, and may be of interest to a wide range of stakeholders including environmental, human health, farm worker and agricultural advocates; the chemical industry; pesticide users; and members of the public interested in the sale, distribution, or use of pesticides. Since others also may be interested, the Agency has not attempted to describe all the specific entities that may be affected by this action. If you have any questions regarding the applicability of this action to a particular entity, consult the person listed under **FOR FURTHER INFORMATION CONTACT**.

B. How can I get copies of this document and other related information?

The docket for this action, identified by docket identification (ID) number EPA–HQ–OPP–2015–0062, is available at *http://www.regulations.gov* or at the Office of Pesticide Programs Regulatory Public Docket (OPP Docket) in the Environmental Protection Agency Docket Center (EPA/DC), West William Jefferson Clinton Bldg., Rm. 3334, 1301 Constitution Ave. NW., Washington, DC 20460–0001. The Public Reading Room is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Public Reading Room is (202) 566–1744, and the telephone number for the OPP Docket is (703) 305–5805. Please review the visitor instructions and additional information about the docket available at *http://www.epa.gov/dockets.*

II. Registrants Issued Notices of Intent To Suspend Active Ingredients, Products Affected, and Dates Issued

The registrants and products subject to this Notice of Intent to Suspend are

listed in Table 1. A Notice of Intent to Suspend was sent to each registrant of the affected products via the U.S. Postal Service, first class mail, return receipt requested.

TABLE 1—LIST OF REGISTRANTS AND PRODUCTS SUBJECT TO SUSPENSION

Registrant affected	Active ingredient	EPA registration No.	Product name	Date EPA issued notice of intent to suspend
Genics, Inc	Naphthenate Salts	71653–1	Cobra Wrap	April 16, 2014.
Pyrethrum Board of Kenya	Pyrethrins	4713–5	Kenya Pyrethrum Extract Refined Concentrate.	January 27, 2015.
Chem-Tech, Ltd	Pyrethrins	47000–19	Dy-Fly 1 Livestock Spray	January 27, 2015.
Chem-Tech, Ltd	Pyrethrins	47000–101	CT–42	January 27, 2015.

III. Basis for Issuance of Notice of Intent To Suspend; Requirement List

The registrants failed to submit the data or information required by the DCI, or to take other appropriate steps to secure the required data for their pesticide products listed in Table 2 of this unit.

TABLE 2—LIST OF REQUIREMENTS

Registrant affected	Active ingredient	EPA registration No.	Product name	Reason issued	Data requirements involved
Genics, Inc	Naphthenate Salts	71653–1	Cobra Wrap	Failure to submit adequate required data.	Product chemistry.
Pyrethrum Board of Kenya.	Pyrethrins	4713–5	Kenya Pyrethrum Extract Refined Concentrate.	Failure to submit adequate required data.	Product chemistry.
Chem-Tech, Ltd	Pyrethrins	47000–19	Dy-Fly 1 Livestock Spray.	Failure to submit adequate required data.	Product chemistry.
Chem-Tech, Ltd	Pyrethrins	47000–101	CT–42	Failure to submit adequate required data.	Product chemistry.

IV. How to avoid suspension under this notice?

1. You may avoid suspension under this notice if you or another person adversely affected by this notice properly request a hearing within 30 days of your receipt of the Notice of Intent to Suspend by mail or, if you did not receive the notice that was sent to you via USPS first class mail return receipt requested, then within 30 days from the date of publication of this **Federal Register** notice (see **DATES**). If you request a hearing, it will be conducted in accordance with the requirements of FIFRA section 6(d) (7 U.S.C. 136d) and the Agency's procedural regulations in 40 CFR part 164. Section 3(c)(2)(B) of FIFRA (7 U.S.C. 136a), however, provides that the only allowable issues which may be addressed at the hearing are whether you have failed to take the actions which are the bases of this notice and whether the Agency's decision regarding the disposition of existing stocks is consistent with FIFRA. Therefore, no substantive allegation or legal argument concerning other issues, including but not limited to the Agency's original decision to require the submission of data or other information, the need for or utility of any of the required data or other information or deadlines imposed, any allegations of errors or unfairness in any proceedings before an arbitrator, and the risks and benefits associated with continued registration of the affected product, may be considered in the proceeding. The Administrative Law Judge shall by order dismiss any objections which have no bearing on the allowable issues which may be considered in the proceeding. Section 3(c)(2)(B)(iv) of FIFRA provides that any hearing must be held and a determination issued within 75 days after receipt of a hearing request. This 75-day period may not be extended unless all parties in the proceeding stipulate to such an extension. If a hearing is properly requested, the Agency will issue a final order at the conclusion of the hearing governing the suspension of your product. A request for a hearing pursuant to this notice must:

- Include specific objections which pertain to the allowable issues which may be heard at the hearing.
- Identify the registrations for which a hearing is requested.
- Set forth all necessary supporting facts pertaining to any of the objections which you have identified in your request for a hearing.

If a hearing is requested by any person other than the registrant, that person must also state specifically why he/she asserts that he/she would be adversely affected by the suspension action described in this notice. Three copies of the request must be submitted to: Hearing Clerk, 1900 Environmental Protection Agency, 1200 Pennsylvania Ave. NW., Washington, DC 20460–0001.

An additional copy should be sent to the person who signed this notice. The request must be received by the Hearing Clerk by the applicable 30th day deadline as measured from your receipt of the Notice of Intent to Suspend by mail or publication of this notice, as set forth in **DATES** and in Unit IV.1., in order to be legally effective. The 30-day time limit is established by FIFRA and cannot be extended for any reason. Failure to meet the 30-day time limit will result in automatic suspension of your registration by operation of law and, under such circumstances, the suspension of the registration for your affected product will be final and

effective at the close of business on the applicable 30th day deadline as measured from your receipt of the Notice of Intent to Suspend by mail or publication of this notice, as set forth in **DATES** and in Unit IV.1., and will not be subject to further administrative review. The Agency's rules of practice at 40 CFR 164.7 forbid anyone who may take part in deciding this case, at any stage of the proceeding, from discussing the merits of the proceeding *ex parte* with any party or with any person who has been connected with the preparation or presentation of the proceeding as an advocate or in any investigative or expert capacity, or with any of their representatives. Accordingly, the following EPA offices, and the staffs thereof, are designated as judicial staff to perform the judicial function of EPA in any administrative hearings on this Notice of Intent to Suspend: The Office of the Administrative Law Judges, the Office of the Environmental Appeals Board, the EPA Administrator, the EPA Deputy Administrator, and the members of the staff in the immediate offices of the EPA Administrator and EPA Deputy Administrator. None of the persons designated as the judicial staff shall have any *ex parte* communication with trial staff or any other interested person not employed by EPA on the merits of any of the issues involved in this proceeding, without fully complying with the applicable regulations.

2. You may also avoid suspension if, within the applicable 30-day deadline period as measured from your receipt of the Notice of Intent to Suspend by mail or publication of this notice, as set forth in **DATES** and in Unit IV.1., the Agency determines that you have taken appropriate steps to comply with the FIFRA section 3(c)(2)(B) DCI notice. In order to avoid suspension under this option, you must satisfactorily comply with Table 2—List of Requirements in Unit II., for each product by submitting all required supporting data/information described in Table 2 of Unit. II. and in the Explanatory Appendix (in the docket for this **Federal Register** notice) to the following address (preferably by certified mail):

Office of Pesticide Programs, Pesticide Re-evaluation Division (7508P), Environmental Protection Agency, 1200 Pennsylvania Ave. NW., Washington, DC 20460–0001.

For you to avoid automatic suspension under this notice, the Agency must also determine within the applicable 30-day deadline period that you have satisfied the requirements that are the bases of this notice and so notify you in writing. You should submit the necessary data/information as quickly as possible for there to be any chance the Agency will be able to make the necessary determination in time to avoid suspension of your product. The suspension of the registration of your company's product pursuant to this notice will be rescinded when the Agency determines you have complied fully with the requirements which were the bases of this notice. Such compliance may only be achieved by submission of the data/information described in Table 2 of Unit II.

V. Status of Products That Become Suspended

Your product will remain suspended, however, until the Agency determines you are in compliance with the requirements which are the bases of this notice and so informs you in writing.

After the suspension becomes final and effective, the registrant subject to this notice, including all supplemental registrants of products listed in Table 1 of Unit II., may not legally distribute, sell, use, offer for sale, hold for sale, ship, deliver for shipment, or receive and (having so received) deliver or offer to deliver, to any person, the products listed in Table 1 of Unit II. Persons other than the registrant subject to this notice, as defined in the preceding sentence, may continue to distribute, sell, use, offer for sale, hold for sale, ship, deliver for shipment, or receive and (having so received) deliver or offer to deliver, to any person, the products listed in Table 1 of Unit II. Nothing in this notice authorizes any person to distribute, sell, use, offer for sale, hold for sale, ship, deliver for shipment, or receive and (having so received) deliver or offer to deliver, to any person, the products listed in Table 1 of Unit II. in any manner which would have been unlawful prior to the suspension.

If the registration for your product, listed in Table 1 of Unit II., are currently suspended as a result of failure to comply with another FIFRA section 3(c)(2)(B) DCI notice or FIFRA Section 4 Data Requirements notice, this notice, when it becomes a final and effective order of suspension, will be in addition to any existing suspension, *i.e.,* all requirements which are the bases of the suspension must be satisfied before the registration will be reinstated.

It is the responsibility of the basic registrant to notify all supplementary registered distributors of a basic registered product that this suspension action also applies to their supplementary registered products. The basic registrant may be held liable for violations committed by their distributors.

Any questions about the requirements and procedures set forth in this notice or in the subject FIFRA section 3(c)(2)(B) DCI notice, should be addressed to the person listed under **FOR FURTHER INFORMATION CONTACT**.

Authority: 7 U.S.C. 136 *et seq.*

Dated: February 23, 2015.

Michael Goodis,

Acting Director, Pesticide Re-evaluation Division, Office of Pesticide Programs.

[FR Doc. 2015–04402 Filed 3–3–15; 8:45 am]

BILLING CODE 6560–50–P

FEDERAL COMMUNICATIONS COMMISSION

[OMB 3060–0645]

Information Collection Being Submitted for Review and Approval to the Office of Management and Budget

AGENCY: Federal Communications Commission.

ACTION: Notice and request for comments.

SUMMARY: As part of its continuing effort to reduce paperwork burdens, and as required by the Paperwork Reduction Act (PRA) of 1995 (44 U.S.C. 3501–3520), the Federal 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 Office of Management and Budget (OMB) control number. No person shall be subject to any penalty for failing to comply with a collection of information subject to the PRA that does not display a valid OMB control number.

DATES: Written comments should be submitted on or before April 3, 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 contacts below as soon as possible.

ADDRESSES: Direct all PRA comments to Nicholas A. Fraser, OMB, via email *Nicholas_A._Fraser@omb.eop.gov;* and to Cathy Williams, FCC, via email *PRA@fcc.gov* and to *Cathy.Williams@fcc.gov.* Include in the comments the OMB control number as shown in the **SUPPLEMENTARY INFORMATION** section below.

FOR FURTHER INFORMATION CONTACT: For additional information or copies of the information collection, contact Cathy Williams at (202) 418–2918. To view a copy of this information collection request (ICR) submitted to OMB: (1) Go to the Web page <*http://www.reginfo.gov/public/do/PRAMain*>, (2) look for the section of the Web page called ''Currently Under Review,'' (3) click on the downward-pointing arrow in the ''Select Agency'' box below the ''Currently Under Review'' heading, (4) select ''Federal Communications Commission'' from the list of agencies presented in the ''Select Agency'' box, (5) click the ''Submit'' button to the right of the ''Select Agency'' box, (6) when the list of FCC ICRs currently under review appears, look for the OMB control number of this ICR and then click on the ICR Reference Number. A copy of the FCC submission to OMB will be displayed.

SUPPLEMENTARY INFORMATION:

OMB Control Number: 3060–0645.

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.

Marlene H. Dortch,

Secretary, Office of the Secretary, Office of the Managing Director.

[FR Doc. 2015–04436 Filed 3–3–15; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

[3060–1085]

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 May 4, 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 Benish Shah, FCC, via email *PRA@fcc.gov* and to *Benish.Shah@fcc.gov.*

FOR FURTHER INFORMATION CONTACT: For additional information about the information collection, contact *Benish.Shah@fcc.gov,* (202) 418–7866.

SUPPLEMENTARY INFORMATION:

OMB Control Number: 3060–1085.

Title: Section 9.5, Interconnected Voice Over Internet Protocol (VoIP) E911 Compliance.

Form Number: N/A.

Type of Review: Extension of a currently approved collection.

Respondents: Business or other for-profit entities.

Number of Respondents: 12 respondents; 14,971,342 responses.

Estimated Time per Response: 50,062 hours.

Frequency of Response: Recordkeeping requirement and third party disclosure requirements.

Obligation to Respond: Mandatory. Statutory authority for this information collection is contained in 47. U.S.C. Sections 1, 4(i), and 251 (e)(3) of the Communications Act of 1934, as amended.

Total Annual Burden: 600,743 hours.

Total Annual Cost: $80,235,305.

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: The Commission is obligated by statute to promote ''safety of life and property'' and to ''encourage and facilitate the prompt deployment throughout the United States of a seamless, ubiquitous, and reliable end-to-end infrastructure'' for public safety. Congress has established 911 as the national emergency number to enable all citizens to reach emergency services directly and efficiently, irrespective of whether a citizen uses wireline or wireless technology when calling for help by dialing 911. Efforts by federal, state and local government, along with the significant efforts of wireline and wireless service providers, have resulted in the nearly ubiquitous deployment of this life-saving service.

The Order the Commission adopted on May 19, 2005, sets forth rules requiring providers of VoIP services that interconnect with the nation's existing public switched telephone network (interconnected VoIP services) to supply E911 capabilities to their customers. To ensure E911 functionality for customers of VoIP service providers the Commission requires the following information collections:

A. Location Registration. Requires providers to interconnected VoIP services to obtain location information from their customers for use in the routing of 911 calls and the provision of location information to emergency answering points.

B. Provision of Automatic Location Information (ALI). Interconnected VoIP service providers will place the location information for their customers into, or make that information available through, specialized databases maintained by local exchange carriers (and, in at least one case, a state government) across the country.

C. Customer Notification. Requires that all providers of interconnected VoIP are aware of their interconnected VoIP service's actual E911 capabilities. That all providers of interconnected VoIP service specifically advise every subscriber, both new and existing, prominently and in plain language, the circumstances under which E911 service may not be available through the interconnected VoIP service or may be in some way limited by comparison to traditional E911 service.

D. Record of Customer Notification. Requires VoIP providers to obtain and keep a record of affirmative acknowledgement by every subscriber, both new and existing, of having received and understood this advisory.

E. User Notification. In addition, in order to ensure to the extent possible that the advisory is available to all potential users of an interconnected VoIP service, interconnected VoIP service providers must distribute to all subscribers, both new and existing, warning stickers or other appropriate labels warning subscribers if E911 service may be limited or not available and instructing the subscriber to place them on or near the customer premises equipment used in conjunction with the interconnected VoIP service.

Federal Communications Commission.

Marlene H. Dortch,

Secretary, Office of the Secretary, Office of the Managing Director.

[FR Doc. 2015–04416 Filed 3–3–15; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL MARITIME COMMISSION

Notice of Agreements Filed

The Commission hereby gives notice of the filing of the following agreements under the Shipping Act of 1984. Interested parties may submit comments on the agreements to the Secretary, Federal Maritime Commission, Washington, DC 20573, within twelve days of the date this notice appears in the **Federal Register**. Copies of the agreements are available through the Commission's Web site (*www.fmc.gov*)

or by contacting the Office of Agreements at (202)-523–5793 or *tradeanalysis@fmc.gov.*

Agreement No.: 011905–001.

Title: K-Line/CSAV Car Carrier Agreement.

Parties: Compania Sud Americana de Vapores and Kawasaki Kisen Kaisha, Ltd.

Filing Party: John P. Meade, Esq.; General Counsel; K- Line America, Inc.; 6199 Bethlehem Road; Preston, MD 21655.

Synopsis: The amendment updates the address for CSAV and adds Mexico to the geographic scope.

Agreement No.: 012208–001.

Title: Hoegh/Grimaldi Space Charter Agreement.

Parties: Hoegh Autoliners AS and Grimaldi Deep Sea S.p.A.

Filing Party: Wayne R. Rohde, Esq.; Cozen O'Connor; 1627 I Street NW., Suite 1100, Washington, DC 20006.

Synopsis: The Amendment changes the name of Industria Armamento Meridionale S.P.A. to Grimaldi Deep Sea S.p.A., adds the trade from Baltimore to Antwerp to the geographic scope of the Agreement, and restates the Agreement accordingly.

By Order of the Federal Maritime Commission.

Dated: February 26, 2015.

Karen V. Gregory,

Secretary.

[FR Doc. 2015–04428 Filed 3–3–15; 8:45 am]

BILLING CODE 6730–01–P

FEDERAL RESERVE SYSTEM

Change in Bank Control Notices; Acquisitions of Shares of a Bank or Bank Holding Company

The notificants listed below have applied under the Change in Bank Control Act (12 U.S.C. 1817(j)) and § 225.41 of the Board's Regulation Y (12 CFR 225.41) to acquire shares of a bank or bank holding company. The factors that are considered in acting on the notices are set forth in paragraph 7 of the Act (12 U.S.C. 1817(j)(7)).

The notices are available for immediate inspection at the Federal Reserve Bank indicated. The notices also will be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank indicated for that notice or to the offices of the Board of Governors. Comments must be received not later than March 20, 2015.

A. Federal Reserve Bank of Kansas City (Dennis Denney, Assistant Vice President) 1 Memorial Drive, Kansas City, Missouri 64198–0001:

1. *Lee R. Stuart, individually, and Lee R. Stuart, James Stuart III, Susan Sehnert Stuart, Carolyn Jean Stuart, Megan Marie Stuart, all of Lincoln, Nebraska; Susan Stuart Seiler, Edina, Minnesota; Robert David Stuart, Portland, Oregon; and Wells Fargo Bank, N.A., San Francisco, California, as Trustee of the following trusts: the James Stuart Jr. Non-GST Exempt Trust FBO Rob Stuart T/U/W, dated July 28, 2010, Omaha, Nebraska; the James Stuart Jr. Non-GST Exempt Trust FBO Carolyn Stuart T/U/W, dated July 28, 2010, Omaha, Nebraska; the James Stuart Jr. Non-GST Exempt Trust FBO Megan Stuart T/U/W, dated July 28, 2010, Omaha, Nebraska; and the Susan S. Stuart Q-Tip Trust Non-GST Exempt T/U/W, dated July 28, 2010, Omaha, Nebraska; all as members of a family control group,* to acquire voting shares of NBC Bancshares, LLC, Lincoln, Nebraska, parent of Nebraska Bank of Commerce, Lincoln, Nebraska, and Mountain View Bank of Commerce, Westminster, Colorado.

Board of Governors of the Federal Reserve System, February 26, 2015.

Michael J. Lewandowski,

Associate Secretary of the Board.

[FR Doc. 2015–04434 Filed 3–3–15; 8:45 am]

BILLING CODE 6210–01–P

GENERAL SERVICES ADMINISTRATION

[Notice–CECANF–2015–02; Docket No. 2015–0002; Sequence No. 2]

Commission To Eliminate Child Abuse and Neglect Fatalities; Announcement of Meeting

AGENCY: Commission To Eliminate Child Abuse and Neglect Fatalities, GSA.

ACTION: Meeting notice.

SUMMARY: The Commission To Eliminate Child Abuse and Neglect Fatalities (CECANF), a Federal Advisory Committee established by the Protect Our Kids Act of 2012, Public Law 112–275, will hold a meeting open to the public on Wednesday, March 25 and Thursday, March 26 in Scottsdale, Arizona.

DATES: The meeting will be held on Wednesday, March 25, 2015, from 8 a.m. to 4 p.m., and Thursday, March 26, 2015, from 8 a.m. to 12:30 p.m. Mountain Standard Time. (Please note that Arizona does not observe Daylight Saving Time.) Comments regarding this meeting must be received by Monday, March 25, 2015, for consideration prior to the meeting.

ADDRESSES: CECANF will convene its meeting at the Talking Stick Resort, 9800 E. Indian Bend Rd., Scottsdale, AZ 85256. This site is accessible to individuals with disabilities. The meeting also will be made available via teleconference and/or webinar.

Submit comments identified by ''Notice–CECANF–2015–02,'' by either of the following methods:

- *Regulations.gov: http://www.regulations.gov.* Submit comments via the Federal eRulemaking portal by searching for ''Notice–CECANF–2015–02.'' Select the link ''Comment Now'' that corresponds with ''Notice–CECANF–2015–02.'' Follow the instructions provided on the screen. Please include your name, organization name (if any), and ''Notice–CECANF–2015–02'' on your attached document.
- *Mail:* U.S. General Services Administration, 1800 F Street NW., Room 7003D, Washington, DC 20405, Attention: Tom Hodnett (CD) for CECANF.

Instructions: Please submit comments only and cite ''Notice–CECANF–2015–02'' in all correspondence related to this notice. All comments received will be posted without change to *http://www.regulations.gov*, including any personal and/or business confidential information provided.

FOR FURTHER INFORMATION CONTACT: Visit the CECANF Web site at *https://eliminatechildabusefatalities.sites.usa.gov/* or contact Patricia Brincefield, Communications Director, at 202–818–9596, U.S. General Services Administration, 1800 F Street NW., Room 7003D, Washington, DC 20405, Attention: Tom Hodnett (CD) for CECANF.

SUPPLEMENTARY INFORMATION:

Background: CECANF was established to develop a national strategy and recommendations for reducing fatalities resulting from child abuse and neglect.

Agenda: This meeting will explore key issues related to addressing and preventing child abuse and neglect fatalities in Indian Country, and will include presentations and discussions related to issues of jurisdiction, data collection and data sharing, and the quality and quantity of services. Speakers will include Tribal leaders, Federal agency representatives, and practitioners. Commission members will then continue discussing the work plans of the Commission subcommittees, the information that they have obtained to date, and emerging high-level recommendations.

Attendance at the Meeting: Individuals interested in attending the meeting in person or participating by webinar and teleconference must register in advance. To register to attend in person or by webinar/phone, please go to: *https://attendee.gotowebinar.com/rt/8209953633791455745* and follow the prompts. Once you register, you will receive a confirmation email with the webinar login and teleconference number. Detailed meeting minutes will be posted within 90 days of the meeting. Members of the public will not have the opportunity to ask questions or otherwise participate in the meeting.

However, members of the public wishing to comment should follow the steps detailed under the heading **ADDRESSES** in this publication or contact us via the CECANF Web site at *https://eliminatechildabusefatalities.sites.usa.gov/contact-us/*.

Dated: February 24, 2015.

Karen White,

Executive Assistant.

[FR Doc. 2015–04452 Filed 3–3–15; 8:45 am]

BILLING CODE 6820–34–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Office of the Secretary

[Document Identifier: HHS–OS–0990–0388–60D]

Agency Information Collection Activities; Proposed Collection; Public Comment Request

AGENCY: Office of the Secretary, HHS.

ACTION: Notice.

SUMMARY: In compliance with section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, the Office of the Secretary (OS), Department of Health and Human Services, announces plans to submit an Information Collection Request (ICR), described below, to the Office of Management and Budget (OMB). The ICR is for extending the use of the approved information collection assigned OMB control number 0990–0388, which expires on July 31, 2015. Prior to submitting that ICR to OMB, OS seeks comments from the public regarding the burden estimate, below, or any other aspect of the ICR.

DATES: Comments on the ICR must be received on or before May 4, 2015.

ADDRESSES: Submit your comments to *Information.CollectionClearance@hhs.gov* or by calling (202) 690–6162.

FOR FURTHER INFORMATION CONTACT: Information Collection Clearance staff, *Information.CollectionClearance@hhs.gov* or (202) 690–6162.

SUPPLEMENTARY INFORMATION: When submitting comments or requesting information, please include the document identifier HHS–OS–0990–0388–60D for reference.

Information Collection Request Title: *Let's Move!* Cities, Towns, and Counties—.

Abstract: The Office of the Assistant Secretary for Health (OASH) is requesting an approval on an extension by Office of Management and Budget (OMB) on a currently approved information collection; the OMB number is 0990–0388. The project on, *Let's Move!* Cities, Towns and Counties (LMCTC), seeks to continue to conduct a survey of local government organizations for the Initiative. *Let's Move* is a comprehensive initiative, launched by the First Lady, Michelle Obama, dedicated to solving the challenge of childhood obesity within a generation. The online survey is the mechanism by which *Let's Move!* Cities, Towns and Counties report progress on the initiative's goals and are recognized for that progress. LMCTC calls on local elected officials to adopt long-term, sustainable, and holistic approaches to addressing childhood obesity. Local elected officials who sign up for the initiative are willing to commit to five goals that are intended to create healthier, more livable communities.

Therefore, the online survey is essential to the successful operation of the initiative. Since July 2012 until January 31 2015, 463 sites had signed up for *Let's Move!* Cities, Towns and Counties. Sites who have completed the online survey report that they have implemented a total of 2170 promising practices intended to promote healthy eating and active living for community residents.

Likely Respondents: This activity is requesting comment on the burden for a survey for local government officials who have chosen to participate in *Let's Move!* Cities, Towns and Counties. The survey requests information about the activities the locality has undertaken against the initiative's goals. The responses to these questions are used to show progress, and to recognize municipal and county sites' success in participating in *Let's Move!* Cities, Towns and Counties.

TOTAL ESTIMATED ANNUALIZED BURDEN—HOURS

Form name	Number of respondents	Number of responses per respondent	Average burden per response (in hours)	Total burden hours
Government Official (city, town, county)	500	1	30/60	250
Total				

OS specifically requests comments on (1) the necessity and utility of the proposed information collection for the proper performance of the agency's functions, (2) the accuracy of the estimated burden, (3) ways to enhance the quality, utility, and clarity of the information to be collected, and (4) the use of automated collection techniques or other forms of information technology to minimize the information collection burden.

Darius Taylor,

Information Collection Clearance Officer.

[FR Doc. 2015–04458 Filed 3–3–15; 8:45 am]

BILLING CODE 4150–28–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

Board of Scientific Counselors, Office of Public Health Preparedness and Response, (BSC, OPHPR)

In accordance with section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), the Centers for Disease Control and Prevention (CDC),

announces the following meeting of the aforementioned committee:

Times and Dates:

10:00 a.m.–5:00 p.m., EDT, March 25, 2015

8:00 a.m.–3:30 p.m., EDT, March 26, 2015

Place: Centers for Disease Control and Prevention (CDC), Global Communications Center, Building 19, Auditorium B3, 1600 Clifton Road NE., Atlanta, Georgia 30333

Status: Open to the public limited only by the space available. The meeting room will accommodate up to 90 people. Public participants should pre-register for the meeting as described in Additional Information for Public Participants. Members of the public that wish to attend this meeting should pre-register by submitting the following information by email, facsimile, or phone (see Contact Person for More Information) no later than 12:00 noon (EDT) on Tuesday, March 17, 2015:

- Full Name
- Organizational Affiliation
- Complete Mailing Address
- Citizenship
- Phone Number or Email Address

Purpose: This Board is charged with providing advice and guidance to the Secretary, Department of Health and Human Services (HHS), the Assistant Secretary for Health (ASH), the Director, Centers for Disease Control and Prevention (CDC), and the Director, Office of Public Health Preparedness and Response (OPHPR), concerning strategies and goals for the programs and research within OPHPR, monitoring the overall strategic direction and focus of the OPHPR Divisions and Offices, and administration and oversight of peer review of OPHPR scientific programs. For additional information about the Board, please visit: *http://www.cdc.gov/phpr/science/counselors.htm.*

Matters for Discussion: Day one of the meeting will cover briefings and BSC deliberation on the following topics: Interval updates from OPHPR Divisions and Offices; key issues associated with CDC's response to the Ebola outbreak; mental and behavioral health and emergency preparedness and response; and BSC liaison representative updates to the Board highlighting organizational activities relevant to the OPHPR mission.

Day two of the meeting will cover briefings and BSC deliberation on the following topics: Hurricane Sandy Recovery Research Initiative overview; select agent regulations; National Health Security Preparedness Index Update; and OPHPR impact measurement.

Agenda items are subject to change as priorities dictate.

Contact Person for More Information: Sparkle Buissereth, Executive Assistant, Office of Science and Public Health Practice, Centers for Disease Control and Prevention, 1600 Clifton Road NE., Mailstop D–44, Atlanta, Georgia 30333, Telephone: (404) 639–7325; Facsimile: (404) 639–7977; Email: *OPHPR.BSC.Questions@cdc.gov.*

The Director, Management Analysis and Services Office, has been delegated the authority to sign **Federal Register** notices pertaining to announcements of meetings and other committee management activities for both the Centers for Disease Control and Prevention, and Agency for Toxic Substances and Disease Registry.

Elaine L. Baker,

Director, Management Analysis and Services Office, Centers for Disease Control and Prevention.

[FR Doc. 2015–04466 Filed 3–3–15; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

Disease, Disability, and Injury Prevention and Control Special Emphasis Panel (SEP): Initial Review

The meeting announced below concerns Public Health Research on Modifiable Risk Factors for Spina Bifida, DD15–001, initial review.

SUMMARY: This document corrects a notice that was published in the **Federal Register** on February 18, 2015 Volume 80, Number 32, pages 8661. The time and date should read as follows:

Time And Date: 11:00 a.m.–6:00 p.m., March 19, 2015 (Closed).

FOR FURTHER INFORMATION CONTACT: M. Chris Langub, Ph.D., Scientific Review Officer, CDC, 4770 Buford Highway NE., Mailstop F46, Atlanta, Georgia 30341, Telephone: (770) 488–3585, *EEO6@cdc.gov.*

The Director, Management Analysis and Services Office, has been delegated the authority to sign **Federal Register** notices pertaining to announcements of meetings and other committee management activities, for both the Centers for Disease Control and Prevention and the Agency for Toxic Substances and Disease Registry.

Elaine L. Baker,

Director, Management Analysis and Services Office, Centers for Disease Control and Prevention.

[FR Doc. 2015–04469 Filed 3–3–15; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

Disease, Disability, and Injury Prevention and Control Special Emphasis Panel (SEP): Initial Review

In accordance with Section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), the Centers for Disease Control and Prevention (CDC) announces a meeting for the initial review of applications in response to DP15–006, Investigating New Approaches for Tobacco Surveillance Systems.

Time and Date: 11:00 a.m.–6:30 p.m., March 24, 2015 (Closed).

Place: Teleconference.

Status: The meeting will be closed to the public in accordance with provisions set forth in Section 552b(c) (4) and (6), Title 5 U.S.C., and the Determination of the Director, Management Analysis and Services Office, CDC, pursuant to Public Law 92–463.

Matters for Discussion: The meeting will include the initial review, discussion, and evaluation of applications received in response to ''Investigating New Approaches for Tobacco Surveillance Systems'', DP15–006.

Contact Person for More Information: M. Chris Langub, Ph.D., Scientific Review Officer, CDC, 4770 Buford Highway, NE., Mailstop F–80, Atlanta, Georgia 30341, Telephone: (770) 488–3585, *EEO6@cdc.gov.*

The Director, Management Analysis and Services Office, has been delegated the authority to sign **Federal Register** notices pertaining to announcements of meetings and other committee management activities, for both the Centers for Disease Control and Prevention and the Agency for Toxic Substances and Disease Registry.

Catherine Ramadei,

Acting Director, Management Analysis and Services Office, Centers for Disease Control and Prevention.

[FR Doc. 2015–04411 Filed 3–3–15; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

Disease, Disability, and Injury Prevention and Control Special Emphasis Panel (SEP): Initial Review

The meeting announced below concerns Comparison and Validation of Screening Tools for Substance Use Among Pregnant Women, DP15–003, initial review.

SUMMARY: This document corrects a notice that was published in the **Federal Register** on February 18, 2015, Volume 80, Number 32, pages 8661. The time and date should read as follows:

Time and Date: 11:00 a.m.–6:00 p.m., March 18, 2015 (Closed).

FOR FURTHER INFORMATION CONTACT: M. Chris Langub, Ph.D., Scientific Review Officer, CDC, 4770 Buford Highway NE., Mailstop F46, Atlanta, Georgia 30341, Telephone: (770) 488–3585, *EEO6@cdc.gov.*

The Director, Management Analysis and Services Office, has been delegated the authority to sign **Federal Register** notices pertaining to announcements of meetings and other committee management activities, for both the Centers for Disease Control and Prevention and the Agency for Toxic Substances and Disease Registry.

Elaine L. Baker,

Director, Management Analysis and Services Office, Centers for Disease Control and Prevention.

[FR Doc. 2015–04467 Filed 3–3–15; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

Disease, Disability, and Injury Prevention and Control Special Emphasis Panel (SEP): Initial Review

The meeting announced below concerns Epidemiologic Study of Interstitial Cystitis, DP15–010, initial review.

In accordance with Section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), the Centers for Disease Control and Prevention (CDC) announces the aforementioned meeting:

Time and Date: 10:00 a.m.–6:30 p.m., March 26, 2015 (Closed).

Place: Teleconference.

Status: The meeting will be closed to the public in accordance with provisions set forth in Section 552b(c)(4) and (6), Title 5 U.S.C., and the Determination of the Director, Management Analysis and Services Office, CDC, pursuant to Public Law 92–463.

Matters for Discussion: The meeting will include the initial review, discussion, and evaluation of applications received in response to ''Epidemiologic Study of Interstitial Cystitis, DP15–010, initial review.''

Contact Person for More Information: M. Chris Langub, Ph.D., Scientific Review Officer, CDC, 4770 Buford Highway NE., Mailstop F–80, Atlanta, Georgia 30341, Telephone: (770) 488–3585, *EEO6@cdc.gov.*

The Director, Management Analysis and Services Office, has been delegated the authority to sign **Federal Register** notices pertaining to announcements of meetings and other committee management activities, for both the Centers for Disease Control and Prevention and the Agency for Toxic Substances and Disease Registry.

Elaine L. Baker,

Director, Management Analysis and Services Office, Centers for Disease Control and Prevention.

[FR Doc. 2015–04468 Filed 3–3–15; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

Advisory Board on Radiation and Worker Health (ABRWH or Advisory Board), National Institute for Occupational Safety and Health (NIOSH)

In accordance with section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), and pursuant to the requirements of 42 CFR 83.15(a), the Centers for Disease Control and Prevention (CDC), announces the following meeting of the aforementioned committee:

Times and Dates:

9:00 a.m.–4:30 p.m., Pacific Daylight Time, March 25, 2015
9:00 a.m.–4:30 p.m., Pacific Daylight Time, March 26, 2015

Public Comment Time and Date:

4:30 p.m.–5:30 p.m.,* Pacific Daylight Time, March 25, 2015

* Please note that the public comment period may end before the time indicated, following the last call for comments. Members of the public who wish to provide public comments should plan to attend the public comment session at the start time listed.

Place: Red Lion Richland Hanford House, 802 George Washington Way, Richland, Washington 99352, Phone: 509–946–7611; Fax: 509–943–8564. Audio Conference Call via FTS Conferencing. The USA toll-free, dial-in number is 1–866–659–0537 with a pass code of 9933701.

Live Meeting Connection: https://www.livemeeting.com/cc/cdc/join?id=48H6RN&role=attend&pw=ABRWH&i=i.ics; Meeting ID: 48H6RN; Entry Code: ABRWH.

Status: Open to the public, limited only by the space available. The meeting space accommodates approximately 100 people.

Background: The Advisory Board was established under the Energy Employees Occupational Illness Compensation Program Act of 2000 to advise the President on a variety of policy and technical functions required to implement and effectively manage the new compensation program. Key functions of the Advisory Board include providing advice on the development of probability of causation guidelines which have been promulgated by the Department of Health and Human Services (HHS) as a final rule, advice on methods of dose reconstruction which have also been promulgated by HHS as a final rule, advice on the scientific validity and quality of dose estimation and reconstruction efforts being performed for purposes of the compensation program, and advice on petitions to add classes of workers to the Special Exposure Cohort (SEC).

In December 2000, the President delegated responsibility for funding, staffing, and operating the Advisory Board to HHS, which subsequently delegated this authority to the CDC. NIOSH implements this responsibility for CDC. The charter was issued on August 3, 2001, renewed at appropriate intervals, and will expire on August 3, 2015.

Purpose: This Advisory Board is charged with (a) providing advice to the Secretary, HHS, on the development of guidelines under Executive Order 13179; (b) providing advice to the Secretary, HHS, on the scientific validity and quality of dose reconstruction efforts performed for this program; and (c) upon request by the Secretary, HHS, advising the Secretary on whether there is a class of employees at any Department of Energy facility who were exposed to radiation but for whom it is not feasible to estimate their radiation dose, and on whether there is reasonable likelihood that such radiation doses may have endangered the health of members of this class.

Matters for Discussion: The agenda for the Advisory Board meeting includes: NIOSH Program Update; Department of Labor Program Update; Department of Energy Program Update; SEC Issues

Work Group Report on ''Sufficient Accuracy''/Co-Worker Dose Modeling; SEC Petitions Update; SEC petitions for: Hanford (1984–1993; Richland, Washington); Dow Chemical Corporation (1947–1957; Pittsburgh, California), Grand Junction Operations Office (1975–2010; Grand Junction, Colorado), Idaho National Laboratory (1949–1970; Scoville, Idaho); an update on the SEC petition review for the Kansas City Plant (Kansas City, Missouri); Review of the DuPont Deepwater Works (Deepwater, New Jersey) Site Profile; and Board Work Sessions.

The agenda is subject to change as priorities dictate.

In the event an individual cannot attend, written comments may be submitted to the contact person below well in advance of the meeting. Any written comments received will be provided at the meeting in accordance with the redaction policy provided below.

Policy on Redaction of Board Meeting Transcripts (Public Comment): (1) If a person making a comment gives his or her personal information, no attempt will be made to redact the name; however, NIOSH will redact other personally identifiable information, such as contact information, social security numbers, case numbers, etc., of the commenter.

(2) If an individual in making a statement reveals personal information (*e.g.,* medical or employment information) about themselves that information will not usually be redacted. The NIOSH Freedom of Information Act (FOIA) coordinator will, however, review such revelations in accordance with the Federal Advisory Committee Act and if deemed appropriate, will redact such information.

(3) If a commenter reveals personal information concerning a living third party, that information will be reviewed by the NIOSH FOIA coordinator, and upon determination, if deemed appropriated, such information will be redacted, unless the disclosure is made by the third party's authorized representative under the Energy Employees Occupational Illness Compensation Program Act (EEOICPA) program.

(4) In general, information concerning a deceased third party may be disclosed; however, such information will be redacted if (a) the disclosure is made by an individual other than the survivor claimant, a parent, spouse, or child, or the authorized representative of the deceased third party; (b) if it is unclear whether the third party is living or deceased; or (c) the information is unrelated or irrelevant to the purpose of the disclosure.

The Board will take reasonable steps to ensure that individuals making public comment are aware of the fact that their comments (including their name, if provided) will appear in a transcript of the meeting posted on a public Web site. Such reasonable steps include: (a) A statement read at the start of each public comment period stating that transcripts will be posted and names of speakers will not be redacted; (b) A printed copy of the statement mentioned in (a) above will be displayed on the table where individuals sign up to make public comments; (c) A statement such as outlined in (a) above will also appear with the agenda for a Board Meeting when it is posted on the NIOSH Web site; (d) A statement such as in (a) above will appear in the **Federal Register** Notice that announces Board and Subcommittee meetings.

Contact Person for More Information: Theodore Katz, Designated Federal Officer, NIOSH, CDC, 1600 Clifton Road NE., MS E–20, Atlanta, Georgia 30333, telephone: (513) 533–6800, toll free: 1–800–CDC–INFO, email: *dcas@cdc.gov.*

The Director, Management Analysis and Services Office, has been delegated the authority to sign **Federal Register** Notices pertaining to announcements of meetings and other committee management activities, for both the Centers for Disease Control and Prevention and the Agency for Toxic Substances and Disease Registry.

Elaine L. Baker,

Director, Management Analysis and Services Office, Centers for Disease Control and Prevention.

[FR Doc. 2015–04465 Filed 3–3–15; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Administration for Children and Families

Proposed Information Collection Activity; Comment Request

Proposed Projects

Title: Low Income Home Energy Assistance Program (LIHEAP) Carryover and Re-allotment Report.

OMB No.: 0970–0106.

Description: The LIHEAP statute and regulations require LIHEAP grantees to report certain information to HHS concerning funds forwarded and funds subject to reallotment. The 1994 reauthorization of the LIHEAP statute, the Human Service Amendments of 1994 (Pub. L. 103–252), requires that the carryover and reallotment report for one fiscal year be submitted to HHS by the grantee before the Allotment for the next fiscal year may be awarded.

We are requesting no changes in the collection of data with the Carryover and Reallotment Report For FY 20__, a form for the collection of data, and the Simplified Instructions for Timely Obligations of FY 20__ LIHEAP Funds and Reporting Funds For Carryover and Reallotment. The form clarifies the information being requested and ensures the submission of all the required information. The form facilitates our response to numerous queries each year concerning the amounts of obligated funds. Use of the form is voluntary. Grantees have the option to use another format.

Respondents: State, Local or Tribal Government.

ANNUAL BURDEN ESTIMATES

Instrument	Number of respondents	Number of responses per respondent	Average burden hours per response	Total burden hours
Carryover & Reallotment	210	1	3	630
Estimated Total Annual Burden Hours				630

In compliance with the requirements of Section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, the Administration for Children and Families is soliciting public comment on the specific aspects of the information collection described above. Copies of the proposed collection of information can be obtained and

comments may be forwarded by writing to the Administration for Children and Families, Office of Administration, Office of Planning, Research and Evaluation, 370 L'Enfant Promenade SW., Washington, DC 20447, Attn: ACF Reports Clearance Officer. Email address: *infocollection@acf.hhs.gov.* All requests should be identified by the title of the information collection.

The Department specifically requests comments 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; (c) 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. Consideration will be given to comments and suggestions submitted within 60 days of this publication.

Robert Sargis,

Reports Clearance Officer.

[FR Doc. 2015–04441 Filed 3–3–15; 8:45 am]

BILLING CODE 4184–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Administration for Children and Families

Proposed Information Collection Activity; Comment Request

Title: The Evaluation and System Design for the Next Generation of HPOG Career Pathways Programs (HPOG Next Gen).

OMB No.: New Collection.

Description: The Administration for Children and Families (ACF), U.S. Department of Health and Human Services (HHS) is proposing information collection activities as part of the Evaluation and System Design for the Next Generation of Health Profession Opportunity Grants (HPOG) Career Pathways Programs (HPOG Next Gen). The goals of the HPOG Next Gen evaluation are to establish a data system for program management and evaluation and to design a study to assess the effectiveness of the new HPOG programs. The study also is intended to evaluate variation in participant impact that may be attributable to different HPOG program components. The impact study design will include a classic experiment in which eligible applicants for the non-Tribal HPOG program services will be randomly assigned to a treatment group offered participation in HPOG and a control group not offered the opportunity to enroll in HPOG.

Both goals require collecting information from HPOG grantees on a regular basis. The information collection proposed is an internet-based collection of information from HPOG grantees on: (1) Baseline characteristics of both treatment group and control group sample members; (2) treatment group members' program participation and patterns, and participant outputs and outcomes; and (3) program designs and operating characteristics.

The universe of information collection proposed for HPOG Next Gen includes:

1. A performance management system will collect information from all grantees on their programs and participants on a semi-annual basis over the grant period of performance.

2. A brief baseline survey of eligible applicants to non-Tribal HPOG programs.

Respondents: Participant level data to be collected by program staff in the approximately 40 grantee organizations (higher education institutions, workforce investment boards, private training institutions, nonprofit organizations, and tribal entities); individuals enrolled in HPOG interventions; and control group members.

ANNUAL BURDEN ESTIMATES

Instrument	Total number of respondents	Annual number of respondents	Number of responses per respondent	Average burden hours per response	Annual burden hours
HPOG program performance report	120	40	2	31.25	2,500
A brief baseline survey of eligible applicants to non-Tribal HPOG programs	31,500	10,500	1	.5	5,250

Estimated Total Annual Burden Hours: 7,750

In compliance with the requirements of Section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, the Administration for Children and Families is soliciting public comment on the specific aspects of the information collection described above. Copies of the proposed collection of information can be obtained and comments may be forwarded by writing to the Administration for Children and Families, Office of Planning, Research and Evaluation, 370 L'Enfant Promenade SW., Washington, DC 20447, Attn: OPRE Reports Clearance Officer. Email address: *OPREinfocollection@acf.hhs.gov.* All requests should be identified by the title of the information collection.

The Department specifically requests comments 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; (c) 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. Consideration will be given to comments and suggestions submitted within 60 days of this publication.

Karl Koerper,

Reports Clearance Officer.

[FR Doc. 2015–04404 Filed 3–3–15; 8:45 am]

BILLING CODE 4184–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Administration for Community Living

Agency Information Collection Activities; Submission for OMB Review; Comment Request; State Annual Long-Term Care Ombudsman Report and Instructions

AGENCY: Administration for Community Living, Administration on Aging.

ACTION: Notice.

SUMMARY: The Administration on Aging (AoA) is announcing that the proposed collection of information listed below has been submitted to the Office of Management and Budget (OMB) for review and clearance under the Paperwork Reduction Act of 1995.

DATES: Submit written or electronic comments on the collection of information by May 4, 2015.

ADDRESSES: Submit electronic comments on the collection of information to: *louise.ryan@acl.gov.* Submit written comments on the collection of information to Louise Ryan, U.S. Administration for Community Living, 1 Massachusetts Avenue, Washington, DC 20201.

FOR FURTHER INFORMATION CONTACT: Louise Ryan, telephone: (202) 357–3503; email: *louise.ryan@acl.hhs.gov.*

SUPPLEMENTARY INFORMATION: In compliance with 44 U.S.C. 3507, AoA has submitted the following proposed collection of information to OMB for review and clearance.

States provide the following data and narrative information in the report:

1. Numbers and descriptions of cases filed and complaints made on behalf of long-term care facility residents to the statewide ombudsman program;
2. Major issues identified impacting on the quality of care and life of long-term care facility residents;
3. Statewide program operations; and
4. Ombudsman activities in addition to complaint investigation.

The report form and instructions have been in continuous use, with minor modifications, since they were first approved by OMB for the FY 1995 reporting period. This request is for approval to extend use of the current form and instructions, with no modifications, for three years, covering the FY 2015–2017 reporting periods.

The data collected on complaints filed with Ombudsman programs and narrative on long-term care issues provide information to Centers for Medicare and Medicaid Services and others on patterns of concerns and major long-term care issues affecting residents of long-term care facilities. Both the complaint and program data collected assist the states and local Ombudsman programs in planning strategies and activities, providing training and technical assistance and developing performance measures.

A reporting form and instructions may be viewed in the ombudsman section of the AoA Web site, *http://www.aoa.acl.gov/AoA_Programs/Elder_Rights/Ombudsman/NORS.aspx.* AoA estimates the burden of this collection and entering the report information as follows: Approximately 7,702.3 hours, with 52 State Long-Term Care Ombudsman programs responding annually.

Dated: February 26, 2015.

Kathy Greenlee,

Administrator and Assistant Secretary for Aging.

[FR Doc. 2015–04470 Filed 3–3–15; 8:45 am]

BILLING CODE 4154–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Notice of Intent To Award a Single Source Non-Competing Continuation Cooperative Agreement to Amputee Coalition

AGENCY: Administration for Community Living, HHS.

SUMMARY: The Administration for Community Living (ACL) is proud to announce the Center for Improved Health of Persons with Limb Loss (Limb Loss Program) is moving to ACL as a result of the 2015 budget recently signed by President Obama.

The Limb Loss Program supports a national resource center and related activities that provides comprehensive information and resources to assist individuals and families dealing with Limb Loss. The Limb Loss Program currently operates through a cooperative agreement between the Amputee Coalition and the U.S. Department of Health and Human Services (HHS) Centers for Disease Control and Prevention (CDC). ACL will be working with the CDC on transitioning the program to ACL.

Program Name: Limb Loss Program
Award Amount: $2,730,000
Project Period: 4/1/2015 to 3/31/2016
Award Type: Cooperative Agreement

Statutory Authority: This program is authorized under Section 317 of the Public Health Service Act (42 U.S.C. 247(b–4)); Consolidated and Further Continuing Appropriations Act, 2015, Public Law 113–235 (Dec. 16, 2014).

Catalog of Federal Domestic Assistance (CFDA) Number: 93.325 Discretionary Projects

DATES: Estimated Project Period—April 1, 2015 through March 31, 2016.

I. Program Description

The purpose of this cooperative agreement is to continue existing activities to promote health, wellness and the adoption of healthy behaviors with the objective of preventing and/or reducing chronic conditions associated with limb loss. The grantee will continue to use both traditional and innovative approaches that will educate and inform people with disabilities, their family members, health care providers, policy makers, community members, and the general public.

Justification: The Limb Loss Program currently operates through a cooperative agreement between the Amputee Coalition and the U.S. Department of Health and Human Services (HHS) Centers for Disease Control and Prevention (CDC). ACL will be working with the CDC on transitioning the program to ACL. To ensure uninterrupted continuation of the grant goals and objectives, ACL plans to issue a one year non-competing award to the incumbent Limb Loss Program grantee, Amputee Coalition.

II. Agency Contact

For further information or comments regarding this action, contact Ophelia M. McLain, U.S. Department of Health and Human Services, Administration for Community Living, Administration on Intellectual and Developmental Disabilities, Office of Innovation, One Massachusetts Avenue NW., Washington, DC 20001; telephone (202) 690–7025; fax (202) 357–3560; email *Ophelia.McLain@acl.hhs.gov.*

Dated: February 26, 2015.

Kathy Greenlee,

Administrator and Assistant Secretary for Aging.

[FR Doc. 2015–04460 Filed 3–3–15; 8:45 am]

BILLING CODE 4154–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2015–N–0001]

Endocrinologic and Metabolic Drugs Advisory Committee; Notice of Meeting

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

This notice announces a forthcoming meeting of a public advisory committee of the Food and Drug Administration (FDA). The meeting will be open to the public.

Name of Committee: Endocrinologic and Metabolic Drugs Advisory Committee.

General Function of the Committee: To provide advice and recommendations to the Agency on FDA's regulatory issues.

Date and Time: The meeting will be held on April 14, 2015, from 7:30 a.m. to 5:15 p.m.

Location: FDA White Oak Campus, 10903 New Hampshire Ave., Bldg. 31 Conference Center, the Great Room (Rm. 1503), Silver Spring, MD 20993–0002. Answers to commonly asked questions including information regarding special accommodations due to a disability, visitor parking, and transportation may be accessed at: *http://www.fda.gov/AdvisoryCommittees/AboutAdvisoryCommittees/ucm408555.htm.*

Contact Person: Philip Bautista, Center for Drug Evaluation and Research, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 31, Rm. 2417, Silver Spring, MD 20993–0002, 301–796–9001, FAX: 301–847–8533, *EMDAC@fda.hhs.gov,* or FDA Advisory Committee Information Line, 1–800–741–8138 (301–443–0572 in the Washington, DC area). A notice in the **Federal Register** about last minute modifications that impact a previously announced advisory committee meeting cannot always be published quickly enough to provide timely notice. Therefore, you should always check the Agency's Web site at *http://www.fda.gov/AdvisoryCommittees/default.htm* and scroll down to the appropriate advisory committee meeting link, or call the advisory committee information line to learn about possible modifications before coming to the meeting.

Agenda: During the morning session, the committee will discuss the results of the cardiovascular outcomes trial (CVOT), Saxagliptin Assessment of Vascular Outcomes Recorded in Patients with Diabetes Mellitus, for new drug application (NDA) 22350, Onglyza (saxagliptin) and NDA 200678, Kombiglyze XR (saxagliptin and metformin HCl extended-release) tablets manufactured/marketed by AstraZeneca AB.

During the afternoon session, the committee will discuss the results of the CVOT, Examination of Cardiovascular Outcomes with Alogliptin versus Standard of Care, for NDA 22271, Nesina (ALOGLIPTIN); NDA 022426, Oseni (ALOGLIPTIN and PIOGLITAZONE); and NDA 203414, Kazano (ALOGLIPTIN and METFORMIN) tablets marketed by Takeda Pharmaceutical U.S.A., Inc.

Saxagliptin and ALOGLIPTIN are dipeptidyl peptidase-4 inhibitors, both indicated as an adjunct to diet and exercise to improve glycemic control in adults with type 2 diabetes mellitus. Both CVOTs were submitted in accordance with the 2008 FDA Draft Guidance, ''Diabetes Mellitus—Evaluating Cardiovascular Risk in New Antidiabetic Therapies to Treat Type 2 Diabetes,'' to demonstrate that a new antidiabetic therapy to treat type 2 diabetes is not associated with an unacceptable increase in cardiovascular risk.

FDA intends to make background material available to the public no later than 2 business days before the meeting. If FDA is unable to post the background material on its Web site prior to the meeting, the background material will be made publicly available at the location of the advisory committee meeting, and the background material will be posted on FDA's Web site after the meeting. Background material is available at *http://www.fda.gov/AdvisoryCommittees/Calendar/default.htm.* Scroll down to the appropriate advisory committee meeting link.

Procedure: Interested persons may present data, information, or views, orally or in writing, on issues pending before the committee. Written submissions may be made to the contact person on or before March 31, 2015. Oral presentations from the public will be scheduled between approximately 10:10 a.m. to 10:40 a.m., and 3:30 p.m. to 4 p.m. Those individuals interested in making formal oral presentations should notify the contact person and submit a brief statement of the general nature of the evidence or arguments they wish to present, the names and addresses of proposed participants, and an indication of the approximate time requested to make their presentation on or before March 23, 2015. Time allotted for each presentation may be limited. If the number of registrants requesting to speak is greater than can be reasonably accommodated during the scheduled open public hearing session, FDA may conduct a lottery to determine the speakers for the scheduled open public hearing session. The contact person will notify interested persons regarding their request to speak by March 24, 2015.

Persons attending FDA's advisory committee meetings are advised that the Agency is not responsible for providing access to electrical outlets.

FDA welcomes the attendance of the public at its advisory committee meetings and will make every effort to accommodate persons with physical disabilities or special needs. If you require special accommodations due to a disability, please contact Philip Bautista at least 7 days in advance of the meeting.

FDA is committed to the orderly conduct of its advisory committee meetings. Please visit our Web site at *http://www.fda.gov/AdvisoryCommittees/AboutAdvisoryCommittees/ucm111462.htm* for procedures on public conduct during advisory committee meetings.

Notice of this meeting is given under the Federal Advisory Committee Act (5 U.S.C. app. 2).

Dated: February 26, 2015.

Jill Hartzler Warner,

Associate Commissioner for Special Medical Programs.

[FR Doc. 2015–04395 Filed 3–3–15; 8:45 am]

BILLING CODE 4164–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2015–N–0001]

Pediatric Advisory Committee; Notice of Meeting

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

This notice announces a forthcoming meeting of a public advisory committee of the Food and Drug Administration (FDA). The meeting will be open to the public.

Name of Committee: Pediatric Advisory Committee.

General Function of the Committee: To provide advice and recommendations to the Agency on FDA's regulatory issues.

Date and Time: The meeting will be held on March 24, 2015, from 8 a.m. to 5:30 p.m.

Location: Double Tree by Hilton, 8727 Colesville Rd., Silver Spring, MD 20910, 301–589–5200. Answers to commonly asked questions including information regarding special accommodations due to a disability, visitor parking, and transportation may be accessed at: *http://www.fda.gov/AdvisoryCommittees/AboutAdvisoryCommittees/ucm408555.htm.*

Contact Person: Walter Ellenberg, Office of the Commissioner, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 32, rm. 5154, Silver Spring, MD 20993, 301–796–0885, email: *walter.ellenberg@fda.hhs.gov,* or FDA Advisory Committee Information Line, 1–800–741–8138 (301–443–0572 in the Washington, DC area). A notice in the **Federal Register** about last minute modifications that impact a previously announced advisory committee meeting cannot always be published quickly enough to provide timely notice. Therefore, you should always check the Agency's Web site at *http://www.fda.gov/AdvisoryCommittees/default.htm* and scroll down to the appropriate advisory committee meeting link, or call the advisory committee information line

to learn about possible modifications before coming to the meeting.

Agenda: On March 24, 2015, the Pediatric Advisory Committee (PAC) will meet to discuss pediatric-focused safety reviews, as mandated by the Best Pharmaceuticals for Children Act (Pub. L. 107–109) and the Pediatric Research Equity Act (Pub. L. 108–155). The PAC will meet to discuss the following products: CYMBALTA (duloxetine hydrochloride), QUILLIVANT XR (methylphenidate hydrochloride), LUNESTA (eszopiclone), RISPERDAL (risperidone), OXTELLAR XR (oxcarbazepine), REVATIO (sildenafil), ADVAIR HFA (fluticasone propionate/salmeterol), DYMISTA (azelastine hydrochloride/fluticasone proprionate), QNASL (beclomethasone dipropionate), VENOFER (iron sucrose), INVIRASE (saquinavir), ALTABAX Ointment (retapamulin), FluMist QUADRIVALENT (influenza vaccine live, intranasal), FLUARIX QUADRIVALENT (influenza virus vaccine), Medtronic ACTIVA DYSTONIA THERAPY, and LIPOSORBER LA–15 System. In addition, there will be a short presentation of the ethical issues discussed by the Pediatric Ethics Subcommittee of the PAC on March 23, 2015.

FDA intends to make background material available to the public no later than 2 business days before the meeting. If FDA is unable to post the background material on its Web site prior to the meeting, the background material will be made publicly available at the location of the advisory committee meeting, and the background material will be posted on FDA's Web site after the meeting. Background material is available at *http://www.fda.gov/AdvisoryCommittees/Calendar/default.htm.* Scroll down to the appropriate advisory committee link.

Procedure: Interested persons may present data, information, or views, orally or in writing, on issues pending before the committee. Written submissions may be made to the contact person on or before March 16, 2015. Oral presentations from the public will be scheduled on March 24, 2015, between approximately 9 a.m. and 10 a.m. Those individuals interested in making formal oral presentations should notify the contact person and submit a brief statement of the general nature of the evidence or arguments they wish to present, the names and addresses of proposed participants, and an indication of the approximate time requested to make their presentation on or before March 6, 2015. Time allotted for each presentation may be limited. If the number of registrants requesting to speak is greater than can be reasonably accommodated during the scheduled open public hearing session, FDA may conduct a lottery to determine the speakers for the scheduled open public hearing session. The contact person will notify interested persons regarding their request to speak by March 9, 2015.

Persons attending FDA's advisory committee meetings are advised that the Agency is not responsible for providing access to electrical outlets.

FDA welcomes the attendance of the public at its advisory committee meetings and will make every effort to accommodate persons with physical disabilities or special needs. If you require special accommodations due to a disability, please contact Walter Ellenberg at least 7 days in advance of the meeting.

FDA is committed to the orderly conduct of its advisory committee meetings. Please visit our Web site at *http://www.fda.gov/AdvisoryCommittees/AboutAdvisoryCommittees/ucm111462.htm* for procedures on public conduct during advisory committee meetings.

Notice of this meeting is given under the Federal Advisory Committee Act (5 U.S.C. app. 2).

Dated: February 26, 2015.

Jill Hartzler Warner,

Associate Commissioner for Special Medical Programs.

[FR Doc. 2015–04394 Filed 3–3–15; 8:45 am]

BILLING CODE 4164–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Center for Scientific Review; Amended Notice of Meeting

Notice is hereby given of a change in the meeting of the Center for Scientific Review Special Emphasis Panel, March 05, 2015, 11:00 a.m. to March 05, 2015, 05:00 p.m., National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD, 20892 which was published in the **Federal Register** on February 24, 2015, 80 FR 9738.

The meeting will be held on March 12, 2015. The meeting location and time remain the same. The meeting is closed to the public.

Dated: February 25, 2015.

David Clary,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2015–04408 Filed 3–3–15; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Neurological Disorders and Stroke; Notice of Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. App.), notice is hereby given of a meeting of the National Advisory Neurological Disorders and Stroke Council.

The meeting will be open to the public as indicated below, with attendance limited to space available. Individuals who plan to attend and need special assistance, such as sign language interpretation or other reasonable accommodations, should notify the Contact Person listed below in advance of the meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable materials, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Advisory Neurological Disorders and Stroke Council.

Date: May 28–29, 2015.

Open: May 28, 2015, 8:00 a.m. to 3:00 p.m.

Agenda: Report by the Director, NINDS; Report by the Associate Director for Extramural Research; Administrative and Program Developments; and an Overview of the NINDS Intramural Program.

Place: National Institutes of Health, Building 31, 31 Center Drive, Conference Room 10, Bethesda, MD 20892.

Closed: May 28, 2015, 3:00 p.m. to 4:45 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Building 31, 31 Center Drive, Conference Room 10, Bethesda, MD 20892.

Closed: May 28, 2015, 4:45 p.m. to 5:15 p.m.

Agenda: To review and evaluate the Division of Intramural Research Board of Scientific Counselors' Reports.

Place: National Institutes of Health, Building 31, 31 Center Drive, Conference Room 10, Bethesda, MD 20892.

Closed: May 29, 2015, 8:00 a.m. to 11:00 a.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Building 31, 31 Center Drive, Conference Room 10, Bethesda, MD 20892.

Contact Person: Robert Finkelstein, Ph.D., Associate Director for Extramural Research,

National Institute of Neurological Disorders and Stroke, NIH, 6001 Executive Blvd., Suite 3309, MSC 9531, Bethesda, MD 20892, (301) 496–9248.

Any interested person may file written comments with the committee by forwarding the statement to the Contact Person listed on this notice. The statement should include the name, address, telephone number and when applicable, the business or professional affiliation of the interested person.

In the interest of security, NIH has instituted stringent procedures for entrance onto the NIH campus. All visitor vehicles, including taxicabs, hotel, and airport shuttles will be inspected before being allowed on campus. Visitors will be asked to show one form of identification (for example, a government-issued photo ID, driver's license, or passport) and to state the purpose of their visit.

Information is also available on the Institute's/Center's home page: *http://www.ninds.nih.gov,* where an agenda and any additional information for the meeting will be posted when available.

(Catalogue of Federal Domestic Assistance Program Nos. 93.853, Clinical Research Related to Neurological Disorders; 93.854, Biological Basis Research in the Neurosciences, National Institutes of Health, HHS).

Dated: February 25, 2015.

Carolyn Baum,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2015–04407 Filed 3–3–15; 8:45 am]

BILLING CODE 4140–01–P

ADVISORY COUNCIL ON HISTORIC PRESERVATION

Notice of Advisory Council on Historic Preservation Quarterly Business Meeting

AGENCY: Advisory Council on Historic Preservation.

ACTION: Notice of Advisory Council on Historic Preservation Quarterly Business Meeting.

SUMMARY: Notice is hereby given that the Advisory Council on Historic Preservation (ACHP) will hold its next quarterly meeting on Thursday, March 19, 2015. The meeting will be held in the Ortega Ballroom at the Officer's Club on Moraga Avenue, The Presidio, San Francisco, California, starting at 8:00 a.m. PST.

DATES: The quarterly meeting will take place on Thursday, March 19, 2015, starting at 8:30 a.m. PST.

ADDRESSES: The meeting will be held in the Ortega Ballroom at the Officer's Club on Moraga Avenue, The Presidio, San Francisco, California.

FOR FURTHER INFORMATION CONTACT: Cindy Bienvenue, 202–517–0202, *cbienvenue@achp.gov.*

SUPPLEMENTARY INFORMATION: The Advisory Council on Historic Preservation (ACHP) is an independent federal agency that promotes the preservation, enhancement, and sustainable use of our nation's diverse historic resources, and advises the President and the Congress on national historic preservation policy. The goal of the National Historic Preservation Act (NHPA), which established the ACHP in 1966, is to have federal agencies act as responsible stewards of our nation's resources when their actions affect historic properties. The ACHP is the only entity with the legal responsibility to encourage federal agencies to factor historic preservation into federal project requirements. For more information on the ACHP, please visit our Web site at *www.achp.gov.*

The agenda for the upcoming quarterly meeting of the ACHP is the following:

Call to Order—8:00 a.m.

I. Chairman's Welcome

II. Historic Preservation Policy and Programs

A. Building a More Inclusive Preservation Program

1. Asian-American Pacific Islander Initiative

2. American Latino Heritage Initiative

B. Working with Native Americans

1. Presentation by California Tribes

2. ACHP Native American Affairs Committee Activities

C. Preservation 50 and the ACHP Public Policy Initiative

D. Historic Preservation Legislation in the 114th Congress

1. ACHP Legislative Agenda

2. Policy for Adoption of ACHP Legislative Positions

E. Clement Price Scholar Program

III. Section 106 Issues

A. 2015 Section 3 Report to the President Implementation

B. Alignment of Section 4f and Section 106 Reviews

C. Federal Agency Support for SHPOs and THPOs

IV. ACHP Management Issues

A. Member Communications-Recommendations

V. New Business

VI. Adjourn

The meetings of the ACHP are open to the public. If you need special accommodations due to a disability, please contact Cindy Bienvenue, 202–517–0202 or *cbienvenue@achp.gov,* at least seven (7) days prior to the meeting.

Authority: 16 U.S.C. 470j.

Dated: February 27, 2015.

Javier E. Marques,

Associate General Counsel.

[FR Doc. 2015–04498 Filed 3–3–15; 8:45 am]

BILLING CODE 4310–K6–P

DEPARTMENT OF HOMELAND SECURITY

[Docket No. DHS–2015–0007]

Office of Cybersecurity and Communications, National Protection and Programs Directorate Notice of Meeting Regarding Information Sharing and Analysis Organizations

Authority: 6 U.S.C. 131–134; 6 CFR. 29; E.O. 13691.

AGENCY: Office of Cybersecurity and Communications, National Protection and Programs Directorate.

ACTION: Notice of Meeting.

SUMMARY: This Notice announces a public meeting on March 18, 2015 to discuss Information Sharing and Analysis Organizations, cybersecurity information sharing, and the Executive Order 13691, ''Promoting Private Sector Cybersecurity Information Sharing'' of February 13, 2015.

DATES: The meeting will be held on March 18, 2015, 9:00 a.m. to 11:30 a.m. The meeting may conclude before the allotted time if all matters for discussion have been addressed. Submit comments on or before April 19, 2015 at 11:59 p.m. In the event DHS does not have appropriations by 11:59 p.m. on March 16, 2015, this notice and the meeting is cancelled.

ADDRESSES: The meeting location is in Arlington—Navy League of the United States, 2300 Wilson Boulevard, Arlington, VA 22201. See Supplementary Information section for the address to submit written or electronic comments.

FOR FURTHER INFORMATION CONTACT: If you have questions concerning the meeting, please contact *ISAO@hq.dhs.gov* or Michael A. Echols, Director, JPMO, Department of Homeland Security, *michael.echols@dhs.gov.*

SUPPLEMENTARY INFORMATION:

Background and Purpose

On February 13, 2015, President Obama signed Executive Order 13691 intended to enable and facilitate ''private companies, nonprofit organizations, and executive departments and agencies . . .to share information related to cybersecurity risks and incidents and collaborate to

respond in as close to real time as possible.'' The order addresses two concerns the private sector has raised:

• How can companies share information if they do not fit neatly into the sector-based structure of the existing Information Sharing and Analysis Centers (ISACs)?

• If a group of companies wants to start an information sharing organization, what model should they follow? What are the best practices for such an organization?

ISAOs may allow organizations to robustly participate in DHS information sharing programs even if they do not fit into an existing critical infrastructure sector, seek to collaborate with other companies in different ways (regionally, for example), or lack sufficient resources to share directly with the government. ISAOs may participate in existing DHS cybersecurity information sharing programs and contribute to near-real-time sharing of cyber threat indicators.

Information on Service for Individuals With Disabilities

For information on facilities or services for individuals with disabilities or to request special assistance at the public meeting, contact *ISAO@hq.dhs.gov* and write ''Special Assistance'' in the subject box or contact the meeting coordinator the **FOR FURTHER INFORMATION CONTACT** section of this notice.

Meeting Details

Members of the public may attend this meeting up to the seating capacity of the room. We plan to record the meeting using an audio-digital recorder, and to make that audio recording available through a link in our online docket. A valid government-issued photo identification (for example, a driver's license) will be required for entrance to the building and meeting space. To facilitate the building security process, and to request reasonable accommodation, those who plan to attend should contact the meeting coordinator, Mr. Michael Echols, 7 days prior to the meeting by using the contact information in the **FOR FURTHER INFORMATION CONTACT** section of this notice. Requests made after March 11, 2015 might not be able to be accommodated.

We encourage you to participate in this meeting by commenting orally, or submitting written comments to the DHS personnel attending the meeting who are identified to receive them. These comments will be posted to the online docket and will include any personal information you have provided.

In the event that DHS does not have appropriations as of Monday, March 16, 2015 by 11:59 p.m., the meeting is cancelled until further notice.

Submitting Other Written Comments

You may also submit written comments to the docket before or after the meeting using any one of the following methods:

(1) *Federal eRulemaking Portal: http://www.regulations.gov.* Although comments are being submitted to the Federal eRulemaking Portal, this is a tool to provide transparency to the general public, not because this is a rulemaking action.

(2) *Email: ISAO@hq.dhs.gov.* Include the docket number in the subject line of the message.

(3) *Fax:* 703–235–4981, Attn: Michael A. Echols.

(4) *Mail:* Michael A. Echols, Director, JPMO—ISAO Coordinator, NPPD, Department of Homeland Security, 245 Murray Lane, Mail Stop 0615, Arlington VA 20598–0615.

To avoid duplication, please use only one of these four methods. All comments and related material submitted after the meeting must either be submitted to the online docket on or before April 19, 2015, or reach the Docket Management Facility by that date.

Dated: February 25, 2015.

Andy Ozment,

Assistant Secretary for Cybersecurity and Communications, National Protection and Programs Directorate, Department of Homeland Security.

[FR Doc. 2015–04435 Filed 3–3–15; 8:45 am]

BILLING CODE 9110–9P–P

DEPARTMENT OF THE INTERIOR

Bureau of Indian Affairs

[156A2100DD.AADD001000.A0E501010.999900]

Johnson O'Malley Program

AGENCY: Bureau of Indian Affairs, Interior.

ACTION: Tribal consultation meetings.

SUMMARY: The Bureau of Indian Education (BIE) will be conducting consultation meetings to obtain oral and written comments on potential issues about the Johnson O'Malley (JOM) program. The meetings are a continuation of meetings conducted by the Bureau of Indian Affairs (BIA) and BIE in 2012. As required by 25 U.S.C. 2011(b), the purpose of consultation is to provide Indian tribes, school boards, parents, Indian organizations and other interested parties with an opportunity to comment on potential issues raised during previous consultation meetings or being considered by the BIE on Indian education programs.

DATES: See the **SUPPLEMENTARY INFORMATION** section of this document for dates of tribal consultation sessions. We will consider all comments received by May 10, 2015, 4:30 p.m. Eastern Time.

ADDRESSES: See the **SUPPLEMENTARY INFORMATION** section of this document for the locations of these tribal consultation sessions. Submit comments by mail or hand-deliver written comments to: Ms. Jennifer L. Davis, Program Analyst, Bureau of Indian Education, 1951 Constitution Avenue, Mail Stop Room 312A–SIB, Washington, DC 20245; facsimile: (202) 208–3271; or email to: *JOMComments@bia.gov.*

FOR FURTHER INFORMATION CONTACT: Ms. Jennifer L. Davis, Program Analyst, telephone: (202) 208–4397.

SUPPLEMENTARY INFORMATION: Tribal consultation sessions on the JOM Student Count will be held on the following dates and at the following locations:

Date	Time	Location
Tuesday, March 31, 2015	1 p.m.–4 p.m. (Pacific Standard Time)	Portland Marriott Downtown Waterfront, 1401 SW Naito Pkwy., Portland, OR 97201, (503) 226–7600. Local BIE Contact: Verla J. LaPlante; telephone (206) 220–7976.
Thursday, April 2, 2015	12 p.m.–3 p.m. (Eastern Standard Time)	Teleconference/Webinar. Teleconference Access: Call-in Number: 888–421–9594. Audience passcode: 1847541.

Date	Time	Location
Wednesday, April 8, 2015 ...	12 p.m.–3 p.m. (Eastern Standard Time)	Webinar Access: URL: https://www.mymeetings.com/nc/join/. Conference number: RW1826786.
Friday, April 10, 2015	9 a.m.–12 p.m. (Central Standard Time)	Holiday Inn Oklahoma City Airport, 4401 SW. 15th St., Oklahoma City, OK 73108, (405) 601–7272. Local BIE Contact: Catherine Fatheree; telephone: (405) 605–6051.

A consultation booklet for the meetings will be distributed to federally-recognized Indian tribes, Bureau Regional and Agency Offices and Bureau-funded schools. The booklets will also be available from local contact persons at each meeting and can be obtained on the BIE Web site at *www.bie.edu*.

Dated: February 26, 2015.

Kevin K. Washburn,

Assistant Secretary—Indian Affairs.

[FR Doc. 2015–04472 Filed 2–27–15; 4:15 pm]

BILLING CODE 4310–6W–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[LLNM950000 L13110000.BX0000 15XL1109PF]

Notice of Filing of Plats of Survey, New Mexico

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of filing of plats of survey.

SUMMARY: The plats of survey described below are scheduled to be officially filed in the New Mexico State Office, Bureau of Land Management, Santa Fe, New Mexico, thirty (30) calendar days from the date of this publication.

FOR FURTHER INFORMATION CONTACT: These plats will be available for inspection in the New Mexico State Office, Bureau of Land Management, 301 Dinosaur Trail, Santa Fe, New Mexico. Copies may be obtained from this office upon payment. Contact Carlos Martinez at 505–954–2096, or by email at *cjjmarti@blm.gov,* for assistance. 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.

SUPPLEMENTARY INFORMATION:

New Mexico Principal Meridian, New Mexico (NM)

The Remonumentation of Corner, representing the dependent resurvey and survey in Township 15 North, Range 6 East, of the New Mexico Principal Meridian, accepted February 13, 2015, for Group 1131 NM.

The Supplement plat, representing the dependent resurvey and survey in Township.

17 South, Range 13 West, of the New Mexico Principal Meridian, accepted January 5, 2015, NM.

The plat, in two sheets, representing the dependent resurvey and survey in Township 12 North, Range 20 West, of the New Mexico Principal Meridian, accepted January 15, 2015 for Group, 1132, NM.

The plat, representing the dependent resurvey and survey in Township 11 North, Range 20 West, of the New Mexico Principal Meridian, accepted January 15, 2015, for Group 1132, NM.

The plat, in five sheets, representing the dependent resurvey and survey in Township 16 North, Range 6 East, of the New Mexico Principal Meridian, accepted February 10, 2015, for Group 1131, NM.

The plat, in two sheets, representing the dependent resurvey and survey of Fractional Township 31 North, Range 21 West, of the New Mexico Principal Meridian, accepted February 13, 2105, for Group 1159, NM.

The plat, in four sheets, representing the dependent resurvey and survey in Township 12 North, Range 20 West, of the New Mexico Principal Meridian, accepted February 13, 2015, for Group 1132, NM.

The plat, representing the dependent resurvey and survey in Township 21 South, Range 3 East, of the New Mexico Principal Meridian, accepted February 23, 2015, for Group 1163, NM.

The Indian Meridian, Oklahoma (OK)

The Supplemental plat representing the dependent resurvey and survey in Township 5 South, Range 9 West, of the Indian Meridian, accepted February 13, 2015, for Group 228 OK.

These plats are scheduled for official filing 30 days from the notice of publication in the **Federal Register**, as provided for in the BLM Manual Section 2097—Opening Orders. Notice from this office will be provided as to the date of said publication. If a protest against a survey, in accordance with 43 CFR 4.450–2, of the above plats is received prior to the date of official filing, the filing will be stayed pending consideration of the protest.

A plat will not be officially filed until the day after all protests have been dismissed and become final or appeals from the dismissal affirmed. A person or party who wishes to protest against any of these surveys must file a written protest with the Bureau of Land Management New Mexico State Director stating that they wish to protest.

A statement of reasons for a protest may be filed with the Notice of Protest to the State Director or the statement of reasons must be filed with the State Director within thirty (30) days after the protest is filed.

Charles I. Doman,

Acting Branch Chief, Cadastral Survey.

[FR Doc. 2015–04507 Filed 3–3–15; 8:45 am]

BILLING CODE 4310–FB–P

DEPARTMENT OF THE INTERIOR

National Park Service

[NPS–PWR–PWRO–16730; PPPWLAKES1/ PPMPSAS1Z.YP0000]

Final Environmental Impact Statement/ Wilderness Management Plan, Lake Mead National Recreation Area, Nevada/Bureau of Land Management, Southern Nevada District

AGENCIES: National Park Service and Bureau of Land Management, Interior.

ACTION: Notice of availability.

SUMMARY: The National Park Service (NPS) and Bureau of Land Management (BLM) announce the availability of the Final Environmental Impact Statement (Final EIS) for the Wilderness Management Plan for the Jimbilnan, Pinto Valley, Black Canyon, Eldorado, Ireteba Peaks, Nellis Wash, Spirit Mountain, and Bridge Canyon Wilderness Areas at Lake Mead National Recreation Area and adjacent public lands. The jointly prepared Wilderness Management Plan describes three alternatives for consideration. *Alternative A* (no-action alternative) continues the current management of the wilderness areas and serves as a

baseline for comparison with the other action alternatives. *Alternative B* (preferred alternative) generally focuses on protecting the character of the wilderness areas while providing a few more opportunities for access into several areas. *Alternative C* provides a higher level of access and visitor use management while still protecting the overall character of the wilderness areas. The Final EIS also analyzes the potential environmental consequences of each of the alternatives, including potential impacts to soils, vegetation, terrestrial wildlife, threatened, endangered, and special status species, natural soundscape, wilderness character, archeological resources, ethnographic resources, visitor use and experience, and public safety.

DATES: The National Park Service will execute a Record of Decision (ROD) no sooner than 30 days following **Federal Register** publication by the Environmental Protection Agency of its notice of filing and availability of the Final EIS.

ADDRESSES: The Final EIS is available for public inspection at *http://parkplanning.nps.gov.lake*, and in the office of the Superintendent, Lake Mead National Recreation Area, 601 Nevada Way, Boulder City, NV 89005; telephone (702) 293–8920.

FOR FURTHER INFORMATION CONTACT: Mr. Jim Holland, Park Planner, Lake Mead National Recreation Area, 601 Nevada Highway, Boulder City, NV 89005 (702) 293–8986.

SUPPLEMENTARY INFORMATION: The proposed Wilderness Management Plan addresses public issues and concerns, identifies goals, objectives, and decision-making guidelines for administrative actions and visitor use, and provides guidelines for managing the Jimbilnan, Pinto Valley, Black Canyon, Eldorado, Ireteba Peaks, Nellis Wash, Spirit Mountain, and Bridge Canyon wilderness areas in Nevada. These areas were designated as units of the National Wilderness Preservation System through the Clark County Conservation of Public Land and Natural Resources Act (Pub. L. 107–282) in 2002. The NPS and BLM jointly manage the Eldorado, Ireteba Peak, and the Spirit Mountain wilderness areas; the other five wilderness areas are managed by the NPS.

During April 2010, a draft wilderness management plan/environmental assessment was distributed for public review. However, due to issues subsequently raised by rock climbers and American Indian tribes, the NPS and BLM determined it would be appropriate to prepare an Environmental Impact Statement. The Notice of Intent was published in the **Federal Register** on February 12, 2012. The Draft EIS for the Wilderness Management Plan was published in January 2014, with a public review and comment period extending from January 17 through March 23, 2014. Public meetings were held in Henderson, NV; Boulder City, NV; and Bullhead City, AZ. Overall approximately 269 written comments were received.

The primary issues addressed in the Final EIS for the Wilderness Management Plan are as follows:

- Providing for use of Spirit Mountain by the general public while meeting tribal needs and concerns.
- Managing rock climbing in the wilderness areas, particularly placement or removal of fixed anchors for rock-climbing activities, and managing ''bolt-intensive face climbs.''
- The use of climbing equipment (including climbing chalk) near sensitive cultural resources (*e.g.*, petroglyphs and pictographs).
- Access to several of the wilderness areas, including losing vehicle access to areas listed in the plan, illegal off-road access, and motorized or climbing ascents of Spirit Mountain.

Decision Process: The Record of Decision will be executed not sooner than 30 days after release of the Final EIS. As a delegated EIS process, the official responsible for final approval of the Wilderness Management Plan is the Regional Director, Pacific West Region, NPS. Subsequently the officials responsible for implementing the approved Wilderness Management Plan are the Superintendent, Lake Mead National Recreation Area, and the BLM State Director, Nevada.

Dated: February 10, 2015.

Patricia L. Neubacher,

Acting Regional Director, Pacific West Region, National Park Service.

[FR Doc. 2015–04485 Filed 3–3–15; 8:45 am]

BILLING CODE 4312–FF–P

DEPARTMENT OF THE INTERIOR

National Park Service

[NPS–WASO–NAGPRA–17405; PPWOCRADN0–PCU00RP15.R50000]

Native American Graves Protection and Repatriation Review Committee: Notice of Nomination Solicitation

AGENCY: National Park Service, Interior.

ACTION: Notice of request for nominations.

SUMMARY: The National Park Service is seeking nominations for three members of the Native American Graves Protection and Repatriation Review Committee (Review Committee). The Secretary of the Interior will appoint the members from nominations submitted by national museum organizations and national scientific organizations.

DATES: Nominations must be received by June 2, 2015.

ADDRESSES: Melanie O'Brien, Designated Federal Officer, Native American Graves Protection and Repatriation Review Committee, National NAGPRA Program (2253), National Park Service, 1849 C Street NW., Washington, DC 20240, or via email *nagpra_dfo@nps.gov.*

SUPPLEMENTARY INFORMATION: The Review Committee was established by the Native American Graves Protection and Repatriation Act of 1990 (NAGPRA), at 25 U.S.C. 3006, 5 U.S.C. Appendix 2.

The Review Committee is responsible for:

1. Monitoring the NAGPRA inventory and identification process;
2. reviewing and making findings related to the identity or cultural affiliation of cultural items, or the return of such items;
3. facilitating the resolution of disputes;
4. compiling an inventory of culturally unidentifiable human remains and developing a process for disposition of such remains;
5. consulting with Indian tribes and Native Hawaiian organizations and museums on matters within the scope of the work of the Review Committee affecting such tribes or organizations;
6. consulting with the Secretary of the Interior in the development of regulations to carry out NAGPRA; and
7. making recommendations regarding future care of repatriated cultural items.

The Review Committee consists of seven members appointed by the Secretary of the Interior. The Secretary may not appoint Federal officers or employees to the Review Committee. Three members are appointed from nominations submitted by Indian tribes, Native Hawaiian organizations, and traditional Native American religious leaders. At least two of these members must be traditional Indian religious leaders. Three members are appointed from nominations submitted by national museum or scientific organizations. One member is appointed from a list of persons developed and consented to by all of the other members.

Members serve as Special Governmental Employees, which requires completion of annual ethics training. Members are appointed for 4-

year terms and incumbent members may be reappointed for 2-year terms. The Review Committee's work takes place during public meetings. The Review Committee normally meets in person two times per year, normally for two or three days. The Review Committee may also hold one or more public teleconferences of several hours duration.

Review Committee members serve without pay but shall be reimbursed for each day the member participates in Review Committee meetings. Review Committee members are reimbursed for travel expenses incurred in association with Review Committee meetings (25 U.S.C. 3006(b)(4)). Additional information regarding the Review Committee, including the Review Committee's charter, meeting protocol, and dispute resolution procedures, is available on the National NAGPRA Program Web site, at *www.nps.gov/NAGPRA/REVIEW/*.

Individuals who are federally registered lobbyists are ineligible to serve on all FACA and non-FACA boards, committees, or councils in an individual capacity. The term ''individual capacity'' refers to individuals who are appointed to exercise their own individual best judgment on behalf of the government, such as when they are designated Special Government Employees, rather than being appointed to represent a particular interest.

Nominations should:

1. Be submitted on the official letterhead of the organization.

2. Affirm that the signatory is the official authorized by the organization to submit the nomination.

3. Affirm that the organization's activity pertains or relates to the United States as a whole, as opposed to a lesser geographical scope.

4. Include the nominee's full legal name, home address, home telephone number, and email address.

5. Include the nominee's resume or a brief biography of the nominee, in which the nominee's NAGPRA experience and ability to work as a member of a Federal advisory committee are addressed.

FOR FURTHER INFORMATION CONTACT: Melanie O'Brien, Designated Federal Officer, Native American Graves Protection and Repatriation Review Committee, National NAGPRA Program (2253), National Park Service, 1849 C Street NW., Washington, DC 20240, or via email *nagpra_dfo@nps.gov*.

Dated: February 20, 2015.

Alma Ripps,

Chief, Office of Policy.

[FR Doc. 2015–04486 Filed 3–3–15; 8:45 am]

BILLING CODE 4310–EE–P

INTERNATIONAL TRADE COMMISSION

Notice of Receipt of Complaint; Solicitation of Comments Relating to the Public Interest

AGENCY: U.S. International Trade Commission.

ACTION: Notice.

SUMMARY: Notice is hereby given that the U.S. International Trade Commission has received a complaint entitled *Certain Wireless Standard Compliant Electronic Devices, Including Communication Devices and Tablet Computers, DN 3061;* the Commission is soliciting comments on any public interest issues raised by the complaint or complainant's filing under section 210.8(b) of the Commission's Rules of Practice and Procedure (19 CFR 210.8(b)).

FOR FURTHER INFORMATION CONTACT: Lisa R. Barton, Secretary to the Commission, U.S. International Trade Commission, 500 E Street SW., Washington, DC 20436, telephone (202) 205–2000. The public version of the complaint can be accessed on the Commission's Electronic Document Information System (EDIS) at *EDIS*,[1] and will be available for inspection during official business hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary, U.S. International Trade Commission, 500 E Street SW., Washington, DC 20436, telephone (202) 205–2000.

General information concerning the Commission may also be obtained by accessing its Internet server at United States International Trade Commission (USITC) at *USITC*.[2] The public record for this investigation may be viewed on the Commission's Electronic Document Information System (EDIS) at *EDIS*.[3] Hearing-impaired persons are advised that information on this matter can be obtained by contacting the Commission's TDD terminal on (202) 205–1810.

SUPPLEMENTARY INFORMATION: The Commission has received a complaint and a submission pursuant to section 210.8(b) of the Commission's Rules of Practice and Procedure filed on behalf of Ericsson Inc. and Telefonaktiebolaget LM Ericsson on February 26, 2015. The complaint alleges violations of section 337 of the Tariff Act of 1930 (19 U.S.C. 1337) in the importation into the United States, the sale for importation, and the sale within the United States after importation of certain wirelsess standard compliant electronic devices, including communication devices and tablet computers. The complaint names as respondent Apple Inc., a/k/a Apple Computer, Inc. of Cupertino, CA. The complainant requests that the Commission issue a permanent limited exclusion order and permanent cease and desist orders.

Proposed respondents, other interested parties, and members of the public are invited to file comments, not to exceed five (5) pages in length, inclusive of attachments, on any public interest issues raised by the complaint or section 210.8(b) filing. Comments should address whether issuance of the relief specifically requested by the complainant in this investigation would affect the public health and welfare in the United States, competitive conditions in the United States economy, the production of like or directly competitive articles in the United States, or United States consumers.

In particular, the Commission is interested in comments that:

(i) Explain how the articles potentially subject to the requested remedial orders are used in the United States;

(ii) identify any public health, safety, or welfare concerns in the United States relating to the requested remedial orders;

(iii) identify like or directly competitive articles that complainant, its licensees, or third parties make in the United States which could replace the subject articles if they were to be excluded;

(iv) indicate whether complainant, complainant's licensees, and/or third party suppliers have the capacity to replace the volume of articles potentially subject to the requested exclusion order and/or a cease and desist order within a commercially reasonable time; and

(v) explain how the requested remedial orders would impact United States consumers.

Written submissions must be filed no later than by close of business, eight calendar days after the date of publication of this notice in the **Federal Register**. There will be further opportunities for comment on the

[1] Electronic Document Information System (EDIS): *http://edis.usitc.gov*.

[2] United States International Trade Commission (USITC): *http://edis.usitc.gov*.

[3] Electronic Document Information System (EDIS): *http://edis.usitc.gov*.

public interest after the issuance of any final initial determination in this investigation.

Persons filing written submissions must file the original document electronically on or before the deadlines stated above and submit 8 true paper copies to the Office of the Secretary by noon the next day pursuant to section 210.4(f) of the Commission's Rules of Practice and Procedure (19 CFR 210.4(f)). Submissions should refer to the docket number (''Docket No. 3061'') in a prominent place on the cover page and/or the first page. (*See* Handbook for Electronic Filing Procedures, *Electronic Filing Procedures*[4]). Persons with questions regarding filing should contact the Secretary (202–205–2000).

Any person desiring to submit a document to the Commission in confidence must request confidential treatment. All such requests should be directed to the Secretary to the Commission and must include a full statement of the reasons why the Commission should grant such treatment. *See* 19 CFR 201.6. Documents for which confidential treatment by the Commission is properly sought will be treated accordingly. All nonconfidential written submissions will be available for public inspection at the Office of the Secretary and on *EDIS*.[5]

This action is taken under the authority of section 337 of the Tariff Act of 1930, as amended (19 U.S.C. 1337), and of sections 201.10 and 210.8(c) of the Commission's Rules of Practice and Procedure (19 CFR 201.10, 210.8(c)).

Issued: February 27, 2015.

By order of the Commission.

William R. Bishop,

Supervisory Hearings and Information Officer.

[FR Doc. 2015–04454 Filed 3–3–15; 8:45 am]

BILLING CODE 7020–02–P

[4] Handbook for Electronic Filing Procedures: *http://www.usitc.gov/secretary/fed_reg_notices/rules/handbook_on_electronic_filing.pdf.*

[5] Electronic Document Information System (EDIS): *http://edis.usitc.gov.*

INTERNATIONAL TRADE COMMISSION

Notice of Receipt of Complaint; Solicitation of Comments Relating to the Public Interest

AGENCY: U.S. International Trade Commission.

ACTION: Notice.

SUMMARY: Notice is hereby given that the U.S. International Trade Commission has received a complaint entitled *Certain Electronic Devices, Including Wireless Communication Devices, Computers, Tablet Computers, Digital Media Players, and Cameras, DN 3060;* the Commission is soliciting comments on any public interest issues raised by the complaint or complainant's filing under section 210.8(b) of the Commission's Rules of Practice and Procedure (19 CFR 210.8(b)).

FOR FURTHER INFORMATION CONTACT: Lisa R. Barton, Secretary to the Commission, U.S. International Trade Commission, 500 E Street SW., Washington, DC 20436, telephone (202) 205–2000. The public version of the complaint can be accessed on the Commission's Electronic Document Information System (EDIS) at *EDIS*,[1] and will be available for inspection during official business hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary, U.S. International Trade Commission, 500 E Street SW., Washington, DC 20436, telephone (202) 205–2000.

General information concerning the Commission may also be obtained by accessing its Internet server at United States International Trade Commission (USITC) at *USITC.*[2] The public record for this investigation may be viewed on the Commission's Electronic Document Information System (EDIS) at *EDIS.*[3] Hearing-impaired persons are advised that information on this matter can be obtained by contacting the Commission's TDD terminal on (202) 205–1810.

SUPPLEMENTARY INFORMATION: The Commission has received a complaint and a submission pursuant to section 210.8(b) of the Commission's Rules of Practice and Procedure filed on behalf of Ericsson Inc. and Telefonaktiebolaget LM Ericsson on February 26, 2015. The complaint alleges violations of section 337 of the Tariff Act of 1930 (19 U.S.C. 1337) in the importation into the United States, the sale for importation, and the sale within the United States after importation of certain electronic devices, including wireless communication devices, computers, tablet computers, digital media players, and cameras. The complaint names as respondent Apple Inc., a/k/a Apple Computer, Inc. of Cupertino, CA. The complainant requests that the Commission issue a permanent limited exclusion order and permanent cease and desist orders.

[1] Electronic Document Information System (EDIS): *http://edis.usitc.gov.*

[2] United States International Trade Commission (USITC): *http://edis.usitc.gov.*

[3] Electronic Document Information System (EDIS): *http://edis.usitc.gov.*

Proposed respondents, other interested parties, and members of the public are invited to file comments, not to exceed five (5) pages in length, inclusive of attachments, on any public interest issues raised by the complaint or section 210.8(b) filing. Comments should address whether issuance of the relief specifically requested by the complainant in this investigation would affect the public health and welfare in the United States, competitive conditions in the United States economy, the production of like or directly competitive articles in the United States, or United States consumers.

In particular, the Commission is interested in comments that:

(i) Explain how the articles potentially subject to the requested remedial orders are used in the United States;

(ii) identify any public health, safety, or welfare concerns in the United States relating to the requested remedial orders;

(iii) identify like or directly competitive articles that complainant, its licensees, or third parties make in the United States which could replace the subject articles if they were to be excluded;

(iv) indicate whether complainant, complainant's licensees, and/or third party suppliers have the capacity to replace the volume of articles potentially subject to the requested exclusion order and/or a cease and desist order within a commercially reasonable time; and

(v) explain how the requested remedial orders would impact United States consumers.

Written submissions must be filed no later than by close of business, eight calendar days after the date of publication of this notice in the **Federal Register**. There will be further opportunities for comment on the public interest after the issuance of any final initial determination in this investigation.

Persons filing written submissions must file the original document electronically on or before the deadlines stated above and submit 8 true paper copies to the Office of the Secretary by noon the next day pursuant to section 210.4(f) of the Commission's Rules of Practice and Procedure (19 CFR 210.4(f)). Submissions should refer to the docket number (''Docket No. 3060'') in a prominent place on the cover page and/or the first page. (*See* Handbook for Electronic Filing Procedures, *Electronic*

Filing Procedures[4]). Persons with questions regarding filing should contact the Secretary (202–205–2000).

Any person desiring to submit a document to the Commission in confidence must request confidential treatment. All such requests should be directed to the Secretary to the Commission and must include a full statement of the reasons why the Commission should grant such treatment. *See* 19 CFR 201.6. Documents for which confidential treatment by the Commission is properly sought will be treated accordingly. All nonconfidential written submissions will be available for public inspection at the Office of the Secretary and on *EDIS*.[5]

This action is taken under the authority of section 337 of the Tariff Act of 1930, as amended (19 U.S.C. 1337), and of sections 201.10 and 210.8(c) of the Commission's Rules of Practice and Procedure (19 CFR 201.10, 210.8(c)).

By order of the Commission.

Issued: February 27, 2015.

William R. Bishop,

Supervisory Hearings and Information Officer.

[FR Doc. 2015–04453 Filed 3–3–15; 8:45 am]

BILLING CODE 7020–02–P

INTERNATIONAL TRADE COMMISSION

[Investigation No. 332–552]

Overview of Cuban Imports of Goods and Services and Effects of U.S. Restrictions

AGENCY: United States International Trade Commission.

ACTION: Rescheduling of public hearing.

SUMMARY: The Commission has rescheduled the public hearing in this investigation from March 24, 2015 to June 2, 2015.

DATES:

May 18, 2015: Deadline for filing requests to appear at the public hearing.

May 20, 2015: Deadline for filing pre-hearing briefs and statements.

June 2, 2015: Public hearing.

June 9, 2015: Deadline for filing post-hearing briefs and statements.

June 19, 2015: Deadline for filing all other written submissions.

ADDRESSES: All Commission offices, including the Commission's hearing rooms, are located in the United States International Trade Commission Building, 500 E Street SW., Washington, DC. All written submissions should be addressed to the Secretary, United States International Trade Commission, 500 E Street SW., Washington, DC 20436. The public record for this investigation may be viewed on the Commission's electronic docket (EDIS) at *http://www.usitc.gov/secretary/edis.htm.*

FOR FURTHER INFORMATION CONTACT: Project Leader Heidi Colby-Oizumi (202–205–3391; *heidi.colby@usitc.gov*) or Deputy Project Leader Alissa Tafti (202–205–3244; *alissa.tafti@usitc.gov*). For information on legal aspects, contact William Gearhart of the Office of the General Counsel (202–205–3091; *william.gearhart@usitc.gov*). The media should contact Margaret O'Laughlin, Office of External Relations (202–205–1819; *margaret.olaughlin@usitc.gov*). General information concerning the Commission may also be obtained by accessing its Internet address (*http://www.usitc.gov*). Hearing impaired individuals may obtain information on this matter by contacting the Commission's TDD terminal at 202–205–1810. Persons with mobility impairments who will need special assistance in gaining access to the Commission should contact the Office of the Secretary at 202–205–2000.

SUMMARY: As announced in the notice of institution of the investigation published in the **Federal Register** on February 4, 2015 (80 FR 6137), the hearing will be held at the U.S. International Trade Commission building, 500 E Street SW., Washington, DC, 20436; it will begin at 9:30 a.m. In addition to the hearing date, the deadline dates for filing of requests to appear and pre-hearing and post-hearing briefs and statements have been changed: the deadline for filing requests to appear at the hearing has been changed to May 18, 2015; the deadline for filing pre-hearing briefs and statements has been changed to May 20, 2015; the deadline for filing post-hearing briefs and statements has been changed to June 9, 2015; and the deadline for filing all other written submissions has been changed to June 19, 2015. All other requirements and procedures set out in the February 4, 2015, notice continue to apply.

In the event that, as of the close of business on May 18, 2015, no witnesses are scheduled to appear at the hearing, the hearing will be canceled. Any person interested in attending the hearing as an observer or nonparticipant may call the Secretary to the Commission (202–205–2000) after May 18, 2015 for information concerning whether the hearing will be held.

By order of the Commission.

Issued: February 27, 2015.

William R. Bishop,

Supervisory Hearings and Information Officer.

[FR Doc. 2015–04477 Filed 3–3–15; 8:45 am]

BILLING CODE 7020–02–P

DEPARTMENT OF JUSTICE

Notice of Lodging of Proposed Consent Decree Under the Resource Conservation and Recovery Act

On February 26, 2015, the Department of Justice lodged a proposed consent decree with the United States District Court for the District of Nevada in the lawsuit entitled *United States and State of Nevada* v. *Newmont USA Limited,* Civil Action No. 3:15-cv-00199–HDM–WGC.

In this action, the United States and the State of Nevada filed a complaint under the Resource Conservation and Recovery Act,, 42 U.S.C. 6901 *et seq.,* and the State of Nevada's Disposal of Hazardous Waste statutes, set forth at Title 40 (''Public Health and Safety''), Chapter 459 (''Hazardous Materials'') of the Nevada Revised Statutes (NRS 459.400 to 459.600) alleging violations at a gold mining and processing facility located near Carlin, Nevada. The consent decree requires Newmont to pay a civil penalty of $395,000.00.

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. *Newmont USA Limited,* D.J. Ref. No. 90–7–1–10580. All comments must be submitted no later than thirty (30) days after the publication date of this notice. Comments may be submitted either by email or by mail:

To submit comments:	*Send them to:*
By email	*pubcomment-ees.enrd@usdoj.gov.*
By mail	Assistant Attorney General, U.S. DOJ—ENRD, P.O. Box 7611, Washington, D.C. 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

[4] Handbook for Electronic Filing Procedures: *http://www.usitc.gov/secretary/fed_reg_notices/rules/handbook_on_electronic_filing.pdf.*

[5] Electronic Document Information System (EDIS): *http://edis.usitc.gov.*

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 $6.25 (25 cents per page reproduction cost) payable to the United States Treasury.

Henry Friedman,

Assistant Section Chief, Environmental Enforcement Section, Environment and Natural Resources Division.

[FR Doc. 2015–04417 Filed 3–3–15; 8:45 am]

BILLING CODE 4410–15–P

DEPARTMENT OF JUSTICE

Notice of Lodging of Proposed Consent Decree Under the Resource Conservation and Recovery Act

On February 26, 2015, the Department of Justice lodged a proposed consent decree with the United States District Court for the District of Nevada in the lawsuit entitled *United States and State of Nevada* v. *Barrick Goldstrike Mines, Inc.,* Civil Action No. 3:15-cv-0017–RCJ–VPC.

In this action, the United States and the State of Nevada filed a complaint under the Resource Conservation and Recovery Act, 42 U.S.C. 6901 *et seq.,* and the State of Nevada's Disposal of Hazardous Waste statutes, set forth at Title 40 (''Public Health and Safety''), Chapter 459 (''Hazardous Materials'') of the Nevada Revised Statutes (NRS 459.400 to 459.600) alleging violations at a gold mining and processing facility located near Elko, Nevada. The consent decree requires Barrick to pay a civil penalty of $196,000.00.

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. *Barrick Goldstrike Mines, Inc.,* D.J. Ref. No. 90–7–1–10581. All comments must be submitted no later than thirty (30) days after the publication date of this notice. Comments may be submitted either by email or by mail:

To submit comments:	*Send them to:*
By email	*pubcomment-ees.enrd@usdoj.gov.*
By mail	Assistant Attorney General, U.S. DOJ—ENRD, P.O. Box 7611, Washington, DC 20044–7611.

During the public comment period, the 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 $6.50 (25 cents per page reproduction cost) payable to the United States Treasury.

Henry Friedman,

Assistant Section Chief, Environmental Enforcement Section, Environment and Natural Resources Division.

[FR Doc. 2015–04418 Filed 3–3–15; 8:45 am]

BILLING CODE 4410–15–P

LIBRARY OF CONGRESS

Copyright Royalty Board

[Docket No. 14–CRB–0010–CD (2013)]

Distribution of 2013 Cable Royalty Funds

AGENCY: Copyright Royalty Board, Library of Congress.

ACTION: Notice requesting comments.

SUMMARY: The Copyright Royalty Judges solicit comments on a motion of Phase I claimants for partial distribution of 2013 cable royalty funds.

DATES: Comments are due on or before April 3, 2015.

ADDRESSES: Interested parties may submit comments electronically to *crb@loc.gov.* In the alternative, interested parties may send an original, five copies, and an electronic copy on a CD either by mail or hand delivery. Commenters shall not use multiple means of transmission. Interested parties may not deliver comments by an overnight delivery service other than the U.S. Postal Service Express Mail. If commenters use U.S. mail (including overnight delivery), the appropriate address is: Copyright Royalty Board, P.O. Box 70977, Washington, DC 20024–0977. If a private party delivers comments by hand, they must be brought to the Library of Congress, James Madison Memorial Building, LM–401, 101 Independence Avenue SE., Washington, DC 20559–6000. If a party delivers comments by a commercial courier, the comments must go to the Congressional Courier Acceptance Site located at 2nd and D Streets NE., Washington, DC, in an envelope addressed to: Copyright Royalty Board, Library of Congress, James Madison Memorial Building, LM–403, 101 Independence Avenue SE., Washington, DC 20559–6000.

FOR FURTHER INFORMATION CONTACT: LaKeshia Keys, Program Specialist, by telephone at (202) 707–7658 or email at *crb@loc.gov.*

SUPPLEMENTARY INFORMATION: Each year cable systems must submit royalty payments to the Register of Copyrights as required by the statutory license set forth in section 111 of the Copyright Act for the retransmission to cable subscribers of over-the-air television and radio broadcast signals. *See* 17 U.S.C. 111(d). The Copyright Royalty Judges (Judges) oversee distribution of royalties to copyright owners whose works were included in a qualifying transmission and who timely filed a claim for royalties. Allocation of the royalties collected occurs in one of two ways. In the first instance, the Judges may authorize distribution in accordance with a negotiated settlement among all claiming parties. 17 U.S.C. 111(d)(4)(A). If all claimants do not reach agreement with respect to the royalties, the Judges must conduct a proceeding to determine the distribution of any royalties that remain in controversy. 17 U.S.C. 111(d)(4)(B). Alternatively, the Judges may, on motion of claimants and on notice to all interested parties, authorize a partial distribution of royalties, reserving on deposit sufficient funds to resolve identified disputes. 17 U.S.C. 111(d)(4)(C), 801(b)(3)(C).

On January 21, 2015, representatives of the Phase I claimant categories (the ''Phase I Claimants'') [1] filed with the Judges a motion requesting a partial distribution amounting to 60% of the 2013 cable royalty funds pursuant to section 801(b)(3)(C) of the Copyright Act. 17 U.S.C. 801(b)(3)(C). That section

[1] The ''Phase I Claimants'' are Program Suppliers, Joint Sports Claimants, Public Television Claimants (represented by Public Broadcasting Service), Commercial Television Claimants (represented by National Association of Broadcasters), Music Claimants (represented by American Society of Composers, Authors and Publishers, Broadcast Music, Inc., and SESAC, Inc.), Canadian Claimants Group, National Public Radio, and Devotional Claimants. In what has become known as Phase I of a cable royalty distribution proceeding, the Judges allocate royalties among certain categories of claimants whose broadcast programming has been retransmitted by cable systems. The Phase I Claimants who are the moving parties in this requested partial distribution represent the traditional claimant categories. The Judges have not and do not by this notice determine the universe of claimant categories for 2013 cable retransmission royalties. In Phase II of a cable royalty distribution proceeding, the Judges determine how the allocated royalties are to be distributed among claimants within each of the Phase I categories.

requires that, before ruling on the motion, the Judges publish a notice in the **Federal Register** seeking responses to the motion for partial distribution to ascertain whether any claimant entitled to receive the subject royalties has a reasonable objection to the requested distribution. Accordingly, this Notice seeks comments from interested claimants on whether any reasonable objection exists that would preclude the distribution of 60% of the 2013 cable royalty funds to the Phase I Claimants. Parties making objection to the partial distribution must advise the Judges of the existence and extent of all objections by the end of the comment period. The Judges will not consider any objections with respect to the partial distribution motion that come to their attention after the close of the comment period.

The Judges have caused the Motion of the Phase I Claimants for Partial Distribution to be posted on the Copyright Royalty Board Web site at *http://www.loc.gov/crb.*

Dated: February 26, 2015.

Suzanne M. Barnett,

Chief U.S. Copyright Royalty Judge.

[FR Doc. 2015–04509 Filed 3–3–15; 8:45 am]

BILLING CODE 1410–72–P

NUCLEAR REGULATORY COMMISSION

[NRC–2015–0045]

Reviewing and Assessing the Financial Condition of Operating Power Reactor Licensees, Including Requests for Additional Information

AGENCY: Nuclear Regulatory Commission.

ACTION: Interim staff guidance; issuance.

SUMMARY: The U.S. Nuclear Regulatory Commission (NRC) is issuing Interim Staff Guidance (ISG), OL/FR–ISG–2014–01, ''Reviewing and Assessing the Financial Condition of Operating Power Reactor Licensees, Including Requests for Additional Information,'' dated February 17, 2015. The ISG provides clarifying guidance to the NRC staff when reviewing licensee financial information, and when requesting additional information regarding licensee financial conditions, as authorized under the NRC's regulations. Such review and inquiry are performed by NRC staff for currently operating power reactor licensees, absent a licensing action such as a license transfer.

DATES: The ISG is available March 4, 2015.

ADDRESSES: Please refer to Docket ID NRC–2015–0045 when contacting the NRC about the availability of information regarding this document. You may obtain publicly-available information related to this document using any of the following methods:

- *Federal Rulemaking Web site:* Go to *http://www.regulations.gov* and search for Docket ID NRC–2015–0045. Address questions about NRC dockets to Carol Gallagher; telephone: 301–415–3463; email: *Carol.Gallagher@nrc.gov.* For technical questions, contact the individual listed in the **FOR FURTHER INFORMATION CONTACT** section of this document.
- *NRC's Agencywide Documents Access and Management System (ADAMS):* You may obtain publicly available documents online in the ADAMS Public Documents collection at *http://www.nrc.gov/reading-rm/adams.html.* To begin the search, select ''*ADAMS Public Documents''* and then select ''*Begin Web-based ADAMS Search.''* For problems with ADAMS, please contact the NRC's Public Document Room (PDR) reference staff at 1–800–397–4209, 301–415–4737, or by email to *pdr.resource@nrc.gov.* The ADAMS accession number for each document referenced in this notice (if that document is available in ADAMS) is provided the first time that a document is referenced. The ISG is available in ADAMS under Accession No. ML14218A625.
- *NRC's PDR:* You may examine and purchase copies of public documents at the NRC's PDR, Room O1–F21, One White Flint North, 11555 Rockville Pike, Rockville, Maryland 20852.

FOR FURTHER INFORMATION CONTACT: Richard Turtil, Office of Nuclear Reactor Regulation, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001; telephone: 301–415–2308; email: *Richard.Turtil@nrc.gov.*

SUPPLEMENTARY INFORMATION:

I. Discussion

The purpose of this ISG is to clarify the process by which the NRC will review financial conditions of, and financial concerns about, currently operating power reactor licensees. This guidance is intended to provide consistency and transparency with regard to the NRC's financial review process for licensees (in the absence of a license transfer or other similar licensing action). It addresses the NRC's basis for financial Requests for Additional Information from licensees during operations, the NRC staff's evaluation of Requests for Additional Information responses, and the closure of such inquiries. This ISG is intended to enhance the NRC's financial review guidance presented in Section III(1)(d)—Post-OL Non-transfer Reviews, of NUREG–1577, Revision 1, ''Standard Review Plan on Power Reactor Licensee Financial Qualifications and Decommissioning Funding Assurance,'' dated December 2001, (ADAMS Accession No. ML013330264). The guidance in this ISG will be included in the next update to NUREG–1577.

II. Backfitting and Issue Finality

The NRC is issuing interim guidance for the NRC staff regarding its review of operating power reactor licensees' financial information. Issuance of the ISG does not constitute backfitting as defined in § 50.109 of Title 10 of the *Code of Federal Regulations* (10 CFR) (the Backfit Rule) and is not otherwise inconsistent with the issue finality provisions in 10 CFR part 52. The NRC's position is based upon the following considerations.

1. *The ISG positions do not constitute backfitting, inasmuch as the ISG is internal guidance to NRC staff.*

The ISG provides interim guidance to the NRC staff on how to review licensees' financial information and request additional financial information. Changes in internal staff guidance are not matters for which applicants or licensees are protected under 10 CFR 50.109 or issue finality provisions in 10 CFR part 52.

2. *The NRC has no intention to impose the ISG on existing nuclear power plant licenses either now or in the future (absent a voluntary request for change from the licensee).*

The NRC staff does not intend to impose or apply the positions described in the ISG to existing (already issued) licenses (*e.g.,* operating licenses and combined licenses). Hence, the ISG—even if considered guidance which is within the purview of the issue finality provisions in 10 CFR part 52—need not be evaluated as if it were a backfit or as being inconsistent with issue finality provisions.

Even if, in the future, the NRC staff seeks to impose a position in the ISG on holders of already issued licenses, such imposition would not provide any basis for the Backfit Rule or issue finality provisions to apply. The ISG concerns, in part, the NRC's request for operating power reactor licensees' financial information. Information collection and reporting requirements such as these are not subject to the Backfit Rule and issue finality provisions.

III. Congressional Review Act

This action is a rule as defined in the Congressional Review Act (5 U.S.C. 801–808). However, the Office of Management and Budget has not found it to be a major rule as defined in the Congressional Review Act.

Dated at Rockville, Maryland, this 17th day of February 2015.

For the Nuclear Regulatory Commission.

Scott A. Morris,

Director, Division of Inspection and Regional Support, Office of Nuclear Reactor Regulation.

[FR Doc. 2015–04479 Filed 3–3–15; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[NRC–2015–0044]

Guidance for Evaluation of Acute Chemical Exposures and Proposed Quantitative Standards

AGENCY: Nuclear Regulatory Commission.

ACTION: Draft interim staff guidance; request for comment.

SUMMARY: The U.S. Nuclear Regulatory Commission (NRC) is soliciting public comment on its draft Interim Staff Guidance (ISG), ''Guidance for Evaluation of Acute Chemical Exposures and Proposed Quantitative Standards.'' The ISG supplements existing guidance in NUREG–1520, ''Standard Review Plan for the Review of a License Application for a Fuel Cycle Facility,'' by providing additional guidance for the NRC to follow when evaluating descriptions of proposed quantitative standards. The ISG identifies sources of information on which proposed quantitative standards may be based.

DATES: Submit comments by May 18, 2015. Comments received after this date will be considered if it is practical to do so, but the Commission is able to ensure consideration only for comments received before this date.

ADDRESSES: You may submit comments by any of the following methods (unless this document describes a different method for submitting comments on a specific subject):

- *Federal Rulemaking Web site:* Go to *http://www.regulations.gov* and search for Docket ID NRC–2015–0044. Address questions about NRC dockets to Carol Gallagher; telephone: 301–415–3463; email: *Carol.Gallagher@nrc.gov.* For technical questions, contact the individual listed in the **FOR FURTHER INFORMATION CONTACT** section of this document.
- *Mail comments to:* Cindy Bladey, Office of Administration, Mail Stop: OWFN–12–H08, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001.

For additional direction on accessing information and submitting comments, see ''Obtaining Information and Submitting Comments'' in the **SUPPLEMENTARY INFORMATION** section of this document.

FOR FURTHER INFORMATION CONTACT: Marilyn Diaz, Office of Nuclear Material Safety and Safeguards, U.S. Nuclear Regulatory Commission, Washington DC 20555–0001; telephone: 301–287–9068, email: *Marilyn.Diaz@nrc.gov.*

SUPPLEMENTARY INFORMATION:

I. Obtaining Information and Submitting Comments

A. Obtaining Information

Please refer to Docket ID NRC–NRC–2015–0044 when contacting the NRC about the availability of information for this action. You may obtain publicly-available information related to this action by any of the following methods:

- *Federal Rulemaking Web site:* Go to *http://www.regulations.gov* and search for Docket ID NRC–2015–0044.
- *NRC's Agencywide Documents Access and Management System (ADAMS):* You may obtain publicly available documents online in the ADAMS Public Documents collection at *http://www.nrc.gov/reading-rm/adams.html.* To begin the search, select ''*ADAMS Public Documents''* and then select ''*Begin Web-based ADAMS Search.''* For problems with ADAMS, please contact the NRC's Public Document Room (PDR) reference staff at 1–800–397–4209, 301–415–4737, or by email to *pdr.resource@nrc.gov.* The draft ISG is available in ADAMS under Accession No. ML15051A029.
- *NRC's PDR:* You may examine and purchase copies of public documents at the NRC's PDR, Room O1–F21, One White Flint North, 11555 Rockville Pike, Rockville, Maryland 20852.

B. Submitting Comments

Please include Docket ID NRC–2015–0044 in the subject line of your comment submission, in order to ensure that the NRC is able to make your comment submission available to the public in this docket.

The NRC cautions you not to include identifying or contact information that you do not want to be publicly disclosed in your comment submission. The NRC posts all comment submissions at *http://www.regulations.gov* as well as entering the comment submissions into ADAMS. The NRC does not routinely edit comment submissions to remove identifying or contact information.

If you are requesting or aggregating comments from other persons for submission to the NRC, then you should inform those persons not to include identifying or contact information that they do not want to be publicly disclosed in their comment submission. Your request should state that the NRC does not routinely edit comment submissions to remove such information before making the comment submissions available to the public or entering the comment submissions into ADAMS.

II. Background

A fuel cycle facility licensee that is regulated under part 70 of Title 10 of the *Code of Federal Regulations* (10 CFR), and that is subject to subpart H, ''Additional Requirements for Certain Licensees Authorized to Possess a Critical Mass of Special Nuclear Material,'' is required to conduct an Integrated safety analysis (ISA) and submit an ISA summary that supports the license application. As relevant to the ISG, the 10 CFR 70.65(b)(7) provision requires that for all credible acute chemical exposure events set forth in 10 CFR 70.61(b)(4) and (c)(4), the ISA summary describe ''the proposed quantitative standards used to assess the consequences to an individual from acute chemical exposure to licensed material or chemicals produced from licensed materials.''

The ISG will assist the NRC in determining whether ISA summaries and the underlying ISAs conducted by applicants or licensees adequately consider all credible acute chemical exposure events and exposure pathways. The ISG identifies several sources of chemical hazards information on which proposed quantitative standards may be based. As stated in the ISG, these sources of information include the Emergency Response Planning Guidelines (ERPGs), the Acute Exposure Guidelines Levels (AEGLs), Temporary Emergency Exposure Levels (TEELs), and the Globally Harmonized System of Classification and Labeling of Chemicals (GHS). The ERPGs, AEGLs, TEELs and GHS hazard statements contain information relevant to inhalation exposure pathways. As detailed in the ISG, the National Institute for Occupational Safety and Health Skin Notations, and the GHS hazards statements, contain useful data on which an applicant may base its

proposed quantitative standards for dermal and ocular exposures.

The information from the ISG will be incorporated into the next revision of NUREG–1520, ''Standard Review Plan for the Review of a License Application for a Fuel Cycle Facility,'' (ADAMS Accession No. ML101390110).

Additional background information and documents related to this notice can be found in ADAMS under the following accession numbers:

1	Memorandum of Understanding Between NRC and OSHA Relating to NRC-Licensed Facilities	ML11354A432
2	NRC Information Notice 2007–022, Recent Hydrogen Fluoride Exposures at Fuel Cycle Facilities (June 19, 2007).	ML071410230
3	Letter from Felix M. Killar, Senior Director, Fuel and Materials Safety, NEI, to Daniel H. Dorman, Director, Division of Fuel Cycle Safety and Safeguards, Office of Nuclear Materials Safety and Safeguards (NMSS) (September 8, 2008).	ML083360632
4	Letter from Daniel H. Dorman, Director, Division of Fuel Cycle Safety and Safeguards, NMSS, to Felix M. Killar, Senior Director, Fuel Supply. Material Licenses, of the Nuclear Energy Institute (NEI) (November 10, 2008).	ML082900889
5	Letter from Felix M. Killar, Senior Director, Fuel and Materials Safety, NEI, to Daniel H. Dorman, Director, Division of Fuel Cycle Safety and Safeguards, NMSS (February 24, 2009).	ML090690732
6	Letter from Daniel H. Dorman, Director, Division of Fuel Cycle Safety and Safeguards, NMSS, to Felix M. Killar, Senior Director, Fuel Supply. Material Licenses, of the Nuclear Energy Institute (NEI) (June 12, 2009).	ML090920296
7	Letter from Janet R. Schlueter, Sr. Director, Fuel and Materials Safety, NEI, to Marissa G. Bailey, Director, Division of Fuel Cycle Safety and Safeguards, NMSS (March 26, 2014).	ML14086A267
8	Letter from Marissa G. Bailey, Director, Division of Fuel Cycle Safety and Safeguards, NMSS, to Janet R. Schlueter, NEI (September 15, 2014).	ML14251A150
9	Letter from Ellen Ginsberg, the General Counsel of the NEI to Margaret Doane, the General Counsel of the NRC, (November 7, 2014).	ML14322B019

Dated at Rockville, Maryland, this 26th day of February, 2015.

For the Nuclear Regulatory Commission.

Marissa G. Bailey,

Director, Division of Fuel Cycle Safety, Safeguards and Environmental Review, Office of Nuclear Material Safety and Safeguards.

[FR Doc. 2015–04478 Filed 3–3–15; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[NRC–2013–0046]

Scope Expansion of the Post-Investigation Alternative Dispute Resolution Program

AGENCY: Nuclear Regulatory Commission.

ACTION: Policy revision; issuance.

SUMMARY: The U.S. Nuclear Regulatory Commission (NRC) is issuing a revision to its Enforcement Policy (Enforcement Policy or Policy) to incorporate Commission direction to add escalated non-willful (traditional) enforcement cases with the potential for civil penalties within the scope of the Commission's Alternative Dispute Resolution Program and to make other conforming edits.

DATES: This revision to the Enforcement Policy is effective March 4, 2015.

ADDRESSES: Please refer to Docket ID NRC–2013–0046 when contacting the NRC about the availability of information for this action. You may obtain publicly-available information related to this action by any of the following methods:

- Federal Rulemaking Web site: Go to *http://www.regulations.gov* and search for Docket ID NRC–2013–0046. Address questions about NRC dockets to Carol Gallagher; telephone: 301–415–3463; email: *Carol.Gallagher@nrc.gov.* For technical questions, contact the individuals listed in the **FOR FURTHER INFORMATION CONTACT** section of this document.
- NRC's Agencywide Documents Access and Management System (ADAMS): You may obtain publicly-available documents online in the ADAMS Public Documents collection at *http://www.nrc.gov/reading-rm/adams.html.* To begin the search, select ''ADAMS Public Documents'' and then select ''Begin Web-based ADAMS Search.'' For problems with ADAMS, please contact the NRC's Public Document Room (PDR) reference staff at 1–800–397–4209, 301–415–4737, or by email to *pdr.resource@nrc.gov.* The ADAMS accession number for each document referenced (if it is available in ADAMS) is provided the first time that it is mentioned in the **SUPPLEMENTARY INFORMATION** section.
- NRC's PDR: You may examine and purchase copies of public documents at the NRC's PDR, Room O1–F21, One White Flint North, 11555 Rockville Pike, Rockville, Maryland 20852.

FOR FURTHER INFORMATION CONTACT: Daniel Lenehan, telephone: 301–415–3501, email: *Daniel.Lenehan@nrc.gov,* or Shahram Ghasemian, telephone: 301–415–3591, email: *Shahram.Ghasemian@nrc.gov;* both of the Office of Enforcement, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001.

SUPPLEMENTARY INFORMATION:

Background

The Administrative Dispute Resolution Act of 1996 authorizes and encourages the use of Alternative Dispute Resolution (ADR) procedures by Federal agencies. The term ''ADR'' refers to a number of voluntary processes, such as mediation and facilitated dialogues that can be used to assist parties in resolving disputes and potential conflicts. These techniques involve the use of a neutral third party, either from within the agency or from outside the agency, and are voluntary processes in terms of the decision to participate and the content of the final agreement. The NRC's experience with ADR has demonstrated that the use of these techniques can result in more efficient resolution of issues, more effective outcomes, and improved relationships between the agency and other parties. The NRC established the ADR Program in its Office of Enforcement in 2004.

Since the implementation of the ADR Program, the NRC has reached settlement agreements with licensees (or contractors) and individuals, and has issued subsequent ADR confirmatory orders in more than 90 enforcement cases. The parties to ADR in the NRC's enforcement program are the NRC staff and, in most cases, a licensee. The proceedings are conducted using the facilitation skills of a trained independent mediator. Mediation allows the NRC staff and the licensee to communicate openly and directly and enables the parties to reach effective and workable agreements that meet the NRC's regulatory interests. Historically,

the ADR Program has resulted in broader and more comprehensive corrective actions than would be expected using traditional enforcement means.

On December 16, 2010, then NRC Chairman, Gregory Jaczko, issued a memorandum, ''ADR Implementation and Assessment'' (ADAMS Accession No. ML12030A228) tasking the NRC staff to conduct a comprehensive review of the ADR Program, including determining if it should be expanded. At the time the ADR Program was limited to cases involving discrimination and other wrong doing. On September 6, 2011, the NRC issued a notice in the **Federal Register** that solicited nominations of individuals to participate on a panel to discuss ADR Program implementation and whether changes could be made to make it more effective, transparent, and efficient (76 FR 55136). On October 17, 2011, the NRC issued another **Federal Register** notice that announced its intention to hold a public meeting to solicit feedback from its stakeholders on the ADR Program (76 FR 64124). During the public meeting, which was held on November 8, 2011, external NRC stakeholders expressed support for the expansion of the ADR Program to the extent possible.

In Commission Paper SECY–12–0161, ''Status Update, Tasks Related to Alternative Dispute Resolution in the Allegation and Enforcement Programs,'' dated November 28, 2012 (ADAMS Accession No. ML12321A145), the NRC staff notified the Commission of its intent to pilot the expansion of the ADR Program to include escalated non-willful (traditional) enforcement cases with proposed civil penalties for a 1-year period. The expansion of the program did not include violations associated with findings assessed through the Reactor Oversight Process.

During the pilot period, the NRC staff made ADR available for seven escalated non-willful (traditional) enforcement cases with proposed civil penalties however, none of the licensees chose ADR. The licensees included a waste disposal facility, two radiographers, a gauge user, two hospitals, and one non-operating (decommissioned) reactor. However, shortly after the 1-year period, a power reactor licensee chose to engage in ADR for an escalated non-willful (traditional) enforcement case with the potential for a civil penalty. The subsequent mediation resulted in a settlement, specified in the Confirmatory Order, under which the licensee agreed to fleet-wide actions as opposed to plant-specific actions that would have typically been expected from using the traditional enforcement process.

In Commission Paper SECY–14–0077, ''Status Update and Proposed Policy Revision: Tasks Related to Alternative Dispute Resolution in the Enforcement Program,'' dated July 30, 2014 (ADAMS Accession No. ML14143A363), the NRC staff recommended that the Commission approve expanding the scope of the ADR Program to include non-willful (traditional) enforcement cases with the potential for civil penalties (not including violations associated with findings assessed through the Reactor Oversight Process).

In the Staff Requirements Memorandum to SECY–14–007, the Commission approved the expansion of the ADR Program. Accordingly, the NRC is revising Section 2.4.3, ''Alternate Dispute Resolution,'' of the Enforcement Policy to add escalated non-willful (traditional) enforcement cases with the potential for civil penalties within the scope of the program and to make other conforming edits.

Revisions to Enforcement Policy

The text of revised section 2.4.3, in its entirety, follows. A marked copy of the Enforcement Policy is available in ADAMS under Accession No. ML15028A422.

2.4.3 Alternative Dispute Resolution

The Administrative Dispute Resolution Act of 1996 (ADRA) authorizes and encourages the use of Alternative Dispute Resolution (ADR) procedures by Federal agencies. ADR refers to a variety of processes that emphasize creative, cooperative approaches to handling conflicts in lieu of adversarial procedures. Mediation is the form of ADR typically used by the U.S. Nuclear Regulatory Commission (NRC). The use of ADR in the NRC's enforcement program is available for cases involving discrimination and other wrongdoing as well as escalated nonwillful (traditional) enforcement cases with the potential for civil penalties (not including violations associated with findings assessed through the Reactor Oversight Process).

ADR may also be used for discrimination violations based solely on a finding by DOL; however, the NRC will not negotiate the DOL finding. Individuals within the Commission's jurisdiction may also be offered ADR. ADR complements, and works in conjunction with, the traditional NRC enforcement process. ADR may be offered (1) before a predecisional enforcement conference (PEC), (2) after the initial enforcement action is taken (*i.e.,* an NOV or proposed imposition of a civil penalty), or (3) with the imposition of a civil penalty and prior to a hearing request. Use of the ADR program is voluntary for all parties, including the NRC; any participant may end the process at any time. Mediation activities are kept confidential in accordance with 5 U.S.C. 574; however, the terms of the settlement agreement are normally formalized in a Confirmatory Order, which is published in the **Federal Register**. Normally, there is also a press release providing information about the settlement agreement.

In some circumstances, it may not be appropriate for the NRC to engage in ADR (*e.g.,* the U.S. Department of Justice has substantial involvement in the case, cases in which the subject matter is such that a Confirmatory Order detailing the terms of a settlement agreement cannot be made public, or other particularly egregious cases in which the public interest is not served by engaging in ADR). The approval of the Director, OE, is required in those cases where the staff proposes not to offer ADR.

Additional information concerning the NRC's ADR program is available in the NRC Enforcement Manual and on the NRC Web site.

In addition, an individual and his or her employer (or former employer) can use ADR to resolve discrimination complaints (under Section 211 of the ERA) before the initiation of investigative activities by OI (*i.e.,* pre-investigation ADR, commonly referred to as ''early ADR'') (see NRC Management Directive 8.8, ''Management of Allegations'') or a licensee-sponsored ADR program that is similar in nature to the NRC's early ADR program. If the parties reach a settlement agreement using early ADR or licensee-sponsored ADR, the NRC subsequently reviews the agreement to ensure that it does not include any provisions in violation of the NRC's ''Employee Protection'' regulations. If no such restrictive provisions exist, the NRC will not investigate the discrimination complaint or take enforcement action.

Congressional Review Act

This policy revision is a rule as defined in the Congressional Review Act (5 U.S.C. 801–808). However, the Office of Management and Budget has not found it to be a major rule as defined in the Congressional Review Act.

Dated at Rockville, Maryland, this 26th day of February, 2015.

For the Nuclear Regulatory Commission.

Annette L. Vietti-Cook,

Secretary of the Commission.

[FR Doc. 2015–04490 Filed 3–3–15; 8:45 am]

BILLING CODE 7590–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–74247A; File No. SR–BATS–2015–09]

Self-Regulatory Organizations; BATS Exchange, Inc.; Notice of Filing of a Proposed Rule Change To Amend Rules 11.9, 11.12, and 11.13 of BATS Exchange, Inc.; Correction

February 26, 2015.

AGENCY: Securities and Exchange Commission

ACTION: Notice; correction.

SUMMARY: The Securities and Exchange Commission published a document in the **Federal Register** on February 18, 2015, concerning a Notice of Filing of a Proposed Rule Change to Amend Rules 11.9, 11.12, and 11.13 of BATS Exchange, Inc.. The document contained a typographical error.

FOR FURTHER INFORMATION CONTACT: Christopher P. Grobbel, Division of Trading and Markets, Securities and Exchange Commission, 100 F Street NE., Washington, DC 20549, (202) 551–5491.

Correction

In the **Federal Register** of February 18, 2015 in FR Doc. 2015–3222, on page 8720, in the first and second line in the subheading under the heading ''SECURITIES AND EXCHANGE COMMISSION'' in the third column, correct the reference to ''File No. SR–BATS–2014–09'' instead to ''File No. SR–BATS–2015–09.''

Jill M. Peterson,

Assistant Secretary.

[FR Doc. 2015–04423 Filed 3–3–15; 8:45 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–74383; File No. SR–FINRA–2014–028]

Self-Regulatory Organizations; Financial Industry Regulatory Authority, Inc.; Order Approving a Proposed Rule Change Relating to Revisions to the Definitions of Non-Public Arbitrator and Public Arbitrator

February 26, 2015.

I. Introduction

On June 17, 2014, the Financial Industry Regulatory Authority, Inc. (''FINRA'') filed with the Securities and Exchange Commission (''SEC'' or ''Commission''), pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'') [1] and Rule 19b–4 thereunder,[2] a proposed rule change to amend FINRA Rule 12100(p) of the Code of Arbitration Procedure for Customer Disputes (''Customer Code'') and FINRA Rule 13100(p) of the Code of Arbitration Procedure for Industry Disputes (''Industry Code'') (collectively, ''Codes''), defining the term ''non-public arbitrator;'' and FINRA Rule 12100(u) of the Customer Code and Rule 13100(u) of the Industry Code, defining the term ''public arbitrator.''

The proposed rule change was published for comment in the **Federal Register** on July 3, 2014.[3] On August 4, 2014, FINRA extended the time period in which the Commission must approve the proposed rule change, disapprove the proposed rule change, or institute proceedings to determine whether to approve or disapprove the proposed rule change to October 1, 2014. The Commission received three hundred sixteen (316) comment letters in response to the Notice of Filing.[4] On September 30, 2014, the Commission received a letter from FINRA responding to the comment letters.[5] On October 1, 2014, the Commission issued an order to institute proceedings pursuant to section 19(b)(2)(B) of the Act [6] to determine whether to approve or disapprove the proposed rule change. The order was published for comment in the **Federal Register** on October 7, 2014.[7] The Commission received fourteen (14) comment letters in response to the Proceedings Order.[8] On

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] Exchange Act Release No. 72491 (Jun. 27, 2014), 79 FR 38080 (Jul. 3, 2014) (Notice of Filing of Proposed Rule Change Relating to Revisions to the Definitions of Non-Public Arbitrator and Public Arbitrator) (''Notice of Filing''). The comment period closed on July 24, 2014.

[4] Of the 316 letters, 21 were unique letters, and 295 of the letters followed a form designated as the ''Type A'' letter, submitted by self-identified independent financial advisors (''independent financial advisors'') (''Type A Letter''). The unique letters were submitted by: Philip M. Aidikoff, Aidikoff, Uhl & Bakhtiari, dated July 1, 2014 (''Aidikoff Letter''); Steven B. Caruso, Esq., Maddox Hargett & Caruso, P.C., dated July 1, 2014 (''Caruso July Letter''); Ryan K. Bakhtiari, Aidikoff, Uhl & Bakhtiari, dated July 2, 2014 (''Bakhtiari July Letter''); Richard A. Stephens, Attorney at Law, dated July 6, 2014 (''Stephens Letter''); Daniel E. Bacine, Barrack, Rodos & Bacine, dated July 18, 2014 (''Bacine Letter''); Blossom Nicinski, dated July 20, 2014 (''Nicinski Letter''); Christopher L. Mass, dated July 21, 2014 (''Mass Letter''); Glenn S. Gitomer, McCausland Keen and Buckman, dated July 23, 2014 (''Gitomer July Letter''); David T. Bellaire, Esq., Executive Vice President & General Counsel, Financial Services Institute, dated July 24, 2014 (''FSI Letter''); Thomas J. Berthel, CEO, Berthel Fisher & Company, dated July 24, 2014 (''Berthel Letter''); Kevin M. Carroll, Managing Director and Associate General Counsel, Securities Industry and Financial Markets Association, dated July 24, 2014 (''SIFMA July Letter''); CJ Croll, Student Intern, Elissa Germaine, Supervising Attorney, and Jill I. Gross, Director, Investor Rights Clinic at Pace Law School, dated July 24, 2014 (''PIRC July Letter''); Jason Doss, President, Public Investors Arbitration Bar Association, dated July 24, 2014 (''PIABA Letter''); George H. Friedman, Esq., George H. Friedman Consulting, LLC, dated July 24, 2014 (''Friedman July Letter''); Gary N. Hardiman, dated July 24,2014 (''Hardiman Letter''); J. Burton LeBlanc, President, American Association for Justice, dated July 24, 2014 (''AAJ Letter''); Richard P. Ryder, Esq., President, Securities Arbitration Commentator, Inc., dated July 24, 2014 (''SAC July Letter''); Andrea Seidt, President, North American Securities Administrators Association, and Ohio Securities Commissioner, dated July 24, 2014 (''NASAA July Letter''); Robert Getman, dated July 28, 2014 (''Getman Letter''); Barry D. Estell, Attorney at Law (retired), dated August 13, 2014 (''Estell Letter''); and Walter N. Vernon III, Esq., dated August 21, 2014 (''Vernon Letter''). Comment letters are available at *www.sec.gov*.

The Commission discussed these comments in the Proceedings Order. *See infra* note 7.

[5] Letter from Margo A. Hassan, Assistant Chief Counsel, FINRA Dispute Resolution, to Brent J. Fields, Secretary, SEC, dated September 30, 2014 (''FINRA September Letter''). The FINRA September Letter is available at *www.sec.gov*.

[6] 15 U.S.C. 78s(b)(2)(B).

[7] Exchange Act Release No. 73277 (Oct. 1, 2014), 79 FR 60556 (Oct. 7, 2014) (Order Instituting Proceedings To Determine Whether To Approve or Disapprove Proposed Rule Change Relating to Revisions to the Definitions of Non-Public Arbitrator and Public Arbitrator) (''Proceedings Order''). The comment period closed on November 6, 2014.

[8] The comment letters were submitted by: John A. Bender, Esq., Member, Ryan Swanson Cleveland, dated October 10, 2014 (''Bender Letter''); George H. Friedman, Esquire, George H. Friedman Consulting, LLC, dated October 20, 2014 (''Friedman October Letter''); Richard P. Ryder, Esq., President, Securities Arbitration Commentator, Inc., dated October 26, 2014 (''SAC October Letter''); Steven B. Caruso, Esq., Maddox Hargett & Caruso, P.C., dated October 29, 2014 (''Caruso October Letter''); Ryan K. Bakhtiari, Aidikoff, Uhl & Bakhtiari, dated October 30, 2014 (''Bakhtiari October Letter''); Glenn S. Gitomer, McCausland Keen and Buckman, dated November 5, 2014 (''Gitomer November Letter''); William Beatty, President, North American Securities Administrators Association and Washington Securities Administrator, dated

Continued

November 24, 2014, the Commission received a letter from FINRA responding to the comment letters.[9] On December 11, 2014, the Commission received a letter from FINRA supplementing the FINRA November Letter.[10]

This order approves the proposed rule change.

II. Description of the Proposed Rule Change

In general, FINRA classifies arbitrators as ''non-public'' or ''public'' based on their professional and personal affiliations. Currently, FINRA Rule 12100(p) of the Customer Code and FINRA Rule 13100(p) of the Industry Code (defining the term ''non-public arbitrator'') list financial industry affiliations that might qualify a person to serve as a non-public arbitrator in the FINRA arbitration forum. Conversely, FINRA Rule 12100(u) of the Customer Code and FINRA Rule 13100(u) of the Industry Code (defining the term ''public arbitrator'') list affiliations that disqualify a person from serving as a public arbitrator in the FINRA arbitration forum. FINRA is proposing to delete the definitions in their entirety, and replace them with new definitions. The proposed amendments are described below.

A. Non-Public Arbitrator Definition

1. Proposed New Rule 12100(p)(1) [11]

Under the current non-public arbitrator definition, if a person is currently, or was within the past five years, affiliated with a financial industry entity specified in the rule (a ''specified financial industry entity''), the person is classified as a non-public arbitrator.[12] The rule permits these individuals to be reclassified as public arbitrators five years after ending all financial industry affiliations unless (i) they retired from, or spent a substantial part of their career with, a specified financial industry entity [13] or (ii) they were affiliated for 20 years or more with a specified financial industry entity.[14] The individuals subject to these exceptions remain classified as non-public arbitrators.

New Rule 12100(p)(1) would eliminate the five-year cooling-off provision for persons who work in the financial industry by permanently classifying persons who are, or were, affiliated with a specified financial industry entity at any point in their careers, for any duration, as non-public arbitrators. New Rule 12100(p)(1) would also add two new categories of financial industry professionals who would be permanently classified as non-public arbitrators: (i) Persons associated with, including registered through, a mutual fund or hedge fund, and (ii) persons associated with, including registered through, an investment adviser.[15]

In addition, new Rule 12100(p)(1) would clarify certain references made in the current rule. For instance, the new rule would replace ''[a person] registered under the Commodity Exchange Act; a member of a commodities exchange . . ., or associated with a person or firm registered under the Commodity Exchange Act,'' [16] with ''a person who is, or was, associated with, including registered through, under, or with (as applicable), . . . the Commodity Exchange Act or the Commodities Futures Trading Commission[.]'' Also, instead of referring to ''a member . . . of a registered futures association,'' [17] new Rule 12100(p)(1)(B) would identify the association as the National Futures Association. Moreover, new Rule 12100(p)(1)(B) would include a reference to ''[a person] who is, or was, associated with, including registered through, under, or with (as applicable), . . . the Municipal Securities Rulemaking Board.'' In addition, new Rule 12100(p)(1)(C) would include a provision to cover any entity ''organized under or registered pursuant to the Securities Exchange Act of 1934, Investment Company Act of 1940, or the Investment Advisers Act of 1940.'' This provision would cover financial industry affiliated persons not otherwise specified in the rule and potential categories of financial industry professionals that may be created in the future.

2. Proposed New Rule 12100(p)(2)

Under current Rule 12100(p)(3), attorneys, accountants, and other professionals who devoted 20 percent or more of their professional work in the last two years to serving specified financial industry entities and/or employees, are classified as non-public arbitrators.[18] Rule 12100(p)(3) permits these individuals to be reclassified as public arbitrators two years after they stopped providing services to specified financial industry entities, with one exception. A person who provided services for 20 calendar years or more over the course of his or her career is permanently disqualified from serving as a public arbitrator.[19]

Proposed new Rule 12100(p)(2) would broaden the application of current Rule 12100(p)(3) in three ways: (i) It would increase the look-back period from two years to five years, (ii) it would apply to not only services provided to specified financial industry entities but also to services provided to any persons or entities associated with those specified financial industry entities, and (iii) it would permanently disqualify from serving as public arbitrators persons who provided the specified services for

November 6, 2014 (''NASAA November Letter''); Kevin M. Carroll, Managing Director and Associate General Counsel, Securities Industry and Financial Markets Association, dated November 6, 2014 (''SIFMA November Letter''); Ryan Corbin, Kori Eskridge, and Kristina Ludwig, Student Interns, and Nicole Iannarone, Assistant Clinical Professor, Georgia State University College of Law Investor Advocacy Clinic, dated November 6, 2014 (''GSU Letter''); CJ Croll and Jeffrey Valacer, Student Interns, Elissa Germaine, Supervising Attorney, and Jill I. Gross, Director, Investor Rights Clinic at Pace Law School, dated November 6, 2014 (''PIRC First November Letter''); Greg Curley, Senior Litigation Counsel, American International Group, Inc., AIG Advisor Group, Inc., dated November 6, 2014 (''AIG Letter''); William A. Jacobson, Esq., Clinical Professor of Law and Director, and Nathan F. Baum, Student, Cornell University Law School Securities Law Clinic, dated November 6, 2014 (''CSLC Letter''); Daniel Wolfe, Legal Intern, and Teresa Verges, Director, University of Miami Investor Rights Clinic, dated November 6, 2014 (''UMIRC Letter''); and CJ Croll and Jeffrey Valacer, Student Interns, Elissa Germaine, Supervising Attorney, and Jill I. Gross, Director, Investor Rights Clinic at Pace Law School, dated November 21, 2014 (''PIRC Second November Letter''). Comment letters are available at *www.sec.gov*.

[9] Letter from Margo A. Hassan, Assistant Chief Counsel, FINRA Dispute Resolution, to Brent J. Fields, Secretary, SEC, dated November 24, 2014 (''FINRA November Letter''). The FINRA November Letter is available at *www.sec.gov*.

[10] Letter from Margo A. Hassan, Assistant Chief Counsel, FINRA Dispute Resolution, to Brent J. Fields, Secretary, SEC, dated December 11, 2014 (''FINRA December Letter''). The FINRA December Letter is available at *www.sec.gov*.

[11] Where this order refers only to rules in the Customer Code, the changes and discussions also apply to the corresponding rules in the Industry Code.

[12] *See* current Rule 12100(p)(1). This provision applies to a person who is, or was within the past five years: (1) Associated with, including registered through, a broker or dealer (including a government securities broker or dealer or a municipal securities dealer); (2) registered under the Commodities Exchange Act; (3) a member of a commodities exchange or a registered futures association; or (4) associated with a person or firm registered under the Commodities Exchange Act.

[13] *See* current Rule 12100(p)(2).

[14] *See* current Rule 12100(u)(2).

[15] Currently, FINRA Rules preclude these individuals from serving as arbitrators in any capacity. *See* current Rule 12100(p) and (u). If, however, they end their affiliation they may serve as public arbitrators after a two-year cooling-off period. These individuals may serve as non-public arbitrators if they are qualified to serve under another provision (*e.g.*, dually registered as an investment adviser and an associated person of a FINRA member).

[16] *See* current FINRA Rule 12100(p)(1)(B)-(D).

[17] *See* current FINRA Rule 12100(p)(1)(C).

[18] The rule applies to the persons and entities listed in current Rule 12100(p)(1).

[19] *See* current Rule 12100(u)(2).

15 calendar years or more over the course of their careers (in contrast to the current 20 year provision).[20]

In addition, the proposal would replace the phrase ''professional work'' with ''professional time.''

3. Proposed New Rule 12100(p)(3)

Currently, FINRA rules permit individuals who represent or provide professional services to investors in securities disputes to serve as public arbitrators.[21]

Under proposed new Rule 12100(p)(3), attorneys, accountants, and other professionals who devoted 20 percent or more of their professional time, within the past five years, to serving parties in investment or financial industry employment disputes would be classified as non-public arbitrators. However, Rule 12100(p)(3) would permit these individuals to serve as public arbitrators five years after they stopped devoting 20 percent or more of their professional time to serving parties in investment or financial industry employment disputes with one exception. A person who provided services for 15 calendar years or more over the course of his or her career would be permanently disqualified from serving as a public arbitrator.[22]

4. Proposed New Rule 12100(p)(4)

Under current Rule 12100(p)(4), any person who is an employee of a bank or other financial institution who (i) effects transactions in securities, including government or municipal securities, and commodities, futures, or options, or (ii) supervises or monitors the compliance with the securities and commodities laws of employees who engage in such activities is classified as a non-public arbitrator. When these individuals end their affiliation, they are immediately reclassified as public arbitrators unless they have engaged in this type of work for 20 years or more over the course of their careers.[23]

Proposed new Rule 12100(p)(4) would add a five-year look-back period to this provision. Specifically, under proposed new Rule 12100(p)(4), any person who, within the last five calendar years, was an employee of a bank or other financial institution who (i) effects transactions in securities, including government or municipal securities, commodities, futures, or options, or (ii) supervises or monitors the compliance with the securities and commodities laws of employees who engage in such activities would be classified as a non-public arbitrator. However, proposed new Rule 12100(p)(4) would permit these individuals to serve as public arbitrators five years after they ended their industry affiliation unless they provided these services for 15 years or more.[24] After 15 years of service, the proposed rules would permanently classify such individuals as non-public arbitrators.[25]

B. Public Arbitrator Definition

1. Proposed New Rule 12100(u)(1)

Current Rules 12100(u)(1) and 12100(u)(3) identify the types of financial industry employment that disqualify a person from serving as a public arbitrator by cross-referencing those activities listed in current Rule 12100(p) (defining ''non-public arbitrators''). Consequently, these otherwise qualified individuals are classified as non-public arbitrators. Proposed new Rule 12100(u)(1) would retain the types of financial industry employment that would disqualify a person from serving as a public arbitrator with revisions identical to those in proposed new Rule 12100(p)(1). Specifically: (i) Instead of referring to ''[a person] registered under the Commodity Exchange Act; a member of a commodities exchange . . ., or associated with a person or firm registered under the Commodity Exchange Act,'' proposed new Rule 12100(u)(1)(B) would refer to ''a person who is, or was, associated with, including registered through, under, or with (as applicable), . . . the Commodity Exchange Act or the Commodities Futures Trading Commission;'' (ii) instead of referring to ''a member . . . of a registered futures association,'' proposed new Rule 12100(u)(1)(B) would identify the association as the National Futures Association; (iii) proposed new Rule 12100(u)(1)(B) would add a reference to ''[a person] who is, or was, associated with, including registered through, under, or with (as applicable), . . . the Municipal Securities Rulemaking Board;'' and (iv) proposed new Rule 12100(p)(1)(C) would include a provision to cover any entity ''organized under or registered pursuant to the Securities Exchange Act of 1934, Investment Company Act of 1940, or the Investment Advisers Act of 1940.'' This provision would cover financial industry affiliated persons not otherwise specified in the rule and potential categories of financial industry professionals that may be created in the future.

As stated above, current FINRA Rule 12100 (p)(1) generally permits individuals classified as non-public arbitrators to become reclassified as public arbitrators five years after ending their affiliations (subject to specified exceptions).[26] As explained in the above discussion on proposed new Rule 12100(p)(1), the proposal would eliminate the five-year cooling-off period[27] resulting in the permanent classification of these individuals as non-public arbitrators pursuant to new Rule 12100(u)(1).

2. Proposed New Rules 12100(u)(2) and 12100(u)(6)[28]

Under current Rule 12100(u)(1), attorneys, accountants, and other professionals who devoted 20 percent or more of their professional work in the last two years to serving specified financial industry entities and/or employees listed in current Rule 12100(p)(1), may not be classified as public arbitrators. However, current Rule 12100(u)(1) permits these individuals to be reclassified as public arbitrators two years after they stopped providing those services, with one exception.[29] A person who provided services for 20 calendar years or more over the course of his or her career is permanently disqualified from serving as a public arbitrator.[30]

Proposed new Rules 12100(u)(2) and 12100(u)(6) would broaden the provisions of current Rule 12100(u)(1) in three ways: (i) It would apply to not only services provided to specified financial industry entities but also to services provided to any persons or

[20] *See* proposed new Rule 12100(u)(2). The 15 years are a total number of years—they would not have to be consecutive years.

[21] Currently, these individuals are not qualified under the non-public arbitrator definition to serve as non-public arbitrators, nor are they disqualified from serving as public arbitrators under the public arbitration definition.

[22] *See* proposed new Rule 12100(u)(3). The 15 years are a total number of years—they would not have to be consecutive years.

[23] *See* current Rule 12100(u)(2).

[24] *See* proposed new Rule 12100(u)(4). The 15 years are a total number of years—they would not have to be consecutive years.

[25] *See* proposed new Rule 12100(u)(4).

[26] *See supra* notes 12, 12, and 13 and their accompanying text.

[27] Current Rule 12100(u)(3) subjects investment advisers and persons associated with, including registered through, a mutual fund or hedge fund to a two-year cooling-off period after ending the affiliation. Under proposed new Rule 12100(u)(1), these individuals would also be subject to permanent classification as non-public arbitrators.

[28] Although the descriptions of the disqualifications in proposed new Rules 12100(u)(2) and 12100(u)(6) are almost identical, FINRA believes it would add clarity to the definition to distinguish when the provisions would result in a permanent classification, and when they would result in a temporary classification. *See* Notice of Filing, 79 FR 38080, 38084 (Jul. 3, 2014).

[29] *See* current Rule 12100(u)(1) (incorporating, among other things, current Rule 12100(p)(3)).

[30] *See* current Rule 12100(u)(2) (referencing the 20-year time period).

entities associated with those specified financial industry entities;[31] (ii) new Rule 12100(u)(2) would decrease the number of years for a permanent disqualification from 20 years to 15 years;[32] and (iii) new Rule 12100(u)(6) would increase the cooling-off period from two years to five years.[33] In sum, the proposal would permanently disqualify from serving as public arbitrators persons who provided the specified services for 15 calendar years or more over the course of their careers.

3. Proposed New Rules 12100(u)(3) and 12100(u)(7)

Under proposed new Rules 12100(u)(3) and 12100(u)(7) attorneys, accountants, expert witnesses, and other professionals who devote 20 percent or more of their professional time annually to representing or providing services to parties in disputes concerning investment accounts or transactions, or employment relationships within the financial industry generally would be classified as non-public arbitrators.[34] New Rule 12100(u)(7), however, would permit these individuals to be reclassified as public arbitrators five years after the final calendar year in which they devoted 20 percent or more of their professional time providing those services with one exception. A person who provided services for 15 calendar years or more over the course of his or her career would be permanently disqualified from serving as a public arbitrator.[35]

4. Proposed New Rules 12100(u)(4) and 12100(u)(8)[36]

Under current Rule 12100(u)(1), any person who is an employee of a bank or other financial institution and (i) effects transactions in securities, including government or municipal securities, and commodities, futures, or options, or (ii) supervises or monitors the compliance with the securities and commodities laws of employees who engage in such activities is classified as a non-public arbitrator.[37] When these individuals end their affiliation, they may immediately be reclassified as public arbitrators unless they have engaged in this type of work for 20 years or more over the course of their careers.[38]

Proposed new Rules 12100(u)(4) and 12100(u)(8) would broaden the application of provisions of current Rule 12100(u)(1) in two ways: (i) Proposed new Rule 12100(u)(8) would permit these individuals to be reclassified as public arbitrators five years after they ended their affiliation, and (ii) proposed new Rule 12100(u)(4) would decrease the number of years required for a permanent classification as a non-public arbitrator from 20 years to 15 years.[39]

5. Proposed New Rule 12100(u)(5)

Under current Rules 12100(u)(6) and 12100(u)(7), individuals who are employed by,[40] or who are directors or officers of,[41] an entity that directly or indirectly controls, is controlled by, or is under common control with, any partnership, corporation, or other organization that is engaged in the securities business are classified as non-public arbitrators.[42] These persons may become public arbitrators two years after ending their affiliation.[43]

Proposed new Rule 12100(u)(5) would broaden the provisions of current Rules 12100(u)(6) and 12100(u)(7) in two ways: (i) It would expand the scope of the classification by replacing the phrase ''securities business'' with ''financial industry,'' and (ii) it would increase the cooling-off period from two years to five years.[44]

6. Proposed New Rule 12100(u)(9)

Under current Rule 12100(u)(4), an attorney, accountant, or other professional whose firm derived 10 percent or more of its annual revenue in the past two years from providing services to specified financial industry entities is classified as a non-public arbitrator. Similarly, under current Rule 12100(u)(5), any attorney, accountant, or other professional whose firm derived $50,000 or more in annual revenue in the past two years from providing professional services to any specified financial industry entity relating to any customer dispute concerning an investment account or transaction is also classified as a non-public arbitrator. In both instances, however, current Rule 12100(u) permits such individuals to be reclassified as public arbitrators two years after they ended their affiliation with the firm or two years after the firm no longer derived annual revenue from specified financial industry entities that exceeding those thresholds.[45]

Proposed new Rule 12100(u)(9) would: (i) Merge current Rules 12100(u)(4) and 12100(u)(5), and (ii) remove the requirement that the $50,000 in revenue relate to customer disputes concerning an investment account or transaction. Specifically, under proposed new Rule 12100(u)(9) any person who is an attorney, accountant, or other professional whose firm derived $50,000 or more, or at least 10 percent of its annual revenue, in any single calendar year during the past two calendar years, from (i) the entities listed in proposed new Rule 12100(u)(1) and/or from any persons or entities associated with such listed entities, or (ii) a bank or other financial institution where persons effect transactions in securities including government or municipal securities, commodities, futures, or options would be classified as a non-public arbitrator. Proposed new Rule 12100(u)(9) would, however, permit such individuals to be reclassified as public arbitrators two calendar years after ending their employment with the employing firm.

7. Proposed New Rule 12100(u)(10)

Under proposed new Rule 12100(u)(10), attorneys, accountants, and other professionals whose firm derived $50,000 or more, or at least 10 percent of its annual revenue, in any single calendar year during the past two calendar years, from individual and/or institutional investors relating to securities matters generally would be classified as non-public arbitrators. Proposed new Rule 12100(u)(10) would, however, permit such individuals to be

[31] *Cf.* current Rule 12100(p)(3) to illustrate the scope of coverage to be expanded by proposed new Rule 12100(u)(2).

[32] The 15 years are a total number of years—they would not have to be consecutive years.

[33] Substantively, proposed new Rules 12100(u)(2) and 12100(u)(6) are analogous to proposed new Rule 12100(p)(2).

[34] The substance of proposed new Rules 12100(u)(3) and 12100(u)(7) corresponds to the substance of proposed new Rule 12100(p)(3).

[35] *See* proposed new Rule 12100(u)(3). The 15 years are a total number of years—they would not have to be consecutive years.

[36] Although the descriptions of the disqualifications in proposed new Rules 12100(u)(4) and 12100(u)(8) are almost identical, FINRA believes it would add clarity to the definition to distinguish when the provisions would result in a permanent classification, and when they would result in a temporary classification. *See* Notice of Filing, 79 FR 38080, 38084 (Jul. 3, 2014).

[37] *See* current Rule 12100(u)(1), which cross-references current Rule 12100(p)(4), among other provisions.

[38] *See* current Rule 12100(u)(2).

[39] The 15 years are a total number of years—they would not have to be consecutive years.

[40] *See* current Rule 12100(u)(6).

[41] *See* current Rule 12100(u)(7).

[42] Under current Rules 12100(u)(6) and 12100(u)(7), a spouse or immediate family member of such individuals would also be classified as a non-public arbitrator.

[43] *See* current Rule 12100(u); *see also infra* note 49 and accompanying text.

[44] Current Rule 12100(u) subjects individuals covered by current Rules 12100(u)(6) and 12100(u)(7) to a two-year cooling-off period after ending the affiliation. The disqualification for spouses and immediate family members is addressed in proposed new Rule 12100(u)(11), which retains a two-year cooling-off period after ending the affiliation or relationship (discussed below).

[45] Current Rule 12100(u) subjects individuals covered by current Rules 12100(u)(4) and 12100(u)(5) to a two-year cooling-off period after ending the affiliation.

reclassified as public arbitrators two calendar years after ending their employment with the employing firm or two years after the firm no longer derived annual revenue from individual and/or institutional investors relating to securities matters that exceeding those thresholds.

8. Proposed New Rule 12100(u)(11)

Under current Rules 12100(u)(6) and 12100(u)(7), an individual whose spouse or immediate family member is employed by,[46] or is a director or officer of,[47] an entity that directly or indirectly controls, is controlled by, or is under common control with, any partnership, corporation, or other organization that is engaged in the securities business is classified as a non-public arbitrator. These persons may become public arbitrators two years after ending their affiliation.[48]

In addition, under current Rule 12100(u)(8), an individual whose spouse or immediate family member is engaged in the conduct or activities described in current Rule 12100(p)(1)–(4) (*i.e.,* is employed by a specified financial entity or provides services to such an entity and/or the entity's employees) is classified as a non-public arbitrator.[49]

Proposed new Rule 12100(u)(11) would: (i) Merge current Rules 12100(u)(6), 12100(7), and 12100(u)(8), and (ii) add a two year cooling-off period. Specifically, under new Rule 12100(u)(11) a person whose immediate family member is an individual whom FINRA would disqualify from serving on the public arbitrator roster would be classified as a non-public arbitrator. However, if the person's immediate family member ends the disqualifying affiliation, or the person ends the relationship with the individual so that the individual is no longer the person's immediate family member, the person would be able to be reclassified as a public arbitrator after two calendar years had passed from the end of the affiliation or relationship.

9. Definition of ''Immediate Family Member''

Current Rule 12100(u) defines the term ''immediate family member'' to include a person's parent, stepparent, child, stepchild, member of a person's household, an individual to whom a person provides financial support of more than 50 percent of his or her annual income, or a person who is claimed as a dependent for federal income tax purposes. Current Rule 12100(u) does not define the term ''spouse.''

Proposed new Rule 12100(u) would amend the definition of ''immediate family member'' to add as immediate family members a person's spouse, partner in a civil union, and domestic partner.

The text of the proposed rule change is available, at the principal office of FINRA, on FINRA's Web site at *http://www.finra.org,* and at the Commission's Public Reference Room. A more detailed description of the proposed rule changes is contained in the Notice of Filing and the Proceedings Order.[50]

III. Comment Summary [51]

In response to the Notice of Filing, the Commission received 316 comment letters (including 295 copies of substantially the same letter submitted by self-identified independent financial advisors). Five of the commenters expressed support for the proposed rule change in its entirety.[52] Two commenters opposed the proposed rule change in its entirety.[53] The other commenters (including the independent financial advisors) generally supported the proposed rule change in part, but raised concerns about various aspects of the proposal.

In response to the Proceedings Order, the Commission received fourteen comments.[54] Of these comments, four supported the proposal,[55] three opposed the proposal,[56] and the remainder partially supported or opposed aspects of the proposal.[57]

A. Permanent Classification of Industry Employees as Non-Public Arbitrators

In general, the proposal would result in the permanent classification (or reclassification of current public arbitrators) of individuals who worked in the financial industry (a) in any capacity, (b) at any point, and (c) for any duration, (''Industry Affiliates'') as non-public arbitrators. Many commenters opposed the permanent classification of Industry Affiliates as non-public arbitrators for varying reasons.[58]

1. Elimination of the Cooling-Off Period

In general, the proposal would result in the classification (or reclassification of current public arbitrators) of individuals as non-public arbitrators who otherwise would have been classified as public arbitrators. Specifically, individuals who worked in the financial industry for any duration would be permanently classified as non-public arbitrators (effectively eliminating the five-year cooling-off period).[59]

Several commenters supported this provision as providing a workable ''bright-line'' test that would address criticism regarding bias (perceived or actual) in favor of the financial industry,[60] including one that stated that eliminating the five-year cooling-off period would eliminate industry-side potential and perceived bias.[61]

Many commenters opposed eliminating the five-year cooling-off period for Industry Affiliates.[62] Some of these commenters expressed concern that eliminating the cooling-off period could exclude arbitrators with industry experience who could be useful on a panel to, among other things, educate the other panelists on industry practice.[63] Another commenter suggested that FINRA classify Industry Affiliates as neither public nor non-public arbitrators for a set number of years following the date they end their affiliation with the financial industry.[64]

[46] *See* current Rule 12100(u)(6).

[47] *See* current Rule 12100(u)(7).

[48] *See* current Rule 12100(u).

[49] While current Rule 12100(u) does not include a cooling-off period for this classification, FINRA stated that it has been its practice to make these individuals wait for five years after their spouse or immediate family member ends the disqualifying affiliation before the individuals may be reclassified public arbitrators. *See* Notice of Filing, 79 FR 38080, 38085 (Jul. 3, 2014).

[50] *See supra* notes 3 and 7.

[51] Some provisions of the proposed rule change would result in a similar outcome—the permanent classification of certain individuals as non-public arbitrators. Accordingly, where the discussion of comments references specific provisions of the proposal, that discussion may also apply to other provisions in the proposal that would result in similar outcomes.

[52] *See* Aidikoff Letter, Bakhtiari July Letter, Caruso July Letter, Gitomer July Letter, and SIFMA July Letter.

[53] *See* SAC July Letter (stating that the proposed rule change should be disapproved until a cost-benefit analysis is provided) and Friedman July Letter (stating that FINRA should ''go back to the drawing board'').

[54] *See supra* note 8.

[55] *See* Caruso October Letter, Bakhtiari October Letter, Gitomer November Letter, and SIFMA November Letter.

[56] *See* Bender Letter, Friedman October Letter, and SAC October Letter.

[57] *See* UMIRC Letter, GSU Letter, AIG Letter, CSLC Letter, NASAA November Letter, PIRC First November Letter, and PIRC Second November Letter.

[58] *See, e.g.,* Type A Letter, FSI Letter, Getman Letter, and Vernon Letter.

[59] *See* proposed new Rules 12100(p)(1) and (u)(1).

[60] *See* Aidikoff Letter; *see also* Caruso October Letter, Bakhtiari October Letter, Gitomer November Letter, SIFMA November Letter, CSLC Letter Bakhtiari July Letter, SIFMA July Letter, NASAA July Letter, PIABA Letter, and AAJ Letter.

[61] *See* SIFMA November Letter.

[62] *See* Bender Letter, Friedman October Letter, SAC October Letter, Type A Letter, FSI Letter, Getman Letter, Berthel Letter, and Vernon Letter.

[63] *See* Type A Letter and Berthel Letter; *see also* FSI Letter.

[64] *See* Friedman October Letter; *see also* PIRC July Letter and FSI Letter (suggesting that FINRA should

Continued

This commenter also opposed categorizing any industry employee, regardless of capacity, as a non-public arbitrator. For example, this commenter suggested that industry employees who are clerical should be classified as neither public nor non-public arbitrators.[65]

In its response, FINRA disagreed with the opposing commenters, stating that its constituents agreed that any cooling off period for financial industry employees would ''leave a perception of unfairness for some advocates.'' [66] In addition, FINRA stated that investor advocates have a stated preference for using expert witnesses and making their own arguments rather than relying on members of the arbitration panel that have industry experience to explain and influence matters.[67] FINRA also stated, however, that former industry employees have valuable knowledge and experience, and that completely removing them from arbitrator service would negatively impact the forum.[68] Similarly, FINRA stated that if an Industry Affiliate meets FINRA's qualifications for service as an arbitrator (regardless of the capacity in which she or he served the financial industry), she or he should be classified as a non-public arbitrator.[69] FINRA stated that parties to an arbitration would continue to have the authority to strike any or all arbitrators on the non-public list.[70]

Ultimately, FINRA stated that it believes that it is more workable to use a bright-line test than a pro rata cooling-off period for financial industry employees.[71] Accordingly, FINRA declined to amend the proposed rule change.[72]

2. All Employees, Regardless of Capacity, To Be Classified as Non-Public Arbitrators

Four commenters stated that, as proposed, the rule would improperly characterize certain individuals without true financial industry experience as non-public arbitrators.[73] One of these commenters expressed concern that individuals performing solely clerical or ministerial functions for a financial industry firm would be classified as non-public arbitrators because they would be considered ''associated persons'' as defined by Rule 12100(p).[74] Accordingly, this commenter suggested FINRA amend the definition of the term ''associated person'' in the proposal to track the definition of the term ''associated person'' in section 3(a)(18) of the Act, which excludes individuals performing solely clerical or ministerial functions. Another commenter suggested that the proposal should only classify individuals who ''worked for [a financial industry firm] in a capacity for which testing and registration is required'' as non-public arbitrators to address this concern.[75]

In its response, FINRA stated that its staff believes that ''investor concerns about the neutrality of the public roster apply to all industry employees, including those who serve in clerical or ministerial positions.'' [76] In addition, FINRA stated that it believes that if a financial industry affiliate meets FINRA's qualifications for service as an arbitrator, FINRA should appoint the person to the non-public arbitrator roster.[77] Accordingly, FINRA declined to amend the proposed rule change.[78]

B. Classification of Professionals

1. Classifying Investor Advocates as Non-Public Arbitrators

In general, the proposed rule change would classify attorneys, accountants, expert witnesses, or other professionals who (a) devote 20 percent or more of their professional time (b) in any single calendar year within the past five calendar years (c) to representing or providing services to parties in disputes concerning investment accounts or transactions, or employment relationships within the industry (''Investor Advocates'') as non-public arbitrators.[79] Currently, individuals meeting this description are classified as public arbitrators.

Several commenters supported this provision,[80] including two commenters that indicated that this provision is necessary to eliminate potential and perceived investor-side bias.[81] Specifically, one of these commenters stated that the rationale for eliminating perceived bias is the same for both public and non-public arbitrators.[82] Another commenter stated that eliminating perceived investor-side bias is necessary in light of the implementation of the all-public-panel rule.[83] Similarly, one commenter noted that the historical distinction of classifying arbitrators as pubic arbitrators based on their financial industry experience was compelling when FINRA required the presence of someone with financial industry experience on all panels, but is no longer necessary with the advent of the all-public-panel rule.[84]

Several commenters also opposed the classification of Investor Advocates as non-public arbitrators,[85] including some commenters who supported the classification of industry-affiliated persons as non-public arbitrators.[86] Many of these commenters stated that including investor representatives in the public arbitrator pool counteracts some of the existing perceived bias in favor of the financial industry in the FINRA arbitration forum.[87] One commenter stated that ''[he could not] fathom how this [provision] would further investor protection.'' [88] Two other commenters stated that there is no evidence supporting the assumption that professionals who serve the investing public have any bias either for or against

adopt a cooling-off period for industry employees that would be proportional to the number of years they were Industry Affiliates).

[65] *See* Friedman October Letter.

[66] *See* FINRA September Letter.

[67] *Id.*

[68] *See* FINRA November Letter; *see also* FINRA September Letter.

[69] *See* FINRA November Letter; *see also* FINRA September Letter.

[70] *See* FINRA November Letter; *see also* FINRA September Letter.

[71] *See* FINRA September Letter.

[72] *See* FINRA September Letter and FINRA November Letter.

[73] *See* Stephens Letter, FSI Letter, Getman Letter, and Vernon Letter.

[74] *See* Stephens Letter.

[75] *See* Vernon Letter (expressing concern that under the proposal [the commenter] could be characterized as a non-public arbitrator based solely on his capacity as a ''trainee'' for Merrill Lynch in 1983).

[76] *See* FINRA September Letter.

[77] *See* FINRA November Letter.

[78] *See* FINRA September Letter and FINRA November Letter.

[79] *See* proposed new Rule 12100(p)(3).

[80] *See* Caruso October Letter, Bakhtiari October Letter, Gitomer November Letter, SIFMA November Letter, AIG Letter, FSI Letter, Bethel Letter, and SIFMA July Letter. The commenters who used the Type A Letter also supported this provision.

[81] *See* SIFMA November Letter and AIG Letter.

[82] *See* SIFMA November Letter; *see also* SIFMA July Letter (stating that the proposal ''strike[s] an appropriate balance in the interests of fairness, perceptions of fairness, and arbitrator neutrality for all parties'').

[83] *See* AIG Letter.

[84] *See* SIFMA November Letter.

[85] *See* Bender Letter, Friedman October Letter, SAC October Letter, UMIRC Letter, GSU Letter, CSLC Letter, NASAA November Letter, PIRC Second November Letter, NASAA July Letter, PIABA Letter, Stephens Letter, PIRC July Letter, Bacine Letter, Mass Letter, Hardiman Letter, and Friedman July Letter.

[86] *See, e.g.,* CSLC Letter and NASAA November Letter; *see also* NASAA July Letter (arguing that FINRA should classify as non-public arbitrators only persons ''representing or providing services to non-retail parties in disputes concerning investment accounts or transactions, or employment relationships within the financial industry''), Stephens Letter (arguing that FINRA should only classify as non-public arbitrators persons ''. . . representing or providing services to parties in disputes [other than customers] concerning investment accounts . . .''), and Bacine Letter (arguing that the distinction between public and non-public arbitrators has always been based on whether the arbitrators had industry experience and argued for keeping this distinction).

[87] *See, e.g.,* CSLC Letter, NASAA July Letter, and PIABA Letter.

[88] *See* Friedman October Letter.

the financial industry.[89] Another commenter stated that it believes that the classification of Investor Advocates as non-public arbitrators is inconsistent with the concept of a ''public'' arbitrator.[90] Two commenters argued that there is a perception that the arbitration system is unfair or always ''stacked against'' investors and that ''any proposal to change the definitions of public and non-public arbitrator should be focused on mitigating the investing public's perception of bias, not the industry's perception of bias.'' [91] Another commenter asserted that the ''public'' and ''non-public'' labels were never intended to account for biases in favor of the investing public but rather to eliminate arbitrators' perceived and actual bias against customers who are compelled to participate in this forum by the financial industry.[92] This commenter also argued that the proposed new classifications would cause confusion because Investor Advocates generally represent the public and would naturally be considered to be associated with the ''public'' pool.[93]

In the Notice of Filing, FINRA stated that it proposed the reclassification of arbitrator categories in response to concerns regarding the neutrality of the public arbitrator roster raised by both investor representatives and industry representatives.[94] Similarly, in its response FINRA stated that addressing both investor and industry perceptions of bias in the public arbitrator roster would better safeguard the integrity of its arbitration forum.[95] FINRA also stated that parties would continue to receive extensive disclosure statements on each proposed arbitrator that describe in detail that arbitrator's background. Accordingly, FINRA believes that under the proposal parties in customer cases would be able to address their own perceptions of bias that may arise under the proposal through the use of their unlimited strikes on the list of non-public arbitrators.[96] Thus, FINRA declined to amend the proposed rule change.[97]

2. Five-Year Cooling-Off Period for Professionals Representing Industry

In general, the proposed rule change would extend the cooling-off period from two years to five years for attorneys, accountants, expert witnesses, or other professionals who (a) devote 20 percent or more of their professional time (b) in any single calendar year within the past five calendar years (c) to representing or providing services to financial industry firms (''Industry Advocates'').

Three commenters generally supported this provision as fair and acknowledged the consistency of approach towards professionals representing investors and those representing industry.[98] Another commenter generally supported removing Industry Advocates from the public arbitrator roster, but believed that they should be permanently classified as non-public arbitrators like financial industry employees (*i.e.,* the commenter suggested that FINRA eliminate the cooling-off period rather than extend it).[99]

In its response, FINRA stated that it has drawn a distinction between individuals who work in the financial industry and individuals who provide services to the financial industry. FINRA also stated its belief that to help ensure fairness to all forum users, it needed to take a consistent approach to cooling-off periods for service providers to both investors and the financial industry.[100] Accordingly, FINRA declined to amend the proposed rule change.[101]

3. Using Professional Time To Quantify Professional Work

As stated above, the proposal would classify attorneys, accountants, expert witnesses, or other professionals as either public arbitrators or non-public arbitrators depending on, among other things, the percentage of time those individuals devoted to representing either the financial industry or investors.[102] Some commenters questioned the appropriateness of classifying individuals as public or non-public arbitrators based on the ''amount of time'' an individual devotes to a client.[103] Alternatively, commenters suggested using revenue instead of professional time as the metric to quantify professional work.[104] One of these commenters suggested that revenue is a better measurement since not all professionals track their work in terms of time, but all professionals would have a record of revenue.[105] Another one of these commenters stated that using professional time as the metric would categorize professors and supervisors in investor advocacy clinics as non-public arbitrators, even though the clinic does not earn any revenues and the primary function of the clinic is educational.[106]

In its response, FINRA stated that given the purpose of the proposal is to address the perception that professionals who regularly provide services to investors might be biased in favor of investors, it does not believe that it would be appropriate to make an exception for employees of law school investor advocacy clinics.[107] FINRA also stated that the proposed rule change regarding ''professional time'' was specifically discussed by its National Arbitration and Mediation Committee (''NAMC'') [108] and it agreed that the change ''added clarity to the rule text, was simpler to apply, and would result in more accurate calculations by arbitrator applicants and arbitrators reviewing their business mix.'' [109] Accordingly, FINRA declined to amend the proposed rule change.[110]

[89] *See* GSU Letter and PIABA Letter.

[90] *See* NASAA November Letter; *see also* Mass Letter (asserting that lawyers who represent investors or claimants are public arbitrators because they work on behalf of the public at large against the financial industry), and Hardiman Letter (stating that classifying Investor Advocates as non-public arbitrators would be ''burying professionals who represent the investing public in the industry non-public side'').

[91] *See* CSLC Letter (citing the NASAA July Letter and PIABA Letter) and PIRC Second November Letter.

[92] *See* UMIRC Letter.

[93] *See* UMIRC Letter; *see also, e.g.,* Stephens Letter, NASAA July Letter, PIABA Letter, PIRC July Letter, Bacine Letter (stating that the proposal would create confusion since the U.S. courts, the American Arbitration Association, and the general public generally view professionals who represent investors to be ''public arbitrators''), and PIRC July Letter (stating that past NASD response letters, as well as the FINRA Web site, also make the distinction that professionals who represent investors are typically public arbitrators).

[94] *See* Notice of Filing, 79 FR 38080, 38081 (Jul. 3, 2014); *see also* FINRA September Letter (stating that industry constituents have expressed concern about the neutrality of the public arbitrator roster because of the presence on the roster of Investor Advocates).

[95] *See* FINRA November Letter.

[96] *Id.*

[97] *See* FINRA September Letter and FINRA November Letter.

[98] *See* SIFMA July Letter, PIABA Letter, and Berthel Letter.

[99] *See* NASAA July Letter.

[100] *See* FINRA September Letter.

[101] *Id.*

[102] *See* proposed new Rule 12100(p)(3).

[103] *See* UMIRC Letter and PIRC July Letter.

[104] *See* UMIRC Letter and PIRC July Letter.

[105] *See* PIRC July Letter.

[106] *See* UMIRC Letter.

[107] *See* FINRA November Letter.

[108] NAMC provides policy guidance to FINRA Dispute Resolution staff. Its members include investors, securities industry professionals, and FINRA arbitrators and mediators. A majority of NAMC's members and its chair are non-industry representatives. *See* FINRA Advisory Committees, National Arbitration and Mediation Committee, available at *http://www.finra.org/aboutfinra/leadership/committees/p197363*.

[109] *See* FINRA September Letter and FINRA November Letter.

[110] *See* FINRA September Letter and FINRA November Letter.

4. Impact to the Pool of Public Arbitrators

a. Number of Available Public Arbitrators

Since February 1, 2011, customers have been able to choose an arbitration panel composed entirely of public arbitrators (*i.e.,* an ''all-public panel'').[111] One commenter cited statistics that indicated that customers in approximately three-quarters of eligible cases choose an all-public panel.[112] Another commenter estimated that public arbitrators account for approximately 85% of those that serve.[113] Consequently, several commenters expressed concern that the proposed rule change would negatively impact the number of public arbitrators available to serve in FINRA's arbitration forum.[114] Similarly, some commenters suggested that under the proposed rule change FINRA would need to devote resources to recruit additional public arbitrators.[115]

Several commenters questioned FINRA's estimate that the total number of arbitrators that would be reclassified from public arbitrators to non-public arbitrators would be approximately 474 [116] out of 3,567 current public arbitrators (approximately 13.3%).[117] A number of commenters stated that they believe that FINRA severely underestimated the number of arbitrators that would be reclassified.[118] Some commenters estimated that the number of public arbitrators that would be reclassified is approximately one-fourth or 25% of the current public arbitrator pool.[119] Consequently, commenters expressed concern that the proposal would result in delays in arbitration proceedings due to an insufficient number of arbitrators.[120] Two commenters cited the recent stay in arbitration proceedings in Puerto Rico as an example of the possible outcome if the pool of public arbitrators is drastically reduced in some geographic areas.[121]

In its response, FINRA acknowledged commenters' concerns about reducing the number of public arbitrators currently on the public arbitrator roster. FINRA also stated, however, that it believes that addressing users' perceptions of the neutrality of its public arbitrators outweighs those concerns.[122] In addition, FINRA stated that it intends to address commenters' concerns as well, stating its commitment to aggressively recruiting arbitrators to help ensure that ''the forum has a sufficient number of public arbitrators to serve the needs of forum users in each of its hearing locations.'' [123] Specifically, FINRA illustrated its ongoing efforts to recruit public arbitrators since the adoption of the all-public panel rule.[124] In addition, FINRA expressed its commitment to arbitrator retention, citing its recent rule proposal to increase the amount of honoraria arbitrators receive in connection with serving on a panel.[125] In its response, FINRA concluded that despite the temporary decrease in the number of public arbitrators resulting from the proposed rule change, the FINRA forum will have a sufficient number of public arbitrators to serve the immediate needs of forum users.[126] In addition, FINRA stated that if the proposal was approved it would focus its recruiting efforts on the hearing locations most impacted by the rule change and that it would assign additional staff to recruitment as necessary.[127] Accordingly, FINRA declined to amend the proposed rule change.[128]

b. Quality of Public Arbitrator Pool

Several commenters expressed concern that the proposed rule change would negatively impact the quality of public arbitrators available to serve in FINRA's arbitration forum.[129] In particular, these commenters were concerned that the classification of Investor Advocates as non-public arbitrators would diminish the number of qualified public arbitrators.[130] For example, one commenter stated that the proposal would result in the most highly trained public arbitrators for customer-member cases being reclassified as non-public arbitrators.[131] Another commenter stated more generally that the proposal would ''gut the public arbitrator pool of many experienced and knowledgeable arbitrators'' and result in a ''brain drain'' of the public arbitrator pool.[132]

In its response, FINRA stated that the proposed rule change would not reduce the total number of arbitrators available for selection but rather would shift them to another part of the roster. Accordingly, FINRA stated that it does not believe that the proposed rule change would drain from the forum the experience and expertise of those arbitrators being reclassified as non-public. FINRA stated that instead, the parties would receive a complete description of the background and experience of each arbitrator on the non-public list and could use that information to rank or strike them accordingly. FINRA stated that the proposal would effectively maintain the reclassified individuals in the pool of

[111] *See* Exchange Act Release No. 70442 (Sept. 18, 2013), 78 FR 58580 (Sept. 24, 2013) (order approving a proposed rule change to, among other things, permit all parties to select an all-public panel) and Exchange Act Release No. 63799 (Jan. 31, 2011), 76 FR 6500 (Feb. 4, 2011) (order approving a proposed rule change to provide customers with the option to choose an all-public panel in all cases).

[112] *See* UMIRC Letter (citing Exchange Act Release No. 69762 (Jun. 13, 2013), 78 FR 37267, 37268 (Jun. 20, 2013) (Notice of Filing of Proposed Rule Change Relating to Amendments to the Code of Arbitration Procedure for Customer Disputes Concerning Panel Composition)).

[113] *See* SAC October Letter.

[114] *See, e.g.,* Bender Letter, PIRC First November Letter, GSU Letter, SAC October Letter, Friedman October Letter, UMIRC Letter, Friedman July Letter, SAC July Letter, NASAA July Letter, and FSI Letter.

[115] *See* SAC July Letter and NASAA July Letter.

[116] In the FINRA September Letter, FINRA estimated that 374 arbitrators would be reclassified from public to non-public arbitrators as a result of having had a Central Registration Depository (''CRD'') number at some point in their careers or having had an affiliation with a firm with a CRD number. In addition, FINRA estimated that approximately 100 arbitrators would be reclassified from public to non-public as a result of having identified an affiliation with PIABA; *see also* FINRA November Letter.

[117] *See* FINRA November Letter (basing its estimate on a survey of databases to which FINRA has access); *see also* FINRA September Letter.

[118] *See* Bender Letter, SAC October Letter, UMIRC Letter, PIRC November Letter, and GSU Letter.

[119] *See* Bender Letter and SAC October Letter.

[120] *See* SAC October Letter and UMIRC Letter; *see also* FSI Letter.

[121] *See* SAC October Letter and UMIRC Letter; *see also* SAC July Letter (suggesting that the potential shortage of public arbitrators may be more concentrated in some locations than others).

[122] *See* FINRA November Letter.

[123] *See* FINRA November Letter and FINRA December Letter; *see also* FINRA September Letter.

[124] *See* FINRA November Letter and FINRA December Letter (collectively citing, for example, the Puerto Rico bond fund disputes for which FINRA stated that its staff conducted recruitment activities in Puerto Rico and asked arbitrators in hearing locations in the Southeast Region and Texas if they would be willing to serve in Puerto Rico. FINRA stated that its recruitment efforts have resulted in almost 200 applications from Puerto Rico residents to serve on its roster, and approximately 800 arbitrators currently on its roster who have agreed to hear cases in Puerto Rico).

[125] *See* Exchange Act Release No. 73245 (Sept. 29, 2014), 79 FR 58976 (Oct. 3, 2014) (Order Approving Proposed Rule Change to Amend the Code of Arbitration Procedure for Customer Disputes and the Code of Arbitration Procedure for Industry Disputes to Increase Arbitrator Honoraria and Increase Certain Arbitration Fees and Surcharges).

[126] *See* FINRA September Letter, FINRA November Letter, and FINRA December Letter.

[127] *See* FINRA December Letter; *see also* FINRA September Letter (stating that if the proposal was approved, it would conduct a more detailed analysis to determine whether additional arbitrator recruitment efforts were necessary in any particular geographic area and would deploy the necessary resources to avoid any undue delay in the arbitration process).

[128] *See* FINRA September Letter and FINRA November Letter.

[129] *See, e.g.,* Bender Letter, PIRC First November Letter, GSU Letter, and SAC October Letter.

[130] *See, e.g.,* Bender Letter, PIRC First November Letter, GSU Letter, and SAC October Letter.

[131] *See* Bender Letter.

[132] *See* PIRC First November Letter.

arbitrators as non-public arbitrators to be able to continue to utilize their experience and expertise while eliminating the industry's perception of bias of these arbitrators.[133] In addition, FINRA acknowledged the need for aggressive arbitrator recruitment to help ensure that the forum has a sufficient number of qualified public arbitrators[134] and outlined the measures it intends to undertake to fulfill this objective.[135] Accordingly, FINRA declined to amend the proposed rule change.[136]

5. Impact on Qualified Chairpersons

Several commenters expressed concern that the proposed rule change would negatively impact the quantity and quality of chairpersons available to serve in FINRA's arbitration forum.[137] Some commenters suggested changes to the qualification requirements for chairpersons in customer cases, such as allowing arbitrators with investor relationships to serve as chairpersons or requiring that the chairperson be a judge or hold a law degree.[138]

In its response, FINRA stated that allowing arbitrators with investor relationships to serve as chairpersons would nullify the effort to address perceived bias.[139] FINRA also noted that more than 75 percent of the public chair-qualified arbitrators are attorneys and therefore stated that it does not believe that changes to the chair qualifications are necessary.[140] Accordingly, FINRA declined to amend the proposed rule change.[141]

6. Cost-Benefit Analysis

a. Timing

Several commenters stated that the proposed rule change should not be approved until FINRA obtained additional data and published a detailed cost-benefit analysis justifying the proposal.[142] In particular, these commenters expressed concern with FINRA's commitment[143] to perform a detailed cost-benefit analysis after the proposal was implemented in order to assess its impact and determine where to allocate additional resources for arbitrator recruitment.[144] Two of these commenters stated that if FINRA ultimately finds the impact of the proposed rule change unsupportable, forum participants would have to comply with a ''bad'' rule while proceedings are pending to approve a subsequent rule change.[145] One of these commenters also stated that if the effort to conduct a cost-benefit analysis is to be expended in any event, conducting it prior to implementing the proposal could streamline implementation of the proposed rule change.[146]

In its response, FINRA stated that a cost-benefit analysis, while useful for planning purposes, does not outweigh the imperative of addressing the users' perception of neutrality in maintaining the integrity of the forum, and that fairness requires FINRA to address the concerns of all forum users.[147] Further, FINRA noted that the ''proposed rule change is the culmination of extensive dialogue with FINRA constituents and FINRA filed the proposed rule change at the urging of its constituents.''[148] In addition, FINRA stated that performing a cost-benefit analysis would be time-intensive and require a survey of every public arbitrator on its roster.[149] In the interim, FINRA performed a preliminary analysis of databases currently available to it to obtain estimates of the potential impact of the proposal (discussed above).[150] FINRA also committed to perform a cost-benefit analysis if the proposal is approved.[151]

b. Potential Forum Delays

Three commenters stated that by failing to conduct an in-depth analysis of the impact of the proposed rule change, FINRA failed to weigh the consequences of its actions.[152] For example, one commenter suggested that FINRA may not currently have enough public arbitrators and that this shortage of public arbitrators may be contributing to an increase in overall case turnaround time.[153] Similarly, two commenters identified the lack of a cost-benefit analysis as a reason that FINRA has underestimated the potential impact of the proposal on the public arbitrator pool.[154]

Alternatively, one commenter stated that FINRA's representations that the proposal would not affect a significant number of arbitrators are sufficient.[155] This commenter also stated that even if the impact to the public arbitrator pool is greater than anticipated, it is a small price to pay for arbitrator neutrality.[156]

In its response, FINRA stated that it monitors the amount of time it takes to process a claim in its forum and has not heard from forum users that arbitrator availability is causing delays in processing cases. Instead, FINRA stated that various other factors are more likely to result in delays, including party-initiated postponements; an increase in the number of hearing sessions per case; concentration of law firms representing the majority of parties; and efforts to verify arbitrators' disclosures to protect parties from undisclosed arbitrator conflicts.[157] Moreover, as discussed above, FINRA stated that it recognizes the need for aggressive arbitrator recruitment to address any potential impact and outlined the steps it expects to take in its aggressive recruitment and retention of public arbitrators.[158]

7. Consideration of the Proposal by FINRA's Dispute Resolution Task Force

Two commenters suggested that FINRA withdraw the proposal and submit it to its recently formed Arbitration Task Force[159] for

[133] *See* FINRA November Letter.

[134] *See* FINRA November Letter and FINRA December Letter.

[135] *See* FINRA December Letter.

[136] *See* FINRA November Letter.

[137] *See* Stephens Letter and Bacine Letter (expressing concern that classifying professionals who provide services to customers as non-public arbitrators would negatively impact the quality of chairman-eligible arbitrators); *see also* Bender Letter.

[138] *See* Bacine Letter and Berthel Letter.

[139] *See* FINRA September Letter.

[140] *Id.*

[141] *Id.*

[142] *See* SAC July Letter, Friedman July Letter, Estell Letter, Friedman October Letter, PIRC First November Letter, and SAC October Letter (questioning whether the depletion of public arbitrators resulting from the proposed rule change would lead to delays in hearing claims).

[143] *See* FINRA September Letter.

[144] *See, e.g.,* SAC October Letter and PIRC First November Letter.

[145] *See* SAC October Letter and PIRC First November Letter.

[146] *See* SAC October Letter; *see also* Estell Letter (suggesting that FINRA make information about each arbitrator publicly available, particularly to academic researchers, and that the data could provide FINRA with statistical proof of bias or lack of bias upon which to base its proposal instead of relying on perceptions of bias).

[147] *See* FINRA November Letter; *see also* FINRA September Letter.

[148] *See* FINRA November Letter; *see also* FINRA September Letter.

[149] *See* FINRA September Letter.

[150] *See* FINRA November Letter and FINRA December Letter; *see also* FINRA September Letter.

[151] *See* FINRA September Letter.

[152] *See* Friedman October Letter, SAC October Letter, and PIRC November Letter.

[153] *See* SAC October Letter; *see also* Friedman July Letter and SAC July Letter (expressing concern that a decrease in the number of public arbitrators could result in greater delays in arbitrating claims, particularly (1) during declines in the financial markets (when the number of arbitration claims filed increases) or (2) in certain hearing locations with smaller rosters of arbitrators).

[154] *See* Friedman October Letter, SAC October Letter, SAC July Letter, and Friedman July Letter.

[155] *See* SIFMA November Letter.

[156] *Id.*

[157] *See* FINRA November Letter.

[158] *See* FINRA November Letter and FINRA December Letter.

[159] *See* FINRA News Release, FINRA Announces Arbitration Task Force (Jul. 17, 2014), available at *http://www.finra.org/Newsroom/NewsReleases/2014/P554192* (announcing the formation of an Arbitration Task Force to consider possible enhancements to improve transparency,

Continued

consideration.[160] One of these commenters suggested that the Task Force should be permitted to consider the proposal after a full impact analysis is conducted so that the Task Force would have the benefit of this analysis for its consideration.[161]

In its response, FINRA stated that it has engaged in a comprehensive process soliciting input from interested groups.[162] It also stated that the proposal reflects a balanced approach on classifying arbitrators that would enhance forum users' perception of fairness of the forum.[163] In addition, FINRA stated that while the Task Force is setting its own agenda and is free to discuss the arbitrator definitions, it does not expect to make any recommendations until the fall of 2015, which would make it unlikely for FINRA to file any proposed rule change based on Task Force recommendations until at least 2016.[164] FINRA indicated that it does not believe that it would be in the best interests of forum users to delay action on this fully considered proposal.[165]

8. Alternative Solutions

Several commenters suggested alternatives to the proposal.[166] For example, two commenters suggested that FINRA require arbitrators to disclose additional information about themselves, including their mix of work and the percentage of revenue derived from representation for or against the financial industry, so that parties can make independent determinations about each arbitrator.[167] One of these commenters also suggested that FINRA eliminate the labels of public and non-public altogether and allow parties to choose from a single pool of arbitrators.[168] Another commenter stated that Industry Affiliates should not permanently remain classified as non-public arbitrators but rather should be reclassified as being precluded from acting as an arbitrator in any capacity (*i.e.,* a ''no-man's land'') for a number of years after ceasing their respective affiliation with the financial industry.[169] Three other commenters objected to broker-dealers' use of pre-dispute mandatory arbitration agreements.[170] Other commenters suggested ways to improve the quality of arbitration panels.[171]

As discussed above, FINRA stated that it has engaged in a robust review process, including consultation with its NAMC, interested groups, and other forum constituents, during which it encouraged interested persons to raise their concerns about the definitions and to make suggestions on how to improve them.[172] FINRA stated that its NAMC did not recommend that FINRA eliminate the arbitrator classifications.[173] In addition, FINRA stated that eliminating the arbitrator classifications would undermine many of its recent changes to arbitrator selection rules, notably its all-public panel rule, which have been positively received by parties. In addition, FINRA stated that the recommended alternatives were either outside the scope of, or would cause undue delay to, the proposed rule change.[174] Accordingly, FINRA declined to amend the proposed rule change.[175]

IV. Discussion

The Commission has carefully considered the proposed rule change, the comments received, and FINRA's responses to the comments. Based on its review of the record, the Commission finds that the proposal is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities association.[176] In particular, the Commission finds that the proposal is consistent with section 15A(b)(6) of the Act, which requires, among other things, that FINRA's rules be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, and, in general, to protect investors and the public interest.[177]

As stated above, FINRA classifies arbitrators as ''non-public'' or ''public'' based on their professional and personal affiliations.

The proposal would, among other things: (1) Permanently classify as ''non-public arbitrators'' individuals with certain affiliations with the financial industry; and (2) classify as non-public arbitrators certain professionals (*e.g.,* accountants and attorneys) who represent or provide services to parties in disputes concerning investment accounts or transactions, or employment relationships within the financial industry.[178] Consequently, the proposed rule change would, in some instances, require the reclassification of current public arbitrators to non-public arbitrators.

As stated in the Notice of Filing, the proposed rule change was designed to address concerns regarding the perceived neutrality of the public arbitrator roster raised by both investor representatives and financial industry representatives.[179] Specifically, the classification of individuals affiliated with the financial industry as non-public arbitrators responds to concerns of potential bias of arbitrators, whether actual or perceived, in favor of the industry.[180] Similarly, the classification of Investor Advocates as non-public arbitrators responds to concerns of potential bias of arbitrators, whether actual or perceived, in favor of investors.[181]

The Commission believes that the proposed rule change would help to address any perceived bias of public arbitrators by classifying certain individuals with either financial industry experience or significant experience representing investors as non-public arbitrators. Accordingly, the

impartiality and efficiency of FINRA's securities arbitration forum for all participants).

[160] *See* Friedman October Letter and SAC October Letter; *see also* Friedman July Letter.

[161] *See* SAC October Letter.

[162] *See* FINRA November Letter; *see also* FINRA September Letter.

[163] *See* FINRA November Letter; *see also* FINRA September Letter.

[164] *See* FINRA November Letter.

[165] *See* FINRA September Letter and FINRA November Letter.

[166] *See* Bender Letter, NASAA November Letter, PIRC First November Letter, Friedman July Letter, and Nicinski Letter.

[167] *See* Bender Letter and PIRC First November Letter; *see also* Estell Letter.

[168] *See* PIRC First November Letter; *see also* Nicinski Letter.

[169] *See* Friedman October Letter; *see also* Friedman July Letter (suggesting that instead of public and non-public, arbitrators should be classified as affiliated with financial industry or not).

[170] *See* AAJ Letter, Estell Letter, and NASAA October Letter.

[171] *See, e.g.,* Nicinski Letter (recommending that arbitrators be required to display some knowledge of the investment products likely to be discussed during an arbitration) and Berthel Letter (recommending (1) that every panel include arbitrators with a strong background in securities laws and (2) that the Chair be a judge or hold a law degree).

[172] *See* FINRA September Letter and FINRA November Letter.

[173] *See* FINRA September Letter and FINRA November Letter; *see also supra* note 109.

[174] *See* FINRA September Letter.

[175] *See* FINRA September Letter and FINRA November Letter.

[176] In approving this proposed rule change, the Commission has considered the proposed rule change's impact on efficiency, competition, and capital formation. *See* 15 U.S.C. 78c(f).

[177] 15 U.S.C. 78o–3(b)(6).

[178] *See infra* pp. 41–42 for a discussion of other provisions of the proposed rule change.

[179] *See* Notice of Filing, 79 FR 38080, 38081 (Jul. 3, 2014).

[180] *See* SIFMA November Letter and CSLC Letter; *see also* SIFMA July Letter, Aidikoff Letter, Bakhtiari July Letter, NASAA July Letter, and PIABA Letter.

[181] *See* SIFMA November Letter and AIG Letter; *see also* SIFMA July Letter, FSI Letter, Berthel Letter, and Type A Form Letters; *but see* Friedman October Letter, UMIRC Letter, GSU Letter, CSLC Letter, NASAA November Letter, Second PIRC November Letter, NASAA July Letter, PIABA Letter, Stephens Letter, PIRC July Letter, Bacine Letter, Mass Letter, Hardiman Letter, and Friedman July Letter.

Commission also believes that the proposal would enhance the perception of neutrality of the entire FINRA arbitration forum. The Commission recognizes commenters' concerns that classifying Investor Advocates as non-public investors may be inconsistent with their historic view of non-public and public arbitrators (*i.e.,* classifying public arbitrators and non-public arbitrators based on their affiliations (or lack thereof) with the financial industry).[182] The Commission also recognizes, however, that the public interest would be served by addressing concerns of fairness and neutrality for all forum users.[183]

The Commission also recognizes the concerns of some commenters that the proposed rule change would require FINRA to reclassify some current public arbitrators as non-public arbitrators and that these reclassifications may temporarily reduce the number and quality of the public arbitrator pool, particularly in light of the implementation of FINRA's all-public-panel rules.[184] The Commission, however, also recognizes FINRA's current and proposed future efforts to help ensure the sufficiency of the public arbitrator pool.[185]

Although FINRA stated that it currently anticipates having a sufficient number of public arbitrators to serve the immediate needs of forum users, it also acknowledged that the proposal may necessitate aggressive arbitrator recruitment.[186] Accordingly, FINRA stated that it is committed to help ensure that the forum has a sufficient number of public arbitrators to serve the needs of its forum members in each of its hearing locations.[187] For example, FINRA stated that it intends to conduct a detailed survey of its public arbitrators as part of an impact analysis to assist in allocating its resources to recruit public arbitrators in the areas most needed.[188] In addition, FINRA stated that it intends to devote its resources to recruiting arbitrators.[189]

Furthermore, FINRA stated that it has taken steps to enhance arbitrator retention. For example, FINRA stated that it has implemented a new rule to increase the amount of honoraria paid to its arbitrators.[190] In addition, FINRA stated that it intends to increase the amount of honoraria paid to arbitrators when a party or parties postpone or cancel hearing sessions on short notice.[191]

While FINRA acknowledges that the proposed rule change will necessitate aggressive arbitrator recruitment to help ensure that its arbitration forum will continue to have sufficient public arbitrators to prevent delays in all hearing locations,[192] the Commission preliminarily believes that FINRA's plan to mitigate such delays is appropriate, particularly in light of the primary objective of the proposal—improving the perceived neutrality of its arbitrators and integrity of its arbitration forum.

In sum, the Commission believes that the proposed rule change would help address forum users' perceptions of neutrality in, and maintain the integrity of, the arbitration forum. In addition, the Commission believes the potential negative effects (in particular, a temporary decline in the number of available public arbitrators) will be mitigated by FINRA's proposed recruitment and retention of public arbitrators.

The proposed rule change would also: (1) Extend the cooling off period for Industry Affiliates and Investor Advocates to five years, and (2) use professional time to quantify professional work when determining whether a person qualifies as an Industry Affiliate or Investor Advocate. Although some commenters suggested alternatives, such as proportional cooling off periods or using revenue, instead of professional time, to quantify professional work, FINRA stated its belief that a bright-line test is more workable and eases administrative burdens while addressing concerns about potential or perceived bias in the forum.

In addition to the amendments discussed above, the proposed rule change would make several additional changes to the Codes. For instance, the proposal would (1) add new categories of financial industry personnel who would be classified as non-public arbitrators, in particular persons associated with, including registered through, a mutual fund or hedge fund and persons associated with, including registered through, an investment adviser; (2) reduce from 20 to 15, the number of years a person must work over the course of his or her career in specified capacities in order to be permanently classified as a non-public arbitrator; and (3) redefine the definition of ''immediate family member'' as well as add a two year cooling off period for individuals whose immediate family members engage in specified activities that disqualify them from serving on the public arbitrator roster.

The Commission also recognizes some of the other concerns raised by commenters regarding the process FINRA used for proposing this rule. Some commenters expressed concern that FINRA did not perform a cost-benefit analysis prior to proposing the rule change.[193] Other commenters recommended that FINRA submit the proposal to its Arbitration Task Force prior to proposing it.[194] In response, FINRA identified the process it took in developing and considering the proposal, including consultation with its NAMC, interested groups, and other forum users; stated that additional consideration by the Arbitration Task Force is not precluded; and stated its intent to perform future cost-benefit analysis to prevent burdening its arbitrators prior to the effectiveness of the proposed new rule.[195] In sum, the Commission believes that FINRA gave due consideration to the proposal and met the requirements of the Exchange Act. However, the Commission will be interested in the results of FINRA's future cost-benefit analysis and the staff will monitor the consequences of approval of the proposed rule change.

For the reasons stated above, the Commission finds that the proposed rule change is consistent with the Act and the rules and regulations thereunder.

[182] *See, e.g.,* CSLC Letter, NASAA November Letter, NASAA July Letter, PIABA Letter, Stephens Letter, PIRC July Letter, Bacine Letter, Friedman July Letter, Hardiman Letter, and Mass Letter.

[183] *See* FINRA September Letter, FINRA November Letter, and FINRA December Letter.

[184] *See, e.g.,* Bender Letter, PIRC First November Letter, GSU Letter, SAC October Letter, SAC July Letter, and NASAA July Letter.

[185] *See* FINRA November Letter and FINRA December Letter.

[186] *See* FINRA November Letter and FINRA December Letter.

[187] *See* FINRA November Letter and FINRA December Letter.

[188] *See* FINRA September Letter and FINRA December Letter.

[189] *See* FINRA November Letter and FINRA December Letter.

[190] *See supra* note 125.

[191] *See, e.g.,* FINRA December Letter; *see also* Exchange Act Release No. 74289 (Feb. 18, 2015), 80 FR 9773 (Feb. 24, 2015) (Notice of Filing of a Proposed Rule Change to Amend the Codes of Arbitration Procedure to Increase the Late Cancellation Fee) (FINRA proposed rule change to amend Rules 12214 and 12601 of the Customer Code and Rules 13214 and 13601 of the Industry Code to require, among other things, that parties give more advance notice before cancelling or postponing a hearing, or be assessed a higher late cancellation fee if such notice is not provided).

[192] *See* FINRA November Letter.

[193] *See* Friedman October Letter, PIRC First November Letter, and SAC October Letter; *see also* SAC July Letter and Friedman July Letter.

[194] *See* Friedman October Letter and SAC October Letter; *see also* Friedman July Letter.

[195] *See* FINRA September Letter, FINRA November Letter, and FINRA December Letter.

V. Conclusion

It is therefore ordered pursuant to section 19(b)(2) of the Act [196] that the proposed rule change (SR–FINRA–2014–028) be and hereby is approved.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[197]

Jill M. Peterson,

Assistant Secretary.

[FR Doc. 2015–04419 Filed 3–3–15; 8:45 am]

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[196] 15 U.S.C. 78s(b)(2).

[197] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–74384; File No. SR–MSRB–2014–08]

Self-Regulatory Organizations; Municipal Securities Rulemaking Board; Notice of Filing of Amendment No. 1 and Amendment No. 2 and Order Granting Accelerated Approval of a Proposed Rule Change Consisting of Proposed Amendments to MSRB Rules G–1, on Separately Identifiable Department or Division of a Bank; G–2, on Standards of Professional Qualification; G–3, on Professional Qualification Requirements; and D–13, on Municipal Advisory Activities

February 26, 2015.

I. Introduction

On November 18, 2014, the Municipal Securities Rulemaking Board (the ''MSRB'' or ''Board'') filed with the Securities and Exchange Commission (the ''SEC'' or ''Commission''), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'') [1] and Rule 19b–4 thereunder,[2] a proposed rule change consisting of proposed amendments to MSRB Rules G–1, on separately identifiable department or division of a bank; G–2, on standards of professional qualification; G–3, on professional qualification requirements; and D–13, on municipal advisory activities (the ''proposed rule change''). The proposed rule change was published for comment in the **Federal Register** on December 5, 2014.[3]

The Commission received five comment letters on the proposed rule change.[4] On February 5, 2015, the MSRB submitted a response to the comments on the proposed rule change [5] and filed Amendment No. 1 (''Amendment No. 1'').[6]

The Commission received two comment letters on Amendment No. 1.[7] On February 20, 2015, the MSRB submitted a response to the comments on Amendment No.1.[8] On February 25, 2015, the MSRB submitted Amendment No. 2 (''Amendment No. 2'' and together with Amendment No. 1, the ''Amendments'').[9] The Commission is publishing this notice to solicit comments on the Amendments from interested persons and is approving the proposed rule change, as modified by the Amendments, on an accelerated basis.

II. Description of the Proposed Rule Change

According to the MSRB, the purpose of the proposed rule change is to establish professional qualification requirements for municipal advisors and their associated persons and to make related changes to select MSRB rules.[10] A full description of the proposed rule change is contained in the Proposing Release.

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] Securities Exchange Act Release No. 73708 (December 1, 2014), 79 FR 72225 (December 5, 2014) (the ''Proposing Release'').

[4] *See* Letters from Anonymous, dated December 25, 2014; Leslie M. Norwood, Managing Director and Associate General Counsel, Securities Industry and Financial Markets Association (''SIFMA''), dated December 26, 2014 (''SIFMA Letter''); Anonymous Attorney, on behalf of a registered investment advisor and municipal advisor (''Anonymous Attorney''), dated December 26, 2014 (''Anonymous Letter''); Tamara K. Salmon, Senior Associate Counsel, Investment Company Institute (''ICI''), dated December 29, 2014 (''ICI Letter''); and Terri Heaton, President, National Association of Municipal Advisors (''NAMA''), dated January 27, 2015 (''NAMA Letter No. 1'').

[5] *See* Letter to Secretary, Commission, from Lawrence P. Sandor, Deputy General Counsel, MSRB, dated February 5, 2015 (''MSRB Response Letter No. 1'').

[6] *See* Letter to Secretary, Commission, from Lawrence P. Sandor, Deputy General Counsel, MSRB, dated February 5, 2015. Amendment No. 1 partially amends the text of the proposed rule change to revise Rules G–1(a)(ii)(B), G–3(a)(i)(A)(2) and G–3(b)(i)(B) by deleting the following clause: ''Except to the extent a person must be qualified as a municipal advisor representative to perform such services.'' The MSRB believes that it would be premature to include such clause until certain foundational rules regarding municipal advisors are approved and effective.

[7] *See* Letters from Dave A. Sanchez Attorney at Law (''Sanchez''), dated February 12, 2015 (''Sanchez Letter''); and Terri Heaton, President, NAMA, dated February 12, 2015 (''NAMA Letter No. 2'').

[8] *See* Letter to Secretary, Commission, from Lawrence P. Sandor, Deputy General Counsel, MSRB, dated February 20, 2015 (''MSRB Response Letter No. 2'' and together with MSRB Response Letter No. 1, the ''MSRB Response Letters'').

[9] *See* Letter to Secretary, Commission, from Michael Cowart, Assistant General Counsel, MSRB, dated February 25, 2015. Amendment No. 2 partially amends Amendment No. 1 to correct a technical error in a quotation of rule text.

[10] *See supra* note 3 at 2.

1. Proposed Amendments to Rule G–1

The proposed amendments to Rule G–1 includes language to provide that, for purposes of its municipal advisory activities, the term ''separately identifiable department or division of a bank'' would have the same meaning as used in 17 CFR 240.15Ba1–1(d)(4).[11]

2. Proposed Amendments to Rule G–2

The proposed amendments to Rule G–2 add a basic requirement that no municipal advisor shall engage in municipal advisory activities unless such municipal advisor and every natural person associated with such municipal advisor is qualified in accordance with the rules of the Board.[12]

3. Proposed Amendments to Rule G–3

Apprenticeship

MSRB Rule G–3 currently requires a municipal securities representative to serve an apprenticeship period of 90 days before transacting business with any member of the public or receiving compensation for such activities.[13] The MSRB believes that dealers and municipal advisors should determine the length and nature of the initial training for newly registered persons, consistent with industry feedback and the approach taken by Financial Industry Regulatory Authority (''FINRA'').[14] Accordingly, the proposed amendments to Rule G–3 eliminate the apprenticeship requirement for municipal securities representatives and, similarly, do not propose an apprenticeship requirement for municipal advisor representatives.[15]

New Registration Classifications

The proposed amendments to Rule G–3 create two new registration classifications: (i) Municipal advisor representative; and (ii) municipal advisor principal.[16]

The proposed amendments to Rule G–3 define a ''municipal advisor representative'' as a natural person associated with a municipal advisor who engages in municipal advisory activities on the municipal advisor's behalf, other than a person performing only clerical, administrative, support or similar functions.[17] The proposed amendments to Rule G–3 require each municipal advisor representative to take and pass the Municipal Advisor

[11] *See* Exhibit 5 of the Amendments.

[12] *Id.*

[13] *See supra* note 3 at 9.

[14] *Id.*

[15] *Id.*

[16] *See supra* note 11.

[17] *Id.*

Representative Qualification Examination prior to being qualified as a municipal advisor representative.[18]

The proposed amendments to Rule G–3 define a ''municipal advisor principal'' as a natural person associated with a municipal advisor who is qualified as a municipal advisor representative and is directly engaged in the management, direction or supervision of the municipal advisory activities of the municipal advisor and its associated persons.[19] The proposed amendments to Rule G–3 require each municipal advisor to designate at least one municipal advisor principal.[20]

In addition, the proposed amendments to Rule G–3 require any person who ceases to be associated with a municipal advisor for two or more years (at any time after having qualified as a municipal advisor representative) to take and pass the Municipal Advisor Representative Qualification Examination prior to being qualified as a municipal advisor representative, unless a waiver is granted.[21]

MSRB Waiver

The proposed amendments to Rule G–3 and the Supplementary Material permit the MSRB to consider waiving the requirement that a municipal advisor representative or municipal advisor principal pass the Municipal Advisor Representative Qualification Examination in extraordinary cases: (1) Where the applicant participated in the development of the Municipal Advisor Representative Qualification Examination as a member of the MSRB's Professional Qualifications Advisory Committee (''PQAC''); or (2) where the applicant previously qualified as a municipal advisor representative by passing the Municipal Advisor Representative Qualification Examination and such qualification lapsed pursuant to Rule G–3(d)(ii)(B).[22]

4. Proposed Amendments to Rule D–13

Currently, Rule D–13 defines municipal advisory activities as the activities described in Section 15B(e)(4)(A)(i) and (ii) of the Act.[23] The proposed amendments to Rule D–13 incorporate Commission rules into the definition by providing that the term ''municipal advisory activities'' means, except as otherwise specifically provided by rule of the Board, the activities described in Section 15B(e)(4)(A)(i) and (ii) of the Act and the rules and regulations promulgated thereunder.[24]

5. Technical Amendments

The proposed rule change would also make minor technical amendments to select MSRB rules, such as amending Rule G–3(a)(ii) to correctly re-letter G–3(a)(ii)(D) as G–3(a)(ii)(C).[25]

6. Effective Date

The MSRB requested that the proposed rule change become effective 60 days following the date of Commission approval.[26] The MSRB stated that the effective date of the Municipal Advisor Representative Qualification Examination will be announced by the MSRB with at least 30 days notice.[27] The MSRB further stated that prospective municipal advisor representatives will have one year from the effective date of the Municipal Advisor Representative Qualification Examination to pass such examination.[28]

III. Summary of Comments Received and the MSRB's Response

The Commission received five comment letters in response to the proposed rule change (four of which provide substantive comments) and two comment letters in response to Amendment No. 1.[29] The Commission received MSRB Response Letter No. 1 in response to comments regarding the proposed rule change and MSRB Response Letter No. 2 in response to comments regarding Amendment No. 1.[30] A full description of the comments, MSRB responses, and amendments are contained in the comment letters, the MSRB Response Letters, and the Amendments, respectively.

1. SIFMA Letter

Professional Qualifications Examination

SIFMA believes that persons currently qualified to perform municipal securities activities should also be qualified to perform municipal advisor activities.[31] In other words, SIFMA believes that after the effective date of the proposed rule change, the Series 52 qualification examination should be sufficient for both municipal securities representatives and municipal advisor representatives.[32]

Given the new regulatory regime for municipal advisors and the differences in the roles of municipal advisor and securities professionals, the MSRB does not believe the Series 52 examination (or the general securities representative examination that qualified municipal securities representatives before November 7, 2011) would sufficiently determine whether a municipal advisor professional meets a minimal level of competency to engage in municipal advisory activities.[33] The MSRB stated that the focus of the Series 52 examination is not on municipal advisory activities.[34] The MSRB further stated that the questions being developed for the Municipal Advisor Representative Qualification Examination target the job responsibilities of municipal advisor professionals.[35] The MSRB noted that the roles and job responsibilities of municipal advisor representatives and municipal securities representatives are distinct, and the body of law that applies to each type of professional reflects the differences in such roles and responsibilities.[36]

SIFMA is concerned that development of a new qualification examination would take an additional two to three years.[37] SIFMA states that because the Series 52 examination currently exists there would be no unnecessary delay in developing test material and administering the test, thereby avoiding an unnecessary delay in testing.[38] SIFMA also contends it would be faster and more cost efficient for municipal advisor professionals to take the Series 52 examination.[39]

The MSRB does not agree with SIFMA's assertion that developing a new qualification examination would take an additional two to three years.[40] The MSRB stated that PQAC has been working expeditiously in developing the Municipal Advisor Representative Qualification Examination.[41] The MSRB also reiterated its position that it does not believe the Series 52 examination would test the basic competency of municipal advisor professionals.[42] The MSRB believes that while it is hard to dispute that using an existing exam would be faster and less costly, such an approach would fail to demonstrate basic competency of municipal advisor

[18] *Id.*
[19] *Id.*
[20] *Id.*
[21] *Id.*
[22] *Id.*
[23] *See supra* note 3 at 5.
[24] *See supra* note 11.
[25] *Id.*
[26] *See supra* note 3 at 10.
[27] *Id.*
[28] *Id.* at 6.
[29] *See supra* notes 4 and 7.
[30] *See supra* notes 5 and 8.
[31] *See* SIFMA Letter at 2.
[32] *Id.*
[33] *See* MSRB Response Letter No. 1 at 3.
[34] *Id.* at 3–4.
[35] *Id.* at 4.
[36] *Id.*
[37] *See* SIFMA Letter at 3.
[38] *Id.* at 4.
[39] *Id.* at 3.
[40] *See* MSRB Response Letter No. 1 at 4.
[41] *Id.*
[42] *Id.*

professionals to engage in municipal advisory activities.[43] The MSRB stated that the costs, timing, and efficiency of the proposed rule change should only be appropriately compared to reasonable regulatory alternative—a criterion the Series 52 examination does not meet.[44]

SIFMA suggests that developing a separate test for municipal advisor professionals is an inefficient process and unfairly burdens the large percentage of municipal advisor professionals who are associated with municipal securities dealers.[45]

The MSRB does not believe that such individuals would be unfairly burdened by a new test.[46] To the contrary, the MSRB believes that failing to develop a separate test for municipal advisor professionals could place individuals not associated with dealers at a competitive disadvantage and could result in an undue burden on small municipal advisors.[47] The MSRB stated that the market for municipal advisory services is separate and distinct from the market for the services of municipal securities brokers and dealers and, as such, it is both appropriate and reasonable that all professionals providing municipal advisory services should be evaluated according to identical criteria, regardless of the status of their employer.[48]

Grandfathering Current Municipal Securities Representatives

SIFMA suggests that if the MSRB decides to continue with the development of a new test for qualification as a municipal advisor representative, then associated persons currently qualified as municipal securities representatives should be grandfathered in as municipal advisor representatives, if they so choose.[49] SIFMA believes that this methodology would be consistent with other major changes to qualifications examinations.[50]

The MSRB responded by reiterating its view that grandfathering would be inconsistent with the intent of Congress.[51] The MSRB believes that requiring municipal advisor professionals to take and pass a basic qualification examination ensures that these individuals possess a minimum level of understanding of the role and responsibilities of municipal advisors and the applicable rules and regulations.[52] The MSRB stated that investors, municipal entities, and the general public will be better served by a regulatory regime that requires all municipal advisor professionals to pass the same basic competency test.[53]

Economic Analysis

SIFMA believes that the cost-benefit analysis contained in in the Proposing Release was inadequate.[54] SIFMA suggests that the MSRB conduct a full cost-benefit analysis of the proposed rule change prior to its approval.[55]

The MSRB responded by stating that it considered the costs and benefits of the proposed rule change and even utilized the cost estimate per individual test taker provided by SIFMA in determining the likely initial cost to the industry and the likely ongoing expense.[56] The MSRB also refined its estimate of the initial cost based on the number of Form MA-Is filed with the SEC by registered municipal advisors (as of January 20, 2015), which the MSRB stated is not materially different from the cost estimate used in its economic analysis.[57] The MSRB believes its economic analysis was sound and that no further analysis is warranted.[58]

Continuing Education Requirement for Municipal Advisor Representatives

SIFMA suggests that the MSRB develop continuing education requirements for municipal advisor representatives.[59] SIFMA believes this concern was not addressed by the proposed rule change.[60]

The MSRB responded by stating that such suggestion is not relevant to the proposed rule change.[61] The MSRB noted that the Act requires the MSRB to provide continuing education requirements for municipal advisors and it will likely consider rulemaking on this topic in the near future.[62]

PQAC Nomination Process

SIFMA and its members believe that the process for nomination to the MSRB's PQAC should be fully transparent and the members of PQAC should be listed on the MSRB's Web site.[63] Also, SIFMA further states that it is in the best interest of every industry member to ensure that the test questions that are developed are fair, even-handed and suitable for a basic competency examination.[64]

The MSRB stated that it understands the concern raised by SIFMA and believes that its examinations are developed in a fair, even-handed and suitable manner.[65] The MSRB stated it contemplated publishing the names of PQAC members but is concerned that such transparency will undermine the test development process.[66] The MSRB believes that it is not appropriate to publish the names of PQAC members given the importance of confidentiality and the integrity of the process.[67] The MSRB further stated that it contracts with an external testing professional to ensure the overall integrity of the test development process, including the selection of PQAC members, is fair and in accordance with accepted standards for professional test development.[68] Nevertheless, the MSRB stated that it will consider providing more information about the selection process and the criteria used by the MSRB to select PQAC members.[69]

2. ICI Letter

ICI recommends that the MSRB reconsider its current approach to develop only one examination for representatives because such approach will result in use of an examination that does not sufficiently test competencies relevant to the advisory representative's business and is inconsistent with the approach taken by other self-regulatory organizations.[70] ICI suggests that the MSRB utilize at least two examinations—one for representatives of a municipal advisor whose advisory activities are limited to municipal fund securities, and one for representatives whose advice is limited to municipal securities other than municipal fund securities.[71]

The MSRB responded by stating that it believes that individuals who engage in municipal advisory activities regarding municipal fund securities should demonstrate knowledge of all of the rules and regulations governing municipal advisors.[72] The MSRB stated that these rules and regulations

[43] *Id.* 4–5.
[44] *Id.* at 5.
[45] *See* SIFMA Letter at 5.
[46] *See* MSRB Response Letter No. 1 at 5.
[47] *Id.*
[48] *Id.*
[49] *See* SIFMA Letter at 5.
[50] *Id.*
[51] *See* MSRB Response Letter No. 1 at 5.
[52] *Id.*
[53] *Id.*
[54] *See* SIFMA Letter at 6.
[55] *Id.* at 2.
[56] *See* MSRB Response Letter No. 1 at 6.
[57] *Id.*
[58] *Id.*
[59] *See* SIFMA Letter at 6.
[60] *Id.*
[61] *See* MSRB Response Letter No. 1 at 6.
[62] *Id.*
[63] *See* SIFMA Letter at 6.
[64] *Id.* at 6–7.
[65] *See* MSRB Response Letter No. 1 at 6.
[66] *Id.*
[67] *Id.* at 7.
[68] *Id.*
[69] *Id.*
[70] *See* ICI Letter at 2.
[71] *Id.*
[72] *See* MSRB Response Letter No. 1 at 7.

generally will apply to all municipal advisors, regardless of the product that is the subject of the advice provided.[73] As such, the MSRB believes that all municipal advisors should have knowledge of the regulatory framework and the basic obligations of municipal advisors.[74]

ICI stated that it recognizes its recommendation of two examinations may impose additional burdens, however, ICI believes such approach is consistent with the manner in which self-regulatory organizations have long implemented examination requirements.[75] ICI further stated that there is a long-standing self-regulatory organization practice of developing discrete examinations based on the nature of the business conducted.[76]

The MSRB responded by noting that self-regulatory organizations have developed a number of qualification examinations; however, most of these examinations are focused on the role of the investment professional, such as compliance officer (Series 14), investment adviser (Series 65), operations professional (Series 99), research analyst (Series 86 and 87), equity trader (Series 55), financial and operations principal (Series 27), general securities principal (Series 24), general securities sales supervisor (Series 9 and 10), and general securities representative (Series 7).[77] The MSRB stated that for each of these examinations, a test taker may be required to demonstrate knowledge of a variety of products, consistent with the role of the individual; even where an examination is limited a candidate is expected to be familiar with a variety of products.[78] Consequently, the MSRB believes its approach to the Municipal Advisor Representative Qualification Examination is consistent with its prior practice and the practice of other self-regulatory organizations.[79]

3. Anonymous Letter

Anonymous Attorney believes that individuals who are Chartered Financial Analyst (''CFA'') charterholders should be exempt from the proposed Municipal Advisor Representative Qualification Examination requirement in the manner suggested by the CFA Institute (''CFAI'') in the CFAI's response to MSRB Regulatory Notice 2014–08.[80] CFAI proposed that the examination requirement be constructed in a modular fashion with one component focusing on the knowledge of business and the second component devoted to the rules and regulations of the municipal securities market.[81] CFAI also requested that CFA charterholders be granted a waiver from the examination component focusing on the knowledge of business.[82] Anonymous Attorney believes that separating the examination into two modules can be undertaken with minimal effort.[83] Anonymous Attorney also stated that the examination requirement is burdensome and concluded that such examination could drive some CFA charterholders out of the municipal advisory business.[84]

The MSRB stated that it recognizes the requirements established by CFAI for CFA charterholders and understands that fixed income securities are covered on its examinations.[85] However, the MSRB explained that the Municipal Advisor Representative Qualification Examination will focus on the role and responsibilities of municipal advisor professionals and the rules and regulations governing their conduct.[86] The MSRB highlighted that the Municipal Advisor Representative Qualification Examination will not solely test a candidate's knowledge of municipal securities.[87] In addition, the MSRB stated that Anonymous Attorney has not provided any evidence that the CFA examinations (Levels I, II or III) test an individual's knowledge of the role and responsibilities of a municipal advisor.[88] The MSRB believes the assertion that CFA charterholders may be driven out of the market because of the new test is purely speculative.[89] The MSRB further stated that Anonymous Attorney offers no information regarding the number of CFA charterholders that are engaged in municipal advisory activities or why they would be in any different position than individuals who passed other qualification examinations.[90] Given that the costs and time associated with receiving and maintaining a CFA charter exceed any reasonable estimate of the costs to complete a new municipal advisor examination, the MSRB stated its expectation that the new exam would add only marginally to a CFA charterholder's professional qualification expenses.[91] For the foregoing reasons, the MSRB does not believe that a modular examination for municipal advisor professionals would be appropriate.[92]

4. NAMA Letter No. 1

NAMA supports the efforts of the MSRB to set professional qualification standards for municipal advisor professionals.[93] NAMA believes the MSRB has taken the most cost-effective approach at this time.[94] Additionally, NAMA supports the decision by the MSRB to have a uniform competency requirement for all persons deemed to be municipal advisor representatives regardless of whether such persons have passed other examinations (such as the Series 52 or Series 7 examinations).[95] Consistent with the proposed rule change, NAMA does not believe that the MSRB should grandfather individuals who have passed such examinations.[96] NAMA suggests, however, that the MSRB continue to evaluate the feasibility and wisdom of supplemental or targeted subject matter examinations.[97]

The MSRB does not believe that a supplemental or targeted subject area examination approach is appropriate.[98] The MSRB believes it has a demonstrated commitment to seeking ways to improve regulatory efficiency generally and would be open to assessing alternative approaches to the assessment of professional qualifications once the municipal advisor regulatory framework is fully implemented.[99]

5. Sanchez Letter and NAMA Letter No. 2

Sanchez expressed concern that Amendment No. 1 will effectively create an exemption for municipal securities representatives who engage in financial advisory and consultant services for issuers in connection with the issuance of municipal securities (the ''subject activity'') from having to pass the Municipal Advisor Representative Qualification Examination to qualify as municipal advisor representatives.[100] Similarly, NAMA expressed concern that Amendment No. 1 would provide municipal securities representatives

[73] *Id.*
[74] *Id.*
[75] *See* ICI Letter at 3–4.
[76] *Id.*
[77] *See* MSRB Response Letter at 7–8.
[78] *Id.*
[79] *Id.* at 8.
[80] *See* Anonymous Letter No. 1 at 1.
[81] *Id.*
[82] *Id.*
[83] *Id.* at 2.
[84] *Id.* at 3.
[85] *See* MSRB Response Letter No. 1 at 8.
[86] *Id.*
[87] *Id.*
[88] *Id.*
[89] *Id.*
[90] *Id.*
[91] *Id.* at 8–9.
[92] *Id.* at 9.
[93] *See* NAMA Letter No. 1 at 1.
[94] *Id.* at 2.
[95] *Id.* at 1.
[96] *Id.* at 2.
[97] *Id.*
[98] *See* MSRB Response Letter No. 1 at 9.
[99] *Id.*
[100] *See* Sanchez Letter at 1.

who engage in the subject activity an exemption from having to pass the Municipal Advisor Representative Qualification Examination because the subject activity would be considered municipal securities representative activity.[101] NAMA also stated that Amendment No. 1 expands the definition of municipal advisory activity, as provided by the Act and Commission rules, because it appears to allow dealers and bank dealers to engage in municipal advisory activity without proper registration.[102]

The MSRB responded by clarifying that Amendment No. 1 would not have the effect of limiting, and was not intended to limit, the applicability of the municipal advisor regulatory regime, including MSRB rules governing the municipal advisory activities of municipal advisors, or to alter the definition of municipal advisory activities.[103] The MSRB noted that the determination of whether an individual is engaged in municipal advisory activities is based on the scope of the individual's activities, and not the individual's status.[104] The MSRB stated that due to such principle, a dealer and its associated persons could simultaneously be subject to MSRB rules applicable to dealers and MSRB rules applicable to municipal advisors.[105]

The MSRB stated that Amendment No. 1 would retain the current language in the MSRB professional qualification rules to prevent any confusion regarding the application of MSRB rules governing dealers to the financial advisory activities of municipal securities representatives while MSRB rules governing municipal advisors are developed and implemented and until the MSRB makes any future determinations regarding the application of such rules.[106] The MSRB further stated that any individual engaged in or supervising municipal advisory activities must comply with the professional qualification requirements for municipal advisor representatives, which will include at a future date the taking and passing of the Municipal Advisor Representative Qualification Examination.[107] The MSRB also represented that Amendment No. 1 has no bearing on the definition of municipal advisory activities.[108]

IV. Discussion and Commission Findings

The Commission has carefully considered the proposed rule change, as modified by the Amendments, as well as the comments received, and the responses by the MSRB to such comments. The Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to the MSRB.

In particular, the Commission finds that the proposed rule change is consistent with Section 15B(b)(2)(A) of the Act, which provides that the MSRB's rules shall provide that no municipal securities broker or municipal securities dealer shall effect any transaction in, or induce or attempt to induce the purchase or sale of, any municipal security, and no broker, dealer, municipal securities dealer, or municipal advisor shall provide advice to or on behalf of a municipal entity or obligated person with respect to municipal financial products or the issuance of municipal securities, unless . . . such municipal securities broker or municipal securities dealer and every natural person associated with such municipal securities broker or municipal securities dealer meet such standards of training, experience, competence, and such other qualifications as the Board finds necessary or appropriate in the public interest or for the protection of investors and municipal entities or obligated persons.[109] Section 15B(b)(2)(A) of the Act also provides that, in connection with the definition and application of such standards, the MSRB may appropriately classify municipal advisors and their associated persons, specify that all or any portion of such standards shall be applicable to any such class, and require persons in any such class to pass an examination regarding such standards of competence.[110] The Commission believes that the proposed rule change is consistent with Section 15B(b)(2)(A) of the Act because the proposed rule change requires individuals who engage in or supervise municipal advisory activities to pass a professional qualification examination which is an established means for determining the basic competency of individuals in a particular class. The Commission believes that requiring prospective municipal advisor representatives to pass a basic qualification examination will protect investors, municipal entities, and obligated persons by ensuring such representatives have a basic understanding of the role of a municipal advisor representative and the rules and regulations governing such individuals.

Additionally, Section 15B(b)(2)(L)(iii) of the Act provides that the MSRB's rules shall provide professional standards with respect to municipal advisors.[111] The Commission believes that the proposed rule change is consistent with Section 15B(b)(2)(L)(iii) of the Act because it would establish professional standards for those individuals engaged in or supervising municipal advisory activities by requiring such individuals to demonstrate a basic competency regarding the role of municipal advisor representatives and the rules and regulations governing the conduct of such persons.

Section 15B(b)(2)(L)(iv) of the Act requires that MSRB rules not impose a regulatory burden on small municipal advisors that is not necessary or appropriate in the public interest and for the protection of investors, municipal entities, and obligated persons, provided that there is robust protection of investors against fraud.[112] The Commission believes that the proposed rule change is consistent with Section 15B(b)(2)(L)(iv) of the Act. While the proposed rule change would affect all municipal advisors, including small municipal advisors, it is a necessary and appropriate regulatory burden in order to establish the baseline competence of those individuals engaged in municipal advisory activities. Establishing a baseline competence is necessary for the protection of investors, municipal entities, and obligated persons. The Commission also believes such baseline competence is in the public interest because it promotes compliance with the rules and regulations governing the conduct of municipal advisors.

In approving the proposed rule change, the Commission has considered the proposed rule change's impact on efficiency, competition, and capital formation.[113] The Commission believes that the proposed rule change includes accommodations that help promote efficiency. Specifically, the MSRB has provided a one-year grace period for passing the examination. As noted by the MSRB, the grace period provides

[101] *See* NAMA Letter No. 2 at 1.

[102] *Id.* at 1–2.

[103] *See* MSRB Response Letter No. 2 at 2.

[104] *Id.*

[105] *Id.*

[106] *Id.*

[107] *Id.* at 2–3.

[108] *Id.* at 3.

[109] 15 U.S.C. 78*o*–4(b)(2)(A).

[110] *Id.*

[111] 15 U.S.C. 78*o*–4(b)(2)(L)(iii).

[112] 15 U.S.C. 78*o*–4(b)(2)(L)(iv).

[113] 15 U.S.C. 78c(f).

municipal advisor representatives with sufficient time to study and take the examination without causing an undue disruption to the business of the municipal advisor. The Commission does not believe that the proposed rule change would impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act since it would apply equally to all municipal advisor representatives who engage in municipal advisory activities. Furthermore, the Commission believes that the potential burdens created by the proposed rule change are to be likely outweighed by the benefits of establishing baseline professional qualification standards and promoting compliance with the rules and regulations governing the conduct of municipal advisors. The Commission has reviewed the record for the proposed rule change and notes that the record does not contain any information to indicate that the proposed rule change would have a negative effect on capital formation.

As noted above, the Commission received five comment letters on the proposed rule change and two comment letters on Amendment No. 1. The Commission believes that the MSRB considered carefully and responded adequately to the comments and concerns regarding the proposed rule change and Amendment No. 1. For the reasons noted above, including those discussed in the Amendments and the MSRB Response Letters, the Commission believes that the proposed rule change, as amended by the Amendments, is consistent with the Act.

V. Solicitation of Comments on the Amendments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the Amendments to the proposed rule change are 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–MSRB–2014–08 on the subject line.

Paper Comments

- Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street NE., Washington, DC 20549.

All submissions should refer to File Number SR–MSRB–2014–08. 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 MSRB. 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–MSRB–2014–08 and should be submitted on or before March 25, 2015.

VI. Accelerated Approval of the Proposed Rule Change as Modified by the Amendments

The Commission finds good cause for approving the proposed rule change, as amended by the Amendments, prior to the 30th day after the date of publication of notice in the **Federal Register.** Amendment No. 1 partially amends the text of the proposed rule change to revise Rules G–1(a)(ii)(B), G–3(a)(i)(A)(2), and G–3(b)(i)(B) by deleting the following clause: ''Except to the extent a person must be qualified as a municipal advisor representative to perform such services.'' [114] Amendment No. 2 partially amends Amendment No. 1 to correct a technical error in a quotation of rule text.[115]

The MSRB believes Amendment No. 1 will clarify and ensure that municipal securities representatives or principals who engage in the subject activity remain covered by applicable dealer regulations until such time as the MSRB may determine that such activities are appropriately covered by the developing municipal advisor regulatory framework.[116] The MSRB believes Amendment No. 2 would make a mere technical correction.[117] The MSRB does not believe Amendment No. 2 raises significant new issues or alters the substance of the proposed rule change.[118]

As previously noted, Sanchez and NAMA expressed concern that Amendment No. 1 will effectively provide an exemption for currently qualified municipal securities representative from having to take and pass the Municipal Advisor Representative Qualification Examination.[119] NAMA also believes that the Amendment No. 1 expands the definition of municipal advisory activity because it appears to allow dealers and bank dealers to engage in municipal advisory activity without proper registration.[120] The MSRB responded by clarifying that Amendment No. 1 would not have the effect of limiting, and was not intended to limit, the applicability of the municipal advisor regulatory regime, including MSRB rules governing the municipal advisory activities of municipal advisors, or to alter the definition of municipal advisory activities.[121] According to the MSRB, Amendment No. 1 would retain the current language in the MSRB professional qualification rules to prevent any confusion regarding the application of MSRB rules governing dealers to the financial advisory activities of municipal securities representatives while MSRB rules governing municipal advisors are developed and implemented.[122]

The Commission believes that the revisions in Amendment No. 1 are being made to address the perception of a regulatory gap and are consistent with the purpose of the proposed rule change. The Commission believes that the revision in Amendment No. 2 is being made to correct a technical error. The Commission does not believe the revisions included in the Amendments raise significant new issues or alter the substance of the proposed rule change because the proposed rule change will retain the current rule language in Rules G–1(a)(ii)(B), G–3(a)(i)(A)(2), and G–3(b)(i)(B). Accordingly, the Commission finds good cause for approving the proposed rule change, as modified by

[114] *See supra* note 6.

[115] *See supra* note 9.

[116] *See supra* note 6.

[117] *See supra* note 9.

[118] *Id.*

[119] *See supra* note 7.

[120] *See* NAMA Letter No. 2 at 1–2.

[121] *See* MSRB Response Letter No. 2 at 2.

[122] *Id.*

the Amendments, on an accelerated basis, pursuant to Section 19(b)(2) of the Act.

VII. Conclusion

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,[123] that the proposed rule change (SR–MSRB–2014–08), as modified by the Amendments, be, and hereby is, approved.

For the Commission, pursuant to delegated authority.[124]

Jill M. Peterson,

Assistant Secretary.

[FR Doc. 2015–04431 Filed 3–3–15; 8:45 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–74380; File No. SR–EDGA–2015–12]

Self-Regulatory Organizations; EDGA Exchange, Inc.; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change To Amend Rule 11.11, Routing to Away Trading Centers, To Delete References to the ROLF Routing Option, Which Routed Orders to LavaFlow ECN

February 26, 2015.

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 February 23, 2015, 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 amend Rule 11.11, Routing to Away Trading Centers, to delete references to the ROLF routing option, which routed orders to LavaFlow ECN.

The text of the proposed rule change is available at the Exchange's Web site at *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 the Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange proposes to amend Rule 11.11, Routing to Away Trading Centers, to delete references under subparagraphs (7) and (15) to the ROLF routing option, which routed to LavaFlow ECN. These changes are being proposed in response to LavaFlow ECN ceasing market operations on Friday, January 30, 2015. Under Rule 11.11(g)(7), an order utilizing the ROLF routing option first checked the System[5] for available shares and was then routed to the LavaFlow ECN. If shares remained unexecuted after being routed, they were cancelled, unless otherwise instructed by the User.[6] In addition, under Rule 11.11(g)(15), a User was able to couple the Post to Away option and ROLF routing option. The grouping of the Post to Away and ROLF routing options instructed the System to route and post the order on LavaFlow ECN. As of February 2, 2015, the Exchange, via BATS Trading, the Exchange's affiliated routing broker-dealer, was no longer able to route orders to LavaFlow ECN because it ceased operations. As a result, the Exchange no longer offers the ROLF routing option nor permit [sic] it to be coupled with a Post to Away routing option. Therefore, the Exchange proposes to delete the ROLF routing option under Rule 11.11(g)(7) as well as a reference to the ROLF routing option under Rule 11.11(g)(15).

2. Statutory Basis

The Exchange believes that its proposal is consistent with Section 6(b) of the Act[7] in general, and furthers the objectives of Section 6(b)(5) of the Act[8] in particular, in that it is designed 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 does not believe that this proposal will permit unfair discrimination among customers, brokers, or dealers because the ROLF routing option will no longer be available to all Users. The proposed change is in response to LavaFlow ECN ceasing market operations on Friday, January 30, 2015. As of February 2, 2015, the Exchange, via BATS Trading, was no longer able to route orders to LavaFlow ECN and, therefore, proposes to delete references to the ROLF routing option under Rules 11.11(g)(7) and (15). The proposal is intended to make the Exchange's rules clearer and less confusing for investors by eliminating a routing option that is no longer available; thereby removing impediments to and perfecting the mechanism of a free and open market and a national market system, and, in general, protecting investors and the public interest.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposal will impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act. The proposed rule change is not designed to address any competitive issues but rather avoid investor confusion by eliminating a routing option that is no longer made available by the Exchange.

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.

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[123] 15 U.S.C. 78s(b)(2).

[124] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] 15 U.S.C. 78s(b)(3)(A).

[4] 17 CFR 240.19b–4(f)(6)(iii).

[5] Exchange Rule 1.5(cc) defines ''System'' as ''the electronic communications and trading facility designated by the Board through which securities orders of Users are consolidated for ranking, execution and, when applicable, routing away.''

[6] The term ''User'' is defined as ''any Member or Sponsored Participant who is authorized to obtain access to the System pursuant to Rule 11.3.'' *See* Exchange Rule 1.5(ee).

[7] 15 U.S.C. 78f(b).

[8] 15 U.S.C. 78f(b)(5).

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Because the foregoing proposed rule change does not: (1) Significantly affect the protection of investors or the public interest; (2) impose any significant burden on competition; and (3) by its terms does not become operative for 30 days after the date of this filing, or such shorter time as the Commission may designate if consistent with the protection of investors and the public interest, the proposed rule change has become effective pursuant to Section 19(b)(3)(A) of the Act [9] and Rule 19b–4(f)(6) thereunder.[10]

A proposed rule change filed under Rule 19b–4(f)(6) normally does not become operative for 30 days after the date of filing. However, Rule 19b–4(f)(6)(iii) permits the Commission to designate a shorter time if such action is consistent with the protection of investors and the public interest. The Exchange has asked the Commission to waive the 30-day operative delay so that the proposal may become operative immediately upon filing. 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 avoid potential investor confusion during the operative delay period by immediately eliminating exchange rules that account for a routing option that the Exchange can no longer provide due to LavaFlow ECN's cessation of operations.[11] 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.

[9] 15 U.S.C. 78s(b)(3)(A).

[10] 17 CFR 240.19b–4(f)(6). In addition, Rule 19b–4(f)(6)(iii) requires a self-regulatory organization to provide the Commission with written notice of its intent to file the proposed rule change, along with a brief description and text of the proposed rule change, at least five business days prior to the date of filing of the proposed rule change, or such shorter time as designated by the Commission. The Exchange has met this requirement.

[11] For purposes only of waiving the 30-day operative delay, the Commission has also considered the proposed rule's impact on efficiency, competition, and capital formation. *See* 15 U.S.C. 78c(f).

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–2015–12 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–2015–12. 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–2015–12, and should be submitted on or before March 25, 2015.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[12]

Jill M. Peterson,

Assistant Secretary.

[FR Doc. 2015–04420 Filed 3–3–15; 8:45 am]

BILLING CODE 8011–01–P

[12] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–74382; File No. SR–NYSEARCA–2015–10]

Self-Regulatory Organizations; NYSE Arca, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Amending the NYSE Arca Options Fee Schedule

February 26, 2015.

Pursuant to Section 19(b)(1) [1] of the Securities Exchange Act of 1934 (the ''Act'') [2] and Rule 19b–4 thereunder,[3] notice is hereby given that, on February 18, 2015, NYSE Arca, Inc. (the ''Exchange'' or ''NYSE Arca'') filed with the Securities and Exchange Commission (the ''Commission'') the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to amend the NYSE Arca Options Fee Schedule (''Fee Schedule'') by adding to the Fee Schedule information regarding the number of option issues a Market Maker may have in their assignment in relation to the number of OTPs a Market Maker has. The text of the proposed rule change is available on the Exchange's Web site at *www.nyse.com,* at the principal office of the Exchange, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text

[1] 15 U.S.C.78s(b)(1).

[2] 15 U.S.C. 78a.

[3] 17 CFR 240.19b–4.

of those statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant parts of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange proposes to amend the Fee Schedule by adding to the Fee Schedule information from Rule 6.35(d)(1)–(4) regarding the number of options issues a Market Maker may have in its assignment in relation to the number of OTPs a Market Maker has.

The Fee Schedule sets forth the fees and charges that participants on the Exchange can be expected to pay. However, NYSE Arca Market Makers need to refer to Rule 6.35 (d)(1) to (4) to ascertain the number of OTPs they are required to have depending on the number of option issues in their assignment. The Exchange is proposing to include this information in the Fee Schedule so that Market Makers have a single reference point to ascertain fees associated with their activities on the Exchange.[4] In particular, because the Exchange charges a fee for each OTP assigned to an OTP Holder or OTP Firm (''OTPs''), the rule text identifies the fee structure by setting forth the number of trading permits that are required of OTPs acting as Market Makers according to the number of options issues included in their appointment.

Rule 6.35 (d)(1) to (4) sets forth the trading appointments of participants acting as Market Makers on the Exchange as follows:

(1) Market Makers with 1 OTP may have up to 100 option issues included in their appointment.

(2) Market Makers with 2 OTPs may have up to 250 option issues included in their appointment.

(3) Market Makers with 3 OTPs may have up to 750 option issues included in their appointment.

(4) Market Makers with 4 OTPs may have all option issues traded on the Exchange included in their appointment.

The Exchange proposes to add the information from Rule 6.35(d)(1)–(4) to the Fee Schedule under ''NYSE Arca GENERAL OPTIONS and TRADING PERMIT (OTP) FEES,'' subsection ''NYSE Arca Market Makers.'' Because the current fee schedule sets forth the monthly OTP Fees for NYSE Arca Market Makers, the Exchange proposes to delete this text and add the substance of the OTP fees back in a table format, together with the number of option issues permitted in a Market Maker's assignment depending on the OTPs held by such Market Maker as set forth in Rule 6.35(d)(1)–(4). The proposed fee schedule would read as follows:

Monthly fee per OTP	*Number of issues permitted[5] in Market Maker's quoting assignmentmaker*
$6,000 for 1st OTP	*Up to 100 option issues.*
$5,000 for the 2nd OTP.	*Up to 250 option issues.*
$4,000 for the 3rd OTP.	*Up to 750 option issues.*
$3,000 for the 4th OTP.	*All option issues traded on the Exchange.*
$1,000 for the 5th and additional OTPs.	*All option issues traded on the Exchange.*

The Exchange is not proposing any change in the number of OTPs required by Market Makers. The Exchange believes its proposed change would make the Fee Schedule more comprehensive, thereby better informing members.[6]

For consistency, the Exchange also proposes to make a non-substantive formatting change to how it presents and formats the information related to OTP fees for Floor Brokers, Office, and Clearing Firms to align with the proposed changes to Market Maker OTP fees. The Exchange believes this proposed change would add clarify [sic] and consistency to the Fee Schedule.

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with Section 6(b) of the Securities Exchange Act of 1934 (the ''Act''),[7] in general, and furthers the objectives of Section 6(b)(4) of the Act,[8] in particular, because it provides for the equitable allocation of reasonable dues, fees, and other charges among its members, issuers and other persons using its facilities and does not unfairly discriminate between customers, issuers, brokers or dealers.

The Exchange believes that the proposed change is reasonable, equitable and not unfairly discriminatory because including in the Fee Schedule the number of permits required of OTP Holders and OTP Firms acting as Market Makers on the Exchange from Rule 6.35 (d)(1) through (4) improves the clarity and transparency of the Fee Schedule, which is to the benefit of all market participants who would be better able to understand the basis for Exchange fees.

The Exchange believes that the proposed non-substantive formatting changes, including to re-organize how it presents information regarding OTP fees (*e.g.,* streamlined information from current rule text, together with information from Rule 6.35(d)(1)–(4)), would likewise add to the clarity, transparency and comprehensibility of the Fee Schedule to the benefit of all market participants.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act. As noted above, the Exchange believes the proposed change will enhance to [sic] comprehensibility of the Fee Schedule to the benefit of all market participants, which is pro-competitive.

The Exchange notes that it operates in a highly competitive market in which market participants can readily favor competing venues. In such an environment, the Exchange must continually review, and consider adjusting, its fees and credits to remain competitive with other exchanges. For the reasons described above, the Exchange believes that the proposed rule change reflects this competitive environment.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No written comments were solicited or received with respect to the proposed rule change.

[4] *See e.g.,* NYSE Amex Options Fee Schedule, *available here* [sic], (Section III.A., Monday [sic] ATP Fees). *See also* Securities and Exchange Act Release No. 67505 (July 26, 2012), 77 FR 45292 [sic] (July 31, 2012) (SR–NYSEMKT–2012–24) (filing for immediate effectiveness to add information regarding ATP Fees previously found in NYSE Arca Rule 923NY(d)(1)-(4) [sic] to Fee Schedule).

[5] The Commission notes that the Exhibit 5 submitted with this proposed rule change says ''Number of Options Issues Permitted in Market Makers Assignment.''

[6] Following effectiveness of this proposal, the Exchange plans to file an amendment to Rule 6.35 (Market Maker Appointments), which would include replacing the text of Rule 6.35(d)(1)–(4) with a reference to the Fee Schedule. The proposed change to the Fee Schedule is not contingent upon effectiveness of the changes to Rule 6.35. Until any changes are made to Rule 6.35, the information about the number of option issues permitted in a Market Maker's assignment in relation to the number of OTPs it holds will appear in both the Fee Schedule and Rule 6.35.

[7] 15 U.S.C. 78f(b).

[8] 15 U.S.C. 78f(b)(4).

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change is effective upon filing pursuant to Section 19(b)(3)(A) [9] of the Act and subparagraph (f)(2) of Rule 19b–4[10] thereunder, because it establishes a due, fee, or other charge imposed by the Exchange.

At any time within 60 days of the filing of such proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission shall institute proceedings under Section 19(b)(2)(B) [11] of the Act to determine whether the proposed rule change should be approved or disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov.* Please include File Number SR–NYSEARCA–2015–10 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–NYSEARCA–2015–10. 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 will also be available for inspection and copying at the NYSE's principal office and on its Internet Web site at *www.nyse.com.* All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–NYSEARCA–2015–10, and should be submitted on or before March 25, 2015.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[12]

Jill M. Peterson,

Assistant Secretary.

[FR Doc. 2015–04422 Filed 3–3–15; 8:45 am]

BILLING CODE 8011–01–P

[9] 15 U.S.C. 78s(b)(3)(A).

[10] 17 CFR 240.19b–4(f)(2).

[11] 15 U.S.C. 78s(b)(2)(B).

[12] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–74381; File No. SR–EDGX–2015–11]

Self-Regulatory Organizations; EDGX Exchange, Inc.; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change To Amend Rule 11.11, Routing to Away Trading Centers, To Delete References to the ROLF Routing Option, Which Routed Orders to LavaFlow ECN

February 26, 2015.

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 February 23, 2015, 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 amend Rule 11.11, Routing to Away Trading Centers, to delete references to the ROLF routing option, which routed orders to LavaFlow ECN.

The text of the proposed rule change is available at the Exchange's Web site at *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 the Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange proposes to amend Rule 11.11, Routing to Away Trading Centers, to delete references under subparagraph (7) to the ROLF routing option, which routed to LavaFlow ECN. These changes are being proposed in response to LavaFlow ECN ceasing market operations on Friday, January 30, 2015. Under Rule 11.11(g)(7), an order utilizing the ROLF routing option first checked the System [5] for available shares and was then routed to the LavaFlow ECN. If shares remained unexecuted after being routed, they were cancelled, unless otherwise instructed by the User.[6] As of February

[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] Exchange Rule 1.5(cc) defines ''System'' as ''the electronic communications and trading facility designated by the Board through which securities orders of Users are consolidated for ranking, execution and, when applicable, routing away.''

[6] The term ''User'' is defined as ''any Member or Sponsored Participant who is authorized to obtain access to the System pursuant to Rule 11.3.'' *See* Exchange Rule 1.5(ee).

2, 2015, the Exchange, via BATS Trading, the Exchange's affiliated routing broker-dealer, was no longer able to route orders to LavaFlow ECN because it ceased operations. As a result, the Exchange no longer offers the ROLF routing option. Therefore, the Exchange proposes to delete the ROLF Routing Option under Rule 11.11(g)(7).

2. Statutory Basis

The Exchange believes that its proposal is consistent with Section 6(b) of the Act [7] in general, and furthers the objectives of Section 6(b)(5) of the Act [8] in particular, in that it is designed 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 does not believe that this proposal will permit unfair discrimination among customers, brokers, or dealers because the ROLF routing option will no longer be available to all Users. The proposed change is in response to LavaFlow ECN ceasing market operations on Friday, January 30, 2015. As of February 2, 2015, the Exchange, via BATS Trading, was no longer able to route orders to LavaFlow ECN and, therefore, proposes to delete the ROLF routing option under Rule 11.11(g)(7). The proposal is intended to make the Exchange's rules clearer and less confusing for investors by eliminating a routing option that is no longer available; thereby removing impediments to and perfecting the mechanism of a free and open market and a national market system, and, in general, protecting investors and the public interest.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposal will impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act. The proposed rule change is not designed to address any competitive issues but rather avoid investor confusion by eliminating a routing option that is no longer made available by the Exchange.

[7] 15 U.S.C. 78f(b).

[8] 15 U.S.C. 78f(b)(5).

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

The Exchange has neither solicited nor received written comments on the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Because the foregoing proposed rule change does not: (1) Significantly affect the protection of investors or the public interest; (2) impose any significant burden on competition; and (3) by its terms does not become operative for 30 days after the date of this filing, or such shorter time as the Commission may designate if consistent with the protection of investors and the public interest, the proposed rule change has become effective pursuant to Section 19(b)(3)(A) of the Act [9] and Rule 19b–4(f)(6) thereunder.[10]

A proposed rule change filed under Rule 19b–4(f)(6) normally does not become operative for 30 days after the date of filing. However, Rule 19b–4(f)(6)(iii) permits the Commission to designate a shorter time if such action is consistent with the protection of investors and the public interest. The Exchange has asked the Commission to waive the 30-day operative delay so that the proposal may become operative immediately upon filing. 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 avoid potential investor confusion during the operative delay period by immediately eliminating an exchange rule that accounts for a routing option that the Exchange can no longer provide due to LavaFlow ECN's cessation of operations.[11] 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.

[9] 15 U.S.C. 78s(b)(3)(A).

[10] 17 CFR 240.19b–4(f)(6). In addition, Rule 19b–4(f)(6)(iii) requires a self-regulatory organization to provide the Commission with written notice of its intent to file the proposed rule change, along with a brief description and text of the proposed rule change, at least five business days prior to the date of filing of the proposed rule change, or such shorter time as designated by the Commission. The Exchange has met this requirement.

[11] For purposes only of waiving the 30-day operative delay, the Commission has also considered the proposed rule's impact on efficiency, competition, and capital formation. *See* 15 U.S.C. 78c(f).

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–2015–11 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–2015–11. 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–2015–11, and should be submitted on or before March 25, 2015.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[12]

Jill M. Peterson,

Assistant Secretary.

[FR Doc. 2015–04421 Filed 3–3–15; 8:45 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–74389; File No. SR–CBOE–2015–011]

Self-Regulatory Organizations; Chicago Board Options Exchange, Incorporated; Order Granting Accelerated Approval of a Proposed Rule Change To Amend Exchange Rules Related To Order Tickets

February 26, 2015.

I. Introduction

On January 23, 2015, the Chicago Board Options Exchange, Incorporated (the ''Exchange'' or ''CBOE'') filed with the Securities and Exchange Commission (the ''Commission''), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (the ''Act'')[1] and Rule 19b–4 thereunder,[2] a proposed rule change to amend its rules related to use of order tickets. This proposal was published for comment in the **Federal Register** on February 4, 2015.[3] The Commission received no comments regarding the proposal. This order approves the proposed rule change on an accelerated basis.

II. Description of the Proposed Rule Change

The Exchange proposes to amend its rules governing the use of order tickets. According to the Exchange, system limitations on CBOE currently may prevent a multi-part order with more than a certain number of legs from being entered on a single order ticket for representation and execution in open outcry as a complex order.[4] As a result, complex orders with more than the applicable leg limitation that are represented in open outcry must be split up and entered on multiple order tickets.[5]

The Exchange proposes to amend CBOE Rule 6.53 to require that complex orders of twelve (12) legs or less (one leg of which may be for an underlying security or security future, as applicable) must be entered on a single order ticket at time of systemization to provide consistency in processing, and to enhance the Exchange's audit trail.[6] If permitted by the Exchange via Regulatory Circular, complex orders of more than twelve (12) legs (one leg of which may be for an underlying security or security future, as applicable) may be split across multiple order tickets, if the Trading Permit Holder (''TPH'') representing the complex order includes twelve (12) legs on one of the order tickets and identifies for the Exchange the order tickets that are part of the same complex order (in a form and manner prescribed by the Exchange).[7]

The Exchange also proposes to add Interpretation and Policy .01 to CBOE Rule 24.20 (pertaining to SPX Combo Orders) to require that an SPX Combo Order for twelve (12) legs or less be entered on a single order ticket at time of systemization.[8] An SPX Combo Order that contains more than twelve (12) legs may be represented and executed as a single SPX Combo Order in accordance with CBOE Rule 24.20 if it is split across multiple order tickets and the TPH representing the SPX Combo Order includes twelve (12) legs on one of the order tickets and identifies for the Exchange the order tickets that are part of the same SPX Combo Order (in a manner and form prescribed by the Exchange).[9] The Exchange will announce by Regulatory Circular whether it will permit SPX Combo Orders with more than 12 legs and, if so permitted, the form and manner in which the TPH must link the multiple order tickets.[10] The Exchanges notes that a TPH may submit an order that does not satisfy these ticket requirements, but such order may not be represented or executed as a single SPX Combo Order in accordance with Rule 24.20.[11] The Exchange also notes that Rules 24.20 already specifies an applicable ratio, and it is proposing no changes to the ratio through this rule filing.[12]

III. Discussion and Findings

After careful review, the Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange.[13] In particular, the Commission finds that the proposed rule change is consistent with Section 6(b)(5) of the Act,[14] which requires, among other things, that the rules of a national securities exchange be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest. The Commission also finds that the proposed rule change is consistent with Section 6(b)(1) of the Act,[15] which provides that the Exchange be organized and have the capacity to be able to carry out the purposes of the Act and to enforce compliance by the Exchange's members, and persons associated with members, with the Act, the rules and regulations thereunder and the rules of the Exchange.

The Commission notes that CBOE's proposal is designed to help enhance the Exchange's audit trail with respect to open outcry complex order processing and SPX Combo Orders. The Commission believes that the proposal will help to protect investors and the public interest because the Commission believes an audit trail serves to provides regulators with information that aids them in surveiling activity on their market.

In addition, the Commission finds good cause, pursuant to Section 19(b)(2) of the Act,[16] for approving the proposed rule change prior to the 45th day after publication of notice in the **Federal Register**. The Commission notes that the substance of this proposal was noticed for comment as part of changes proposed in a prior CBOE proposed rule change, which CBOE withdrew.[17] The

[12] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* Securities Exchange Act Release No. 74169 (January 29, 2015), 80 FR 6145 (''Notice'').

[4] *See* Notice, *supra* note 3 at 6147.

[5] *Id.*

[6] *Id.*

[7] *Id.*

[8] *Id.*

[9] If an Open outcry complex order or SPX Combo Order with more than twelve legs is split across multiple order tickets, one of the order tickets must contain twelve legs. For example, a thirteen leg order cannot have seven legs on one ticket and six legs on another ticket; rather, one ticket must have twelve legs and the other ticket must have one leg. *Id.* at 6147.

[10] *Id.*

[11] *Id.*

[12] *Id.*

[13] In approving this proposal, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. *See* 15 U.S.C. 78c(f).

[14] 15 U.S.C. 78f(b)(5).

[15] 15 U.S.C. 78f(b)(1).

[16] 15 U.S.C. 78s(b)(2).

[17] *See* Securities Exchange Act Release No. 72957 (September 2, 2014), 79 FR 53230 (September 8, 2014) (''SR–CBOE–2014–015 Notice''). CBOE withdrew SR–CBOE–2014–015 on November 21, 2014. The Exchange notes that, unlike the instant filing, SR–CBOE–2014–015 did not impose requirements on how a complex order with more than 12 legs should be split across multiple tickets. While the instant filing imposes such a requirement, the Exchange does not believe TPHs will be adversely affected by the proposed requirement specifying how a complex order with more than 12 legs should be split across multiple

Continued

prior CBOE proposed rule change was published for the entire 21 day comment period, and no comments were received.[18] In addition, the instant proposed rule change was published for a 15-day comment period to ensure that the public had an opportunity to review the proposal in its current form and no comments were received on the instant filing. Finally, the Commission notes that the Exchange represents that it has been in communication with TPHs about the changes proposed in the instant filing and implementation issues since August 19, 2014, and has provided training on a Floor Broker Workstation (''FBW) to support the combo indicator and the entry of complex orders with up to twelve legs.[19]

Accordingly, the Commission finds that good cause exists for approving the proposed rule change on an accelerated basis.

IV. Conclusion

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,[20] that the proposed rule change (File No. SR–CBOE–2015–011) be, and hereby is, approved on an accelerated basis.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[21]

Jill M. Peterson,

Assistant Secretary.

[FR Doc. 2015–04451 Filed 3–3–15; 8:45 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

[File No. 500–1]

In the Matter of Adex Media, Inc. et al.; Order of Suspension of Trading

March 2, 2015.

It appears to the Securities and Exchange Commission that there is a lack of current and accurate information concerning the securities of each of the issuers detailed below because questions have arisen as to their operating status, if any. Each of the issuers below is quoted on OTC Link operated by OTC Markets Group, Inc. OTC Markets Group, Inc., however, has been unable to contact each of these issuers for more than one year. In addition, the staff of the Securities and Exchange Commission has independently endeavored to determine whether any of the issuers below are operating. Each of the issuers below either confirmed that they were no longer operating or were now private companies, failed to respond to the Commission's inquiry about their operating status, did not have an operational address, or failed to provide their registered agent with an operational address. The staff of the Securities and Exchange Commission also determined that none of the issuers below has filed any information with OTC Markets Group, Inc. or the Securities and Exchange Commission for the past year.

Issuer	Ticker	Information regarding operating status *
1. Adex Media, Inc	ADXM	2
2. AdStar, Inc	ADST	1
3. Alternative Green Technologies, Inc	AGTI	1
4. American City Bank (Los Angeles, CA)	ACBK	1
5. American Mold Guard, Inc	AMGI	1
6. American Uranium Corp	ACUC	1
7. Americana Distribution, Inc	ADBN	1
8. Atlantis Technology Group	ATNP	1
9. Azure Dynamics Corp	AZDDQ	1
10. Bald Eagle Energy, Inc	BEEI	1
11. Betawave Corp	BWAV	1
12. Beverly Hills Bancorp, Inc	BHBCQ	2
13. Blue Holdings, Inc	BLHI	1
14. California-Michigan Land & Water Co	CMLW	2
15. Cannon Exploration, Inc	CNEX	1
16. Carlton Companies, Inc (The)	CTNO	1
17. China Daqing M&H Petroleum, Inc	CHDP	1
18. China Gateway Corp	CGWY	1
19. China M161 Network Co	CMNW	1
20. ClearPoint Business Resources, Inc	CPBRQ	1
21. Collexis Holdings, Inc	CLXS	1
22. Colonial Capital Trust IV	CBCPQ	1
23. CommercePlanet, Inc	CPLT	1
24. Commodore Applied Technologies, Inc	CXIA	2
25. Composite Power Corp	CPWW	1
26. Consolidated Plen Tech Electronics, Inc	CSPT	1
27. Consumer Products Services Group, Inc	CPSV	1
28. Corprate Data Sciences, Inc	CODS	1
29. Corprate Management Solutions, Inc	YDGE	1
30. Data Evolution Holdings, Inc	DTEV	1
31. Degama Software Solutions, Inc	DGMA	1
32. EarthFirst Technologies, Inc	EFTI	2
33. ebank Financial Services, Inc	EBDC	2
34. Ecuity, Inc	ECUI	1
35. EM International Enterprises Corp	EMIE	1

tickets. The Exchange states that PULSe, the enhanced version of FBW, and proprietary systems that TPHs have designed to comply with the single order ticket requirements of SR–CBOE–2014–015 are capable of complying with the requirement specifying how orders with more than 12 legs should be split across multiple tickets without further programming or configuration. *Id.* at 6147.

[18] SR–CBOE–2014–015 provided for several changes to various CBOE Rules; this proposal specifically relates to Order Ticket requirements. *See* SR–CBOE–2014–015 Notice, *supra* note 17.

[19] *See* Notice, *supra* note 3 at 6146.

[20] 15 U.S.C. 78s(b)(2).

[21] 17 CFR 200.30–3(a)(12).

Issuer	Ticker	Information regarding operating status*
36. EYI Industries, Inc	EYII	1
37. Factory 2–U Stores, Inc	FTUSQ	1
38. Fashion House Holdings, Inc (The)	FHHIQ	1
39. Fidelis Energy, Inc	FDEI	1
40. First Vietnamese American Bank (Westminster CA)	FVAB	2
41. Firstar Exploration Corp	FSRX	1
42. Fusion Networks Holdings, Inc	FUSN	1
43. Genius Products, Inc	GNPR	1
44. Global Innovation Corp	GLBN	1
45. Green Bridge Industries, Inc	GRBG	1
46. GREM USA	GREM	1
47. Grifco International, Inc	GFCI	1
48. Hansheng Industrial Equipment Manufacturing (USA), Inc	HEQM	1
49. Harvey Electronics, Inc	HRVEQ	1
50. HIMC Corp	HMCO	1
51. Immunosyn Corp	IMYN	1
52. Imusic Worldwide, Ltd	IMWL	1
53. Indie Ranch Media, Inc	INDR	1
54. Industrial Enterprises of America, Inc	IEAM	1
55. InNexus Biotechnology Inc	IXSBF	1
56. Innovative Card Technologies, Inc	INVC	1
57. Insight ID, Inc	INII	1
58. Intelligentias, Inc	ITLI	1
59. International Gold Resources, Inc	IGRU	1
60. IR Biosciences Holdings, Inc	IRBS	1
61. KBK Capital Trust I	KBKCP	1
62. Lateral Media, Inc	LTLM	1
63. Manaris (2010) Corp	AVNY	1
64. Map Financial Group Inc	MAPF	1
65. Marketing Concepts International	MCCI	1
66. Marmion Industries Corp	MMIO	1
67. Medwave, Inc	MDWV	1
68. Metro One Development, Inc	MTRO	1
69. Migami, Inc	MIGA	1
70. Modern Technology Corp	MODC	1
71. MotivNation, Inc	MOVT	1
72. MyWeb Inccom	MWEB	1
73. New World Brands, Inc	NWBD	1
74. NexPrise, Inc	NXPS	1
75. Odd Job Stores, Inc	ODDJ	1
76. Oh Boy Industries, Inc	OHBO	1
77. Ovale Group, Inc	OVLG	1
78. Oyco, Inc	OYCO	1
79. Pacer Health Corp	PHLH	1
80. Pacific CMA, Inc	PACC	1
81. Passport Brands, Inc	PBIX	1
82. PERF Go-Green Holdings, Inc	PGOG	1
83. PetroQuest Resources, Inc	PQRJ	1
84. PinkMonkey.com, Inc	PMKY	2
85. PlasmaTech, Inc	PMAH	1
86. Plateau Mineral Development, Inc	PMDP	1
87. Polar Wireless Corp	BCDI	1
88. Pope & Talbot, Inc	PTBTQ	1
89. Powerlinx, Inc	PWNX	1
90. Previsto International Holdings, Inc	HLOI	1
91. Proxim Corp	PROXQ	2
92. Pure Transit Technologies, Inc	PTTL	1
93. Pyrocap International Corp	PYOC	1
94. Quality One Wireless, Inc	QOWI	2
95. Quri Resources, Inc	QURS	1
96. Raven Gold Corp	RVNG	1
97. RCC Holdings Corp	RCCH	1
98. Resource Recovery International Corp	RRIC	1
99. Rockwood National Corp	RNTL	1
100. Royalite Petroleum Co., Inc	RYPE	1
101. Securac Corp	SECU	1
102. Secure Path Technology Holdings, Inc	SPHT	1
103. Signature Leisure, Inc	SGLS	1
104. Silicon Mountain Holdings, Inc	SLCM	2
105. SMAN Capital Trust I	SMANP	1
106. Smart Move, Inc	SMVE	1

Issuer	Ticker	Information regarding operating status *
107. SNTL Litigation Trust	SNLLZ	1
108. SoftNet Technology Corp	SOFN	1
109. Solutions Group, Inc	SOLU	1
110. Southwest Casino Corp	SWCC	1
111. Spectre Gaming, Inc	SGMG	1
112. Spice Depot, Inc (The)	SDEO	1
113. Striker Oil & Gas, Inc	SOIS	1
114. Synergy Brands, Inc	SYBRQ	1
115. Synovics Pharmaceuticals, Inc	SYVC	1
116. Systech Systems International, Inc	SSYT	1
117. TableMAX Corp	TBLX	1
118. TAG Entertainment Corp	TAGE	1
119. Techlabs, Inc	TCHL	1
120. Teleplus World, Corp	TLPEQ	1
121. Unitech Water & Renewable Energy, Inc	UWRE	1
122. United Bullion Exchange, Inc	UBEX	1
123. Upward Technology Corp	UPRD	1
124. USDATA Corp	USDC	1
125. Wentworth Energy, Inc	WNWG	1
126. Winchester International Resorts, Inc	WNCH	1
127. Worldwide E Commerce, Inc	WEWC	1
128. Wyncrest Group, Inc (The)	WNCG	1

* Below are explanations for each of the codes used in the above table:
1 = The Securities and Exchange Commission attempted to contact the issuer and either the Commission did not receive a response to its letter, the letters were returned as undeliverable, or the registered agent responded that they had no forwarding address for the issuer.
2 = The Securities and Exchange Commission was able to contact the issuer, which informed the Commission that either the issuer was no longer operating or was now a private company.

The Commission is of the opinion that the public interest and the protection of investors require a suspension of trading in the securities of the above-listed companies.

Therefore, it is ordered, pursuant to Section 12(k) of the Securities Exchange Act of 1934, that trading in the securities of the above-listed companies is suspended for the period from 9:30 a.m. EST on March 2, 2015, through 11:59 p.m. EDT on March 13, 2015.

By the Commission.

Jill M. Peterson,

Assistant Secretary.

[FR Doc. 2015–04510 Filed 3–2–15; 4:15 pm]

BILLING CODE 8011–01–P

DEPARTMENT OF STATE

[Public Notice: 9051]

60-Day Notice of Proposed Information Collection: Affidavit of Relationship (AOR) for Minors Who are Nationals of El Salvador, Guatemala, and Honduras

ACTION: Notice of request for public comment.

SUMMARY: The Department of State is seeking Office of Management and Budget (OMB) approval for the information collection described below. In accordance with the Paperwork Reduction Act of 1995, we are requesting comments on this collection from all interested individuals and organizations. The purpose of this notice is to allow 60 days for public comment preceding submission of the collection to OMB.

DATES: The Department will accept comments from the public up to May 4, 2015.

ADDRESSES: Direct any comments on this request to Sean Hantak, Program Officer, Department of State, Bureau of Population, Refugees and Migration, Office of Admissions, 2025 E Street NW., Washington DC, 20522.

You may submit comments by any of the following methods:

- *Web:* Persons with access to the Internet may use the Federal Docket Management System (FDMS) to comment on this notice by going to *www.Regulations.gov.* You can search for the document by entering ''Public Notice 9051'' in the Search bar. If necessary, use the Narrow by Agency filter option on the Results page.
- *Email:* PRM/Admissions (Sean Hantak: *hantaksr@state.gov*). You must include ''Comment on Affadavit of Relationship'' in the subject line of the message.
- *Mail:* Send written comments to PRM/Admissions, 2025 E Street NW., 8th Floor, Washington DC 20520.
- *Fax:* 202–453–9393. Attention: Sean Hantak.

You must include the DS form number (if applicable), information collection title, and the OMB control number in any correspondence.

FOR FURTHER INFORMATION CONTACT: Direct requests for additional information regarding the collection listed in this notice, including requests for copies of the proposed collection instrument and supporting documents to Sean Hantak, PRM/Admissions, 2025 E Street NW., 8th Floor, Washington DC 20520 who may be reached at *hantaksr@state.gov.*

SUPPLEMENTARY INFORMATION:

- *Title of Information Collection:* DS–7699 Affidavit of Relationship (AOR) for Minors Who are Nationals Of El Salvador, Guatemala, and Honduras.
- *OMB Control Number:* 1405–0217.
- *Type of Request:* Extension of a Currently Approved Collection.
- *Originating Office:* PRM/A.
- *Form Number:* DS–7699.
- *Respondents:* Anchor parents in the U.S. with children in El Salvador, Guatemala, and Honduras.
- *Estimated Number of Respondents:* 2,500.
- *Estimated Number of Responses:* 2,500.
- *Average Time per Response:* 60 minutes per response.
- *Total Estimated Burden Time:* 2,500 hours.
- *Frequency:* Once per respondent.
- *Obligation to Respond:* Required to Obtain or Retain a Benefit.

We are soliciting public comments to permit the Department to:

• Evaluate whether the proposed information collection is necessary for the proper functions of the Department.

• Evaluate the accuracy of our estimate of the time and cost burden for this proposed collection, including the validity of the methodology and assumptions used.

• Enhance the quality, utility, and clarity of the information to be collected.

• Minimize the reporting burden on those who are to respond, including the use of automated collection techniques or other forms of information technology.

Please note that comments submitted in response to this Notice are public record. Before including any detailed personal information, you should be aware that your comments as submitted, including your personal information, will be available for public review.

Abstract of Proposed Collection

The Department of State Bureau of Population, Refugees, and Migration (PRM) is responsible for coordinating and managing the U.S. Refugee Admissions Program (USRAP). PRM coordinates within the Department of State, as well as with the Department of Homeland Security's U.S. Citizenship and Immigration Services (DHS/USCIS), in carrying out this responsibility. A critical part of the State Department's responsibility is determining which individuals, from among millions of refugees worldwide, will have access to U.S. resettlement consideration. PRM and DHS/USCIS are now assisting with the preparation of a White House directive to initiate an in-country program to provide a means for certain persons who are lawfully present in the United States to claim a relationship with child(ren) in Honduras, El Salvador, and Guatemala and to assist the U.S. Department of State in determining whether those child(ren) are qualified to apply for access to the USRAP for family reunification purposes. This form also assists DHS/USCIS to verify parent-child relationships during refugee case adjudication. The main purpose of the DS–7699 is for the U.S. based parent to provide biographical information about his/her child(ren) in the qualifying countries who may subsequently seek access to the USRAP for verification by the U.S. government.

Methodology

This information collection currently involves the limited use of electronic techniques. Parents (respondents) in the United States will work closely with a resettlement agency during the completion of the AOR to ensure that the information is accurate. Anchor parents may visit any resettlement agency to complete an AOR. Sometimes respondents do not have strong English-language skills and benefit from having a face-to-face meeting with resettlement agency staff. The DS–7699 form will be available electronically and responses will be completed electronically. Completed AORs will be printed out for ink signature by the respondents as well. The electronic copy will be submitted electronically to the Refugee Processing Center (RPC) for downloading into the Worldwide Refugee Admissions Processing System (WRAPS), with the signed paper copy remaining with PRM's Reception and Placement Agency partners.

Dated: February 26, 2015.

Simon Henshaw,

Principal Deputy Assistant Secretary, Bureau of Population, Refugees and Migration, Department of State.

[FR Doc. 2015–04506 Filed 3–3–15; 8:45 am]

BILLING CODE 4710–33–P

DEPARTMENT OF TRANSPORTATION

Office of the Secretary

Notice of Applications for Certificates of Public Convenience and Necessity and Foreign Air Carrier Permits Filed Under Subpart B (Formerly Subpart Q) During the Week Ending December 6, 2014

AGENCY: Department of Transportation (DOT).

ACTION: Notice of Applications.

SUMMARY: The following Applications for Certificates of Public Convenience and Necessity and Foreign Air Carrier Permits were filed under Subpart B (formerly Subpart Q) of the Department of Transportation's Procedural Regulations (See 14 CFR 302. 201 *et. seq.*). The due date for Answers, Conforming Applications, or Motions to Modify Scope are set forth below for each application. Following the Answer period DOT may process the application by expedited procedures. Such procedures may consist of the adoption of a show-cause order, a tentative order, or in appropriate cases a final order without further proceedings.

Docket Number: DOT–OST–2014–0210.

Date Filed: December 1, 2014.

Due Date for Answers, Conforming Applications, or Motion to Modify Scope: December 22, 2014.

Description

Joint application of Alitalia—Compagnia Aerea Italiana S.p.A. (''Alitalia'') and Alitalia—Societa Aerea Italiana S.p.A. (''Alitalia Societa'') requesting (i) an exemption for Alitalia Societa to provide scheduled and charter foreign air transportation of persons, property and mail, (ii) the transfer and re-issuance of Alitalia's foreign air carrier permit from Alitalia to Alitalia Societa, and (iii) the transfer and re-issuance of Alitalia's codeshare statements of authorization to Alitalia Societa.

Docket Number: DOT–OST–2014–0213.

Date Filed: December 2, 2014.

Due Date for Answers, Conforming Applications, or Motion to Modify Scope: December 23, 2014.

Description

Application of Connect Air Ltd. requesting a foreign air carrier permit to enable Connect Air to operate with 703/104/705 category aircraft: (1) Charter foreign air transportation of persons, property and mail between any point or points in Canada and any point or points in the United States, and between any point or points in the United States and any point or points in a third country or countries, provided that, except with respect to cargo charters, such service constitutes part of a continuous operation, with or without a change of aircraft, that includes service to Canada for the purpose of carrying local traffic between Canada and the United States; and (2) other charters. Connect Air also requests: (1) Exemption authority, to the extent necessary to enable it to hold out and provide the service described above; and (2) such additional or other relief as the Department may deem necessary or appropriate.

Docket Number: DOT–OST–2014–0214.

Date Filed: December 3, 2014.

Due Date for Answers, Conforming Applications, or Motion to Modify Scope: December 24, 2014.

Description

Application of JetMagic Ltd. (''JetMagic'') requesting a foreign air carrier permit authorizing JetMagic authority to the extent necessary to engage in: (1) Charter foreign air transportation of persons, property and mail between any point or points behind any Member State of the European Union via any point or points in any Member State and via intermediate points to any point or point in the United States or beyond; (2)

charter foreign air transportation of persons, property and mail between any point or points in the United States and any point or points in any Member of the European Common Aviation Area; (3) other charters pursuant to the prior approval requirements; and (4) transportation authorized by any additional route rights that may be made available to European Union carriers in the future. JetMagic also requests an exemption to the extent necessary to enable it to provide the service described above pending issuance of JetMagic's foreign air carrier permit, and such other relief as the Department may deem necessary or appropriate.

Barbara J. Hairston,

Supervisory Dockets Officer, Docket Operations, Federal Register Liaison.

[FR Doc. 2015–04445 Filed 3–3–15; 8:45 am]

BILLING CODE 4910–9X–P

DEPARTMENT OF TRANSPORTATION

Office of the Secretary

[Docket Number DOT–OST–2014–0228]

Notice of Applications for Certificates of Public Convenience and Necessity and Foreign Air Carrier Permits Filed Under Subpart B (Formerly Subpart Q) During the Week Ending December 20, 2014

AGENCY: Department of Transportation (DOT).

SUMMARY: The following Applications for Certificates of Public Convenience and Necessity and Foreign Air Carrier Permits were filed under Subpart B (formerly Subpart Q) of the Department of Transportation's Procedural Regulations (See 14 CFR 302. 201 *et seq.*). The due date for Answers, Conforming Applications, or Motions to Modify Scope are set forth below for each application. Following the Answer period DOT may process the application by expedited procedures. Such procedures may consist of the adoption of a show-cause order, a tentative order, or in appropriate cases a final order without further proceedings.

Date Filed: December 19, 2014.

Due Date for Answers, Conforming Applications, or Motion to Modify Scope: January 9, 2015.

Description

Application of Air Busan Co., Ltd. requesting an exemption and a foreign air carrier permit authorizing Air Busan to engage in (1) scheduled foreign air transportation of persons, property, and mail from points behind the Republic of Korea via the Republic of Korea and intermediate points to a point or points in the United States and beyond; (2) charter foreign air transportation of persons, property and mail between any point or points in the Republic of Korea and any point or points in the United States, and between any point or points in the United States and any point or points in a third country or countries, provided that such service constitutes part of a continuous operation, with or without a change of aircraft, that includes service to the Republic of Korea for the purpose of carrying local traffic between the Republic of Korea and the United States; and (3) other charter foreign air transportation.

Barbara J. Hairston,

Supervisory Dockets Officer, Docket Operations, Federal Register Liaison.

[FR Doc. 2015–04442 Filed 3–3–15; 8:45 am]

BILLING CODE 4910–9X–P

DEPARTMENT OF TRANSPORTATION

Office of the Secretary

Notice of Applications for Certificates of Public Convenience and Necessity and Foreign Air Carrier Permits Filed Under Subpart B (Formerly Subpart Q) During the Week Ending December 13, 2014

AGENCY: Department of Transportation (DOT).

ACTION: Notice of Applications.

SUMMARY: The following Applications for Certificates of Public Convenience and Necessity and Foreign Air Carrier Permits were filed under Subpart B (formerly Subpart Q) of the Department of Transportation's Procedural Regulations (See 14 CFR 302. 201 *et. seq.*). The due date for Answers, Conforming Applications, or Motions to Modify Scope are set forth below for each application. Following the Answer period DOT may process the application by expedited procedures. Such procedures may consist of the adoption of a show-cause order, a tentative order, or in appropriate cases a final order without further proceedings.

Docket Number: DOT–OST–2014–0221.

Date Filed: December 10, 2014.

Due Date for Answers, Conforming Applications, or Motion to Modify Scope: December 31, 2014.

Description

Application of TransAsia Airways Corporation requesting an exemption and foreign a carrier permit authorizing it to engage in charter foreign air transportation of persons, property and mail from points behind Taiwan, via Taiwan and intermediate points, and any point or points in the United States, and beyond to the full extent permitted by the open skies Air Transport Agreement between the American Institute in Taiwan and the Taipei Economic and Cultural Representative Office of 1997; and other charters pursuant to the prior approval requirements set forth in the Department's regulations.

Docket Number: DOT–OST–2008–0222.

Date Filed: December 11, 2014.

Due Date for Answers, Conforming Applications, or Motion to Modify Scope: January 2, 2014.

Description

Application of euroAtlantic Airways-Transportes Aeros, S.A. requesting an exemption and amended foreign air carrier permit to provide scheduled foreign air transportation: (a) Foreign scheduled air transportation of persons, property and mail from any point or points behind any Member State of the European Union via any point or points in any Member State and via intermediate points to any point or points in the United States and beyond; (b) foreign scheduled air transportation of persons, property and mail between any point or points in the United States and any point or points in any member of the European Common Aviation Area; (c) foreign scheduled cargo air transportation between any point or points in the United States and any other point or points; (d) scheduled transportation consistent with any future, additional rights that may be granted to foreign air carriers of the Member States of the European Community.

Barbara J. Hairston,

Supervisory Dockets Officer, Docket Operations, Federal Register Liaison.

[FR Doc. 2015–04444 Filed 3–3–15; 8:45 am]

BILLING CODE 4910–9X–P

DEPARTMENT OF THE TREASURY

Office of Foreign Assets Control

Unblocking of Specially Designated Nationals and Blocked Persons Pursuant to the Foreign Narcotics Kingpin Designation Act

AGENCY: Office of Foreign Assets Control, Treasury.

ACTION: Notice.

SUMMARY: The Department of the Treasury's Office of Foreign Assets

Control (OFAC) is publishing the names of one individual and one entity whose property and interests in property have been unblocked pursuant to the Foreign Narcotics Kingpin Designation Act (Kingpin Act) (21 U.S.C. 1901–1908, 8 U.S.C. 1182).

DATES: The unblocking and removal from the list of Specially Designated Nationals and Blocked Persons (SDN List) of the one individual and entity identified in this notice whose property and interests in property were blocked pursuant to the Kingpin Act, is effective on February 24, 2015.

FOR FURTHER INFORMATION CONTACT: Assistant Director, Sanctions Compliance & Evaluation, Department of the Treasury, Office of Foreign Assets Control, Washington, DC 20220, Tel: (202) 622–2420.

SUPPLEMENTARY INFORMATION:

Electronic and Facsimile Availability

This document and additional information concerning OFAC are available from OFAC's Web site at *www.treasury.gov/ofac* or via facsimile through a 24-hour fax-on demand service at (202) 622–0077.

Background

On December 3, 1999, the Kingpin Act was signed into law by the President of the United States. The Kingpin Act provides a statutory framework for the President to impose sanctions against significant foreign narcotics traffickers and their organizations on a worldwide basis, with the objective of denying their businesses and agents access to the U.S. financial system and to the benefits of trade and transactions involving U.S. persons and entities.

The Kingpin Act blocks all property and interests in property, subject to U.S. jurisdiction, owned or controlled by significant foreign narcotics traffickers as identified by the President. In addition, the Secretary of the Treasury consults with the Attorney General, the Director of the Central Intelligence Agency, the Director of the Federal Bureau of Investigation, the Administrator of the Drug Enforcement Administration, the Secretary of Defense, the Secretary of State, and the Secretary of Homeland Security when designating and blocking the property or interests in property, subject to U.S. jurisdiction, of persons or entities found to be: (1) Materially assisting in, or providing financial or technological support for or to, or providing goods or services in support of, the international narcotics trafficking activities of a person designated pursuant to the Kingpin Act; (2) owned, controlled, or directed by, or acting for or on behalf of, a person designated pursuant to the Kingpin Act; and/or (3) playing a significant role in international narcotics trafficking.

On February 24, 2015, the Assistant Director of the Office of Global Targeting removed from the SDN List the individual and entity listed below, whose property and interests in property were blocked pursuant to the Kingpin Act:

Individual

1. ALBA CERDA, Salvador, Avenida Pacifico No. 2834, Seccion Costa de Oro Fraccionamiento Playas de Tijuana 22250, Tijuana, Baja California, Mexico; Avenida Pacifico No. 2408, Seccion Costa de Oro Fraccionamiento Playas de Tijuana 22250, Tijuana, Baja California, Mexico; c/o Farmacia Vida Suprema, S.A. DE C.V., Tijuana, Baja California, Mexico; c/o Distribuidora Imperial De Baja California, S.A. DE C.V., Tijuana, Baja California, Mexico; c/o ADP, S.C., Tijuana, Baja California, Mexico; DOB 25 Dec 1947; POB Patzcuaro, Michoacan; Credencial electoral 125324910951 (Mexico) (individual) [SDNTK].

Entity

2. FREIGHT MOVERS INTERNATIONAL, Airport Road, Basseterre, Basseterre, Saint Kitts and Nevis; Church Street, Basseterre, Basseterre, Saint Kitts and Nevis; Offices in St. Kitts and Nevins, West Indies ONLY [SDNTK].

Dated: February 24, 2015.

Gregory T. Gatjanis,

Associate Director, Office of Global Targeting, Office of Foreign Assets Control.

[FR Doc. 2015–04398 Filed 3–3–15; 8:45 am]

BILLING CODE 4810–AL–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Open Meeting of the Taxpayer Advocacy Panel Tax Forms and Publications Project Committee

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice of meeting.

SUMMARY: An open meeting of the Taxpayer Advocacy Panel Tax Forms and Publications Project Committee will be conducted. The Taxpayer Advocacy Panel is soliciting public comments, ideas and suggestions on improving customer service at the Internal Revenue Service.

DATES: The meeting will be held March 19, 2015.

FOR FURTHER INFORMATION CONTACT: Donna Powers at 1–888–912–1227 or (954) 423–7977.

SUPPLEMENTARY INFORMATION: Notice is hereby given pursuant to section 10(a)(2) of the Federal Advisory Committee Act, 5 U.S.C. App. (1988) that an open meeting of the Taxpayer Advocacy Panel Tax Forms and Publications Project Committee will be held Thursday, March 19, 2015 at 1:00 p.m. Eastern Time via teleconference. The public is invited to make oral comments or submit written statements for consideration. Due to limited conference lines, notification of intent to participate must be made with Donna Powers. For more information please contact: Donna Powers at 1–888–912–1227 or (954) 423–7977 or write: TAP Office, 1000 S. Pine Island Road, Plantation, FL 33324 or contact us at the Web site: *http://www.improveirs.org.* The committee will be discussing various issues related to Tax Forms and Publications and public input is welcomed.

Dated: February 27, 2015.

Otis Simpson,

Acting Director, Taxpayer Advocacy Panel.

[FR Doc. 2015–04491 Filed 3–3–15; 8:45 am]

BILLING CODE 4830–01–P

FEDERAL REGISTER

Vol. 80 Wednesday,

No. 42 March 4, 2015

Part II

Department of Commerce

National Oceanic and Atmospheric Administration

Takes of Marine Mammals Incidental to Specified Activities; Taking Marine Mammals Incidental to an Exploration Drilling Program in the Chukchi Sea, Alaska; Notice

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

RIN 0648–XD655

Takes of Marine Mammals Incidental to Specified Activities; Taking Marine Mammals Incidental to an Exploration Drilling Program in the Chukchi Sea, Alaska

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

ACTION: Notice; proposed incidental harassment authorization; request for comments.

SUMMARY: NMFS received an application from Shell Gulf of Mexico Inc. (Shell) for an Incidental Harassment Authorization (IHA) to take marine mammals, by harassment, incidental to offshore exploration drilling on Outer Continental Shelf (OCS) leases in the Chukchi Sea, Alaska. Pursuant to the Marine Mammal Protection Act (MMPA), NMFS is requesting comments on its proposal to issue an IHA to Shell to take, by Level B harassment only, 12 species of marine mammals during the specified activity.

DATES: Comments and information must be received no later than April 3, 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. The mailbox address for providing email comments is *ITP.Guan@noaa.gov.* NMFS is not responsible for email comments sent to addresses other than the one provided here. Comments sent via email, including all attachments, must not exceed a 10-megabyte file size.

Instructions: All comments received are a part of the public record and will generally be posted to *http://www.nmfs.noaa.gov/pr/permits/incidental.htm* without change. All Personal Identifying Information (for example, name, address, etc.) voluntarily submitted by the commenter may be publicly accessible. Do not submit Confidential Business Information or otherwise sensitive or protected information.

A copy of the application, which contains several attachments, including Shell's marine mammal mitigation and monitoring plan (4MP) and Plan of Cooperation, used in this document may be obtained by writing to the address specified above, telephoning the contact listed below (see **FOR FURTHER INFORMATION CONTACT**), or visiting the internet at: *http://www.nmfs.noaa.gov/pr/permits/incidental.htm.* Documents cited in this notice may also be viewed, by appointment, during regular business hours, at the aforementioned address.

FOR FURTHER INFORMATION CONTACT: Shane Guan, Office of Protected Resources, NMFS, (301) 427–8401.

SUPPLEMENTARY INFORMATION:

Background

Sections 101(a)(5)(A) and (D) of the MMPA (16 U.S.C. 1361 *et seq.*) direct the Secretary of Commerce to allow, upon request, the incidental, but not intentional, taking of small numbers of marine mammals by U.S. citizens who engage in a specified activity (other than commercial fishing) within a specified geographical region if certain findings are made and either regulations are issued or, if the taking is limited to harassment, a notice of a proposed authorization is provided to the public for review.

An authorization for incidental takings shall be granted if NMFS finds that the taking will have a negligible impact on the species or stock(s), will not have an unmitigable adverse impact on the availability of the species or stock(s) for subsistence uses (where relevant), and if the permissible methods of taking and requirements pertaining to the mitigation, monitoring and reporting of such takings are set forth. NMFS has defined ''negligible impact'' in 50 CFR 216.103 as ''an impact resulting from the specified activity that cannot be reasonably expected to, and is not reasonably likely to, adversely affect the species or stock through effects on annual rates of recruitment or survival.''

Except with respect to certain activities not pertinent here, the MMPA defines ''harassment'' as: any act of pursuit, torment, or annoyance which (i) has the potential to injure a marine mammal or marine mammal stock in the wild [Level A harassment]; or (ii) has the potential to disturb a marine mammal or marine mammal stock in the wild by causing disruption of behavioral patterns, including, but not limited to, migration, breathing, nursing, breeding, feeding, or sheltering [Level B harassment].

Summary of Request

On September 18, 2014, Shell submitted an application to NMFS for the taking of marine mammals incidental to exploration drilling activities in the Chukchi Sea, Alaska. After receiving comments and questions from NMFS, Shell revised its IHA application and 4MP on December 17, 2014. NMFS determined that the application was adequate and complete on January 5, 2015.

The proposed activity would occur between July and October 2015. The following specific aspects of the proposed activities are likely to result in the take of marine mammals: Exploration drilling, supply and drilling support vessels using dynamic positioning, mudline cellar construction, anchor handling, ice management activities, and zero-offset vertical seismic profiling (ZVSP) activities.

Shell has requested an authorization to take 13 marine mammal species by Level B harassment. However, the narwhal (*Monodon monoceros*) is not expected to be found in the activity area. Therefore, NMFS is proposing to authorize take of 12 marine mammal species, by Level B harassment, incidental to Shell's offshore exploration drilling in the Chukchi Sea. These species are: beluga whale (*Delphinapterus leucas*); bowhead whale (*Balaena mysticetus*); gray whale (*Eschrichtius robustus*); killer whale (*Orcinus orca*); minke whale (*Balaenoptera acutorostrata*); fin whale (*Balaenoptera physalus*); humpback whale (*Megaptera novaeangliae*); harbor porpoise (*Phocoena phocoena*); bearded seal (*Erignathus barbatus*); ringed seal (*Phoca hispida*); spotted seal (*P. largha*); and ribbon seal (*Histriophoca fasciata*).

In 2012, NMFS issued two IHAs to Shell to conducted two exploratory drilling activities at exploration wells in the Beaufort (77 FR 27284; May 9, 2012) and Chukchi (77 FR 27322; May 9, 2012) Seas, Alaska, during the 2012 Arctic open-water season (July through October). Shell's proposed 2015 exploration drilling program is similar to those conducted in 2012. In December 2012, Shell submitted two additional IHA applications to take marine mammals incidental to its proposed exploratory drilling in Beaufort and Chukchi Seas during the 2013 open-water season. However, Shell withdrew its application in February 2013.

Description of the Specified Activity

Overview

Shell proposes to conduct exploration drilling at up to four exploration drill sites at Shell's Burger Prospect on the OCS leases acquired from the U.S. Department of Interior, Bureau of Ocean Energy Management (BOEM). The exploration drilling planned for the

2015 season is a continuation of the Chukchi Sea exploration drilling program that began in 2012, and resulted in the completion of a partial well at the location known as Burger A. Exploration drilling will be done pursuant to Shell's Chukchi Sea Exploration Plan, Revision 2 (EP).

Shell plans to use two drilling units, the drillship *Noble Discoverer* (*Discoverer*) and semi-submersible *Transocean Polar Pioneer* (*Polar Pioneer*) to drill at up to four locations on the Burger Prospect. Both drilling units will be attended to by support vessels for the purposes of ice management, anchor handling, oil spill response (OSR), refueling, support to drilling units, and resupply. The drilling units will be accompanied by an expanded number of support vessels, aircraft, and oil spill response vessels (OSRV) greater than the number deployed during the 2012 drilling season.

Dates and Duration

Shell anticipates that its exploration drilling program will occur between July 1 and approximately October 31, 2015. The drilling units will move through the Bering Strait and into the Chukchi Sea on or after July 1, 2015, and then onto the Burger Prospect as soon as ice and weather conditions allow. Exploration drilling activities will continue until about October 31, 2015, the drilling units and support vessels will exit the Chukchi Sea at the conclusion of the exploration drilling season. Transit entirely out of the Chukchi Sea by all vessels associated with exploration drilling may take well into the month of November due to ice, weather, and sea states.

Specified Geographic Region

All drill sites at which exploration drilling would occur in 2015 will be at Shell's Burger Prospect (see Figure 1–1 on page 1–2 of Shell's IHA application). Shell has identified a total of six Chukchi Sea lease blocks on the Burger Prospect. All six drill sites are located more than 64 mi (103 km) off the Chukchi Sea coast. During 2015, the *Discoverer* and *Polar Pioneer* will be used to conduct exploration drilling activities at up to four exploration drill sites. As with any Arctic exploration program, weather and ice conditions will dictate actual operations.

Activities associated with the Chukchi Sea exploration drilling program and analyzed herein include operation of the *Discoverer, Polar Pioneer,* and associated support vessels. The drilling units will remain at the location of the designated exploration drill sites except when mobilizing and demobilizing to and from the Chukchi Sea, transiting between drill sites, and temporarily moving off location if it is determined ice conditions require such a move to ensure the safety of personnel and/or the environment.

Detailed Description of Activities

The specific activities that may result in incidental taking of marine mammals based on the IHA application are limited to Shell's exploration drilling program and related activities. Activities include exploration drilling sounds, MLC construction, anchor handling while mooring a drilling unit at a drill site, vessels on DP when tending to a drilling unit, ice management, and zero-offset vertical seismic profile (ZVSP) surveys.

(1) Exploration Drilling

In 2015 Shell plans to continue its exploration drilling program on BOEM Alaska OCS leases at drill sites greater than 64 mi (103 km) from the Chukchi Sea coast during the 2015 drilling season. Shell plans to conduct exploration drilling activities at up to four drill sites at the Burger Prospect utilizing two drilling units, the drillship *Discoverer* and the semi-submersible *Polar Pioneer.*

During 2012, Shell drilled a partial well at the Burger A drill site. Drilling at Burger A did not reach a depth at which a ZVSP survey would be conducted. Consequently one was not performed.

A mudline cellar (MLC) will be constructed at each drill site. The MLCs will be constructed in the seafloor using a large diameter bit operated by hydraulic motors and suspended from the *Discoverer* or *Polar Pioneer.*

(2) Support Vessels

During exploration drilling, the *Discoverer* and *Polar Pioneer* will be supported by the types of vessels listed in Table 1–1 of Shell's IHA application. These drilling units would be accompanied by greater number of support vessels and oil spill response vessels than were deployed by Shell during 2012 exploration drilling in the Chukchi Sea.

Two ice management vessels will support the drilling units. These vessels will enter and exit the Chukchi Sea with or ahead of the drilling units, and will generally remain in the vicinity of the drilling units during the drilling season. Ice management and ice scouting is expected to occur at distances of 20 mi (32 km) and 30 mi (48 km) respectively from drill site locations. However, these vessels may have to range beyond these distances depending on ice conditions.

Up to three anchor handlers will support the drilling units. These vessels will enter and exit the Chukchi Sea with or ahead of the drilling units, and will generally remain in the vicinity of the drilling units during the drilling season. When the vessels are not anchor handling, they will be available to provide other general support. Two of the three anchor handlers may be used to perform secondary ice management tasks if needed.

The planned exploration drilling activities will use three offshore supply vessels (OSVs) for resupply of the drilling units and support vessels. Drilling materials, food, fuel, and other supplies will be picked up in Dutch Harbor (with possible minor resupply coming out of Kotzebue) and transported to the drilling units and support vessels.

Shell plans to use up to two science vessels; one for each drilling unit, from which sampling of ocean water and sediments prior to and following drilling discharges would be conducted. The science vessel specifications are based on larger OSVs, but smaller vessels may be used.

Two tugs will tow the *Polar Pioneer* from Dutch Harbor to the Burger Prospect. After the *Polar Pioneer* is moored, the tugs will remain in the vicinity of the drilling units to help move either drilling unit in the event they need to be moved off of a drilling site due to ice or any other event.

Shell may deploy a MLC ROV system from an OSV type vessel that could be used to construct MLCs prior to a drilling units arriving. If used, this vessel would be located at a drill site on the Burger Prospect. When not in use, the vessel would be outside of the Chukchi Sea

(3) Oil Spill Response Vessels

The oil spill response (OSR) vessel types supporting the exploration drilling program are listed in Table 1.2 of Shell's IHA application.

One dedicated OSR barge and on-site oil spill response vessel (OSRV) will be staged in the vicinity of the drilling unit(s) when drilling into potential liquid hydrocarbon bearing zones. This will enable the OSRV to respond to a spill and provide containment, recovery, and storage for the initial response period in the unlikely event of a well control incident.

The OSR barge, associated tug, and OSRV possess sufficient storage capacity to provide containment, recovery, and storage for the initial response period. Shell plans to use two

oil storage tankers (OSTs). An OST will be staged at the Burger Prospect. The OST will hold fuel for Shell's drilling units, support vessels, and have space for storage of recovered liquids in the unlikely event of a well control incident. A second OST will be stationed in the Chukchi Sea and sited such that it will be able to respond to a well control event before the first tanker reaches its recovered liquid capacity.

The tug and barge will be used for nearshore OSR. The nearshore tug and barge will be moored near Goodhope Bay, Kotzebue Sound. The nearshore tug and barge will also carry response equipment, including one 47 ft. (14 m) skimming vessel, 34 ft. (10 m) workboats, mini-barges, boom and duplex skimming units for nearshore recovery and possibly support nearshore protection. The nearshore tug and barge will also carry designated response personnel and will mobilize to recovery areas, deploy equipment, and begin response operations.

(4) Aircraft

Offshore operations will be serviced by up to three helicopters operated out of an onshore support base in Barrow. The helicopters are not yet contracted. Sikorsky S–92s (or similar) will be used to transport crews between the onshore support base, the drilling units and support vessels with helidecks. The helicopters will also be used to haul small amounts of food, materials, equipment, samples and waste between vessels and the shorebase. Approximately 40 Barrow to Burger Prospect round trip flights will occur each week to support the additional crew change necessities for an additional drilling unit, support vessels, and required sampling.

The route chosen will depend on weather conditions and whether subsistence users are active on land or at sea. These routes may be modified depending on weather and subsistence uses.

Shell will also have a dedicated helicopter for Search and Rescue (SAR). The SAR helicopter is expected to be a Sikorsky S–92 (or similar). This aircraft will stay grounded at the Barrow shore base location except during training drills, emergencies, and other non-routine events. The SAR helicopter and crew plan training flights for approximately 40 hr/month.

A fixed wing propeller or turboprop aircraft, such as the Saab 340–B, Beechcraft 1900, or De Havilland Dash 8, will be used to transport crews, materials, and equipment between Wainwright and hub airports such as Barrow or Fairbanks. It is anticipated that there will be one round trip flight every three weeks.

A fixed wing aircraft, Gulfstream Aero-Commander (or similar), will be used for photographic surveys of marine mammals. These flights will take place daily depending on weather conditions. Flight paths are located in the Marine Mammal Monitoring and Mitigation Plan (4MP).

An additional Gulfstream Aero Commander may be used to provide ice reconnaissance flights to monitor ice conditions around the Burger Prospect. Typically, the flights will focus on the ice conditions within 50 mi (80 km) of the drill sites, but more extensive ice reconnaissance may occur beyond 50 mi (80 km).

These flights will occur at an altitude of approximately 3,000 ft. (915 m).

(5) Vertical Seismic Profile

Shell may conduct a geophysical survey referred to as a vertical seismic profile (VSP) survey at each drill site where a well is drilled in 2015. During VSP surveys, an airgun array is deployed at a location near or adjacent to the drilling units, while receivers are placed (temporarily anchored) in the wellbore. The sound source (airgun array) is fired, and the reflected sonic waves are recorded by receivers (geophones) located in the wellbore. The geophones, typically a string of them, are then raised up to the next interval in the wellbore and the process is repeated until the entire wellbore has been surveyed. The purpose of the VSP is to gather geophysical information at various depths, which can then be used to tie-in or groundtruth geophysical information from the previous seismic surveys with geological data collected within the wellbore.

Shell will be conducting a particular form of VSP referred to as a zero-offset VSP (ZVSP), in which the sound source is maintained at a constant location near the wellbore (Figure 1–2 in IHA application). Shell may use one of two typical sound sources: (1) A three-airgun array consisting of three, 150 cubic inches (in^3) (2,458 cm^3) airguns, or (2) a two-airgun array consisting of two, 250 in^3 (4,097 cm^3) airguns. Typical receivers would consist of a standard wireline four-level vertical seismic imager (VSI) tool, which has four receivers 50 ft (15.2 m) apart.

A ZVSP survey is normally conducted at each well after total depth is reached, but may be conducted at a shallower depth. For each survey, Shell would deploy the sound source (airgun array) over the side of the *Discoverer* or *Polar Pioneer* with a crane, the sound source will be 50–200 ft (15–61 m) from the wellhead depending on crane location, and reach a depth of approximately 10–23 ft (3–7 m) below the water surface. The VSI along with its four receivers will be temporarily anchored in the wellbore at depth.

The sound source will be pressured up to 3,000 pounds per square inch (psi), and activated 5–7 times at approximately 20-second intervals. The VSI will then be moved to the next interval of the wellbore and re-anchored, after which the airgun array will again be activated 5–7 times. This process will be repeated until the entire wellbore is surveyed. The interval between anchor points for the VSI is usually 200–300 ft. (61–91 m). A normal ZVSP survey is conducted over a period of about 10–14 hours depending on the depth of the well and the number of anchoring points.

(6) Ice Management and Forecasting

The exploration drilling program is located in an area that is characterized by active sea ice movement, ice scouring, and storm surges. In anticipation of potential ice hazards that may be encountered, Shell will implement a Drilling Ice Management Plan (DIMP) to ensure real-time ice and weather forecasting that will identify conditions that could put operations at risk, allowing Shell to modify its activities accordingly.

Shell's ice management fleet will consist of four vessels: two ice management vessels and two anchor handler/icebreakers. Ice management that is necessary for safe operations during Shell's planned exploration drilling program will occur far out in the OCS, remote from the vicinities of any routine marine vessel traffic in the Chukchi Sea, thereby resulting in no threat to public safety or services that occur near to shore. Shell vessels will also communicate movements and activities through the 2015 North Slope Communications Centers (Com Centers). Management of ice will occur during the drilling season predominated by open water, thus it will not contribute to ice hazards, such as ridging, override, or pileup in an offshore or nearshore environment.

The ice-management/anchor handling vessels will manage the ice by deflecting any ice floes that could affect the *Discoverer* or *Polar Pioneer* when they are drilling or anchor mooring buoys even if the drilling units are not anchored at a drill site. When managing ice, the ice management vessels will generally operate upwind of the drilling units, since the wind and currents contribute to the direction of ice

movement. Ice reconnaissance or ice scouting forays may occur out to 48.3km (30mi) from the drilling units and are conducted by the ice management vessels into ice that may move into the vicinity of exploration drilling activities. This will provide the vessel and shore-based ice advisors with the information required to decide whether or not active ice management is necessary. The actual distances from the drilling units and the patterns of ice management (distances between vessels, and width of the swath in which ice management occurs) will be determined by the ice floe speed, size, thickness, and character, and wind forecast.

Ice floe frequency and intensity is unpredictable and could range from no ice to ice densities that exceed ice-management capabilities, in which case drilling activities might be stopped and the drilling units disconnected from their moorings and moved off site. The *Discoverer* was disconnected from its moorings once during the 2012 season to avoid a potential encounter with multi-year ice flows of sufficient size to halt activities. Advance scouting of ice primarily north and east of the Burger A well by the ice management vessels did not detect ice of sufficient size or thickness to warrant disconnecting the *Discoverer* from its moorings during the remainder of the 2012 season. If ice is present, ice management activities may be necessary in early July, at discrete intervals at other times during the season, and towards the end of operations in late October. However, data regarding historic ice patterns in the area of activities indicate that it will not be required throughout the planned 2015 drilling season.

During the 2012 drilling season, a total of seven days of active ice management by vessels occurred in support of Shell's exploration drilling program in the Chukchi Sea.

When ice is present at a drill site, ice disturbance will be limited to the minimum amount needed to allow drilling to continue. First-year ice will be the type most likely to be encountered. The ice-management vessel will be tasked with managing the ice so that it flows easily around the drilling units and their anchor moorings without building up in front of either. This type of ice is managed by the ice-management vessel continually moving back and forth across the drift line, directly up drift of the drilling units and making turns at both ends, or in circular patterns. During ice-management, the vessel's propeller is rotating at approximately 15 to 20% of the vessel's propeller rotation capacity. Ice management occurs with slow movements of the vessel using lower power and therefore slower propeller rotation speed (*i.e.,* lower cavitation), allowing for fewer repositions of the vessel, and thereby reducing cavitation effects in the water. Occasionally, there may be multi-year ice features that would be managed at a much slower speed than that used to manage first-year ice.

As detailed in Shell's Drilling Ice Management Plan (DIMP), in 2012 Shell's ice management vessels conducted ice management to protect moorings for the *Discoverer* after the drilling unit was moved off of the Burger A well. This work consisted of re-directing flows as necessary to avoid potential impact with mooring buoys, without the necessity to break up multi-year ice flowbergs. Actual breaking of ice may need to occur in the event that ice conditions in the immediate vicinity of activities create a safety hazard for the drilling unit, or its moorings. In such a circumstance, operations personnel will follow the guidelines established in the DIMP to evaluate ice conditions and make the formal designation of a hazardous ice alert condition, which would trigger the procedures that govern any actual icebreaking operations. Despite Shell's experience in 2012, historical data relative to ice conditions in the Chukchi Sea in the vicinity of Shell's planned 2015 activities, establishes that there is a low probability for the type of hazardous ice conditions that might necessitate icebreaking (*e.g.,* records of the National Naval Ice Center archives; Shell/SIWAC). The probability could be greater at the beginning and/or the end of the drilling season (early July or late October). For the purposes of evaluating possible impacts of the planned activities, Shell has assumed icebreaking activities for a limited period of time, and estimated incidental exposures of marine mammals from such activities.

Description of Marine Mammals in the Area of the Specified Activity

The Chukchi Sea supports a diverse assemblage of marine mammals, including: Bowhead, gray, beluga, killer, minke, humpback, and fin whales; harbor porpoise; ringed, ribbon, spotted, and bearded seals; narwhals; polar bears (*Ursus maritimus*); and walruses (*Odobenus rosmarus divergens;* see Table 4–1 in Shell's application). The bowhead, humpback, and fin whales are listed as ''endangered'' under the Endangered Species Act (ESA) and as depleted under the MMPA. The ringed seal is listed as ''threatened'' under the ESA. Certain stocks or populations of gray, beluga, and killer whales and spotted seals are listed as endangered or are proposed for listing under the ESA; however, none of those stocks or populations occur in the proposed activity area. Both the walrus and the polar bear are managed by the U.S. Fish and Wildlife Service (USFWS) and are not considered further in this proposed IHA notice.

Of these species, 12 are expected to occur in the area of Shell's proposed operations. These species are: The bowhead, gray, humpback, minke, fin, killer, and beluga whales; harbor porpoise; and the ringed, spotted, bearded, and ribbon seals. Beluga, bowhead, and gray whales, harbor porpoise, and ringed, bearded, and spotted seals are anticipated to be encountered more than the other marine mammal species mentioned here. The marine mammal species that is likely to be encountered most widely (in space and time) throughout the period of the proposed drilling program is the ringed seal. Encounters with bowhead and gray whales are expected to be limited to particular seasons, as discussed later in this document. Where available, Shell used density estimates from peer-reviewed literature in the application. In cases where density estimates were not readily available in the peer-reviewed literature, Shell used other methods to derive the estimates. NMFS reviewed the density estimate descriptions and articles from which estimates were derived and requested additional information to better explain the density estimates presented by Shell in its application. This additional information was included in the revised IHA application. The explanation for those derivations and the actual density estimates are described later in this document (see the ''Estimated Take by Incidental Harassment'' section).

The narwhal occurs in Canadian waters and occasionally in the Alaskan Beaufort Sea and the Chukchi Sea, but it is considered extralimital in U.S. waters and is not expected to be encountered. There are scattered records of narwhal in Alaskan waters, including reports by subsistence hunters, where the species is considered extralimital (Reeves *et al.,* 2002). Due to the rarity of this species in the proposed project area and the remote chance it would be affected by Shell's proposed Chukchi Sea drilling activities, this species is not discussed further in this proposed IHA notice.

Shell's application contains information on the status, distribution, seasonal distribution, abundance, and life history of each of the species under NMFS jurisdiction mentioned in this

document. When reviewing the application, NMFS determined that the species descriptions provided by Shell correctly characterized the status, distribution, seasonal distribution, and abundance of each species. Please refer to the application for that information (see **ADDRESSES**). Additional information can also be found in the NMFS Stock Assessment Reports (SAR). The Alaska 2013 SAR is available at: *http://www.nmfs.noaa.gov/pr/sars/pdf/ak2013_final.pdf.*

Table 1 lists the 12 marine mammal species or stocks under NMFS jurisdiction with confirmed or possible occurrence in the proposed project area.

TABLE 1—MARINE MAMMAL SPECIES AND STOCKS WITH CONFIRMED OR POSSIBLE OCCURRENCE IN THE PROPOSED EXPLORATION DRILLING AREA

Common name	Scientific name	Status	Occurrence	Seasonality	Range	Abundance
Odontocetes:						
Beluga whale (Eastern Chukchi Sea stock).	*Dephinapterus leucas.*	.....	Common	Mostly spring and fall with some in summer.	Russia to Canada	3,710
Beluga whale (Beaufort Sea stock).	*Delphinapterus leucas.*	.....	Common	Mostly spring and fall with some in summer.	Russia to Canada	39,258
Killer whale	*Orcinus orca*	.....	Occasional/ Extralimital.	Mostly summer and early fall.	California to Alaska	2,084
Harbor porpoise	*Phocoena phocoena.*	.....	Occasional/ Extralimital.	Mostly summer and early fall.	California to Alaska	48,215
Mysticetes:						
Bowhead whale	*Balaena mysticetus*	Endangered; Depleted.	Common	Mostly spring and fall with some in summer.	Russia to Canada	19,534
Gray whale	*Eschrichtius robustus.*	.....	Somewhat common.	Mostly summer	Mexico to the U.S. Arctic Ocean.	19,126
Minke whale	*Balaenoptera acutorostrata.*	.....	Rare	Summer	North Pacific	810–1,003
Fin whale (North Pacific stock).	*B. physalus*	Endangered; Depleted.	Rare	Summer	North Pacific	1,652
Humpback whale (Central North Pacific stock).	*Megaptera novaeangliae.*	Endangered; Depleted.	Rare	Summer	Central to North Pacific.	20,800
Pinnipeds:						
Bearded seal (Beringia distinct population segment).	*Erigathus barbatus*	Candidate	Common	Spring and summer.	Bering, Chukchi, and Beaufort Seas.	155,000
Ringed seal (Arctic stock).	*Phoca hispida*	Threatened; Depleted.	Common	Year round	Bering, Chukchi, and Beaufort Seas.	300,000
Spotted seal	*Phoca largha*	.....	Common	Summer	Japan to U.S. Arctic Ocean.	141,479
Ribbon seal	*Histriophoca fasciata.*	Species of concern	Occasional	Summer	Russia to U.S. Arctic Ocean.	49,000

Potential Effects of the Specified Activity on Marine Mammals

This section includes a summary and discussion of the ways that the types of stressors associated with the specified activity (*e.g.,* drilling, seismic airgun, vessel movement) have been observed to or are thought to impact marine mammals. This section is intended as a background of potential effects and does not consider either the specific manner in which this activity will be carried out or the mitigation that will be implemented or how either of those will shape the anticipated impacts from this specific activity. The ''Estimated Take by Incidental Harassment'' section later in this document will include a quantitative analysis of the number of individuals that are expected to be taken by this activity. The ''Negligible Impact Analysis'' section will include the analysis of how this specific activity will impact marine mammals and will consider the content of this section, the ''Estimated Take by Incidental Harassment'' section, the ''Mitigation'' section, and the ''Anticipated Effects on Marine Mammal Habitat'' section to draw conclusions regarding the likely impacts of this activity on the reproductive success or survivorship of individuals and from that on the affected marine mammal populations or stocks.

Background on Sound

Sound is a physical phenomenon consisting of minute vibrations that travel through a medium, such as air or water, and is generally characterized by several variables. Frequency describes the sound's pitch and is measured in hertz (Hz) or kilohertz (kHz), while sound level describes the sound's intensity and is measured in decibels (dB). Sound level increases or decreases exponentially with each dB of change. The logarithmic nature of the scale means that each 10-dB increase is a 10-fold increase in acoustic power (and a 20-dB increase is then a 100-fold increase in power). A 10-fold increase in acoustic power does not mean that the

sound is perceived as being 10 times louder, however. Sound levels are compared to a reference sound pressure (micro-Pascal) to identify the medium. For air and water, these reference pressures are ''re 20 μ Pa'' and ''re 1 μ Pa,'' respectively. Root mean square (RMS) is the quadratic mean sound pressure over the duration of an impulse. RMS is calculated by squaring all of the sound amplitudes, averaging the squares, and then taking the square root of the average (Urick, 1983). RMS accounts for both positive and negative values; squaring the pressures makes all values positive so that they may be accounted for in the summation of pressure levels (Hastings and Popper, 2005). This measurement is often used in the context of discussing behavioral effects, in part, because behavioral effects, which often result from auditory cues, may be better expressed through averaged units rather than by peak pressures.

Exploration Drilling Program Sound Characteristics

(1) Drilling Sounds

Exploration drilling will be conducted from the drilling units *Discoverer* and *Polar Pioneer.* Underwater sound propagation during the activities results from the use of generators, drilling machinery, and the drilling units themselves. Sound levels during vessel-based operations may fluctuate depending on the specific type of activity at a given time and aspect from the vessel. Underwater sound levels may also depend on the specific equipment in operation. Lower sound levels have been reported during well logging than during drilling operations (Greene 1987b), and underwater sound appeared to be lower at the bow and stern aspects than at the beam (Greene 1987a).

Most drilling sounds generated from vessel-based operations occur at relatively low frequencies below 600 Hz although tones up to 1,850 Hz were recorded by Greene (1987a) during drilling operations in the Beaufort Sea. At a range of 0.17 km, the 20–1000 Hz band level was 122–125 dB re 1μ Pa rms for the drillship *Explorer I.* Underwater sound levels were slightly higher (134 db re 1μ Pa rms) during drilling activity from the *Explorer II* at a range of 0.20 km; although tones were only recorded below 600 Hz. Underwater sound measurements from the *Kulluk* in 1986 at 0.98 km were higher (143 dB re 1μ Pa rms) than from the other two vessels. Measurements of the *Discoverer* on the Burger prospect in 2012, without any support vessels operating nearby, showed received sound levels of 120 dB re 1 μ Pa rms at 1.5 km. The *Polar Pioneer,* a semi-submersible drilling unit, is expected to introduce less sound into the water than the *Discoverer* during drilling and related activities.

(2) Airgun Sounds

Two sound sources have been proposed by Shell for the ZVSP surveys in 2015. The first is a small airgun array that consists of three 150 in^3 (2,458 cm^3) airguns for a total volume of 450 in^3 (7,374 cm^3). The second ZVSP sound source consists of two 250 in^3 (4097 cm^3) airguns with a total volume of 500 in^3 (8,194 cm^3). Typically, a single ZVSP survey will be performed when the well has reached PTD or final depth although, in some instances, a prior ZVSP will have been performed at a shallower depth. A typical survey, would last 10–14 hours, depending on the depth of the well and the number of anchoring points, and include firings of up to the full array, plus additional firing of the smallest airgun in the array to be used as a ''mitigation airgun'' while the geophones are relocated within the wellbore.

Airguns function by venting high-pressure air into the water. The pressure signature of an individual airgun consists of a sharp rise and then fall in pressure, followed by several positive and negative pressure excursions caused by oscillation of the resulting air bubble. The sizes, arrangement, and firing times of the individual airguns in an array are designed and synchronized to suppress the pressure oscillations subsequent to the first cycle. A typical high-energy airgun arrays emit most energy at 10–120 Hz. However, the pulses contain energy up to 500–1000 Hz and some energy at higher frequencies (Goold and Fish 1998; Potter *et al.* 2007).

(3) Aircraft Noise

Helicopters may be used for personnel and equipment transport to and from the drilling units and support vessels. Under calm conditions, rotor and engine sounds are coupled into the water within a 26° cone beneath the aircraft. Some of the sound will transmit beyond the immediate area, and some sound will enter the water outside the 26° area when the sea surface is rough. However, scattering and absorption will limit lateral propagation in the shallow water.

Dominant tones in noise spectra from helicopters are generally below 500 Hz (Greene and Moore 1995). Harmonics of the main rotor and tail rotor usually dominate the sound from helicopters; however, many additional tones associated with the engines and other rotating parts are sometimes present. Because of doppler shift effects, the frequencies of tones received at a stationary site diminish when an aircraft passes overhead. The apparent frequency is increased while the aircraft approaches and is reduced while it moves away.

Aircraft flyovers are not heard underwater for very long, especially when compared to how long they are heard in air as the aircraft approaches an observer. Helicopters flying to and from the drilling units will generally maintain straight-line routes at altitudes of 1,500 ft. (457 m) above sea level, thereby limiting the received levels at and below the surface.

(4) Vessel Noise

In addition to the drilling units, various types of vessels will be used in support of the operations including ice management vessels, anchor handlers, OSVs, and OSR vessels. Sounds from boats and vessels have been reported extensively (Greene and Moore 1995; Blackwell and Greene 2002, 2005, 2006). Numerous measurements of underwater vessel sound have been performed in support of recent industry activity in the Chukchi and Beaufort Seas. Results of these measurements were reported in various 90-day and comprehensive reports since 2007. For example, Garner and Hannay (2009) estimated sound pressure levels of 100 dB re 1 μ Pa rms at distances ranging from ~1.5 to 2.3 mi (~2.4 to 3.7 km) from various types of barges. MacDonnell *et al.* (2008) estimated higher underwater sound pressure levels from the seismic vessel *Gilavar* of 120 dB re 1 μ Pa rms at ~13 mi (~21 km) from the source, although the sound level was only 150 dB re 1 μ Pa rms at 85 ft (26 m) from the vessel. Like other industry-generated sound, underwater sound from vessels is generally at relatively low frequencies. During 2012, underwater sound from ten (10) vessels in transit, and in two instances towing or providing a tow-assist, were recorded by JASCO in the Chukchi Sea as a function of the sound source characterization (SSC) study required in the Shell 2012 Chukchi Sea drilling IHA. SSC transit and tow results from 2012 include ice management vessels, an anchor handler, OSR vessels, the OST, support tugs, and OSVs. The recorded sound pressure levels to 120 dB re 1 μ Pa rms for vessels in transit primarily range from ~0.8–4.3 mi (1.3–6.9 km), whereas the measured 120 dB re 1 μ Pa rms for the drilling unit *Kulluk* under tow by the *Aiviq* in the Chukchi Sea was approximately 11.8 mi (19 km) on its way to the Beaufort Sea (O'Neil and McCrodan 2012a, b). Measurements of vessel sounds from

Shell's 2012 exploration drilling program in the Chukchi Sea are presented in detail in the 2012 Comprehensive Monitoring Report (LGL 2013).

The primary sources of sounds from all vessel classes are propeller cavitation, propeller singing, and propulsion or other machinery. Propeller cavitation is usually the dominant noise source for vessels (Ross 1976). Propeller cavitation and singing are produced outside the hull, whereas propulsion or other machinery noise originates inside the hull. There are additional sounds produced by vessel activity, such as pumps, generators, flow noise from water passing over the hull, and bubbles breaking in the wake. Icebreakers contribute greater sound levels during ice-breaking activities than ships of similar size during normal operation in open water (Richardson *et al.* 1995a). This higher sound production results from the greater amount of power and propeller cavitation required when operating in thick ice.

Acoustic Impacts

When considering the influence of various kinds of sound on the marine environment, it is necessary to understand that different kinds of marine life are sensitive to different frequencies of sound. Based on available behavioral data, audiograms have been derived using auditory evoked potentials, anatomical modeling, and other data, Southall *et al.* (2007) designate ''functional hearing groups'' for marine mammals and estimate the lower and upper frequencies of functional hearing of the groups. The functional groups and the associated frequencies are indicated below (though animals are less sensitive to sounds at the outer edge of their functional range and most sensitive to sounds of frequencies within a smaller range somewhere in the middle of their functional hearing range):

- Low frequency cetaceans (13 species of mysticetes): functional hearing is estimated to occur between approximately 7 Hz and 30 kHz;
- Mid-frequency cetaceans (32 species of dolphins, six species of larger toothed whales, and 19 species of beaked and bottlenose whales): functional hearing is estimated to occur between approximately 150 Hz and 160 kHz;
- High frequency cetaceans (eight species of true porpoises, six species of river dolphins, Kogia, the franciscana, and four species of cephalorhynchids): functional hearing is estimated to occur between approximately 200 Hz and 180 kHz;
- Phocid pinnipeds in Water: functional hearing is estimated to occur between approximately 75 Hz and 100 kHz; and
- Otariid pinnipeds in Water: functional hearing is estimated to occur between approximately 100 Hz and 40 kHz.

As mentioned previously in this document, 12 marine mammal species or stocks (nine cetaceans and four phocid pinnipeds) may occur in the proposed seismic survey area. Of the nine cetacean species or stocks likely to occur in the proposed project area and for which take is requested, two are classified as low-frequency cetaceans (*i.e.,* bowhead and gray whales), two are classified as mid-frequency cetaceans (*i.e.,* both beluga stocks and killer whales), and one is classified as a high-frequency cetacean (*i.e.,* harbor porpoise) (Southall *et al.,* 2007). A species functional hearing group is a consideration when we analyze the effects of exposure to sound on marine mammals.

(1) Tolerance

Numerous studies have shown that underwater sounds from industry activities are often readily detectable by marine mammals in the water at distances of many kilometers. Numerous studies have also shown that marine mammals at distances more than a few kilometers away often show no apparent response to industry activities of various types (Miller *et al.,* 2005; Bain and Williams, 2006). This is often true even in cases when the sounds must be readily audible to the animals based on measured received levels and the hearing sensitivity of that mammal group. Although various baleen whales, toothed whales, and (less frequently) pinnipeds have been shown to react behaviorally to underwater sound such as airgun pulses or vessels under some conditions, at other times mammals of all three types have shown no overt reactions (*e.g.,* Malme *et al.,* 1986; Richardson *et al.,* 1995; Madsen and Mohl, 2000; Croll *et al.,* 2001; Jacobs and Terhune, 2002; Madsen *et al.,* 2002; Miller *et al.,* 2005). In general, pinnipeds and small odontocetes seem to be more tolerant of exposure to some types of underwater sound than are baleen whales. Richardson *et al.* (1995a) found that vessel noise does not seem to strongly affect pinnipeds that are already in the water. Richardson *et al.* (1995a) went on to explain that seals on haul-outs sometimes respond strongly to the presence of vessels and at other times appear to show considerable tolerance of vessels, and Brueggeman *et al.* (1992, cited in Richardson *et al.,* 1995a) observed ringed seals hauled out on ice pans displaying short-term escape reactions when a ship approached within 0.25–0.5 mi (0.4–0.8 km).

(2) Masking

Masking is the obscuring of sounds of interest by other sounds, often at similar frequencies. Marine mammals are highly dependent on sound, and their ability to recognize sound signals amid other noise is important in communication, predator and prey detection, and, in the case of toothed whales, echolocation. Even in the absence of manmade sounds, the sea is usually noisy. Background ambient noise often interferes with or masks the ability of an animal to detect a sound signal even when that signal is above its absolute hearing threshold. Natural ambient noise includes contributions from wind, waves, precipitation, other animals, and (at frequencies above 30 kHz) thermal noise resulting from molecular agitation (Richardson *et al.,* 1995a). Background noise also can include sounds from human activities. Masking of natural sounds can result when human activities produce high levels of background noise. Conversely, if the background level of underwater noise is high (*e.g.,* on a day with strong wind and high waves), an anthropogenic noise source will not be detectable as far away as would be possible under quieter conditions and will itself be masked.

Although some degree of masking is inevitable when high levels of manmade broadband sounds are introduced into the sea, marine mammals have evolved systems and behavior that function to reduce the impacts of masking. Structured signals, such as the echolocation click sequences of small toothed whales, may be readily detected even in the presence of strong background noise because their frequency content and temporal features usually differ strongly from those of the background noise (Au and Moore, 1988, 1990). The components of background noise that are similar in frequency to the sound signal in question primarily determine the degree of masking of that signal.

Redundancy and context can also facilitate detection of weak signals. These phenomena may help marine mammals detect weak sounds in the presence of natural or manmade noise. Most masking studies in marine mammals present the test signal and the masking noise from the same direction. The sound localization abilities of

marine mammals suggest that, if signal and noise come from different directions, masking would not be as severe as the usual types of masking studies might suggest (Richardson *et al.,* 1995a). The dominant background noise may be highly directional if it comes from a particular anthropogenic source such as a ship or industrial site. Directional hearing may significantly reduce the masking effects of these noises by improving the effective signal-to-noise ratio. In the cases of high-frequency hearing by the bottlenose dolphin, beluga whale, and killer whale, empirical evidence confirms that masking depends strongly on the relative directions of arrival of sound signals and the masking noise (Penner *et al.,* 1986; Dubrovskiy, 1990; Bain *et al.,* 1993; Bain and Dahlheim, 1994). Toothed whales, and probably other marine mammals as well, have additional capabilities besides directional hearing that can facilitate detection of sounds in the presence of background noise. There is evidence that some toothed whales can shift the dominant frequencies of their echolocation signals from a frequency range with a lot of ambient noise toward frequencies with less noise (Au *et al.,* 1974, 1985; Moore and Pawloski, 1990; Thomas and Turl, 1990; Romanenko and Kitain, 1992; Lesage *et al.,* 1999). A few marine mammal species are known to increase the source levels or alter the frequency of their calls in the presence of elevated sound levels (Dahlheim, 1987; Au, 1993; Lesage *et al.,* 1993, 1999; Terhune, 1999; Foote *et al.,* 2004; Parks *et al.,* 2007, 2009; Di Iorio and Clark, 2009; Holt *et al.,* 2009).

These data demonstrating adaptations for reduced masking pertain mainly to the very high frequency echolocation signals of toothed whales. There is less information about the existence of corresponding mechanisms at moderate or low frequencies or in other types of marine mammals. For example, Zaitseva *et al.* (1980) found that, for the bottlenose dolphin, the angular separation between a sound source and a masking noise source had little effect on the degree of masking when the sound frequency was 18 kHz, in contrast to the pronounced effect at higher frequencies. Directional hearing has been demonstrated at frequencies as low as 0.5–2 kHz in several marine mammals, including killer whales (Richardson *et al.,* 1995a). This ability may be useful in reducing masking at these frequencies. In summary, high levels of noise generated by anthropogenic activities may act to mask the detection of weaker biologically important sounds by some marine mammals. This masking may be more prominent for lower frequencies. For higher frequencies, such as that used in echolocation by toothed whales, several mechanisms are available that may allow them to reduce the effects of such masking.

Masking effects of underwater sounds from Shell's proposed activities on marine mammal calls and other natural sounds are expected to be limited. For example, beluga whales primarily use high-frequency sounds to communicate and locate prey; therefore, masking by low-frequency sounds associated with drilling activities is not expected to occur (Gales, 1982, as cited in Shell, 2009). If the distance between communicating whales does not exceed their distance from the drilling activity, the likelihood of potential impacts from masking would be low (Gales, 1982, as cited in Shell, 2009). At distances greater than 660–1,300 ft (200–400 m), recorded sounds from drilling activities did not affect behavior of beluga whales, even though the sound energy level and frequency were such that it could be heard several kilometers away (Richardson *et al.,* 1995b). This exposure resulted in whales being deflected from the sound energy and changing behavior. These minor changes are not expected to affect the beluga whale population (Richardson *et al.,* 1991; Richard *et al.,* 1998). Brewer *et al.* (1993) observed belugas within 2.3 mi (3.7 km) of the drilling unit *Kulluk* during drilling; however, the authors do not describe any behaviors that may have been exhibited by those animals. Please refer to the Arctic Multiple-Sale Draft Environmental Impact Statement (USDOI MMS, 2008), available on the Internet at: *http://www.mms.gov/alaska/ref/EIS%20EA/ArcticMultiSale_209/_DEIS.htm,* for more detailed information.

There is evidence of other marine mammal species continuing to call in the presence of industrial activity. Annual acoustical monitoring near BP's Northstar production facility during the fall bowhead migration westward through the Beaufort Sea has recorded thousands of calls each year (for examples, see Richardson *et al.,* 2007; Aerts and Richardson, 2008). Construction, maintenance, and operational activities have been occurring from this facility for over 10 years. To compensate and reduce masking, some mysticetes may alter the frequencies of their communication sounds (Richardson *et al.,* 1995a; Parks *et al.,* 2007). Masking processes in baleen whales are not amenable to laboratory study, and no direct measurements on hearing sensitivity are available for these species. It is not currently possible to determine with precision the potential consequences of temporary or local background noise levels. However, Parks *et al.* (2007) found that right whales (a species closely related to the bowhead whale) altered their vocalizations, possibly in response to background noise levels. For species that can hear over a relatively broad frequency range, as is presumed to be the case for mysticetes, a narrow band source may only cause partial masking. Richardson *et al.* (1995a) note that a bowhead whale 12.4 mi (20 km) from a human sound source, such as that produced during oil and gas industry activities, might hear strong calls from other whales within approximately 12.4 mi (20 km), and a whale 3.1 mi (5 km) from the source might hear strong calls from whales within approximately 3.1 mi (5 km). Additionally, masking is more likely to occur closer to a sound source, and distant anthropogenic sound is less likely to mask short-distance acoustic communication (Richardson *et al.,* 1995a).

Although some masking by marine mammal species in the area may occur, the extent of the masking interference will depend on the spatial relationship of the animal and Shell's activity. Almost all energy in the sounds emitted by drilling and other operational activities is at low frequencies, predominantly below 250 Hz with another peak centered around 1,000 Hz. Most energy in the sounds from the vessels and aircraft to be used during this project is below 1 kHz (Moore *et al.,* 1984; Greene and Moore, 1995; Blackwell *et al.,* 2004b; Blackwell and Greene, 2006). These frequencies are mainly used by mysticetes but not by odontocetes. Therefore, masking effects would potentially be more pronounced in the bowhead and gray whales that might occur in the proposed project area. If, as described later in this document, certain species avoid the proposed drilling locations, impacts from masking are anticipated to be low.

(3) Behavioral Disturbance Reactions

Behavioral responses to sound are highly variable and context-specific. Many different variables can influence an animal's perception of and response to (in both nature and magnitude) an acoustic event. An animal's prior experience with a sound or sound source affects whether it is less likely (habituation) or more likely (sensitization) to respond to certain sounds in the future (animals can also be innately pre-disposed to respond to

certain sounds in certain ways; Southall *et al.,* 2007). Related to the sound itself, the perceived nearness of the sound, bearing of the sound (approaching vs. retreating), similarity of a sound to biologically relevant sounds in the animal's environment (*i.e.,* calls of predators, prey, or conspecifics), and familiarity of the sound may affect the way an animal responds to the sound (Southall *et al.,* 2007). Individuals (of different age, gender, reproductive status, etc.) among most populations will have variable hearing capabilities and differing behavioral sensitivities to sounds that will be affected by prior conditioning, experience, and current activities of those individuals. Often, specific acoustic features of the sound and contextual variables (*i.e.,* proximity, duration, or recurrence of the sound or the current behavior that the marine mammal is engaged in or its prior experience), as well as entirely separate factors such as the physical presence of a nearby vessel, may be more relevant to the animal's response than the received level alone.

Exposure of marine mammals to sound sources can result in (but is not limited to) no response or any of the following observable responses: Increased alertness; orientation or attraction to a sound source; vocal modifications; cessation of feeding; cessation of social interaction; alteration of movement or diving behavior; avoidance; habitat abandonment (temporary or permanent); and, in severe cases, panic, flight, stampede, or stranding, potentially resulting in death (Southall *et al.,* 2007). On a related note, many animals perform vital functions, such as feeding, resting, traveling, and socializing, on a diel cycle (24-hr cycle). Behavioral reactions to noise exposure (such as disruption of critical life functions, displacement, or avoidance of important habitat) are more likely to be significant if they last more than one diel cycle or recur on subsequent days (Southall *et al.,* 2007). Consequently, a behavioral response lasting less than one day and not recurring on subsequent days is not considered particularly severe unless it could directly affect reproduction or survival (Southall *et al.,* 2007).

Detailed studies regarding responses to anthropogenic sound have been conducted on humpback, gray, and bowhead whales and ringed seals. Less detailed data are available for some other species of baleen whales, sperm whales, small toothed whales, and sea otters. The following sub-sections provide examples of behavioral responses that demonstrate the variability in behavioral responses that would be expected given the different sensitivities of marine mammal species to sound.

Baleen Whales—Richardson *et al.* (1995b) reported changes in surfacing and respiration behavior and the occurrence of turns during surfacing in bowhead whales exposed to playback of underwater sound from drilling activities. These behavioral effects were localized and occurred at distances up to 1.2–2.5 mi (2–4 km).

Some bowheads appeared to divert from their migratory path after exposure to projected icebreaker sounds. Other bowheads however, tolerated projected icebreaker sound at levels 20 dB and more above ambient sound levels. The source level of the projected sound however, was much less than that of an actual icebreaker, and reaction distances to actual icebreaking may be much greater than those reported here for projected sounds.

Brewer *et al.* (1993) and Hall *et al.* (1994) reported numerous sightings of marine mammals including bowhead whales in the vicinity of offshore drilling operations in the Beaufort Sea. One bowhead whale sighting was reported within approximately 1,312 ft (400 m) of a drilling vessel although most other bowhead sightings were at much greater distances. Few bowheads were recorded near industrial activities by aerial observers. After controlling for spatial autocorrelation in aerial survey data from Hall *et al.* (1994) using a Mantel test, Schick and Urban (2000) found that the variable describing straight line distance between the rig and bowhead whale sightings was not significant but that a variable describing threshold distances between sightings and the rig was significant. Thus, although the aerial survey results suggested substantial avoidance of the operations by bowhead whales, observations by vessel-based observers indicate that at least some bowheads may have been closer to industrial activities than was suggested by results of aerial observations.

Richardson *et al.* (2008) reported a slight change in the distribution of bowhead whale calls in response to operational sounds on BP's Northstar Island. The southern edge of the call distribution ranged from 0.47 to 1.46 mi (0.76 to 2.35 km) farther offshore, apparently in response to industrial sound levels. This result however, was only achieved after intensive statistical analyses, and it is not clear that this represented a biologically significant effect.

Patenaude *et al.* (2002) reported fewer behavioral responses to aircraft overflights by bowhead compared to beluga whales. Behaviors classified as reactions consisted of short surfacings, immediate dives or turns, changes in behavior state, vigorous swimming, and breaching. Most bowhead reaction resulted from exposure to helicopter activity and little response to fixed-wing aircraft was observed. Most reactions occurred when the helicopter was at altitudes ≤492 ft (150 m) and lateral distances ≤820 ft (250 m; Nowacek *et al.,* 2007).

During their study, Patenaude *et al.* (2002) observed one bowhead whale cow-calf pair during four passes totaling 2.8 hours of the helicopter and two pairs during Twin Otter overflights. All of the helicopter passes were at altitudes of 49–98 ft (15–30 m). The mother dove both times she was at the surface, and the calf dove once out of the four times it was at the surface. For the cow-calf pair sightings during Twin Otter overflights, the authors did not note any behaviors specific to those pairs. Rather, the reactions of the cow-calf pairs were lumped with the reactions of other groups that did not consist of calves.

Richardson *et al.* (1995b) and Moore and Clarke (2002) reviewed a few studies that observed responses of gray whales to aircraft. Cow-calf pairs were quite sensitive to a turboprop survey flown at 1,000 ft (305 m) altitude on the Alaskan summering grounds. In that survey, adults were seen swimming over the calf, or the calf swam under the adult (Ljungblad *et al.,* 1983, cited in Richardson *et al.,* 1995b and Moore and Clarke, 2002). However, when the same aircraft circled for more than 10 minutes at 1,050 ft (320 m) altitude over a group of mating gray whales, no reactions were observed (Ljungblad *et al.,* 1987, cited in Moore and Clarke, 2002). Malme *et al.* (1984, cited in Richardson *et al.,* 1995b and Moore and Clarke, 2002) conducted playback experiments on migrating gray whales. They exposed the animals to underwater noise recorded from a Bell 212 helicopter (estimated altitude=328 ft [100 m]), at an average of three simulated passes per minute. The authors observed that whales changed their swimming course and sometimes slowed down in response to the playback sound but proceeded to migrate past the transducer. Migrating gray whales did not react overtly to a Bell 212 helicopter at greater than 1,394 ft (425 m) altitude, occasionally reacted when the helicopter was at 1,000–1,198 ft (305–365 m), and usually reacted when it was below 825 ft (250 m; Southwest Research Associates, 1988, cited in Richardson *et al.,* 1995b and Moore and Clarke, 2002). Reactions noted in that study included abrupt turns or dives or

both. Green *et al.* (1992, cited in Richardson *et al.,* 1995b) observed that migrating gray whales rarely exhibited noticeable reactions to a straight-line overflight by a Twin Otter at 197 ft (60 m) altitude. Restrictions on aircraft altitude will be part of the proposed mitigation measures (described in the ''Proposed Mitigation'' section later in this document) during the proposed drilling activities, and overflights are likely to have little or no disturbance effects on baleen whales. Any disturbance that may occur would likely be temporary and localized.

Southall *et al.* (2007, Appendix C) reviewed a number of papers describing the responses of marine mammals to non-pulsed sound, such as that produced during exploratory drilling operations. In general, little or no response was observed in animals exposed at received levels from 90–120 dB re 1 μPa (rms). Probability of avoidance and other behavioral effects increased when received levels were from 120–160 dB re 1 μPa (rms). Some of the relevant reviews contained in Southall *et al.* (2007) are summarized next.

Baker *et al.* (1982) reported some avoidance by humpback whales to vessel noise when received levels were 110–120 dB (rms) and clear avoidance at 120–140 dB (sound measurements were not provided by Baker but were based on measurements of identical vessels by Miles and Malme, 1983).

Malme *et al.* (1983, 1984) used playbacks of sounds from helicopter overflight and drilling rigs and platforms to study behavioral effects on migrating gray whales. Received levels exceeding 120 dB induced avoidance reactions. Malme *et al.* (1984) calculated 10%, 50%, and 90% probabilities of gray whale avoidance reactions at received levels of 110, 120, and 130 dB, respectively. Malme *et al.* (1986) observed the behavior of feeding gray whales during four experimental playbacks of drilling sounds (50 to 315 Hz; 21-min overall duration and 10% duty cycle; source levels of 156–162 dB). In two cases for received levels of 100–110 dB, no behavioral reaction was observed. However, avoidance behavior was observed in two cases where received levels were 110–120 dB.

Richardson *et al.* (1990) performed 12 playback experiments in which bowhead whales in the Alaskan Arctic were exposed to drilling sounds. Whales generally did not respond to exposures in the 100 to 130 dB range, although there was some indication of minor behavioral changes in several instances.

McCauley *et al.* (1996) reported several cases of humpback whales responding to vessels in Hervey Bay, Australia. Results indicated clear avoidance at received levels between 118 to 124 dB in three cases for which response and received levels were observed/measured.

Palka and Hammond (2001) analyzed line transect census data in which the orientation and distance off transect line were reported for large numbers of minke whales. The authors developed a method to account for effects of animal movement in response to sighting platforms. Minor changes in locomotion speed, direction, and/or diving profile were reported at ranges from 1,847 to 2,352 ft (563 to 717 m) at received levels of 110 to 120 dB.

Biassoni *et al.* (2000) and Miller *et al.* (2000) reported behavioral observations for humpback whales exposed to a low-frequency sonar stimulus (160- to 330-Hz frequency band; 42-s tonal signal repeated every 6 min; source levels 170 to 200 dB) during playback experiments. Exposure to measured received levels ranging from 120 to 150 dB resulted in variability in humpback singing behavior. Croll *et al.* (2001) investigated responses of foraging fin and blue whales to the same low frequency active sonar stimulus off southern California. Playbacks and control intervals with no transmission were used to investigate behavior and distribution on time scales of several weeks and spatial scales of tens of kilometers. The general conclusion was that whales remained feeding within a region for which 12 to 30 percent of exposures exceeded 140 dB.

Frankel and Clark (1998) conducted playback experiments with wintering humpback whales using a single speaker producing a low-frequency ''M-sequence'' (sine wave with multiple-phase reversals) signal in the 60 to 90 Hz band with output of 172 dB at 1 m. For 11 playbacks, exposures were between 120 and 130 dB re 1 μPa (rms) and included sufficient information regarding individual responses. During eight of the trials, there were no measurable differences in tracks or bearings relative to control conditions, whereas on three occasions, whales either moved slightly away from (n = 1) or towards (n = 2) the playback speaker during exposure. The presence of the source vessel itself had a greater effect than did the M-sequence playback.

Finally, Nowacek *et al.* (2004) used controlled exposures to demonstrate behavioral reactions of northern right whales to various non-pulse sounds. Playback stimuli included ship noise, social sounds of conspecifics, and a complex, 18-min ''alert'' sound consisting of repetitions of three different artificial signals. Ten whales were tagged with calibrated instruments that measured received sound characteristics and concurrent animal movements in three dimensions. Five out of six exposed whales reacted strongly to alert signals at measured received levels between 130 and 150 dB (*i.e.,* ceased foraging and swam rapidly to the surface). Two of these individuals were not exposed to ship noise, and the other four were exposed to both stimuli. These whales reacted mildly to conspecific signals. Seven whales, including the four exposed to the alert stimulus, had no measurable response to either ship sounds or actual vessel noise.

Toothed Whales—Most toothed whales have the greatest hearing sensitivity at frequencies much higher than that of baleen whales and may be less responsive to low-frequency sound commonly associated with oil and gas industry exploratory drilling activities. Richardson *et al.* (1995b) reported that beluga whales did not show any apparent reaction to playback of underwater drilling sounds at distances greater than 656–1,312 ft (200–400 m). Reactions included slowing down, milling, or reversal of course after which the whales continued past the projector, sometimes within 164–328 ft (50–100 m). The authors concluded (based on a small sample size) that the playback of drilling sounds had no biologically significant effects on migration routes of beluga whales migrating through pack ice and along the seaward side of the nearshore lead east of Point Barrow in spring.

At least six of 17 groups of beluga whales appeared to alter their migration path in response to underwater playbacks of icebreaker sound in the Arctic (Richardson *et al.,* 1995b). Received levels from the icebreaker playback were estimated at 78–84 dB in the 1/3-octave band centered at 5,000 Hz, or 8–14 dB above ambient. If beluga whales reacted to an actual icebreaker at received levels of 80 dB, reactions would be expected to occur at distances on the order of 6.2 mi (10 km). Finley *et al.* (1990) also reported beluga avoidance of icebreaker activities in the Canadian High Arctic at distances of 22–31 mi (35–50 km). In addition to avoidance, changes in dive behavior and pod integrity were also noted.

Patenaude *et al.* (2002) reported that beluga whales appeared to be more responsive to aircraft overflights than bowhead whales. Changes were observed in diving and respiration behavior, and some whales veered away when a helicopter passed at ≤820 ft (250 m) lateral distance at altitudes up to 492

ft (150 m). However, some belugas showed no reaction to the helicopter. Belugas appeared to show less response to fixed-wing aircraft than to helicopter overflights.

In reviewing responses of cetaceans with best hearing in mid-frequency ranges, which includes toothed whales, Southall *et al.* (2007) reported that combined field and laboratory data for mid-frequency cetaceans exposed to non-pulse sounds did not lead to a clear conclusion about received levels coincident with various behavioral responses. In some settings, individuals in the field showed profound (significant) behavioral responses to exposures from 90–120 dB, while others failed to exhibit such responses for exposure to received levels from 120–150 dB. Contextual variables other than exposure received level, and probable species differences, are the likely reasons for this variability. Context, including the fact that captive subjects were often directly reinforced with food for tolerating noise exposure, may also explain why there was great disparity in results from field and laboratory conditions—exposures in captive settings generally exceeded 170 dB before inducing behavioral responses. A summary of some of the relevant material reviewed by Southall *et al.* (2007) is next.

LGL and Greeneridge (1986) and Finley *et al.* (1990) documented belugas and narwhals congregated near ice edges reacting to the approach and passage of icebreaking ships in the Arctic. Beluga whales responded to oncoming vessels by (1) fleeing at speeds of up to 12.4 mi/hr (20 km/hr) from distances of 12.4–50 mi (20–80 km), (2) abandoning normal pod structure, and (3) modifying vocal behavior and/or emitting alarm calls. Narwhals, in contrast, generally demonstrated a ''freeze'' response, lying motionless or swimming slowly away (as far as 23 mi [37 km] down the ice edge), huddling in groups, and ceasing sound production. There was some evidence of habituation and reduced avoidance 2 to 3 days after onset.

The 1982 season observations by LGL and Greeneridge (1986) involved a single passage of an icebreaker with both ice-based and aerial measurements on June 28, 1982. Four groups of narwhals (n = 9 to 10, 7, 7, and 6) responded when the ship was 4 mi (6.4 km) away (received levels of approximately 100 dB in the 150- to 1,150-Hz band). At a later point, observers sighted belugas moving away from the source at more than 12.4 mi (20 km; received levels of approximately 90 dB in the 150- to 1,150-Hz band). The total number of animals observed fleeing was about 300, suggesting approximately 100 independent groups (of three individuals each). No whales were sighted the following day, but some were sighted on June 30, with ship noise audible at spectrum levels of approximately 55 dB/Hz (up to 4 kHz).

Observations during 1983 (LGL and Greeneridge, 1986) involved two icebreaking ships with aerial survey and ice-based observations during seven sampling periods. Narwhals and belugas generally reacted at received levels ranging from 101 to 121 dB in the 20- to 1,000-Hz band and at a distance of up to 40.4 mi (65 km). Large numbers (100s) of beluga whales moved out of the area at higher received levels. As noise levels from icebreaking operations diminished, a total of 45 narwhals returned to the area and engaged in diving and foraging behavior. During the final sampling period, following an 8-h quiet interval, no reactions were seen from 28 narwhals and 17 belugas (at received levels ranging up to 115 dB).

The final season (1984) reported in LGL and Greeneridge (1986) involved aerial surveys before, during, and after the passage of two icebreaking ships. During operations, no belugas and few narwhals were observed in an area approximately 16.8 mi (27 km) ahead of the vessels, and all whales sighted over 12.4–50 mi (20–80 km) from the ships were swimming strongly away. Additional observations confirmed the spatial extent of avoidance reactions to this sound source in this context.

Buckstaff (2004) reported elevated dolphin whistle rates with received levels from oncoming vessels in the 110 to 120 dB range in Sarasota Bay, Florida. These hearing thresholds were apparently lower than those reported by a researcher listening with towed hydrophones. Morisaka *et al.* (2005) compared whistles from three populations of Indo-Pacific bottlenose dolphins. One population was exposed to vessel noise with spectrum levels of approximately 85 dB/Hz in the 1- to 22-kHz band (broadband received levels approximately 128 dB) as opposed to approximately 65 dB/Hz in the same band (broadband received levels approximately 108 dB) for the other two sites. Dolphin whistles in the noisier environment had lower fundamental frequencies and less frequency modulation, suggesting a shift in sound parameters as a result of increased ambient noise.

Morton and Symonds (2002) used census data on killer whales in British Columbia to evaluate avoidance of non-pulse acoustic harassment devices (AHDs). Avoidance ranges were about 2.5 mi (4 km). Also, there was a dramatic reduction in the number of days ''resident'' killer whales were sighted during AHD-active periods compared to pre- and post-exposure periods and a nearby control site.

Monteiro-Neto *et al.* (2004) studied avoidance responses of tucuxi (*Sotalia fluviatilis*) to Dukane® Netmark acoustic deterrent devices. In a total of 30 exposure trials, approximately five groups each demonstrated significant avoidance compared to 20 pinger off and 55 no-pinger control trials over two quadrats of about 0.19 mi^2 (0.5 km^2). Estimated exposure received levels were approximately 115 dB.

Awbrey and Stewart (1983) played back semi-submersible drillship sounds (source level: 163 dB) to belugas in Alaska. They reported avoidance reactions at 984 and 4,921 ft (300 and 1,500 m) and approach by groups at a distance of 2.2 mi (3.5 km; received levels were approximately 110 to 145 dB over these ranges assuming a 15 log R transmission loss). Similarly, Richardson *et al.* (1990) played back drilling platform sounds (source level: 163 dB) to belugas in Alaska. They conducted aerial observations of eight individuals among approximately 100 spread over an area several hundred meters to several kilometers from the sound source and found no obvious reactions. Moderate changes in movement were noted for three groups swimming within 656 ft (200 m) of the sound projector.

Two studies deal with issues related to changes in marine mammal vocal behavior as a function of variable background noise levels. Foote *et al.* (2004) found increases in the duration of killer whale calls over the period 1977 to 2003, during which time vessel traffic in Puget Sound, and particularly whale-watching boats around the animals, increased dramatically. Scheifele *et al.* (2005) demonstrated that belugas in the St. Lawrence River increased the levels of their vocalizations as a function of the background noise level (the ''Lombard Effect'').

Several researchers conducting laboratory experiments on hearing and the effects of non-pulse sounds on hearing in mid-frequency cetaceans have reported concurrent behavioral responses. Nachtigall *et al.* (2003) reported that noise exposures up to 179 dB and 55-min duration affected the trained behaviors of a bottlenose dolphin participating in a TTS experiment. Finneran and Schlundt (2004) provided a detailed, comprehensive analysis of the behavioral responses of belugas and

bottlenose dolphins to 1-s tones (received levels 160 to 202 dB) in the context of TTS experiments. Romano *et al.* (2004) investigated the physiological responses of a bottlenose dolphin and a beluga exposed to these tonal exposures and demonstrated a decrease in blood cortisol levels during a series of exposures between 130 and 201 dB. Collectively, the laboratory observations suggested the onset of a behavioral response at higher received levels than did field studies. The differences were likely related to the very different conditions and contextual variables between untrained, free-ranging individuals vs. laboratory subjects that were rewarded with food for tolerating noise exposure.

Pinnipeds—Pinnipeds generally seem to be less responsive to exposure to industrial sound than most cetaceans. Pinniped responses to underwater sound from some types of industrial activities such as seismic exploration appear to be temporary and localized (Harris *et al.,* 2001; Reiser *et al.,* 2009).

Blackwell *et al.* (2004) reported little or no reaction of ringed seals in response to pile-driving activities during construction of a man-made island in the Beaufort Sea. Ringed seals were observed swimming as close as 151 ft (46 m) from the island and may have been habituated to the sounds which were likely audible at distances <9,842 ft (3,000 m) underwater and 0.3 mi (0.5 km) in air. Moulton *et al.* (2003) reported that ringed seal densities on ice in the vicinity of a man-made island in the Beaufort Sea did not change significantly before and after construction and drilling activities.

Southall *et al.* (2007) reviewed literature describing responses of pinnipeds to non-pulsed sound and reported that the limited data suggest exposures between approximately 90 and 140 dB generally do not appear to induce strong behavioral responses in pinnipeds exposed to non-pulse sounds in water; no data exist regarding exposures at higher levels. It is important to note that among these studies, there are some apparent differences in responses between field and laboratory conditions. In contrast to the mid-frequency odontocetes, captive pinnipeds responded more strongly at lower levels than did animals in the field. Again, contextual issues are the likely cause of this difference.

Jacobs and Terhune (2002) observed harbor seal reactions to AHDs (source level in this study was 172 dB) deployed around aquaculture sites. Seals were generally unresponsive to sounds from the AHDs. During two specific events, individuals came within 141 and 144 ft (43 and 44 m) of active AHDs and failed to demonstrate any measurable behavioral response; estimated received levels based on the measures given were approximately 120 to 130 dB.

Costa *et al.* (2003) measured received noise levels from an Acoustic Thermometry of Ocean Climate (ATOC) program sound source off northern California using acoustic data loggers placed on translocated elephant seals. Subjects were captured on land, transported to sea, instrumented with archival acoustic tags, and released such that their transit would lead them near an active ATOC source (at 939-m depth; 75-Hz signal with 37.5- Hz bandwidth; 195 dB maximum source level, ramped up from 165 dB over 20 min) on their return to a haul-out site. Received exposure levels of the ATOC source for experimental subjects averaged 128 dB (range 118 to 137) in the 60- to 90-Hz band. None of the instrumented animals terminated dives or radically altered behavior upon exposure, but some statistically significant changes in diving parameters were documented in nine individuals. Translocated northern elephant seals exposed to this particular non-pulse source began to demonstrate subtle behavioral changes at exposure to received levels of approximately 120 to 140 dB.

Kastelein *et al.* (2006) exposed nine captive harbor seals in an approximately 82 × 98 ft (25 × 30 m) enclosure to non-pulse sounds used in underwater data communication systems (similar to acoustic modems). Test signals were frequency modulated tones, sweeps, and bands of noise with fundamental frequencies between 8 and 16 kHz; 128 to 130 [± 3] dB source levels; 1- to 2-s duration [60–80 percent duty cycle]; or 100 percent duty cycle. They recorded seal positions and the mean number of individual surfacing behaviors during control periods (no exposure), before exposure, and in 15-min experimental sessions (n = 7 exposures for each sound type). Seals generally swam away from each source at received levels of approximately 107 dB, avoiding it by approximately 16 ft (5 m), although they did not haul out of the water or change surfacing behavior. Seal reactions did not appear to wane over repeated exposure (*i.e.,* there was no obvious habituation), and the colony of seals generally returned to baseline conditions following exposure. The seals were not reinforced with food for remaining in the sound field.

Potential effects to pinnipeds from aircraft activity could involve both acoustic and non-acoustic effects. It is uncertain if the seals react to the sound of the helicopter or to its physical presence flying overhead. Typical reactions of hauled out pinnipeds to aircraft that have been observed include looking up at the aircraft, moving on the ice or land, entering a breathing hole or crack in the ice, or entering the water. Ice seals hauled out on the ice have been observed diving into the water when approached by a low-flying aircraft or helicopter (Burns and Harbo, 1972, cited in Richardson *et al.,* 1995a; Burns and Frost, 1979, cited in Richardson *et al.,* 1995a). Richardson *et al.* (1995a) note that responses can vary based on differences in aircraft type, altitude, and flight pattern. Additionally, a study conducted by Born *et al.* (1999) found that wind chill was also a factor in level of response of ringed seals hauled out on ice, as well as time of day and relative wind direction.

Blackwell *et al.* (2004a) observed 12 ringed seals during low-altitude overflights of a Bell 212 helicopter at Northstar in June and July 2000 (9 observations took place concurrent with pipe-driving activities). One seal showed no reaction to the aircraft while the remaining 11 (92%) reacted either by looking at the helicopter (n=10) or by departing from their basking site (n=1). Blackwell *et al.* (2004a) concluded that none of the reactions to helicopters were strong or long lasting, and that seals near Northstar in June and July 2000 probably had habituated to industrial sounds and visible activities that had occurred often during the preceding winter and spring. There have been few systematic studies of pinniped reactions to aircraft overflights, and most of the available data concern pinnipeds hauled out on land or ice rather than pinnipeds in the water (Richardson *et al.,* 1995a; Born *et al.,* 1999).

Born *et al.* (1999) determined that 49 percent of ringed seals escaped (*i.e.,* left the ice) as a response to a helicopter flying at 492 ft (150 m) altitude. Seals entered the water when the helicopter was 4,101 ft (1,250 m) away if the seal was in front of the helicopter and at 1,640 ft (500 m) away if the seal was to the side of the helicopter. The authors noted that more seals reacted to helicopters than to fixed-wing aircraft. The study concluded that the risk of scaring ringed seals by small-type helicopters could be substantially reduced if they do not approach closer than 4,921 ft (1,500 m).

Spotted seals hauled out on land in summer are unusually sensitive to aircraft overflights compared to other species. They often rush into the water when an aircraft flies by at altitudes up to 984–2,461 ft (300–750 m). They

occasionally react to aircraft flying as high as 4,495 ft (1,370 m) and at lateral distances as far as 1.2 mi (2 km) or more (Frost and Lowry, 1990; Rugh *et al.,* 1997).

(4) Hearing Impairment and Other Physiological Effects

Temporary or permanent hearing impairment is a possibility when marine mammals are exposed to very strong sounds. Non-auditory physiological effects might also occur in marine mammals exposed to strong underwater sound. Possible types of non-auditory physiological effects or injuries that theoretically might occur in mammals close to a strong sound source include stress, neurological effects, bubble formation, and other types of organ or tissue damage. It is possible that some marine mammal species (*i.e.,* beaked whales) may be especially susceptible to injury and/or stranding when exposed to strong pulsed sounds. However, as discussed later in this document, there is no definitive evidence that any of these effects occur even for marine mammals in close proximity to industrial sound sources, and beaked whales do not occur in the proposed activity area. Additional information regarding the possibilities of TTS, permanent threshold shift (PTS), and non-auditory physiological effects, such as stress, is discussed for both exploratory drilling activities and ZVSP surveys in the following section (''*Potential Effects from Zero-Offset Vertical Seismic Profile Activities''*).

Potential Effects From Zero-Offset Vertical Seismic Profile Activities

(1) Tolerance

Numerous studies have shown that pulsed sounds from airguns are often readily detectable in the water at distances of many kilometers. Weir (2008) observed marine mammal responses to seismic pulses from a 24 airgun array firing a total volume of either 5,085 in^3 or 3,147 in^3 in Angolan waters between August 2004 and May 2005. Weir recorded a total of 207 sightings of humpback whales (n = 66), sperm whales (n = 124), and Atlantic spotted dolphins (n = 17) and reported that there were no significant differences in encounter rates (sightings/hr) for humpback and sperm whales according to the airgun array's operational status (*i.e.,* active versus silent). For additional information on tolerance of marine mammals to anthropogenic sound, see the previous subsection in this document (''*Potential Effects from Exploratory Drilling Activities''*).

(2) Masking

As stated earlier in this document, masking is the obscuring of sounds of interest by other sounds, often at similar frequencies. For full details about masking, see the previous subsection in this document (''*Potential Effects from Exploratory Drilling Activities''*). Some additional information regarding pulsed sounds is provided here.

There is evidence of some marine mammal species continuing to call in the presence of industrial activity. McDonald *et al.* (1995) heard blue and fin whale calls between seismic pulses in the Pacific. Although there has been one report that sperm whales cease calling when exposed to pulses from a very distant seismic ship (Bowles *et al.,* 1994), a more recent study reported that sperm whales off northern Norway continued calling in the presence of seismic pulses (Madsen *et al.,* 2002). Similar results were also reported during work in the Gulf of Mexico (Tyack *et al.,* 2003). Bowhead whale calls are frequently detected in the presence of seismic pulses, although the numbers of calls detected may sometimes be reduced (Richardson *et al.,* 1986; Greene *et al.,* 1999; Blackwell *et al.,* 2009a). Bowhead whales in the Beaufort Sea may decrease their call rates in response to seismic operations, although movement out of the area might also have contributed to the lower call detection rate (Blackwell *et al.,* 2009a,b). Additionally, there is increasing evidence that, at times, there is enough reverberation between airgun pulses such that detection range of calls may be significantly reduced. In contrast, Di Iorio and Clark (2009) found evidence of increased calling by blue whales during operations by a lower-energy seismic source, a sparker.

There is little concern regarding masking due to the brief duration of these pulses and relatively longer silence between airgun shots (9–12 seconds) near the sound source. However, at long distances (over tens of kilometers away) in deep water, due to multipath propagation and reverberation, the durations of airgun pulses can be ''stretched'' to seconds with long decays (Madsen *et al.,* 2006; Clark and Gagnon, 2006). Therefore it could affect communication signals used by low frequency mysticetes when they occur near the noise band and thus reduce the communication space of animals (*e.g.,* Clark *et al.,* 2009a,b) and cause increased stress levels (*e.g.,* Foote *et al.,* 2004; Holt *et al.,* 2009). Nevertheless, the intensity of the noise is also greatly reduced at long distances. Therefore, masking effects are anticipated to be limited, especially in the case of odontocetes, given that they typically communicate at frequencies higher than those of the airguns.

(3) Behavioral Disturbance Reactions

As was described in more detail in the previous sub-section (''*Potential Effects of Exploratory Drilling Activities''*), behavioral responses to sound are highly variable and context-specific. Summaries of observed reactions and studies related to seismic airgun activity are provided next.

Baleen Whales—Baleen whale responses to pulsed sound (*e.g.,* seismic airguns) have been studied more thoroughly than responses to continuous sound (*e.g.,* drillships). Baleen whales generally tend to avoid operating airguns, but avoidance radii are quite variable. Whales are often reported to show no overt reactions to pulses from large arrays of airguns at distances beyond a few kilometers, even though the airgun pulses remain well above ambient noise levels out to much greater distances (Miller *et al.,* 2005). However, baleen whales exposed to strong noise pulses often react by deviating from their normal migration route (Richardson *et al.,* 1999). Migrating gray and bowhead whales were observed avoiding the sound source by displacing their migration route to varying degrees but within the natural boundaries of the migration corridors (Schick and Urban, 2000; Richardson *et al.,* 1999; Malme *et al.,* 1983). Baleen whale responses to pulsed sound however may depend on the type of activity in which the whales are engaged. Some evidence suggests that feeding bowhead whales may be more tolerant of underwater sound than migrating bowheads (Miller *et al.,* 2005; Lyons *et al.,* 2009; Christie *et al.,* 2010).

Results of studies of gray, bowhead, and humpback whales have determined that received levels of pulses in the 160–170 dB re 1 μPa rms range seem to cause obvious avoidance behavior in a substantial fraction of the animals exposed. In many areas, seismic pulses from large arrays of airguns diminish to those levels at distances ranging from 2.8–9 mi (4.5–14.5 km) from the source. For the much smaller airgun array used during the ZVSP survey (total discharge volume of 760 in^3), distances to received levels in the 170–160 dB re 1 μPa rms range are estimated to be 1.44–2.28 mi (2.31–3.67 km). Baleen whales within those distances may show avoidance or other strong disturbance reactions to the airgun array. Subtle behavioral changes sometimes become evident at somewhat lower received levels, and recent studies have shown

that some species of baleen whales, notably bowhead and humpback whales, at times show strong avoidance at received levels lower than 160–170 dB re 1 μPa rms. Bowhead whales migrating west across the Alaskan Beaufort Sea in autumn, in particular, are unusually responsive, with avoidance occurring out to distances of 12.4–18.6 mi (20–30 km) from a medium-sized airgun source (Miller *et al.,* 1999; Richardson *et al.,* 1999). However, more recent research on bowhead whales (Miller *et al.,* 2005) corroborates earlier evidence that, during the summer feeding season, bowheads are not as sensitive to seismic sources. In summer, bowheads typically begin to show avoidance reactions at a received level of about 160–170 dB re 1 μPa rms (Richardson *et al.,* 1986; Ljungblad *et al.,* 1988; Miller *et al.,* 2005).

Malme *et al.* (1986, 1988) studied the responses of feeding eastern gray whales to pulses from a single 100 in^3 airgun off St. Lawrence Island in the northern Bering Sea. They estimated, based on small sample sizes, that 50% of feeding gray whales ceased feeding at an average received pressure level of 173 dB re 1 μPa on an (approximate) rms basis, and that 10% of feeding whales interrupted feeding at received levels of 163 dB. Those findings were generally consistent with the results of experiments conducted on larger numbers of gray whales that were migrating along the California coast and on observations of the distribution of feeding Western Pacific gray whales off Sakhalin Island, Russia, during a seismic survey (Yazvenko *et al.,* 2007).

Data on short-term reactions (or lack of reactions) of cetaceans to impulsive noises do not necessarily provide information about long-term effects. While it is not certain whether impulsive noises affect reproductive rate or distribution and habitat use in subsequent days or years, certain species have continued to use areas ensonified by airguns and have continued to increase in number despite successive years of anthropogenic activity in the area. Gray whales continued to migrate annually along the west coast of North America despite intermittent seismic exploration and much ship traffic in that area for decades (Appendix A in Malme *et al.,* 1984). Bowhead whales continued to travel to the eastern Beaufort Sea each summer despite seismic exploration in their summer and autumn range for many years (Richardson *et al.,* 1987). Populations of both gray whales and bowhead whales grew substantially during this time. Bowhead whales have increased by approximately 3.4% per year for the last 10 years in the Beaufort Sea (Allen and Angliss, 2011). In any event, the brief exposures to sound pulses from the proposed airgun source (the airguns will only be fired for a period of 10–14 hours for each of the three, possibly four, wells) are highly unlikely to result in prolonged effects.

Toothed Whales—Few systematic data are available describing reactions of toothed whales to noise pulses. Few studies similar to the more extensive baleen whale/seismic pulse work summarized earlier in this document have been reported for toothed whales. However, systematic work on sperm whales is underway (Tyack *et al.,* 2003), and there is an increasing amount of information about responses of various odontocetes to seismic surveys based on monitoring studies (*e.g.,* Stone, 2003; Smultea *et al.,* 2004; Moulton and Miller, 2005).

Seismic operators and marine mammal observers sometimes see dolphins and other small toothed whales near operating airgun arrays, but, in general, there seems to be a tendency for most delphinids to show some limited avoidance of seismic vessels operating large airgun systems. However, some dolphins seem to be attracted to the seismic vessel and floats, and some ride the bow wave of the seismic vessel even when large arrays of airguns are firing. Nonetheless, there have been indications that small toothed whales sometimes move away or maintain a somewhat greater distance from the vessel when a large array of airguns is operating than when it is silent (*e.g.,* Goold, 1996a,b,c; Calambokidis and Osmek, 1998; Stone, 2003). The beluga may be a species that (at least at times) shows long-distance avoidance of seismic vessels. Aerial surveys during seismic operations in the southeastern Beaufort Sea recorded much lower sighting rates of beluga whales within 6.2–12.4 mi (10–20 km) of an active seismic vessel. These results were consistent with the low number of beluga sightings reported by observers aboard the seismic vessel, suggesting that some belugas might be avoiding the seismic operations at distances of 6.2–12.4 mi (10–20 km) (Miller *et al.,* 2005).

Captive bottlenose dolphins and (of more relevance in this project) beluga whales exhibit changes in behavior when exposed to strong pulsed sounds similar in duration to those typically used in seismic surveys (Finneran *et al.,* 2002, 2005). However, the animals tolerated high received levels of sound (pk–pk level >200 dB re 1 μPa) before exhibiting aversive behaviors.

Reactions of toothed whales to large arrays of airguns are variable and, at least for delphinids, seem to be confined to a smaller radius than has been observed for mysticetes. However, based on the limited existing evidence, belugas should not be grouped with delphinids in the ''less responsive'' category.

Pinnipeds—Pinnipeds are not likely to show a strong avoidance reaction to the airgun sources proposed for use. Visual monitoring from seismic vessels has shown only slight (if any) avoidance of airguns by pinnipeds and only slight (if any) changes in behavior. Ringed seals frequently do not avoid the area within a few hundred meters of operating airgun arrays (Harris *et al.,* 2001; Moulton and Lawson, 2002; Miller *et al.,* 2005). Monitoring work in the Alaskan Beaufort Sea during 1996–2001 provided considerable information regarding the behavior of seals exposed to seismic pulses (Harris *et al.,* 2001; Moulton and Lawson, 2002). These seismic projects usually involved arrays of 6 to 16 airguns with total volumes of 560 to 1,500 in^3. The combined results suggest that some seals avoid the immediate area around seismic vessels. In most survey years, ringed seal sightings tended to be farther away from the seismic vessel when the airguns were operating than when they were not (Moulton and Lawson, 2002). However, these avoidance movements were relatively small, on the order of 328 ft (100 m) to a few hundreds of meters, and many seals remained within 328–656 ft (100–200 m) of the trackline as the operating airgun array passed by. Seal sighting rates at the water surface were lower during airgun array operations than during no-airgun periods in each survey year except 1997. Similarly, seals are often very tolerant of pulsed sounds from seal-scaring devices (Mate and Harvey, 1987; Jefferson and Curry, 1994; Richardson *et al.,* 1995a). However, initial telemetry work suggests that avoidance and other behavioral reactions by two other species of seals to small airgun sources may at times be stronger than evident to date from visual studies of pinniped reactions to airguns (Thompson *et al.,* 1998). Even if reactions of the species occurring in the present study area are as strong as those evident in the telemetry study, reactions are expected to be confined to relatively small distances and durations, with no long-term effects on pinniped individuals or populations. Additionally, the airguns are only proposed to be used for a short time during the exploration drilling program (approximately 10–14 hours for

each well, for a total of 40–56 hours, and more likely to be 30–42 hours if the fourth well is not completed, over the entire open-water season, which lasts for approximately 4 months).

(4) Hearing Impairment and Other Physiological Effects

TTS—TTS is the mildest form of hearing impairment that can occur during exposure to a strong sound (Kryter, 1985). While experiencing TTS, the hearing threshold rises, and a sound must be stronger in order to be heard. At least in terrestrial mammals, TTS can last from minutes or hours to (in cases of strong TTS) days, can be limited to a particular frequency range, and can be in varying degrees (*i.e.,* a loss of a certain number of dBs of sensitivity). For sound exposures at or somewhat above the TTS threshold, hearing sensitivity in both terrestrial and marine mammals recovers rapidly after exposure to the noise ends. Few data on sound levels and durations necessary to elicit mild TTS have been obtained for marine mammals, and none of the published data concern TTS elicited by exposure to multiple pulses of sound.

Marine mammal hearing plays a critical role in communication with conspecifics and in interpretation of environmental cues for purposes such as predator avoidance and prey capture. Depending on the degree (elevation of threshold in dB), duration (*i.e.,* recovery time), and frequency range of TTS and the context in which it is experienced, TTS can have effects on marine mammals ranging from discountable to serious. For example, a marine mammal may be able to readily compensate for a brief, relatively small amount of TTS in a non-critical frequency range that takes place during a time when the animal is traveling through the open ocean, where ambient noise is lower and there are not as many competing sounds present. Alternatively, a larger amount and longer duration of TTS sustained during a time when communication is critical for successful mother/calf interactions could have more serious impacts if it were in the same frequency band as the necessary vocalizations and of a severity that it impeded communication. The fact that animals exposed to levels and durations of sound that would be expected to result in this physiological response would also be expected to have behavioral responses of a comparatively more severe or sustained nature is also notable and potentially of more importance than the simple existence of a TTS.

Researchers have derived TTS information for odontocetes from studies on the bottlenose dolphin and beluga. For the one harbor porpoise tested, the received level of airgun sound that elicited onset of TTS was lower (Lucke *et al.,* 2009). If these results from a single animal are representative, it is inappropriate to assume that onset of TTS occurs at similar received levels in all odontocetes (*cf.* Southall *et al.,* 2007). Some cetaceans apparently can incur TTS at considerably lower sound exposures than are necessary to elicit TTS in the beluga or bottlenose dolphin.

For baleen whales, there are no data, direct or indirect, on levels or properties of sound that are required to induce TTS. The frequencies to which baleen whales are most sensitive are assumed to be lower than those to which odontocetes are most sensitive, and natural background noise levels at those low frequencies tend to be higher. As a result, auditory thresholds of baleen whales within their frequency band of best hearing are believed to be higher (less sensitive) than are those of odontocetes at their best frequencies (Clark and Ellison, 2004), meaning that baleen whales require sounds to be louder (*i.e.,* higher dB levels) than odontocetes in the frequency ranges at which each group hears the best. From this, it is suspected that received levels causing TTS onset may also be higher in baleen whales (Southall *et al.,* 2007). Since current NMFS practice assumes the same thresholds for the onset of hearing impairment in both odontocetes and mysticetes, NMFS' onset of TTS threshold is likely conservative for mysticetes. For this proposed activity, Shell expects no cases of TTS given the strong likelihood that baleen whales would avoid the airguns before being exposed to levels high enough for TTS to occur. The source levels of the drilling units are far lower than those of the airguns.

In pinnipeds, TTS thresholds associated with exposure to brief pulses (single or multiple) of underwater sound have not been measured. However, systematic TTS studies on captive pinnipeds have been conducted (Bowles *et al.,* 1999; Kastak *et al.,* 1999, 2005, 2007; Schusterman *et al.,* 2000; Finneran *et al.,* 2003; Southall *et al.,* 2007). Initial evidence from more prolonged (non-pulse) exposures suggested that some pinnipeds (harbor seals in particular) incur TTS at somewhat lower received levels than do small odontocetes exposed for similar durations (Kastak *et al.,* 1999, 2005; Ketten *et al.,* 2001; cf. Au *et al.,* 2000). The TTS threshold for pulsed sounds has been indirectly estimated as being a sound exposure level (SEL) of approximately 171 dB re 1 $\mu Pa^2 \cdot s$ (Southall *et al.,* 2007) which would be equivalent to a single pulse with a received level of approximately 181 to 186 dB re 1 μPa (rms), or a series of pulses for which the highest rms values are a few dB lower. Corresponding values for California sea lions and northern elephant seals are likely to be higher (Kastak *et al.,* 2005). For harbor seal, which is closely related to the ringed seal, TTS onset apparently occurs at somewhat lower received energy levels than for odonotocetes. The sound level necessary to cause TTS in pinnipeds depends on exposure duration, as in other mammals; with longer exposure, the level necessary to elicit TTS is reduced (Schusterman *et al.,* 2000; Kastak *et al.,* 2005, 2007). For very short exposures (*e.g.,* to a single sound pulse), the level necessary to cause TTS is very high (Finneran *et al.,* 2003). For pinnipeds exposed to in-air sounds, auditory fatigue has been measured in response to single pulses and to non-pulse noise (Southall *et al.,* 2007), although high exposure levels were required to induce TTS-onset (SEL: 129 dB re: 20 $\mu Pa^2 \cdot s$; Bowles *et al.,* unpub. data).

NMFS has established acoustic thresholds that identify the received sound levels above which hearing impairment or other injury could potentially occur, which are 180 and 190 dB re 1 μPa (rms) for cetaceans and pinnipeds, respectively (NMFS 1995, 2000). The established 180- and 190-dB criteria were established before additional TTS measurements for marine mammals became available, and represent the received levels above which one could not be certain there would be no injurious effects, auditory or otherwise, to marine mammals. TTS is considered by NMFS to be a type of Level B (non-injurious) harassment. The 180- and 190-dB levels are also typically used as shutdown criteria for mitigation applicable to cetaceans and pinnipeds, respectively, as specified by NMFS (2000) and are used to establish exclusion zones (EZs), as appropriate. Additionally, based on the summary provided here and the fact that modeling indicates the back-propagated source level for the *Discoverer* to be between 177 and 185 dB re 1 μPa at 1 m (Austin and Warner, 2010), TTS is not expected to occur in any marine mammal species that may occur in the proposed drilling area since the source level will not reach levels thought to induce even mild TTS. While the source level of the airgun is higher than the 190-dB threshold level, an animal would have to be in very close

proximity to be exposed to such levels. Additionally, the 180- and 190-dB radii for the airgun are 0.8 mi (1.24 km) and 0.3 mi (524 m), respectively, from the source. Because of the short duration that the airguns will be used (no more than 30–56 hours throughout the entire open-water season) and mitigation and monitoring measures described later in this document, hearing impairment is not anticipated.

PTS—When PTS occurs, there is physical damage to the sound receptors in the ear. In some cases, there can be total or partial deafness, whereas in other cases, the animal has an impaired ability to hear sounds in specific frequency ranges (Kryter, 1985).

There is no specific evidence that exposure to underwater industrial sound associated with oil exploration can cause PTS in any marine mammal (see Southall *et al.,* 2007). However, given the possibility that mammals might incur TTS, there has been further speculation about the possibility that some individuals occurring very close to such activities might incur PTS (*e.g.,* Richardson *et al.,* 1995, p. 372*ff;* Gedamke *et al.,* 2008). Single or occasional occurrences of mild TTS are not indicative of permanent auditory damage in terrestrial mammals. Relationships between TTS and PTS thresholds have not been studied in marine mammals but are assumed to be similar to those in humans and other terrestrial mammals (Southall *et al.,* 2007; Le Prell, in press). PTS might occur at a received sound level at least several decibels above that inducing mild TTS. Based on data from terrestrial mammals, a precautionary assumption is that the PTS threshold for impulse sounds (such as airgun pulses as received close to the source) is at least 6 dB higher than the TTS threshold on a peak-pressure basis and probably greater than 6 dB (Southall *et al.,* 2007).

It is highly unlikely that marine mammals could receive sounds strong enough (and over a sufficient duration) to cause PTS during the proposed exploratory drilling program. As mentioned previously in this document, the source levels of the drilling units are not considered strong enough to cause even slight TTS. Given the higher level of sound necessary to cause PTS, it is even less likely that PTS could occur. In fact, based on the modeled source levels for the drilling units, the levels immediately adjacent to the drilling units may not be sufficient to induce PTS, even if the animals remain in the immediate vicinity of the activity. The modeled source level from the *Discoverer* suggests that marine mammals located immediately adjacent to a drilling unit would likely not be exposed to received sound levels of a magnitude strong enough to induce PTS, even if the animals remain in the immediate vicinity of the proposed activity location for a prolonged period of time. Because the source levels do not reach the threshold of 190 dB currently used for pinnipeds and is at the 180 dB threshold currently used for cetaceans, it is highly unlikely that any type of hearing impairment, temporary or permanent, would occur as a result of the exploration drilling activities. Additionally, Southall *et al.* (2007) proposed that the thresholds for injury of marine mammals exposed to ''discrete'' noise events (either single or multiple exposures over a 24-hr period) are higher than the 180- and 190-dB re 1 μPa (rms) in-water threshold currently used by NMFS.

Non-auditory Physiological Effects—Non-auditory physiological effects or injuries that theoretically might occur in marine mammals exposed to strong underwater sound include stress, neurological effects, bubble formation, and other types of organ or tissue damage (Cox *et al.,* 2006; Southall *et al.,* 2007). Studies examining any such effects are limited. If any such effects do occur, they probably would be limited to unusual situations when animals might be exposed at close range for unusually long periods. It is doubtful that any single marine mammal would be exposed to strong sounds for sufficiently long that significant physiological stress would develop.

Classic stress responses begin when an animal's central nervous system perceives a potential threat to its homeostasis. That perception triggers stress responses regardless of whether a stimulus actually threatens the animal; the mere perception of a threat is sufficient to trigger a stress response (Moberg, 2000; Sapolsky *et al.,* 2005; Seyle, 1950). Once an animal's central nervous system perceives a threat, it mounts a biological response or defense that consists of a combination of the four general biological defense responses: behavioral responses; autonomic nervous system responses; neuroendocrine responses; or immune responses.

In the case of many stressors, an animal's first and most economical (in terms of biotic costs) response is behavioral avoidance of the potential stressor or avoidance of continued exposure to a stressor. An animal's second line of defense to stressors involves the sympathetic part of the autonomic nervous system and the classical ''fight or flight'' response, which includes the cardiovascular system, the gastrointestinal system, the exocrine glands, and the adrenal medulla to produce changes in heart rate, blood pressure, and gastrointestinal activity that humans commonly associate with ''stress.'' These responses have a relatively short duration and may or may not have significant long-term effects on an animal's welfare.

An animal's third line of defense to stressors involves its neuroendocrine or sympathetic nervous systems; the system that has received the most study has been the hypothalmus-pituitary-adrenal system (also known as the HPA axis in mammals or the hypothalamus-pituitary-interrenal axis in fish and some reptiles). Unlike stress responses associated with the autonomic nervous system, virtually all neuroendocrine functions that are affected by stress—including immune competence, reproduction, metabolism, and behavior—are regulated by pituitary hormones. Stress-induced changes in the secretion of pituitary hormones have been implicated in failed reproduction (Moberg, 1987; Rivier, 1995), altered metabolism (Elasser *et al.,* 2000), reduced immune competence (Blecha, 2000), and behavioral disturbance. Increases in the circulation of glucocorticosteroids (cortisol, corticosterone, and aldosterone in marine mammals; see Romano *et al.,* 2004) have been equated with stress for many years.

The primary distinction between stress (which is adaptive and does not normally place an animal at risk) and distress is the biotic cost of the response. During a stress response, an animal uses glycogen stores that can be quickly replenished once the stress is alleviated. In such circumstances, the cost of the stress response would not pose a risk to the animal's welfare. However, when an animal does not have sufficient energy reserves to satisfy the energetic costs of a stress response, energy resources must be diverted from other biotic functions, which impair those functions that experience the diversion. For example, when mounting a stress response diverts energy away from growth in young animals, those animals may experience stunted growth. When mounting a stress response diverts energy from a fetus, an animal's reproductive success and fitness will suffer. In these cases, the animals will have entered a pre-pathological or pathological state which is called ''distress'' (sensu Seyle, 1950) or ''allostatic loading'' (sensu McEwen and Wingfield, 2003). This pathological state will last until the animal replenishes its biotic reserves sufficient to restore normal function. Note that these

examples involved a long-term (days or weeks) stress response exposure to stimuli.

Relationships between these physiological mechanisms, animal behavior, and the costs of stress responses have also been documented fairly well through controlled experiment; because this physiology exists in every vertebrate that has been studied, it is not surprising that stress responses and their costs have been documented in both laboratory and free-living animals (for examples see, Holberton *et al.,* 1996; Hood *et al.,* 1998; Jessop *et al.,* 2003; Krausman *et al.,* 2004; Lankford *et al.,* 2005; Reneerkens *et al.,* 2002; Thompson and Hamer, 2000). Although no information has been collected on the physiological responses of marine mammals to anthropogenic sound exposure, studies of other marine animals and terrestrial animals would lead us to expect some marine mammals to experience physiological stress responses and, perhaps, physiological responses that would be classified as ''distress'' upon exposure to anthropogenic sounds.

For example, Jansen (1998) reported on the relationship between acoustic exposures and physiological responses that are indicative of stress responses in humans (*e.g.,* elevated respiration and increased heart rates). Jones (1998) reported on reductions in human performance when faced with acute, repetitive exposures to acoustic disturbance. Trimper *et al.* (1998) reported on the physiological stress responses of osprey to low-level aircraft noise while Krausman *et al.* (2004) reported on the auditory and physiology stress responses of endangered Sonoran pronghorn to military overflights. Smith *et al.* (2004a, 2004b) identified noise-induced physiological transient stress responses in hearing-specialist fish (*i.e.,* goldfish) that accompanied short- and long-term hearing losses. Welch and Welch (1970) reported physiological and behavioral stress responses that accompanied damage to the inner ears of fish and several mammals.

Hearing is one of the primary senses marine mammals use to gather information about their environment and communicate with conspecifics. Although empirical information on the relationship between sensory impairment (TTS, PTS, and acoustic masking) on marine mammals remains limited, it seems reasonable to assume that reducing an animal's ability to gather information about its environment and to communicate with other members of its species would be stressful for animals that use hearing as their primary sensory mechanism. Therefore, we assume that acoustic exposures sufficient to trigger onset PTS or TTS would be accompanied by physiological stress responses because terrestrial animals exhibit those responses under similar conditions (NRC, 2003). More importantly, marine mammals might experience stress responses at received levels lower than those necessary to trigger onset TTS. Based on empirical studies of the time required to recover from stress responses (Moberg, 2000), NMFS also assumes that stress responses could persist beyond the time interval required for animals to recover from TTS and might result in pathological and pre-pathological states that would be as significant as behavioral responses to TTS. However, as stated previously in this document, the source levels of the drilling units are not loud enough to induce PTS or likely even TTS.

Resonance effects (Gentry, 2002) and direct noise-induced bubble formations (Crum *et al.,* 2005) are implausible in the case of exposure to an impulsive broadband source like an airgun array. If seismic surveys disrupt diving patterns of deep-diving species, this might result in bubble formation and a form of the bends, as speculated to occur in beaked whales exposed to sonar. However, there is no specific evidence of this upon exposure to airgun pulses. Additionally, no beaked whale species occur in the proposed exploration drilling area.

In general, very little is known about the potential for strong, anthropogenic underwater sounds to cause non-auditory physical effects in marine mammals. Such effects, if they occur at all, would presumably be limited to short distances and to activities that extend over a prolonged period. The available data do not allow identification of a specific exposure level above which non-auditory effects can be expected (Southall *et al.,* 2007) or any meaningful quantitative predictions of the numbers (if any) of marine mammals that might be affected in those ways. The low levels of continuous sound that will be produced by the drilling units are not expected to cause such effects. Additionally, marine mammals that show behavioral avoidance of the proposed activities, including most baleen whales, some odontocetes (including belugas), and some pinnipeds, are especially unlikely to incur auditory impairment or other physical effects.

(5) Stranding and Mortality

Marine mammals close to underwater detonations of high explosives can be killed or severely injured, and the auditory organs are especially susceptible to injury (Ketten *et al.,* 1993; Ketten, 1995). However, explosives are no longer used for marine waters for commercial seismic surveys; they have been replaced entirely by airguns or related non-explosive pulse generators. Underwater sound from drilling, support activities, and airgun arrays is less energetic and has slower rise times, and there is no proof that they can cause serious injury, death, or stranding, even in the case of large airgun arrays. However, the association of mass strandings of beaked whales with naval exercises involving mid-frequency active sonar, and, in one case, coinciding with a Lamont-Doherty Earth Observatory (L–DEO) seismic survey (Malakoff, 2002; Cox *et al.,* 2006), has raised the possibility that beaked whales exposed to strong pulsed sounds may be especially susceptible to injury and/or behavioral reactions that can lead to stranding (*e.g.,* Hildebrand, 2005; Southall *et al.,* 2007).

Specific sound-related processes that lead to strandings and mortality are not well documented, but may include:

(1) Swimming in avoidance of a sound into shallow water;

(2) A change in behavior (such as a change in diving behavior) that might contribute to tissue damage, gas bubble formation, hypoxia, cardiac arrhythmia, hypertensive hemorrhage or other forms of trauma;

(3) A physiological change, such as a vestibular response leading to a behavioral change or stress-induced hemorrhagic diathesis, leading in turn to tissue damage; and

(4) Tissue damage directly from sound exposure, such as through acoustically-mediated bubble formation and growth or acoustic resonance of tissues.

Some of these mechanisms are unlikely to apply in the case of impulse sounds. However, there are indications that gas-bubble disease (analogous to ''the bends''), induced in supersaturated tissue by a behavioral response to acoustic exposure, could be a pathologic mechanism for the strandings and mortality of some deep-diving cetaceans exposed to sonar. However, the evidence for this remains circumstantial and is associated with exposure to naval mid-frequency sonar, not seismic surveys or exploratory drilling programs (Cox *et al.,* 2006; Southall *et al.,* 2007).

Both seismic pulses and continuous drillship sounds are quite different from mid-frequency sonar signals, and some mechanisms by which sonar sounds have been hypothesized to affect beaked whales are unlikely to apply to airgun pulses or drillships. Sounds produced by airgun arrays are broadband impulses

with most of the energy below 1 kHz, and the low-energy continuous sounds produced by drillships have most of the energy between 20 and 1,000 Hz. Additionally, the non-impulsive, continuous sounds produced by the drilling units proposed to be used by Shell do not have rapid rise times. Rise time is the fluctuation in sound levels of the source. The type of sound that would be produced during the proposed drilling program will be constant and will not exhibit any sudden fluctuations or changes. Typical military mid-frequency sonar emits non-impulse sounds at frequencies of 2–10 kHz, generally with a relatively narrow bandwidth at any one time. A further difference between them is that naval exercises can involve sound sources on more than one vessel. Thus, it is not appropriate to assume that there is a direct connection between the effects of military sonar and oil and gas industry operations on marine mammals. However, evidence that sonar signals can, in special circumstances, lead (at least indirectly) to physical damage and mortality (*e.g.,* Balcomb and Claridge, 2001; NOAA and USN, 2001; Jepson *et al.,* 2003; Fernández *et al.,* 2004, 2005; Hildebrand, 2005; Cox *et al.,* 2006) suggests that caution is warranted when dealing with exposure of marine mammals to any high-intensity ''pulsed'' sound.

There is no conclusive evidence of cetacean strandings or deaths at sea as a result of exposure to seismic surveys, but a few cases of strandings in the general area where a seismic survey was ongoing have led to speculation concerning a possible link between seismic surveys and strandings. Suggestions that there was a link between seismic surveys and strandings of humpback whales in Brazil (Engel *et al.,* 2004) were not well founded (IAGC, 2004; IWC, 2007). In September 2002, there was a stranding of two Cuvier's beaked whales in the Gulf of California, Mexico, when the L–DEO vessel R/V *Maurice Ewing* was operating a 20 airgun (8,490 in^3) array in the general area. The link between the stranding and the seismic surveys was inconclusive and not based on any physical evidence (Hogarth, 2002; Yoder, 2002). Nonetheless, the Gulf of California incident, plus the beaked whale strandings near naval exercises involving use of mid-frequency sonar, suggests a need for caution in conducting seismic surveys in areas occupied by beaked whales until more is known about effects of seismic surveys on those species (Hildebrand, 2005). No injuries of beaked whales are anticipated during the proposed exploratory drilling program because none occur in the proposed area.

Potential Impacts From Drilling Wastes

Shell will discharge drilling wastes to the Chukchi Sea. These discharges will be authorized under the EPA's National Pollutant Discharge Elimination System (NPDES) General Permit for Oil and Gas Exploration Activities on the Outer Continental Shelf in the Chukchi Sea (AKG–28–8100; ''NPDES exploration facilities GP''). This permit establishes various limits and conditions on the authorized discharges, and the EPA has determined that with these limits and conditions the discharges will not result in any unreasonable degradation of ocean waters.

Under the NPDES exploration facilities GP, drilling wastes to be discharged must have a 96-hr Lethal Concentration 50 percent (LC50) toxicity of 30,000 parts per million or greater at the point of discharge. Both modeling and field studies have shown that discharged drilling wastes are diluted rapidly in receiving waters (Ayers *et al.* 1980a, 1980b, Brandsma *et al.* 1980, NRC 1983, O'Reilly *et al.* 1989, Nedwed *et al.* 2004, Smith *et al.* 2004; Neff 2005). The dilution is strongly affected by the discharge rate. The NPDES exploration facilities GP limits the discharge of drilling wastes to 1,000 bbl/hr (159 m^3/hr). For example, TetraTech (2011) modeled hypothetical 1,000 bbl/hr (159 m^3/hr) discharges of drilling wastes in water depths of 131–164 ft (40–50 m) in the Beaufort and Chukchi Seas for the EPA and predicted dilution factors of 950–17,500 at a distance of 330 ft (100 m) from the discharge point.

The primary effect of the drilling waste discharges will be increases in total suspended solids (TSS) in the water column and localized increase in sedimentation on the sea floor. Shell conducted dispersion modeling of the drilling waste discharges using the Offshore Operators Committee Mud and Produced Water Discharge (OOC) model (Fluid Dynamix 2014). Simulations were performed for each of the six discrete drilling intervals with two discharge locations: Seafloor and sea surface. The Burger Prospect wells are all very similar in well design and site conditions so the simulation approximates the results for the all drill sites. The model results indicate that most of the increase in TSS will be ameliorated within 984 ft (300 m) of the discharge locations through settling and dispersion. Impacts to water quality will cease when the discharge is concluded.

Modeling of similar discharges offshore of Sakhalin Island predicted a 1,000-fold dilution within 10 minutes and 330 ft (100 m) of the discharge. In a field study (O'Reilly *et al.* 1989) of a drilling waste discharge offshore of California, a 270 bbl (43 m^3) discharge of drilling wastes was found to be diluted 183-fold at 33 ft (10 m) and 1,049-fold at 330 ft (100 m). Neff (2005) concluded that concentrations of discharged drilling waste would diminish to levels that would have no effect within about two minutes of discharge and within 16 ft (5 m) of the discharge location.

Discharges of drilling wastes could potentially displace marine mammals a short distance from a drilling location. However, it is likely that marine mammals will have already avoided the area due to sound energy generated by the drilling activities.

Baleen whales, such as bowheads, tend to avoid drilling units at distances up to 12 mi (20 km). Therefore, it is highly unlikely that the whales will swim or feed in close enough proximity of discharges to be affected. The levels of drilling waste discharges are regulated by the NPDES exploration facilities GP. The impact of drilling waste discharges would be localized and temporary. Drilling waste discharges could displace endangered whales (bowhead and humpback whales) a short distance from a drill site. Effects on the whales present within a few meters of the discharge point would be expected, primarily due to sedimentation. However, endangered whales are not likely to have long-term exposures to drilling wastes because of the episodic nature of discharges (typically only a few hours in duration).

Like other baleen whales, gray whales will more than likely avoid drilling activities and therefore not come into close contact with drilling wastes. Gray whales are benthic feeders and the seafloor area covered by accumulations of discharged drilling wastes will be unavailable to the whales for foraging purposes, and represents an indirect impact on these animals. Such indirect impacts are negligible resulting in little effect on individual whales and no effect on the population, because such areas of disturbance will be few and in total will occur over a very small area representing an extremely small portion of available foraging habitat in the Chukchi Sea. Other baleen whales such as the minke whale, which could be found near the drill site, would not be expected to be affected.

Discharges of drilling wastes are not likely to affect beluga whales and other odontocetes such as harbor porpoises

and killer whales. These marine mammals will likely avoid the immediate areas where drilling wastes will be discharged. Discharge modeling performed for both the *Discoverer* and the *Polar Pioneer* based on maximum prevailing current speeds of 9.84 in/s (25 cm/s), shows that sedimentation depth of drilling wastes at greater than 0.4 in (1 cm) thickness will occur within approximately 1,641 (500 m) of the drilling unit discharge point (Fluid Dynamix, 2014b). Concentrations of TSS, a transient feature of the discharge, are modeled to be below 15 mg/L at distances approximately 3,281 ft (1,000 m) from the drilling unit discharge point. Therefore, it is highly unlikely that beluga whales will come into contact with any drilling discharge and impacts are not expected.

Seals are also not expected to be impacted by the discharges of drilling wastes. It is highly unlikely that a seal would remain within 330 ft (100 m) of the discharge source for any extended period of time but if they were to remain within 330 ft (100 m) of the discharge source for an extended period of time, it is possible that physiological effects due to toxins could impact the animal.

Potential Impacts From Drilling Units' Presence

The length of the *Discoverer* at 514 ft (156.7 m) and *Polar Pioneer* at 279 ft (85m) are not large enough to cause large-scale diversions from the animals' normal swim and migratory paths. The drilling units' physical footprints are small relative to the size of the geographic region either would occupy, and will likely not cause marine mammals to deflect greatly from their typical migratory routes.

Any deflection of bowhead whales or other marine mammal species due to the physical presence of the drilling units or support vessels would be extremely small. Even if animals may deflect because of the presence of the drilling units, the Chukchi Sea's migratory corridor is much larger in size than the length of the drilling units, and animals would have other means of passage around the drilling units. In sum, the physical presence of the drilling units is not likely to cause a material deflection to migrating marine mammals. Moreover, any impacts would last only as long as the drilling units are actually present.

Seal species which may be encountered during ice management activities include ringed seals, bearded seals, spotted seals, and the much less common ribbon seal. Ringed seals are found in the activity area year-around. Bearded seals spend the winter season in the Bering Sea, and then follow the ice edge as it retreats in spring. Spotted seals are found in the Bering Sea in winter and spring where they breed, molt, and pup in large groups. Few spotted seals are expected to be encountered in the Chukchi Sea until July. Even then, they are rarely seen on pack ice but are commonly observed hauled out on land or swimming in open water.

Based on extensive analysis of digital imagery taken during aerial surveys in support of Shell's 2012 operations in the Chukchi and Beaufort Seas, ice seals are very infrequently observed hauled out on the ice in groups of greater than one individual. Tens of thousands of images from 17 flights that took place from July through October were reviewed in detail. Of 107 total observations of spotted or ringed seals on ice, only three of those sightings were of a group of two or more individuals. Since seals are found as individuals or in very small groups when they are in the activity area, the chance of a stampede event is very unlikely. Finally, ice seals are well adapted to move between ice and water without injury, including ''escape reactions'' to avoid predators.

Exploratory Drilling Program and Potential for Oil Spill

As noted above, the specified activity involves the drilling of exploratory wells and associated activities in the Chukchi Sea during the 2015 open-water season. The impacts to marine mammals that are reasonably expected to occur will be behavioral in nature. The likelihood of a large or very large (*i.e.,* ≥1,000 barrels or ≥150,000 barrels, respectively) oil spill occurring during Shell's proposed program has been estimated to be low. A total of 35 exploration wells have been drilled between 1982 and 2003 in the Chukchi and Beaufort seas, and there have been no blowouts. In addition, no blowouts have occurred from the approximately 98 exploration wells drilled within the Alaskan OCS (MMS, 2007a). Based on modeling conducted by Bercha (2008), the predicted frequency of an exploration well oil spill in waters similar to those in the Chukchi Sea, Alaska, is 0.000612 per well for a blowout sized between 10,000 barrels (bbl) to 149,000 bbl and 0.000354 per well for a blowout greater than 150,000 bbl.

Shell has implemented several design standards and practices to reduce the already low probability of an oil spill occurring as part of its operations. The wells proposed to be drilled in the Arctic are exploratory and will not be converted to production wells; thus, production casing will not be installed, and the well will be permanently plugged and abandoned once exploration drilling is complete. Shell has also developed and will implement the following plans and protocols: Shell's Critical Operations Curtailment Plan; DIMP; Well Control Plan; and Fuel Transfer Plan. Many of these safety measures are required by the Department of the Interior's interim final rule implementing certain measures to improve the safety of oil and gas exploration and development on the Outer Continental Shelf in light of the Deepwater Horizon event (*see* 75 FR 63346, October 14, 2010). Operationally, Shell has committed to the following to help prevent an oil spill from occurring in the Chukchi Sea:

- Shell's Blow Out Preventer (BOP) was inspected and tested by an independent third party specialist;
- Further inspection and testing of the BOP have been performed to ensure the reliability of the BOP and that all functions will be performed as necessary, including shearing the drill pipe;
- Shell will conduct a function test of annular and ram BOPs every 7 days between pressure tests;
- A second set of blind/shear rams will be installed in the BOP stack;
- Full string casings will typically not be installed through high pressure zones;
- Liners will be installed and cemented, which allows for installation of a liner top packer;
- Testing of liners prior to installing a tieback string of casing back to the wellhead;
- Utilizing a two-barrier policy; and
- Testing of all casing hangers to ensure that they have two independent, validated barriers at all times.

NMFS has considered Shell's proposed action and has concluded that there is no reasonable likelihood of serious injury or mortality of marine mammals from the proposed 2015 Chukchi Sea exploration drilling program. NMFS has consistently interpreted the term ''potential,'' as used in 50 CFR 216.107(a), to only include impacts that have more than a discountable probability of occurring, that is, impacts must be reasonably expected to occur. Hence, NMFS has regularly issued IHAs in cases where it found that the potential for serious injury or mortality was ''highly unlikely'' (*See* 73 FR 40512, 40514, July 15, 2008; 73 FR 45969, 45971, August 7, 2008; 73 FR 46774, 46778, August 11, 2008; 73 FR 66106, 66109, November 6, 2008; 74 FR 55368, 55371, October 27,

2009; 77 FR 27322, May 9, 2012; and 77 FR 27284, May 9, 2012).

Interpreting ''potential'' to include impacts with any probability of occurring (*i.e.,* speculative or extremely low probability events) would nearly preclude the issuance of IHAs in every instance. For example, NMFS would be unable to issue an IHA whenever vessels were involved in the marine activity since there is always some, albeit remote, possibility that a vessel could strike and seriously injure or kill a marine mammal. This would also be inconsistent with the dual-permitting scheme Congress created and undesirable from a policy perspective, as limited agency resources would be used to issue regulations that provide no additional benefit to marine mammals beyond what is proposed in this IHA.

Despite concluding that the risk of serious injury or mortality from an oil spill in this case is extremely remote, NMFS has nonetheless evaluated the potential effects of an oil spill on marine mammals. While an oil spill is not a component of Shell's specified activity, potential impacts on marine mammals from an oil spill are discussed in more detail below and will be addressed in the Environmental Assessment.

Potential Effects of Oil on Cetaceans

The specific effects an oil spill would have on cetaceans are not well known. While mortality is unlikely, exposure to spilled oil could lead to skin irritation, baleen fouling (which might reduce feeding efficiency), respiratory distress from inhalation of hydrocarbon vapors, consumption of some contaminated prey items, and temporary displacement from contaminated feeding areas. Geraci and St. Aubin (1990) summarize effects of oil on marine mammals, and Bratton *et al.* (1993) provides a synthesis of knowledge of oil effects on bowhead whales. The number of cetaceans that might be contacted by a spill would depend on the size, timing, and duration of the spill and where the oil is in relation to the animals. Whales may not avoid oil spills, and some have been observed feeding within oil slicks (Goodale *et al.,* 1981). These topics are discussed in more detail next.

In the case of an oil spill occurring during migration periods, disturbance of the migrating cetaceans from cleanup activities may have more of an impact than the oil itself. Human activity associated with cleanup efforts could deflect whales away from the path of the oil. However, noise created from cleanup activities likely will be short term and localized. Moreover, whale avoidance of clean-up activities may benefit whales by displacing them from the oil spill area.

There is no direct evidence that oil spills, including the much studied Santa Barbara Channel and Exxon Valdez spills, have caused any deaths of cetaceans (Geraci, 1990; Brownell, 1971; Harvey and Dahlheim, 1994). It is suspected that some individually identified killer whales that disappeared from Prince William Sound during the time of the Exxon Valdez spill were casualties of that spill. However, no clear cause and effect relationship between the spill and the disappearance could be established (Dahlheim and Matkin, 1994). The AT–1 pod of transient killer whales that sometimes inhabits Prince William Sound has continued to decline after the Exxon Valdez Oil Spill. Matkin *et al.* (2008) tracked the AB resident pod and the AT–1 transient group of killer whales from 1984 to 2005. The results of their photographic surveillance indicate a much higher than usual mortality rate for both populations the year following the spill (33% for AB Pod and 41% for AT–1 Group) and lower than average rates of increase in the 16 years after the spill (annual increase of about 1.6% for AB Pod compared to an annual increase of about 3.2% for other Alaska killer whale pods). In killer whale pods, mortality rates are usually higher for non-reproductive animals and very low for reproductive animals and adolescents (Olesiuk *et al.,* 1990, 2005; Matkin *et al.,* 2005). No effects on humpback whales in Prince William Sound were evident after the Exxon Valdez Oil Spill (von Ziegesar *et al.,* 1994). There was some temporary displacement of humpback whales out of Prince William Sound, but this could have been caused by oil contamination, boat and aircraft disturbance, displacement of food sources, or other causes.

Migrating gray whales were apparently not greatly affected by the Santa Barbara spill of 1969. There appeared to be no relationship between the spill and mortality of marine mammals. The higher than usual counts of dead marine mammals recorded after the spill likely represented increased survey effort and therefore cannot be conclusively linked to the spill itself (Brownell, 1971; Geraci, 1990). The conclusion was that whales were either able to detect the oil and avoid it or were unaffected by it (Geraci, 1990).

(1) Oiling of External Surfaces

Whales rely on a layer of blubber for insulation, so oil would have little if any effect on thermoregulation by whales. Effects of oiling on cetacean skin appear to be minor and of little significance to the animal's health (Geraci, 1990). Histological data and ultrastructural studies by Geraci and St. Aubin (1990) showed that exposures of skin to crude oil for up to 45 minutes in four species of toothed whales had no effect. They switched to gasoline and applied the sponge up to 75 minutes. This produced transient damage to epidermal cells in whales. Subtle changes were evident only at the cell level. In each case, the skin damage healed within a week. They concluded that a cetacean's skin is an effective barrier to the noxious substances in petroleum. These substances normally damage skin by getting between cells and dissolving protective lipids. In cetacean skin, however, tight intercellular bridges, vital surface cells, and the extraordinary thickness of the epidermis impeded the damage. The authors could not detect a change in lipid concentration between and within cells after exposing skin from a white-sided dolphin to gasoline for 16 hours in vitro.

Bratton *et al.* (1993) synthesized studies on the potential effects of contaminants on bowhead whales. They concluded that no published data proved oil fouling of the skin of any free-living whales, and conclude that bowhead whales contacting fresh or weathered petroleum are unlikely to suffer harm. Although oil is unlikely to adhere to smooth skin, it may stick to rough areas on the surface (Henk and Mullan, 1997). Haldiman *et al.* (1985) found the epidermal layer to be as much as seven to eight times thicker than that found on most whales. They also found that little or no crude oil adhered to preserved bowhead skin that was dipped into oil up to three times, as long as a water film stayed on the skin's surface. Oil adhered in small patches to the surface and vibrissae (stiff, hairlike structures), once it made enough contact with the skin. The amount of oil sticking to the surrounding skin and epidermal depression appeared to be in proportion to the number of exposures and the roughness of the skin's surface. It can be assumed that if oil contacted the eyes, effects would be similar to those observed in ringed seals; continued exposure of the eyes to oil could cause permanent damage (St. Aubin, 1990).

(2) Ingestion

Whales could ingest oil if their food is contaminated, or oil could also be absorbed through the respiratory tract. Some of the ingested oil is voided in vomit or feces but some is absorbed and could cause toxic effects (Geraci, 1990).

When returned to clean water, contaminated animals can depurate this internal oil (Engelhardt, 1978, 1982). Oil ingestion can decrease food assimilation of prey eaten (St. Aubin, 1988). Cetaceans may swallow some oil-contaminated prey, but it likely would be only a small part of their food. It is not known if whales would leave a feeding area where prey was abundant following a spill. Some zooplankton eaten by bowheads and gray whales consume oil particles and bioaccumulation can result. Tissue studies by Geraci and St. Aubin (1990) revealed low levels of naphthalene in the livers and blubber of baleen whales. This result suggests that prey have low concentrations in their tissues, or that baleen whales may be able to metabolize and excrete certain petroleum hydrocarbons. Whales exposed to an oil spill are unlikely to ingest enough oil to cause serious internal damage (Geraci and St. Aubin, 1980, 1982) and this kind of damage has not been reported (Geraci, 1990).

(3) Fouling of Baleen

Baleen itself is not damaged by exposure to oil and is resistant to effects of oil (St. Aubin *et al.,* 1984). Crude oil could coat the baleen and reduce filtration efficiency; however, effects may be temporary (Braithwaite, 1983; St. Aubin *et al.,* 1984). If baleen is coated in oil for long periods, it could cause the animal to be unable to feed, which could lead to malnutrition or even death. Most of the oil that would coat the baleen is removed after 30 min, and less than 5% would remain after 24 hr (Bratton *et al.,* 1993). Effects of oiling of the baleen on feeding efficiency appear to be minor (Geraci, 1990). However, a study conducted by Lambertsen *et al.* (2005) concluded that their results highlight the uncertainty about how rapidly oil would depurate at the near zero temperatures in arctic waters and whether baleen function would be restored after oiling.

(4) Avoidance

Some cetaceans can detect oil and sometimes avoid it, but others enter and swim through slicks without apparent effects (Geraci, 1990; Harvey and Dahlheim, 1994). Bottlenose dolphins in the Gulf of Mexico apparently could detect and avoid slicks and mousse but did not avoid light sheens on the surface (Smultea and Wursig, 1995). After the Regal Sword spill in 1979, various species of baleen and toothed whales were observed swimming and feeding in areas containing spilled oil southeast of Cape Cod, MA (Goodale *et al.,* 1981). For months following Exxon Valdez Oil Spill, there were numerous observations of gray whales, harbor porpoises, Dall's porpoises, and killer whales swimming through light-to-heavy crude-oil sheens (Harvey and Dalheim, 1994, cited in Matkin *et al.,* 2008). However, if some of the animals avoid the area because of the oil, then the effects of the oiling would be less severe on those individuals.

(5) Factors Affecting the Severity of Effects

Effects of oil on cetaceans in open water are likely to be minimal, but there could be effects on cetaceans where both the oil and the whales are at least partly confined in leads or at ice edges (Geraci, 1990). In spring, bowhead and beluga whales migrate through leads in the ice. At this time, the migration can be concentrated in narrow corridors defined by the leads, thereby creating a greater risk to animals caught in the spring lead system should oil enter the leads. This situation would only occur if there were an oil spill late in the season and Shell could not complete cleanup efforts prior to ice covering the area. The oil would likely then be trapped in the ice until it began to thaw in the spring.

In fall, the migration route of bowheads can be close to shore (Blackwell *et al.,* 2009c). If fall migrants were moving through leads in the pack ice or were concentrated in nearshore waters, some bowhead whales might not be able to avoid oil slicks and could be subject to prolonged contamination. However, the autumn migration through the Chukchi Sea extends over several weeks, and some of the whales travel along routes north or inland of the area, thereby reducing the number of whales that could approach patches of spilled oil. Additionally, vessel activity associated with spill cleanup efforts may deflect whales traveling near the Burger prospect in the Chukchi Sea, thereby reducing the likelihood of contact with spilled oil.

Bowhead and beluga whales overwinter in the Bering Sea (mainly from November to March). In the summer, the majority of the bowhead whales are found in the Canadian Beaufort Sea, although some have recently been observed in the U.S. Beaufort and Chukchi Seas during the summer months (June to August). Data from the Barrow-based boat surveys in 2009 (George and Sheffield, 2009) showed that bowheads were observed almost continuously in the waters near Barrow, including feeding groups in the Chukchi Sea at the beginning of July. The majority of belugas in the Beaufort stock migrate into the Beaufort Sea in April or May, although some whales may pass Point Barrow as early as late March and as late as July (Braham *et al.,* 1984; Ljungblad *et al.,* 1984; Richardson *et al.,* 1995a). Therefore, a spill in summer would not be expected to have major impacts on these species. Additionally, humpback and fin whales are only sighted in the Chukchi Sea in small numbers in the summer, as this is thought to be the extreme northern edge of their range. Therefore, impacts to these species from an oil spill would be extremely limited.

Potential Effects of Oil on Pinnipeds

Ice seals are present in open-water areas during summer and early autumn. Externally oiled phocid seals often survive and become clean, but heavily oiled seal pups and adults may die, depending on the extent of oiling and characteristics of the oil. Prolonged exposure could occur if fuel or crude oil was spilled in or reached nearshore waters, was spilled in a lead used by seals, or was spilled under the ice when seals have limited mobility (NMFS, 2000). Adult seals may suffer some temporary adverse effects, such as eye and skin irritation, with possible infection (MMS, 1996). Such effects may increase stress, which could contribute to the death of some individuals. Ringed seals may ingest oil-contaminated foods, but there is little evidence that oiled seals will ingest enough oil to cause lethal internal effects. There is a likelihood that newborn seal pups, if contacted by oil, would die from oiling through loss of insulation and resulting hypothermia. These potential effects are addressed in more detail in subsequent paragraphs.

Reports of the effects of oil spills have shown that some mortality of seals may have occurred as a result of oil fouling; however, large scale mortality had not been observed prior to the Exxon Valdez Oil Spill (St. Aubin, 1990). Effects of oil on marine mammals were not well studied at most spills because of lack of baseline data and/or the brevity of the post-spill surveys. The largest documented impact of a spill, prior to Exxon Valdez Oil Spill Exxon Valdez Oil Spill, was on young seals in January in the Gulf of St. Lawrence (St. Aubin, 1990). Brownell and Le Boeuf (1971) found no marked effects of oil from the Santa Barbara oil spill on California sea lions or on the mortality rates of newborn pups.

Intensive and long-term studies were conducted after the Exxon Valdez Oil Spill in Alaska. There may have been a long-term decline of 36% in numbers of molting harbor seals at oiled haul-out sites in Prince William Sound following

Exxon Valdez Oil Spill Exxon Valdez Oil Spill (Frost *et al.,* 1994a). However, in a reanalysis of those data and additional years of surveys, along with an examination of assumptions and biases associated with the original data, Hoover-Miller *et al.* (2001) concluded that the Exxon Valdez Oil Spill effect had been overestimated. The decline in attendance at some oiled sites was more likely a continuation of the general decline in harbor seal abundance in Prince William Sound documented since 1984 (Frost *et al.,* 1999) rather than a result of Exxon Valdez Oil Spill. The results from Hoover-Miller *et al.* (2001) indicate that the effects of Exxon Valdez Oil Spill were largely indistinguishable from natural decline by 1992. However, while Frost *et al.* (2004) concluded that there was no evidence that seals were displaced from oiled sites, they did find that aerial counts indicated 26% fewer pups were produced at oiled locations in 1989 than would have been expected without the oil spill. Harbor seal pup mortality at oiled beaches was 23% to 26%, which may have been higher than natural mortality, although no baseline data for pup mortality existed prior to Exxon Valdez Oil Spill (Frost *et al.,* 1994a). There was no conclusive evidence of spill effects on Steller sea lions (Calkins *et al.,* 1994). Oil did not persist on sea lions themselves (as it did on harbor seals), nor did it persist on sea lion haul-out sites and rookeries (Calkins *et al.,* 1994). Sea lion rookeries and haul out sites, unlike those used by harbor seals, have steep sides and are subject to high wave energy (Calkins *et al.,* 1994).

(1) Oiling of External Surfaces

Adult seals rely on a layer of blubber for insulation, and oiling of the external surface does not appear to have adverse thermoregulatory effects (Kooyman *et al.,* 1976, 1977; St. Aubin, 1990). Contact with oil on the external surfaces can potentially cause increased stress and irritation of the eyes of ringed seals (Geraci and Smith, 1976; St. Aubin, 1990). These effects seemed to be temporary and reversible, but continued exposure of eyes to oil could cause permanent damage (St. Aubin, 1990). Corneal ulcers and abrasions, conjunctivitis, and swollen nictitating membranes were observed in captive ringed seals placed in crude oil-covered water (Geraci and Smith, 1976) and in seals in the Antarctic after an oil spill (Lillie, 1954).

Newborn seal pups rely on their fur for insulation. Newborn ringed seal pups in lairs on the ice could be contaminated through contact with oiled mothers. There is the potential that newborn ringed seal pups that were contaminated with oil could die from hypothermia.

(2) Ingestion

Marine mammals can ingest oil if their food is contaminated. Oil can also be absorbed through the respiratory tract (Geraci and Smith, 1976; Engelhardt *et al.,* 1977). Some of the ingested oil is voided in vomit or feces but some is absorbed and could cause toxic effects (Engelhardt, 1981). When returned to clean water, contaminated animals can depurate this internal oil (Engelhardt, 1978, 1982, 1985). In addition, seals exposed to an oil spill are unlikely to ingest enough oil to cause serious internal damage (Geraci and St. Aubin, 1980, 1982).

(3) Avoidance and Behavioral Effects

Although seals may have the capability to detect and avoid oil, they apparently do so only to a limited extent (St. Aubin, 1990). Seals may abandon the area of an oil spill because of human disturbance associated with cleanup efforts, but they are most likely to remain in the area of the spill. One notable behavioral reaction to oiling is that oiled seals are reluctant to enter the water, even when intense cleanup activities are conducted nearby (St. Aubin, 1990; Frost *et al.,* 1994b, 2004).

(4) Factors Affecting the Severity of Effects

Seals that are under natural stress, such as lack of food or a heavy infestation by parasites, could potentially die because of the additional stress of oiling (Geraci and Smith, 1976; St. Aubin, 1990; Spraker *et al.,* 1994). Female seals that are nursing young would be under natural stress, as would molting seals. In both cases, the seals would have reduced food stores and may be less resistant to effects of oil than seals that are not under some type of natural stress. Seals that are not under natural stress (*e.g.,* fasting, molting) would be more likely to survive oiling. In general, seals do not exhibit large behavioral or physiological reactions to limited surface oiling or incidental exposure to contaminated food or vapors (St. Aubin, 1990; Williams *et al.,* 1994). Effects could be severe if seals surface in heavy oil slicks in leads or if oil accumulates near haul-out sites (St. Aubin, 1990). An oil spill in open-water is less likely to impact seals.

The potential effects to marine mammals described in this section of the document do not take into consideration the proposed monitoring and mitigation measures described later in this document (see the ''Proposed Mitigation'' and ''Proposed Monitoring and Reporting'' sections).

Anticipated Effects on Marine Mammal Habitat

The primary potential impacts to marine mammals and other marine species are associated with elevated sound levels produced by the exploratory drilling program (*i.e.* the drilling units and the airguns). However, other potential impacts are also possible to the surrounding habitat from physical disturbance and an oil spill (should one occur). This section describes the potential impacts to marine mammal habitat from the specified activity. Because the marine mammals in the area feed on fish and/or invertebrates there is also information on the species typically preyed upon by the marine mammals in the area.

Potential Impacts on Habitat From Seafloor Disturbance (Mooring and MLC Construction)

Mooring of the drilling units and construction of MLCs will result in some seafloor disturbance and temporary increases in water column turbidity.

The drilling units would be held in place during operations with systems of eight anchors for each unit. The embedment type anchors are designed to embed into the seafloor thereby providing the required resistance. The anchors will penetrate the seafloor on contact and may drag 2–3 or more times their length while being set. Both the anchor and anchor chain will disturb sediments in this process creating a trench or depression with surrounding berms where the displaced sediment is mounded. Some sediments will be suspended in the water column during the setting and subsequent removal of the anchors. The depression with associated berm, collectively known as an anchor scar, remains when the anchor is removed.

Dimensions of future anchor scars can be estimated based on the dimensions of the anchor. Shell estimates that each anchor may impact a seafloor area of up to about 2,510 ft^2 (233m^2). Impact estimates associated with mooring a drilling unit by its eight anchors is 20,078 ft^2 (1,865 m^2) of seafloor assuming that the 15 metric ton anchors are used and set only once. Shell plans to pre-set anchors and deploy mooring lines at each drill site prior to arrival of the drilling units. Unless moved by an outside force such as sea current, anchors should only need to be set once per drill site.

Once the drilling units end operation, the *Polar Pioneer* anchors will be retrieved and the *Discoverer* anchors may be left on site for wet storage. Over time the anchor scars will be filled through natural movement of sediment. The duration of the scars depends upon the energy of the system, water depth, ice scour, and sediment type. Anchor scars were visible under low energy conditions in the North Sea for five to ten years after retrieval. Scars typically do not form or persist in sandy mud or sand sediments but may last for nine years in hard clays (Centaur Associates, Inc 1984). Surficial sediments in Shell's Burger Prospect consist of soft sandy mud (silt and clay) with lesser amounts of gravel (Battelle Memorial Institute 2010; Blanchard *et al.* 2010a, b). The energy regime, plus possible effects of ice gouge in the Chukchi Sea suggests that anchor scars would be refilled faster than in the North Sea.

Excavation of each MLC by the drilling units using a large diameter drill bit will displace about 589m^3 of seafloor sediments and directly disturb approximately 1,075 ft^2 (100 m^2) of seafloor. Pressurized air and seawater (no drilling mud used) will be used to assist in the removal of the excavated materials from the MLC. Some of the excavated sediments will be displaced to adjacent seafloor areas and some will be pumped and discharged on the seafloor away from the MLC. These excavated materials will also have some indirect effects as they are suspended in the water and deposited on the seafloor in the vicinity of the MLCs. Direct and indirect effects would include slight changes in seafloor relief and sediment consistency, and smothering of benthic organisms.

Potential Impacts on Habitat From Sound Generation

Underwater noise generated from Shell's proposed exploration drilling activity may potentially affect marine mammal prey species, which are fish species and various invertebrates in the action area.

(1) Zooplankton

Zooplankton are food sources for several endangered species, including bowhead, fin, and humpback whales. The primary generators of sound energy associated with the exploration drilling program are the airgun array during the conduct of ZVSPs, the drilling units during drilling, and marine vessels, particularly during ice management and DP. Sound energy generated by these activities will not negatively impact the diversity and abundance of zooplankton, and will therefore have no direct effect on marine mammals.

Sound energy generated by the airgun arrays to be used for the ZVSPs will have no more than negligible effects on zooplankton. Studies on euphausiids and copepods, which are some of the more abundant and biologically important groups of zooplankton in the Chukchi Sea, have documented the use of hearing receptors to maintain schooling structures (Wiese 1996) and detection of predators (Hartline *et al.* 1996, Wong 1996) respectively, and therefore have some sensitivity to sound; however any effects of airguns on zooplankton would be expected to be restricted to the area within a few feet or meters of the airgun array and would likely be sublethal. Studies on brown shrimp in the Wadden Sea (Webb and Kempf 1998) revealed no particular sensitivity to sounds generated by airguns at sound levels of 190 dB re 1 μPa rms at 3.3 ft. (1.0 m) in water depths of 6.6 ft. (2.0 m). Koshleva (1992) reported no detectable effects on the amphipod (*Gammarus locusta*) at distances as close as 0.5 m from an airgun with a source level of 223 dB re 1 μPa rms. A recent Canadian government review of the impacts of seismic sound on invertebrates and other organisms (CDFO 2004) included similar findings; this review noted ''there are no documented cases of invertebrate mortality upon exposure to seismic sound under field operating conditions'' (CDFO 2004). Some sublethal effects (*e.g.,* reduced growth, behavioral changes) were noted (CDFO 2004).

The energy from airguns has sometimes been shown to damage eggs and fry of some fish. Eggs and larvae of some fish may apparently sustain sublethal to lethal effects if they are within very close proximity to the seismic-energy-discharge point. These types of effects have been demonstrated by some laboratory experiments using single airguns (*e.g.,* Kosheleva 1992, Matishov 1992, Holliday *et al.* 1987), while other similar studies have found no material increases in mortality or morbidity due to airgun exposure (Dalen and Knutsen 1986, Kostyuvchenko 1973). The effects, where they do occur, are apparently limited to the area within 3–6 ft. (1–2 m) from the airgun-discharge ports. In their detailed review of studies on the effects of airguns on fish and fisheries, Dalen *et al.* (1996) concluded that airguns can have deleterious effects on fish eggs and larvae out to a distance of 16 ft (5.0 m), but that the most frequent and serious injuries are restricted to the area within 5.0 ft (1.5 m) of the airguns. Most investigators and reviewers (Gausland 2003, Thomson and Davis 2001, Dalen *et al.* 1996) have concluded that even seismic surveys with much larger airgun arrays than are used for shallow hazards and site clearance surveys, have no impact to fish eggs and larvae discernible at the population or fisheries level.

These studies indicate that some zooplankton within a distance of about 16 ft. (5.0 m) or less from the airgun array may sustain sublethal or lethal injuries but there would be no population effects even over small areas. Therefore there would be no indirect effect on marine mammals.

Ice management is likely to be the most intense sources of sound associated with the exploration drilling program Richardson *et al.* (1995a). Ice management vessels, during active ice management, may have to adjust course forward and astern while moving ice and thereby create greater variability in propeller cavitation than other vessels that maintain course with less adjustment. The drilling units maintain station during drilling without activation of propulsion propellers. Richardson (*et al.*1995a) reported that the noise generated by an icebreaker pushing ice was 10–15 dB re 1 μPa rms greater than the noise produced by the ship underway in open water. It is expected that the lower level of sound produced by the drilling units, ice management, or other vessels would have less impact on zooplankton than would 3D seismic (survey) sound.

No appreciable adverse impact on zooplankton populations will occur due in part to large reproductive capacities and naturally high levels of predation and mortality of these populations. Any mortality or impacts on zooplankton as a result of Shell's operations is immaterial as compared to the naturally occurring reproductive and mortality rates of these species. This is consistent with previous conclusions that crustaceans (such as zooplankton) are not particularly sensitive to sound produced by seismic sounds (Wiese 1996). Impact from sound energy generated by an ice breaker, other marine vessels, and drill ships would have less impact, as these activities produce lower sound energy levels (Burns 1993). Historical sound propagation studies performed on the *Kulluk* by Hall *et al.* (1994) also indicate the *Kulluk* and similar drilling units would have lower sound energy output than three-dimensional seismic sound sources (Burns *et al.* 1993). The drilling units *Discoverer* and *Polar Pioneer* would emit sounds at a lower level than the *Kulluk* and therefore the impacts

due to drilling noise would be even lower than the *Kulluk.* Therefore, zooplankton organisms would not likely be affected by sound energy levels by the vessels to be used during Shell's exploration drilling activities in the Chukchi Sea.

(2) Benthos

There was no indication from post-drilling benthic biomass or density studies that previous drilling activities at the Hammerhead Prospect have had a measurable impact on the ecology of the immediate local area. To the contrary, the abundance of benthic communities in the Sivulliq area would suggest that the benthos were actually thriving there (Dunton *et al.* 2008).

Sound energy generated by exploration drilling and ice management activities will not appreciably affect diversity and abundance of plants or animals on the seafloor. The primary generators of sound energy are the drilling units and marine vessels. Ice management vessels are likely to be the loudest sources of sounds associated with the exploration drilling program (Richardson *et al.* 1995a). Ice management vessels, during active ice management, may have to adjust course forward and astern while moving ice and thereby create greater variability in propeller cavitation than other vessels that maintain course with less adjustment. The drilling units maintain station during drilling without activation of propulsion propellers. Richardson *et al.* (1995a) reported that the noise generated by an icebreaker pushing ice was 10–15 dB re 1 μPa rms greater than the noise produced by the ship underway in open water. The lower level of sound produced by the drilling units, ice management vessels, or other vessels will have less impact on bottom-dwelling organisms than would 3D seismic (survey) sound.

No appreciable adverse impacts on benthic populations would be expected due in part to large reproductive capacities and naturally high levels of predation and mortality of these populations. Any mortalities or impacts that might occur as a result of Shell's operations is immaterial compared to the naturally occurring high reproductive and mortality rates. This is consistent with previous BOEM conclusions that the effect of seismic exploration on benthic organisms probably would be immeasurable (USDI/MMS 2007). Impacts from sound energy generated by ice breakers, other marine vessels, and drilling units would have less impact, as these activities produce much lower sound energy levels (Burns *et al.* 1993).

(3) Fish

Fish react to sound and use sound to communicate (Tavolga *et al.* 1981). Experiments have shown that fish can sense both the intensity and direction of sound (Hawkins 1981). Whether or not fish can hear a particular sound depends upon its frequency and intensity. Wavelength and the natural background sound also play a role. The intensity of sound in water decreases with distance as a result of geometrical spreading and absorption. Therefore, the distance between the sound source and the fish is important. Physical conditions in the sea, such as temperature thermoclines and seabed topography, can influence transmission loss and thus the distance at which a sound can be heard.

The impact of sound energy from exploration drilling and ice management activities will be negligible and temporary. Fish typically move away from sound energy above a level that is at 120 dB re 1 μPa rms or higher (Ona 1988).

Drilling unit sound source levels during drilling can range from 90 dB re 1 μPa rms within 31 mi (50 km) of the drilling unit to 138 dB re 1 μPa rms within a distance of 0.06 mi (0.01 km) from the drilling unit (Greene 1985, 1987b). These are predicted sound levels at various distances based on modeled transmission loss equations in the literature (Greene 1987b). Ice management vessel sound source levels can range from 174–184 dB re 1 μPa rms. At these intensity levels, fish may avoid the drilling unit, ice management vessels, or other large support vessels. This avoidance behavior is temporary and limited to periods when a vessel is underway or drilling. There have been no studies of the direct effects of ice management vessel sounds on fish. However, it is known that the ice management vessels produce sounds generally 10–15 dB re 1 μPa rms higher when moving through ice rather than open water (Richardson *et al.* 1995b). In general, fish show greater reactions to a spike in sound energy levels, or impulse sounds, rather than a continuous high intensity signal (Blaxter *et al.* 1981).

Fish sensitivity to impulse sound such as that generated by ZVSPs varies depending on the species of fish. Cod, herring and other species of fish with swim bladders have been found to be relatively sensitive to sound, while mackerel, flatfish, and many other species that lack swim bladders have been found to have poor hearing (Hawkins 1981, Hastings and Popper 2005). An alarm response in these fish is elicited when the sound signal intensity rises rapidly compared to sound rising more slowly to the same level (Blaxter *et al.* 1981). Any such effects on fish would be negligible and have no indirect effect on marine mammals.

Potential Impacts on Habitat From Drilling Wastes

Discharges of drilling wastes must be authorized by the NPDES exploration facilities GP, and this GP places numerous conditions and limitations on such discharges. The EPA (2012) has determined that with these limits and conditions in place, the discharges will not result in any unreasonable degradation of ocean waters. The primary impacts of the discharges are increases in TSS in the water column and the deposition of drilling wastes on the seafloor. These impacts would be localized to the drill sites and temporary.

(1) Zooplankton

Reviews by EPA (2006) and Neff (2005) indicate that though planktonic organisms are sensitive to environmental conditions (*e.g.,* temperature, light, availability of nutrients, and water quality), there is little or no evidence of effects from drilling waste discharges on plankton in the ocean. In the laboratory, high concentrations of drilling wastes have been shown to have lethal or sublethal effects on zooplankton due to toxicity and abrasion by suspended sediments. These effects are minimized at the drill site by limits and conditions placed on the discharges by the NPDES exploration facilities GP, which include discharge rate limits and toxicity limits.

Any impact by drilling waste discharges on zooplankton would be localized and temporary. Fine-grained particulates and other solids in drilling wastes could cause sublethal effects to organisms in the water column. Responses observed in the laboratory following exposure to drilling mud include alteration of respiration and filtration rates and altered behavior. Zooplankton in the immediate area of discharge from drilling operations could potentially be adversely impacted by sediments in the water column, which could clog respiratory and feeding structures, cause abrasions to gills and other sensitive tissues, or alter behavior or development. However, the planktonic organisms are not likely to have long-term exposures to the drilling waste because of the episodic nature of discharges (typically only a few hours in duration), the small area affected, and the movement of the organisms with the ocean currents. The discharged waste

must have low toxicities to meet permit requirements and modeling studies indicate dilution factors of >1,000 within 328 ft (100 m). Modeling and monitoring studies have demonstrated that increased TSS in the water column from the discharges would largely be limited to the area within 984 ft (300 m) from the discharge. This impact would likely not have more than a short-term impact on zooplankton and no effect on zooplankton populations, and therefore no indirect effects on marine mammals.

(2) Benthos

Benthic organisms would primarily be affected by the discharges through the deposition of the discharged drilling waste on the seafloor resulting in the smothering of organisms, changes in the consistency of sediments on the seafloor, and possible elevation in heavy metal concentrations in the accumulations.

Drilling waste discharges are regulated by the EPA's NPDES exploration facilities GP. The impact of drilling waste discharges would be localized and temporary. Effects on benthic organisms present within a few meters of the discharge point would be expected, primarily due to sedimentation. However, benthic animals are not likely to have long-term exposures to drilling wastes because of the episodic nature of discharges (typically only a few hours in duration).

Shell conducted dispersion modeling of the drilling waste discharges using the Offshore Operators Committee Mud and Produced Water Discharge (OOC) model (Fluid Dynamix 2014a, b). The modeling effort provided predictions of the area and thickness of accumulations of discharged drilling waste on the seafloor. The USA EPA has performed an evaluation of drilling waste in support of the issuance of NPDES GP AKG–28–8100 for exploration facilities (EPA, 2012b) (October 2012), and determined these accumulations will not result in any unreasonable degradation of the marine environment.

Heavy metal contamination of sediments and resulting effects on benthic organisms is not expected. The NPDES exploration facilities GP contains stringent limitations on the concentrations of mercury, cadmium, chromium, silver, and thallium allowed in discharged drilling waste. Additional limitations are placed on free oil, diesel oil, and total aromatic hydrocarbons allowed in discharged drilling waste. Discharge rates are also controlled by the permit. Baseline studies at the 1985 Hammerhead drill site (Trefry and Trocine 2009) detected background levels Al, Fe, Zn, Cd and Hg in all surface and subsurface sediment samples. Considering the relatively small area that drilling waste discharges will be deposited, no material impacts on sediment are expected to occur. The expected increased concentrations of Zn, Cd, and Cr in sediments near the drill site due to the discharge are in the range where no or low effects would result.

Studies in the 1980s, 1999, 2000, and 2002 (Brown *et al.* 2001 in USDI/MMS 2003) also found that benthic organism near drill sites in the Beaufort Sea have accumulated neither petroleum hydrocarbon nor heavy metals. In 2008 Shell investigated the benthic communities (Dunton *et al.* 2008) and sediments (Trefry and Trocine 2009) around the Sivulliq Prospect including the location of the historical Hammerhead drill site that was drilled in 1985. Benthic communities at the historical Hammerhead drill site were found not to differ statistically in abundance, community structure, or diversity, from benthic communities elsewhere in this portion of the Beaufort Sea, indicating that there was no long term effect.

Sediment samples taken in the Chukchi Sea Environmental Studies Program Burger Study Area were analyzed for metal and hydrocarbon concentrations (Neff *et al.* 2010). Concentrations of all measured hydrocarbon types were found to be well within the range of non-toxic background concentrations reported by other Alaskan and Arctic coastal and shelf sediment studies (Neff *et al.* 2010, Dunton *et al.* 2012). Metal concentrations were found to be quite variable. Average concentrations of all metals except for arsenic and barium were found to be lower than those reported for average marine sediment.

Trefry *et al.* (2012) confirmed findings by Neff *et al.* 2010 that concentrations of all measured hydrocarbon types were well within the range of non-toxic background concentrations reported by other Alaskan and Arctic coastal and shelf sediment studies.

Neff *et al.* (2010) assessed the concentrations of metals and various hydrocarbons in sediments at the historic Burger and Klondike wells in the Chukchi Sea, which were drilled in 1989–1990. Surface and subsurface sediments collected in 2008 at the historic drill sites contained higher concentrations of all types of analyzed hydrocarbon in comparison to the surrounding area. The same pattern was found for the metal barium, with concentrations 2–3 times greater at the historic drill sites (mean = 1,410 μ/g and 1,300 μ/g) than in the surrounding areas (639 μ/g and 595 μ/g). Concentrations of copper, mercury, and lead, were elevated in a few samples from the historic drill sites where barium was also elevated. All observed concentrations of hydrocarbons or metals in the sediment samples from the historic drill sites were below levels (below ERL or Effects Range Low of Long 1995) believed to have adverse ecological effects (Neff *et al.* 2010). Similar results were reported by Trefry and Trocine (2009) for the historic Hammerhead drill sites in the Beaufort Sea.

These data show that the potential accumulation of heavy metals in discharged drilling waste on the Chukchi seafloor associated with drilling exploration wells is very limited and does not pose a threat. Impacts to seafloor sediments from the discharge of drilling wastes will be minor, as they would be restricted to a very small portion of the activity area and will not result in contamination.

The drilling waste discharges will be conducted as authorized by the EPA's NPDES exploration facilities GP, which limits the metal content and flow rate for such discharges. The EPA (2012b) analyzed the effects of these types of discharges, including potential transport of pollutants such as metals by biological, physical, or chemical processes, and has concluded that these types of discharges do not result in unreasonable degradation of ocean waters. The physical effects of mooring and MLC construction would be restricted to a very small portion of the Chukchi Sea seafloor (15.7–33.2 ac in total for the exploration program) which represents less than 0.000011%–0.000024% of the seafloor of the Chukchi Sea. However, the predicted small increases in concentrations of metals will likely be evident for a number of years until gouged by ice, redistributed by currents, or buried under natural sedimentation.

There is relatively little information on the effects of various deposition depths on arctic biota (Hurley and Ellis 2004); most such studies have investigated the effects of deposition of dredged materials (Wilbur 1992). Burial depths as low as 1.0 in (2.54 cm) have been found to be lethal for some benthic organisms (Wilbur 1992, EPA 2006). Accumulations of drilling waste to depths > 1.0 in (>2.54 cm) will be restricted to very small areas of the seafloor around each drill site and in total represent an extremely small portion of the Chukchi Sea. These areas would be re-colonized by benthic organisms rather quickly. Impacts to benthic organisms are therefore

considered to be negligible with no indirect effects on marine mammals. As required by the NPDES exploration facilities GP, Shell will implement an environmental monitoring program (EMP), to assess the recovery of the benthos from impacts drilling waste discharges.

(3) Fish

Drilling waste discharges are regulated by the NPDES exploration facilities GP. The impact of drilling waste discharges would be localized and temporary. Drilling waste discharges could displace fish a short distance from a drill site. Effects on fish and fish larvae present within a few meters of the discharge point would be expected, primarily due to sedimentation. However, fish and fish larvae that live in the water column are not likely to have long-term exposures to drilling wastes because of the episodic nature of the discharges (typically only a few hours in duration).

Although unlikely at deeper offshore drilling locations, demersal fish eggs could be smothered if discharges occur in a spawning area during the period of egg production. No specific demersal fish spawning locations have been identified at the Burger drill site locations. The most abundant and trophically important marine fish, the Arctic cod, spawns with planktonic eggs and larvae under the sea ice during winter and will therefore have little exposure to discharges.

Habitat alteration concerns apply to special or relatively uncommon habitats, such as those important for spawning, nursery, or overwintering. Important fish overwintering habitats are located in coastal rivers and nearshore coastal waters, but are not found in the proposed exploration drilling areas. Important spawning areas have not been identified in the Chukchi Sea. Impacts on fish will be negligible, with no indirect effects on marine mammals.

Potential Impacts on Habitat From Ice Management/Icebreaking Activities

Ice management or icebreaking activities include the physical pushing or moving of ice in the proposed exploration drilling area and to prevent ice floes from striking the drilling unit. Ringed, bearded, spotted, and ribbon seals) are dependent on sea ice for at least part of their life history. Sea ice is important for life functions such as resting, breeding, and molting. These species are dependent on two different types of ice: Pack ice and landfast ice. Shell does not expect to have to manage pack ice during the majority of the drilling season. The majority of the ice management or icebreaking should occur in the early and latter portions of the drilling season. Landfast ice would not be present during Shell's proposed operations.

The ringed seal is the most common pinniped species in the Chukchi Sea activity area. While ringed seals use ice year-round, they do not construct lairs for pupping until late winter/early spring on the landfast ice. Shell plans to conclude drilling on or before 31 October, therefore Shell's activities would not impact ringed seal lairs or habitat needed for breeding and pupping in the Chukchi Sea. Ringed seals can be found on the pack ice surface in the late spring and early summer in the Chukchi Sea, the latter part of which may overlap with the start of Shell's planned exploration drilling activities. Management of pack ice that contains hauled out seals may result in the animals becoming startled and entering the water, but such effects would be brief.

Ice management or icebreaking would occur during a time when ringed seal life functions such as breeding, pupping, and molting do not occur in the proposed project area. Additionally, these life functions occur more commonly on landfast ice, which will not be impacted by Shell's activity.

Bearded seals breed in the Bering and Chukchi Seas, but would not be plentiful in the area of the Chukchi Sea exploration drilling program. Spotted seals are even less common in the Chukchi Sea activity area. Ice is used by bearded and spotted seals for critical life functions such as breeding and molting, but it is unlikely these life functions would occur in the proposed project area, during the time in which drilling activities will take place. The availability of ice would not be impacted as a result of Shell's exploration drilling program.

Ice-management or icebreaking related to Shell's planned exploration drilling program in the Chukchi Sea is not expected to have any habitat-related effects that could cause material or long-term consequences for individual marine mammals or on the food sources that they utilize.

Potential Impacts From an Oil Spill

Lower trophic organisms and fish species are primary food sources for Arctic marine mammals. However, as noted earlier in this document, the offshore areas of the Chukchi Sea are not primary feeding grounds for many of the marine mammals that may pass through the area. Therefore, impacts to lower trophic organisms (such as zooplankton) and marine fishes from an oil spill in the proposed drilling area would not be likely to have long-term or significant consequences to marine mammal prey. Impacts would be greater if the oil moves closer to shore, as many of the marine mammals in the area have been seen feeding at nearshore sites (such as bowhead whales). Gray whales do feed in more offshore locations in the Chukchi Sea; therefore, impacts to their prey from oil could have some impacts.

Due to their wide distribution, large numbers, and rapid rate of regeneration, the recovery of marine invertebrate populations is expected to occur soon after the surface oil passes. Spill response activities are not likely to disturb the prey items of whales or seals sufficiently to cause more than minor effects. Spill response activities could cause marine mammals to avoid the disturbed habitat that is being cleaned. However, by causing avoidance, animals would avoid impacts from the oil itself. Additionally, the likelihood of an oil spill is expected to be very low, as discussed earlier in this document.

Proposed Mitigation

In order to issue an incidental take authorization (ITA) under Sections 101(a)(5)(A) and (D) of the MMPA, NMFS must, where applicable, set forth the permissible methods of taking pursuant to such activity, and other means of effecting the least practicable impact on such species or stock and its habitat, paying particular attention to rookeries, mating grounds, and areas of similar significance, and on the availability of such species or stock for taking for certain subsistence uses (where relevant). This section summarizes the contents of Shell's Marine Mammal Monitoring and Mitigation Plan (4MP). Later in this document in the ''Proposed Incidental Harassment Authorization'' section, NMFS lays out the proposed conditions for review, as they would appear in the final IHA (if issued).

Shell submitted a 4MP as part of its application (see ADDRESSES). Shell's planned offshore drilling program incorporates both design features and operational procedures for minimizing potential impacts on marine mammals and on subsistence hunts. The 4MP is a combination of active monitoring in the area of operations and the implementation of mitigation measures designed to minimize project impacts to marine resources. Monitoring will provide information on marine mammals potentially affected by exploration activities, in addition to facilitating real time mitigation to

prevent injury of marine mammals by industrial sounds or activities.

Vessel Based Marine Mammal Monitoring for Mitigation

The objectives of the vessel based marine mammal monitoring are to ensure that disturbance to marine mammals and subsistence hunts is minimized, that effects on marine mammals are documented, and that data is collected on the occurrence and distribution of marine mammals in the project area.

The marine mammal monitoring will be implemented by a team of experienced protected species observers (PSOs). The PSOs will be experienced biologists and Alaska Native personnel trained as field observers. PSOs will be stationed on both drilling units, ice management vessels, anchor handlers and other drilling support vessels engaged in transit to and between drill sites to monitor for marine mammals. The duties of the PSOs will include; watching for and identifying marine mammals, recording their numbers, recording distances and reactions of marine mammals to exploration drilling activities, initiating mitigation measures when appropriate, and reporting results of the vessel based monitoring program, which will include the estimation of the number of marine mammal ''exposures'' as defined by the NMFS and stipulated in the IHA.

The vessel based work will provide:

- The basis for initiating real-time mitigation, if necessary, as required by the various permits that Shell receives;
- Information needed to estimate the number of ''exposures'' of marine mammals to sound levels that may result in harassment, which must be reported to NMFS;
- Data on the occurrence, distribution, and activities of marine mammals in the areas where drilling activity is conducted;
- Information to compare the distances, distributions, behavior, and movements of marine mammals relative to the drilling unit during times with and without drilling activity occurring;
- A communication channel to coastal communities including whalers; and
- Employment and capacity building for local residents, with one objective being to develop a larger pool of experienced Alaska Native PSOs.

The vessel based monitoring will be operated and administered consistent with monitoring programs conducted during past exploration drilling activities, seismic and shallow hazards surveys, or alternative requirements stipulated in permits issued to Shell. Agreements between Shell and other agencies will also be fully incorporated. PSOs will be provided training through a program approved by the NMFS.

Mitigation Measures During the Exploration Drilling Program

Shell's planned exploration drilling activities incorporate design features and operational procedures aimed at minimizing potential impacts on marine mammals and subsistence hunts. Some of the mitigation design features include:

- Conducting pre-season acoustic modeling to establish the appropriate exclusion and disturbance zones;
- Vessel based PSO monitoring to implement appropriate mitigation if necessary, and to determine the effects of the drilling program on marine mammals;
- Passive acoustic monitoring of drilling and vessel sounds and marine mammal vocalizations; and
- Aerial surveys with photographic equipment over operations and in coastal and nearshore waters with photographic equipment to help determine the effects of project activities on marine mammals; and seismic activity mitigation measures during acquisition of the ZVSP surveys.

The potential disturbance of marine mammals during drilling activities will be mitigated through the implementation of several vessel based mitigation measures as necessary.

(1) Exclusion and Disturbance Zones

Mitigation for NMFS' incidental take authorizations typically includes ''safety radii'' or ''exclusion zones'' for marine mammals around airgun arrays and other impulsive industrial sound sources where received levels are ≥180 dB re 1 μPa (rms) for cetaceans and ≥190 dB re 1 μPa (rms) for pinnipeds. These zones are based on a cautionary assumption that sound energy at lower received levels will not injure these animals or impair their hearing abilities, but that higher received levels might have some such effects. Disturbance or behavioral effects to marine mammals from underwater sound may occur from exposure to sound at distances greater than these zones (Richardson *et al.* 1995). The NMFS assumes that marine mammals exposed to pulsed airgun sounds with received levels ≥160 dB re 1 μPa (rms) or continuous sounds from vessel activities with received levels ≥120 dB re 1 μPa (rms) have the potential to be disturbed. These sound level thresholds are currently used by NMFS to define acoustic disturbance (harassment) criteria.

(A) Exploration Drilling Activities

The areas exposed to sounds produced by the drilling units *Discoverer* and *Polar Pioneer* were determined by measurements from drilling in 2012 or were modeled by JASCO Applied Sciences. The 2012 measurement of the distance to the 120 dB (rms) threshold for normal drilling activity by the *Discoverer* was 0.93 mi (1.5 km) while the distance of the ≥120 dB (rms) radius during MLC construction was 5.1 mi (8.2 km).

Measured sound levels for the *Polar Pioneer* were not available. Its sound footprint was estimated with JASCOs Marine Operations Noise Model (MONM) using an average source level derived from a number of reported acoustic measurements of comparable semi-submersible drill units, including the Ocean Bounty (Gales, 1982), SEDCO 708 (Greene, 1986), and Ocean General (McCauley, 1998). The model yielded a propagation range of 0.22 mi (0.35 km) for rms sound pressure levels of 120 dB for the *Polar Pioneer* while drilling at the Burger Prospect.

In addition to drilling and MLC construction, numerous activities in support of exploration drilling produce continuous sounds above 120 dB (rms). These activities in direct support of the moored drilling units include ice management, anchor handling, and supply/discharge sampling vessels using DP thrusters. Detailed sound characterizations for each of these activities are presented in the 2012 Comprehensive Report for NMFS' 2012 IHA (LGL *et al.* 2013).

The source levels for exploration drilling and related support activities are not high enough to cause temporary reduction in hearing sensitivity or permanent hearing damage to marine mammals. Consequently, mitigation as described for seismic activities including ramp ups, power downs, and shut downs should not be necessary for exploration drilling activities. However, Shell plans to use PSOs onboard the drilling units, ice management, and anchor handling vessels to monitor marine mammals and their responses to industry activities, in addition to initiating mitigation measures should in-field measurements of the activities indicate conditions that may present a threat to the health and well-being of marine mammals.

(B) ZVSP Surveys

Two sound sources have been proposed by Shell for the ZVSP surveys. The first is a small airgun array that consists of three 150 in^3 (2,458 cu cm^3) airguns for a total volume of 450 in^3

(7,374 cm^3). The second ZVSP sound source consists of two 250 in^3 (4,097 cm^3) airguns with a total volume of 500 in^3 (8,194 cm^3). Sound footprints of the ZVSP airgun array configurations were estimated using JASCO Applied Sciences' Marine Operations Noise Model (MONM). The model results were maximized over all water depths between 9.9 and 23 ft (3 and 7 m) to yield sound level isopleths as a function of range and direction from the source. The 450 in^3 airgun array at a source depth of 23 ft (7 m) yielded the maximum ranges to the ≥190, ≥180, and ≥160 dB (rms) isopleths. The estimated 95th percentile distances to these thresholds were: 190 dB = 558 ft (170 m), 180 dB = 3,018 ft (920 m), and 160 dB = 39,239 ft (11,960 m). These distances were multiplied by 1.5 as a conservative measure, and the resulting radii are shown in Table 1.

PSOs on the drilling units will initially use the radii in Table 1 for monitoring and mitigation purposes during ZVSP surveys. An acoustics contractor will perform direct measurements of the received levels of underwater sound versus distance and direction from the ZVSP array using calibrated hydrophones. The acoustic data will be analyzed as quickly as reasonably practicable and used to verify (and if necessary adjust) the threshold radii distances during later ZVSP surveys. The mitigation measures to be implemented will include pre-ramp up watches, ramp ups, power downs and shut downs as described below.

TABLE 1—ESTIMATED DISTANCES OF THE ≥190, 180, AND 160, dB (rms) ISOPLETHS TO BE USED FOR MITIGATION PURPOSES DURING ZVSP SURVEYS UNTIL SSV RESULTS ARE AVAILABLE

Threshold levels in dB re 1 μPa (rms)	Estimated distance (m)
≥190	255
≥180	1,380
≥160	11,960

(2) Ramp Ups

A ramp up of an airgun array provides a gradual increase in sound levels, and involves a step-wise increase in the number and total volume of airguns firing until the full volume is achieved. The purpose of a ramp up (or ''soft start'') is to ''warn'' cetaceans and pinnipeds in the vicinity of the airguns and to provide time for them to leave the area, thus avoiding any potential injury or impairment of their hearing abilities.

During the proposed ZVSP surveys, the operator will ramp up the airgun arrays slowly. Full ramp ups (*i.e.,* from a cold start when no airguns have been firing) will begin by firing a single airgun in the array. A full ramp up will not begin until there has been observation of the exclusion zone by PSOs for a minimum of 30 minutes to ensure that no marine mammals are present. The entire exclusion zones must be visible during the 30 minutes leading into to a full ramp up. If the entire exclusion zone is not visible, a ramp up from a cold start cannot begin. If a marine mammal is sighted within the relevant exclusion zone during the 30 minutes prior to ramp up, ramp up will be delayed until the marine mammal is sighted outside of the exclusion zone or is not sighted for at least 15–30 minutes: 15 minutes for small odontocetes and pinnipeds, or 30 minutes for baleen whales and large odontocetes.

(3) Power Downs and Shut Downs

A power down is the immediate reduction in the number of operating energy sources from all firing to some smaller number. A shut down is the immediate cessation of firing of all energy sources. The arrays will be immediately powered down whenever a marine mammal is sighted approaching close to or within the applicable exclusion zone of the full arrays, but is outside the applicable exclusion zone of the single source. If a marine mammal is sighted within the applicable exclusion zone of the single energy source, the entire array will be shut down (*i.e.,* no sources firing).

Mitigation Conclusions

NMFS has carefully evaluated the applicant's proposed mitigation measures and considered a range of other measures in the context of ensuring that NMFS prescribes the means of effecting the least practicable impact on the affected marine mammal species and stocks and their habitat. Our evaluation of potential measures included consideration of the following factors in relation to one another:

- The manner in which, and the degree to which, the successful implementation of the measure is expected to minimize adverse impacts to marine mammals,
- The proven or likely efficacy of the specific measure to minimize adverse impacts as planned, and
- The practicability of the measure for applicant implementation.

Any mitigation measure(s) prescribed by NMFS should be able to accomplish, have a reasonable likelihood of accomplishing (based on current science), or contribute to the accomplishment of one or more of the general goals listed below:

1. Avoidance or minimization of injury or death of marine mammals wherever possible (goals 2, 3, and 4 may contribute to this goal).
2. A reduction in the numbers of marine mammals (total number or number at biologically important time or location) exposed to received levels of noises generated from exploration drilling and associated activities, or other activities expected to result in the take of marine mammals (this goal may contribute to 1, above, or to reducing harassment takes only).
3. A reduction in the number of times (total number or number at biologically important time or location) individuals would be exposed to received levels of noises generated from exploration drilling and associated activities, or other activities expected to result in the take of marine mammals (this goal may contribute to 1, above, or to reducing harassment takes only).
4. A reduction in the intensity of exposures (either total number or number at biologically important time or location) to received levels of noises generated from exploration drilling and associated activities, or other activities expected to result in the take of marine mammals (this goal may contribute to a, above, or to reducing the severity of harassment takes only).
5. Avoidance or minimization of adverse effects to marine mammal habitat, paying special attention to the food base, activities that block or limit passage to or from biologically important areas, permanent destruction of habitat, or temporary destruction/disturbance of habitat during a biologically important time.
6. For monitoring directly related to mitigation—an increase in the probability of detecting marine mammals, thus allowing for more effective implementation of the mitigation.

Based on our evaluation of the applicant's proposed measures, as well as other measures considered by NMFS, NMFS has preliminarily determined that the proposed mitigation measures provide the means of effecting the least practicable impact on marine mammals species or stocks and their habitat, paying particular attention to rookeries, mating grounds, and areas of similar significance.

Proposed measures to ensure availability of such species or stock for

taking for certain subsistence uses are discussed later in this document (see ''*Impact on Availability of Affected Species or Stock for Taking for Subsistence Uses''* section).

Proposed Monitoring and Reporting

In order to issue an ITA for an activity, section 101(a)(5)(D) of the MMPA states that NMFS must set forth, ''requirements pertaining to the monitoring and reporting of such taking.'' The MMPA implementing regulations at 50 CFR 216.104(a)(13) indicate that requests for ITAs must include the suggested means of accomplishing the necessary monitoring and reporting that will result in increased knowledge of the species and of the level of taking or impacts on populations of marine mammals that are expected to be present in the proposed action area. Shell submitted a marine mammal monitoring plan as part of the IHA application. It can be found in Appendix B of the Shell's IHA application. The plan may be modified or supplemented based on comments or new information received from the public during the public comment period or from the peer review panel (see the ''Monitoring Plan Peer Review'' section later in this document).

Monitoring measures prescribed by NMFS should accomplish one or more of the following general goals:

1. An increase in the probability of detecting marine mammals, both within the mitigation zone (thus allowing for more effective implementation of the mitigation) and in general to generate more data to contribute to the analyses mentioned below;

2. An increase in our understanding of how many marine mammals are likely to be exposed to levels of noises generated from exploration drilling and associated activities that we associate with specific adverse effects, such as behavioral harassment, TTS, or PTS;

3. An increase in our understanding of how marine mammals respond to stimuli expected to result in take and how anticipated adverse effects on individuals (in different ways and to varying degrees) may impact the population, species, or stock (specifically through effects on annual rates of recruitment or survival) through any of the following methods:

▪ Behavioral observations in the presence of stimuli compared to observations in the absence of stimuli (need to be able to accurately predict received level, distance from source, and other pertinent information);

▪ Physiological measurements in the presence of stimuli compared to observations in the absence of stimuli (need to be able to accurately predict received level, distance from source, and other pertinent information);

▪ Distribution and/or abundance comparisons in times or areas with concentrated stimuli versus times or areas without stimuli;

4. An increased knowledge of the affected species; and

5. An increase in our understanding of the effectiveness of certain mitigation and monitoring measures.

Proposed Monitoring Measures

1. Protected Species Observers

Vessel based monitoring for marine mammals will be done by trained PSOs on both drilling units and ice management and anchor handler vessels throughout the exploration drilling activities. The observers will monitor the occurrence and behavior of marine mammals near the drilling units, ice management and anchor handling vessels, during all daylight periods during the exploration drilling operation, and during most periods when exploration drilling is not being conducted. PSO duties will include watching for and identifying marine mammals; recording their numbers, distances, and reactions to the exploration drilling activities; and documenting exposures to sound levels that may constitute harassment as defined by NMFS. PSOs will help ensure that the vessel communicates with the Communications and Call Centers (Com Centers) in Native villages along the Chukchi Sea coast.

(A) Number of Observers

A sufficient number of PSOs will be onboard to meet the following criteria:

• 100 percent monitoring coverage during all periods of exploration drilling operations in daylight;

• Maximum of four consecutive hours on watch per PSO; and

• Maximum of approximately 12 hours on watch per day per PSO.

PSO teams will consist of trained Alaska Natives and field biologist observers. An experienced field crew leader will be on every PSO team aboard the drilling units, ice management and anchor handling vessels, and other support vessels during the exploration drilling program. The total number of PSOs aboard may decrease later in the season as the duration of daylight decreases.

(B) Crew Rotation

Shell anticipates that there will be provisions for crew rotation at least every three to six weeks to avoid observer fatigue. During crew rotations detailed notes will be provided to the incoming crew leader. Other communications such as email, fax, and/or phone communication between the current and oncoming crew leaders during each rotation will also occur when necessary. In the event of an unexpected crew change Shell will facilitate such communications to insure monitoring consistency among shifts.

(C) Observer Qualifications and Training

Crew leaders serving as PSOs will have experience from one or more projects with operators in Alaska or the Canadian Beaufort.

Biologist-observers will have previous PSO experience, and crew leaders will be highly experienced with previous vessel based marine mammal monitoring projects. Resumes for those individuals will be provided to the NMFS for approval. All PSOs will be trained and familiar with the marine mammals of the area. A PSO handbook, adapted for the specifics of the planned Shell drilling program, will be prepared and distributed beforehand to all PSOs.

PSOs will also complete a two-day training and refresher session on marine mammal monitoring, to be conducted shortly before the anticipated start of the drilling season. The training sessions will be conducted by marine mammalogists with extensive crew leader experience from previous vessel based seismic monitoring programs in the Arctic.

Primary objectives of the training include:

• Review of the 4MP for this project, including any amendments adopted or specified by NMFS in the final IHA or other agreements in which Shell may elect to participate;

• Review of marine mammal sighting, identification, (photographs and videos) and distance estimation methods, including any amendments specified by NMFS in the IHA (if issued);

• Review operation of specialized equipment (*e.g.,* reticle binoculars, big eye binoculars, night vision devices, GPS system); and

• Review of data recording and data entry systems, including procedures for recording data on mammal sightings, exploration drilling and monitoring activities, environmental conditions, and entry error control. These procedures will be implemented through use of a customized computer databases and laptop computers.

(D) PSO Handbook

A PSO Handbook will be prepared for Shell's monitoring program. The

Handbook will contain maps, illustrations, and photographs as well as copies of important documents and descriptive text and are intended to provide guidance and reference information to trained individuals who will participate as PSOs. The following topics will be covered in the PSO Handbook:

- Summary overview descriptions of the project, marine mammals and underwater sound energy, the 4MP (vessel-based, aerial, acoustic measurements, special studies), the IHA (if issued) and other regulations/permits/agencies, the Marine Mammal Protection Act;
- Monitoring and mitigation objectives and procedures, including initial exclusion and disturbance zones;
- Responsibilities of staff and crew regarding the 4MP;
- Instructions for staff and crew regarding the 4MP;
- Data recording procedures: codes and coding instructions, common coding mistakes, electronic database; navigational, marine physical, and drilling data recording, field data sheet;
- Use of specialized field equipment (*e.g.,* reticle binoculars, Big-eye binoculars, NVDs, laser rangefinders);
- Reticle binocular distance scale;
- Table of wind speed, Beaufort wind force, and sea state codes;
- Data storage and backup procedures;
- List of species that might be encountered: identification, natural history;
- Safety precautions while onboard;
- Crew and/or personnel discord; conflict resolution among PSOs and crew;
- Drug and alcohol policy and testing;
- Scheduling of cruises and watches;
- Communications;
- List of field gear provided;
- Suggested list of personal items to pack;
- Suggested literature, or literature cited;
- Field reporting requirements and procedures;
- Copies of the IHA will be made available; and
- Areas where vessels need permission to operate such as the Ledyard Bay Critical Habitat Unit (LBCHU).

2. Vessel-Based Monitoring Methodology

The observer(s) will watch for marine mammals from the best available vantage point on the drilling units and support vessels. Ideally this vantage point is an elevated stable platform from which the PSO has an unobstructed 360o view of the water. The observer(s) will scan systematically with the naked eye and 7 x 50 reticle binoculars, supplemented with Big-eye binoculars and night-vision equipment when needed. Personnel on the bridge will assist the marine mammal observer(s) in watching for pinnipeds and cetaceans. New or inexperienced PSOs will be paired with an experienced PSO or experienced field biologist so that the quality of marine mammal observations and data recording is kept consistent.

Information to be recorded by marine mammal observers will include the same types of information that were recorded during previous monitoring projects (*e.g.,* Moulton and Lawson 2002; Reiser *et al.* 2010, 2011; Bisson *et al.* 2013). When a mammal sighting is made, the following information about the sighting will be carefully and accurately recorded:

- Species, group size, age/size/sex categories (if determinable), physical description of features that were observed or determined not to be present in the case of unknown or unidentified animals;
- Behavior when first sighted and after initial sighting;
- Heading (if consistent), bearing and distance from observer;
- Apparent reaction to activities (*e.g.,* none, avoidance, approach, paralleling, etc.), closest point of approach, and behavioral pace;
- Time, location, speed, and activity of the vessel, sea state, ice cover, visibility, and sun glare, on support vessels the distance and bearing to the drilling unit will also be recorded; and
- Positions of other vessel(s) in the vicinity of the observer location.

The vessel's position, speed, water depth, sea state, ice cover, visibility, and sun glare will also be recorded at the start and end of each observation watch, every 30 minutes during a watch, and whenever there is a change in any of those variables.

Distances to nearby marine mammals will be estimated with binoculars (Fujinon 7 x 50 binoculars) containing a reticle to measure the vertical angle of the line of sight to the animal relative to the horizon.

An electronic database will be used to record and collate data obtained from visual observations during the vessel-based study. The PSOs will enter the data into the custom data entry program installed on field laptops. The data entry program automates the data entry process and reduces data entry errors and maximizes PSO time spent looking at the water. PSOs also have voice recorders available to them. This is another tool that will allow PSOs to maximize time spent focused on the water.

PSO's are instructed to identify animals as unknown when appropriate rather than strive to identify an animal when there is significant uncertainty. PSOs should also provide any sightings cues they used and any distinguishable features of the animal even if they are not able to identify the animal and record it as unidentified. Emphasis will also be placed on recording what was not seen, such as dorsal features.

(A) Monitoring at Night and in Poor Visibility

Night-vision equipment ''Generation 3'' binocular image intensifiers or equivalent units will be available for use when needed. However, past experience with night-vision devices (NVDs) in the Beaufort Sea and elsewhere indicates that NVDs are not nearly as effective as visual observation during daylight hours (*e.g.,* Harris *et al.* 1997, 1998; Moulton and Lawson 2002; Hartin *et al.* 2013).

(B) Specialized Field Equipment

Shell will provide the following specialized field equipment for use by the onboard PSOs: reticle binoculars, Big-eye binoculars, GPS unit, laptop computers, night vision binoculars, and possibly digital still and digital video cameras. Big eye binoculars will be mounted and used on key monitoring vessels including the drilling units, ice management vessels and the anchor handler.

(C) Field Data-Recording, Verification, Handling, and Security

The observers on the drilling units and support vessels will record their observations directly into computers using a custom software package. The accuracy of the data entry will be verified in the field by computerized validity checks as the data are entered, and by subsequent manual checking. These procedures will allow initial summaries of data to be prepared during and shortly after the field season, and will facilitate transfer of the data to statistical, graphical or other programs for further processing. Quality control of the data will be facilitated by (1) the start-of-season training session, (2) subsequent supervision by the onboard field crew leader, and (3) ongoing data checks during the field season.

The data will be sent off of the vessel to Anchorage on a daily basis and backed up regularly onto storage devices on the vessel, and stored at separate locations on the vessel. If practicable, hand-written data sheets will be photocopied daily during the field season. Data will be secured further by

having data sheets and backup data devices carried back to the Anchorage office during crew rotations.

In addition to routine PSO duties, observers will be encouraged to record comments about their observations into the ''comment'' field in the database. Copies of these records will be available to the observers for reference if they wish to prepare a statement about their observations. If prepared, this statement would be included in the 90-day and comprehensive reports documenting the monitoring work.

PSOs will be able to plot sightings in near real-time for their vessel. Significant sightings from key vessels including drilling units, ice management, anchor handlers and aircraft will be relayed between platforms to keep observers aware of animals that may be in or near the area but may not be visible to the observer at any one time. Emphasis will be placed on relaying sightings with the greatest potential to involve mitigation or reconsideration of a vessel's course (*e.g.,* large group of bowheads).

Observer training will emphasize the use of ''comments'' for sightings that may be considered unique or not fully captured by standard data codes. In addition to the standard marine mammal sightings forms, a specialized form was developed for recording traditional knowledge and natural history observations. PSOs will be encouraged to use this form to capture observations related to any aspect of the arctic environment and the marine mammals found within it. Examples might include relationships between ice and marine mammal sightings, marine mammal behaviors, comparisons of observations among different years/seasons, etc. Voice recorders will also be available for observers to use during periods when large numbers of animals may be present and it is difficult to capture all of the sightings on written or digital forms. These recorders can also be used to capture traditional knowledge and natural history observations should individuals feel more comfortable using the recorders rather than writing down their comments. Copies of these records will be available to all observers for reference if they wish to prepare a statement about their observations for reporting purposes. If prepared, this statement would be included in the 90-day and final reports documenting the monitoring work.

3. Acoustic Monitoring Plan

Exploration Drilling, ZVSP, and Vessel Noise Measurements

Exploration drilling sounds are expected to vary significantly with time due to variations in the level of operations and the different types of equipment used at different times onboard the drilling units. The goals of these measurements are:

- To quantify the absolute sound levels produced by exploration drilling and to monitor their variations with time, distance and direction from the drilling unit;
- To measure the sound levels produced by vessels while operating in direct support of exploration drilling operations. These vessels will include crew change vessels, tugs, ice-management vessels, and spill response vessels not measured in 2012; and
- To measure the sound levels produced by an end-of-hole zero-offset vertical seismic profile (ZVSP) survey using a stationary sound source.

Sound characterization and measurements of all exploration drilling activities will be performed using five Autonomous Multichannel Acoustic Recorders (AMAR) deployed on the seabed along the same radial at distances of 0.31, 0.62, 1.2, 2.5 and 5 mi (0.5,1, 2, 4 and 8 km) from each drilling unit. All five recording stations will sample at least at 32 kHz, providing calibrated acoustic measurements in the 5 Hz to 16 kHz frequency band. The logarithmic spacing of the recorders is designed to sample the attenuation of drilling unit sounds with distance. The autonomous recorders will sample through completion of the first well, to provide a detailed record of sounds emitted from all activities. These recorders will be retrieved and their data analyzed and reported in the project's 90-day report.

The deployment of drilling sound monitoring equipment will occur before, or as soon as possible after the *Discoverer* and the *Polar Pioneer* are on site. Activity logs of exploration drilling operations and nearby vessel activities will be maintained to correlate with these acoustic measurements. All results, including back-propagated source levels for each operation, will be reported in the 90-day report.

(A) Vessel Sound Characterization

Vessel sound characterizations will be performed using dedicated recorders deployed at sufficient distances from exploration drilling operations so that sound produced by those activities does not interfere. Three AMAR acoustic recorders will be deployed on and perpendicular to a sail track on which all Shell contracted vessels will transit. This geometry is designed to obtain sound level measurements as a function of distance and direction. The fore and aft directions are sampled continuously over longer distances to 3 and 6 miles (5 and 10 km) respectively, while broadside and other directions are sampled as the vessels pass closer to the recorders.

Vessel sound measurements will be processed and reported in a manner similar to that used by Shell and other operators in the Beaufort and Chukchi Seas during seismic survey operations. The measurements will further be analyzed to calculate source levels. Source directivity effects will be examined and reported. Preliminary vessel characterization measurements will be reported in a field report to be delivered 120 hours after the recorders are retrieved and data downloaded. Those results will include sound level data but not source level calculations. All vessel characterization results, including source levels, will be reported in 1/3-octave bands in the project 90-day report.

(B) Zero-Offset Vertical Seismic Profiling Sound Monitoring

Shell states that it may conduct a geophysical survey referred to as a zero-offset vertical seismic profile, or ZVSP, at two drill sites in 2015. During ZVSP surveys, an airgun array, which is much smaller than those used for routine seismic surveys, is deployed at a location near or adjacent to the drilling unit, while receivers are placed (temporarily anchored) in the wellbore. The sound source (airgun array) is fired repeatedly, and the reflected sonic waves are recorded by receivers (geophones) located in the wellbore. The geophones, typically a string of them, are then raised up to the next interval in the wellbore and the process is repeated until the entire wellbore has been surveyed. The purpose of the ZVSP survey is to gather geophysical information at various depths in the wellbore, which can then be used to tie-in or ground truth geophysical information from the previously collected 2D and 3D seismic surveys with geological data collected within the wellbore.

Shell will conduct a ZVSP surveys in which the sound source is maintained at a constant location near the wellbore. Two sound sources have been proposed by Shell for the ZVSP surveys in 2015. The first is a small airgun array that consists of three 150 in^3 (2,458 cu cm^3) airguns for a total volume of 450 in^3 (7,374 cm^3). The second ZVSP sound

source consists of two 250 in³ (4,097 cu cm³) airguns with a total volume of 500 in³ (8,194 cm³).

A ZVSP survey is typically conducted at each well after total depth is reached but may be conducted at a shallower depth. For each survey, the sound source (airgun array) would be deployed over the side of the *Discoverer* or the *Polar Pioneer* with a crane. The sound source will be positioned 50–200ft (15–61 m) from the wellhead (depending on crane location), at a depth of ~10–23ft (3–7 m) below the water surface. Receivers will be temporarily anchored in the wellbore at depth. The sound source will be pressured up to 3,000 pounds per square inch (psi), and activated 5–7 times at approximately 20-second intervals. The receivers will then be moved to the next interval of the wellbore and re-anchored, after which the airgun array will again be activated 5–7 times. This process will be repeated until the entire wellbore has been surveyed in this manner. The interval between anchor points for the receiver array is usually 200–300ft (61–91 m). A typical ZVSP survey takes about 10–14 hours to complete per well (depending on the depth of the well and the number of anchoring points in each well).

ZVSP sound verification measurements will be performed using either the AMARs that are deployed for drilling unit sound characterizations, or by JASCO Ocean Bottom Hydrophone (OBH) recorders. The use of AMARS or OBHs depends on the specific timing these measurements will be required by NMFS; the AMARs will not be retrieved until several days after the ZVSP as they are intended to monitor during retrievals of drilling unit anchors and related support activities. If the ZVSP acoustic measurements are required sooner, four OBH recorders would be deployed at the same locations and those could be retrieved immediately following the ZVSP measurement. The ZVSP measurements can be delivered within 120 hours of retrieval and download of the data from either instrument type.

(C) Acoustic Data Analyses

Exploration drilling sound data will be analyzed to extract a record of the frequency-dependent sound levels as a function of time. These results are useful for correlating measured sound energy events with specific survey operations. The analysis provides absolute sound levels in finite frequency bands that can be tailored to match the highest-sensitivity hearing ranges for species of interest. The analyses will also consider sound level integrated through 1-hour durations (referred to as sound energy equivalent level Leq (1-hour). Similar graphs for long time periods will be generated as part of the data analysis performed for indicating drilling sound variation with time in selected frequency bands.

(D) Reporting of Results

Acoustic sound level results will be reported in the 90-day and comprehensive reports for this program. The results reported will include:

- Sound source levels for the drilling units and all drilling support vessels;
- Spectrogram and band level versus time plots computed from the continuous recordings obtained from the hydrophone systems;
- Hourly Leq levels at the hydrophone locations; and
- Correlation of exploration drilling source levels with the type of exploration drilling operation being performed. These results will be obtained by observing differences in drilling sound associated with differences in drilling unit activities as indicated in detailed drilling unit logs.

Acoustic ''Net'' Array in Chukchi Sea

This section describes acoustic studies that were undertaken from 2006 through 2013 in the Chukchi Sea as part of the Joint Monitoring Program and that will be continued by Shell during exploration drilling activities. The acoustic ''net'' array used during the 2006–2013 field seasons in the Chukchi Sea was designed to accomplish two main objectives. The first was to collect information on the occurrence and distribution of marine mammals (including beluga whale, bowhead whale, and other species) that may be available to subsistence hunters near villages along the Chukchi Sea coast and to document their relative abundance, habitat use, and migratory patterns. The second objective was to measure the ambient soundscape throughout the eastern Chukchi Sea and to record received levels of sounds from industry and other activities further offshore in the Chukchi Sea.

A net array configuration similar to that deployed in 2007–2013 is again proposed. The basic components of this effort consist of autonomous acoustic recorders deployed widely across the U.S. Chukchi Sea during the open water season and then more limited arrays during the winter season. These calibrated systems sample at 16 kHz with 24-bit resolution, and are capable of recording marine mammal sounds and making anthropogenic noise measurements. The net array configuration will include a regional array of 23 AMAR recorders deployed July–October off the four main transect locations: Cape Lisburne, Point Lay, Wainwright and Barrow. All of these offshore systems will capture sounds associated with exploration drilling, where present, over large distances to help characterize the sound transmission properties in the Chukchi Sea. Six additional summer AMAR recorders will be deployed around the Burger drill sites to monitor directional variations and longer-range propagation of drilling-related sounds. These recorders will also be used to examine marine mammal vocalization patterns in vicinity of exploration drilling activities. The regional recorders will be retrieved in early October 2015; acoustic monitoring will continue through the winter with 8 AMAR recorders deployed October 2015–August 2016. The winter recorders will sample at 16 kHz on a 17% duty cycle (40 minutes every 4 hours). The winter recorders deployed in previous years have provided important information about fall and spring migrations of bowhead, beluga, walrus and several seal species.

The Chukchi acoustic net array will produce an extremely large dataset comprising several Terabytes of acoustic data. The analyses of these data require identification of marine mammal vocalizations. Because of the very large amount of data to be processed, the analysis methods will incorporate automated vocalization detection algorithms that have been developed over several years. While the hydrophones used in the net array are not directional, and therefore not capable of accurate localization of detections, the number of vocalizations detected on each of the sensors provides a measure of the relative spatial distribution of some marine mammal species, assuming that vocalization patterns are consistent within a species across the spatial and geographic distribution of the hydrophone array. These results therefore provide information such as timing of migrations and routes of migration for belugas and bowheads.

A second purpose of the Chukchi net array is to monitor the amplitude of exploration drilling sound propagation over a very large area. It is expected that sounds from exploratory drilling activities will be detectable on hydrophone systems within approximately 30 km of the drilling units when ambient sound energy conditions are low. The drilling sound levels at recorder locations will be quantified and reported.

Analysis of all acoustic data will be prioritized to address the primary questions. The primary data analysis

questions are to (a) determine when, where, and what species of animals are acoustically detected on each recorder (b) analyze data as a whole to determine offshore distributions as a function of time, (c) quantify spatial and temporal variability in the ambient sound energy, and (d) measure received levels of exploration drilling survey events and drilling unit activities. The detection data will be used to develop spatial and temporal animal detection distributions. Statistical analyses will be used to test for changes in animal detections and distributions as a function of different variables (*e.g.*, time of day, season, environmental conditions, ambient sound energy, and drilling or vessel sound levels).

4. Chukchi Offshore Aerial Photographic Monitoring Program

Shell has been reticent to conduct manned aerial surveys in the offshore Chukchi Sea because conducting those surveys puts people at risk. There is a strong desire, however, to obtain data on marine mammal distribution in the offshore Chukchi Sea and Shell will conduct a photographic aerial survey that would put fewer people at risk as an alternative to the fully-manned aerial survey. The photographic survey would reduce the number of people on board the aircraft from six persons to two persons (the pilot and copilot) and would serve as a pilot study for future surveys that would use an Unmanned Aerial System (UAS) to capture the imagery.

Aerial photographic surveys have been used to monitor distribution and estimate densities of marine mammals in offshore areas since the mid-1980s, and before that, were used to estimate numbers of animals in large concentration areas. Digital photographs provide many advantages over observations made by people if the imagery has sufficient resolution (Koski *et al.* 2013). With photographs there is constant detectability across the imagery, whereas observations by people decline with distance from the center line of the survey area. Observations at the outer limits of the transect can decline to 5–10% of the animals present for real-time observations by people during an aerial survey. The distance from the trackline of sightings is more accurately determined from photographs; group size can be more accurately determined; and sizes of animals can be measured, and hence much more accurately determined, in photographs. As a result of the latter capability, the presence or absence of a calf can be more accurately determined from a photograph than by in-the-moment visual observations. Another benefit of photographs over visual observations is that photographs can be reviewed by more than one independent observer allowing quantification of detection, identification and group size biases.

The proposed photographic survey will provide imagery that can be used to evaluate the ability of future studies to use the same image capturing systems in an UAS where people would not be put at risk. Although the two platforms are not the same, the slower airspeed and potentially lower flight altitude of the UAS would mean that the data quality would be better from the UAS. Initial comparisons have been made between data collected by human observers on board both the Chukchi and Beaufort aerial survey aircraft and the digital imagery collected in 2012. Overall, the imagery provided better estimates of the number of large cetaceans and pinnipeds present but fewer sightings were identified to species in the imagery than by PSOs, because the PSOs had sightings in view for a longer period of time and could use behavior to differentiate species. The comparisons indicated that some cetaceans that were not seen by PSOs were detected in the imagery; errors in identification were made by the PSOs during the survey that could be resolved from examination of the imagery; cetaceans seen by PSOs were visible in the imagery; and during periods with large numbers of sightings, the imagery provided much better estimates of numbers of sightings and group size than the PSO data.

Photographic surveys would start as soon as the ice management, anchor handler and drilling units are at or near the first drill site and would continue throughout the drilling period and until the drilling related vessels have left the exploration drilling area. Since the current plans are for vessels to enter the Chukchi Sea on or about 1 July, surveys would be initiated on or about 3 July. This start date differs from past practices of beginning five days prior to initiation of an activity and continuing until five days after cessation of the activity because the presence of vessels with helidecks in the area where overflights will occur is one of the main mitigations that will allow for safe operation of the overflight program this far offshore. The surveys will be based out of Barrow and the same aircraft will conduct the offshore surveys around the drilling units and the coastal saw-tooth pattern. The surveys of offshore areas around the drilling units will take precedence over the sawtooth survey, but if weather does not permit surveying offshore, the nearshore survey will be conducted if weather permits.

The aerial survey grids are designed to maximize coverage of the sound level fields of the drilling units during the different exploratory drilling activities. The survey grids can be modified as necessary based on weather and whether a noisy activity or quiet activity is taking place. The intensive survey design maximizes the effort over the area where sound levels are highest. The outer survey grid covers an elliptical area with a 45 km radius near the center of the ellipse. The spacing of the outer survey lines is 10 km, and the spacing between the intensive and outer lines is 5 km. The expanded survey grid covers a larger survey area, and the design is based on an elliptical area with a 50 km radius centered on the well sties. For both survey designs the main transects will be spaced 10 km apart which will allow even coverage of the survey area during a single flight if weather conditions permit completion of a survey. A random starting point will be selected for each survey and the evenly spaced lines will be shifted NE or SW along the perimeter of the elliptical survey area based on the start point. The total length of survey lines will be about 1,000 km and the exact length will depend on the location of the randomly selected start point.

Following each survey, the imagery will be downloaded from the memory card to a portable hard drive and then backed up on a second hard drive and stored at accommodations in Barrow until the second hard drive can be transferred to Anchorage. In Anchorage, the imagery will be processed through a computer-assisted analysis program to identify where marine mammal sightings might be located among the many images obtained. A team of trained photo analysts will review the photographs identified as having potential sightings and record the appropriate data on each sighting. If time permits, a second review of some of the images will be conducted while in the field, but the sightings recorded during the second pass will be identified in the database as secondary sightings, so that biases associated with the detection in the imagery can be quantified. If time does not permit that review to be conducted while in the field, the review will be conducted by personnel in the office during or after the field season. A sample of images that are not identified by the computer-assisted analysis program will be examined in detail by the image analysts to determine if the program has missed marine mammal sightings. If the analysis program has missed mammal

sightings, these data will be to develop correction factors to account for these missed sightings among the images that were not examined.

5. Chukchi Sea Coastal Aerial Survey

Nearshore aerial surveys of marine mammals in the Chukchi Sea were conducted over coastal areas to approximately 23 miles (mi) [37 kilometers (km)] offshore in 2006–2008 and in 2010 in support of Shell's summer seismic exploration activities. In 2012 these surveys were flown when it was not possible to fly the photographic transects out over the Burger well site due to weather or rescue craft availability. These surveys provided data on the distribution and abundance of marine mammals in nearshore waters of the Chukchi Sea. Shell plans to conduct these nearshore aerial surveys in the Chukchi Sea as opportunities unfold and surveys will be similar to those conducted during previous years except that no PSOs will be onboard the aircraft. As noted above, the first priority will be to conduct photographic surveys around the offshore exploration drilling activities, but nearshore surveys will be conducted whenever weather does not permit flying offshore. As in past years, surveys in the southern part of the nearshore survey area will depend on the end of the beluga hunt near Point Lay. In past years, Point Lay has requested that aerial surveys not be conducted until after the beluga hunt has ended and so the start of surveys has been delayed until mid-July.

Alaskan Natives from villages along the east coast of the Chukchi Sea hunt marine mammals during the summer and Native communities are concerned that offshore oil and gas exploration activities may negatively impact their ability to harvest marine mammals. Of particular concern are potential impacts on the beluga harvest at Point Lay and on future bowhead harvests at Point Hope, Point Lay, Wainwright and Barrow. Other species of concern in the Chukchi Sea include the gray whale; bearded, ringed, and spotted seals. Gray whale and harbor porpoise are expected to be the most numerous cetacean species encountered during the proposed aerial survey; although harbor porpoise are abundant they are difficult to detect from aircraft because of their small size and brief surfacing. Beluga whales may occur in high numbers early in the season. The ringed seal is likely to be the most abundant pinniped species. The current aerial survey program will be designed to collect distribution data on cetaceans but will be limited in its ability to collect similar data on pinnipeds and harbor porpoises because they are not reliably detectable during review of the collected images unless a third camera with a 50 mm or similar lens is deployed.

Transects will be flown in a saw-toothed pattern between the shore and 23 mi (37 km) offshore as well as along the coast from Point Barrow to Point Hope. This design will permit completion of the survey in one to two days and will provide representative coverage of the nearshore region. Sawtooth transects were designed by placing transect start/end points every 34 mi (55 km) along the offshore boundary of this 23 mi (37 km) wide nearshore zone, and at midpoints between those points along the coast. The transect line start/end points will be shifted along both the coast and the offshore boundary for each survey based upon a randomized starting location, but overall survey distance will not vary substantially. The coastline transect will simply follow the coastline or barrier islands. As with past surveys of the Chukchi Sea coast, coordination with coastal villages to avoid disturbance of the beluga whale subsistence hunt will be extremely important. ''No-fly'' zones around coastal villages or other hunting areas established during communications with village representatives will be in place until the end of the hunting season.

Standard aerial survey procedures used in previous marine mammal projects (by Shell as well as by others) will be followed. This will facilitate comparisons and (as appropriate) pooling with other data, and will minimize controversy about the chosen survey procedures. The aircraft will be flown at 110–120 knots ground speed and usually at an altitude of 1,000 ft (305 m). Aerial surveys at an altitude of 1,000 ft. (305 m) do not provide much information about seals but are suitable for bowhead, beluga, and gray whales. The need for a 1,000+ ft (305+ m) or 1,500+ ft (454+ m) cloud ceiling will limit the dates and times when surveys can be flown. Selection of a higher altitude for surveys would result in a significant reduction in the number of days during which surveys would be possible, impairing the ability of the aerial program to meet its objectives.

The surveyed area will include waters where belugas are usually available to subsistence hunters. If large concentrations of belugas are encountered during the survey, the aircraft will climb to ~10,000 ft (3,050 m) altitude to avoid disturbing the cetaceans. If cetaceans are in offshore areas, the aircraft will climb high enough to include all cetaceans within a single photograph; typically about 3,000 ft (914 m) altitude. When in shallow water, belugas and other marine mammals are more sensitive to aircraft over flights and other forms of disturbance than when they are offshore (see Richardson *et al.* 1995 for a review). They frequently leave shallow estuaries when over flown at altitudes of 2,000–3,000 ft (610–904 m); whereas they rarely react to aircraft at 1,500 ft (457 m) when offshore in deeper water.

Monitoring Plan Peer Review

The MMPA requires that monitoring plans be independently peer reviewed ''where the proposed activity may affect the availability of a species or stock for taking for subsistence uses'' (16 U.S.C. 1371(a)(5)(D)(ii)(III)). Regarding this requirement, NMFS' implementing regulations state, ''Upon receipt of a complete monitoring plan, and at its discretion, [NMFS] will either submit the plan to members of a peer review panel for review or within 60 days of receipt of the proposed monitoring plan, schedule a workshop to review the plan'' (50 CFR 216.108(d)).

NMFS has established an independent peer review panel to review Shell's 4MP for Exploration Drilling of Selected Lease Areas in the Alaskan Chukchi Sea in 2015. The panel is scheduled to meet in early March 2015, and will provide comments to NMFS shortly after they meet. After completion of the peer review, NMFS will consider all recommendations made by the panel, incorporate appropriate changes into the monitoring requirements of the IHA (if issued), and publish the panel's findings and recommendations in the final IHA notice of issuance or denial document.

Reporting Measures

(1) SSV Report

A report on the results of the acoustic verification measurements, including at a minimum the measured 190-, 180-, 160-, and 120-dB (rms) radii of the drilling units, and support vessels, will be reported in the 90-day report. A report of the acoustic verification measurements of the ZVSP airgun array will be submitted within 120 hr after collection and analysis of those measurements once that part of the program is implemented. The ZVSP acoustic array report will specify the distances of the exclusion zones that were adopted for the ZVSP program. Prior to completion of these measurements, Shell will use the radii outlined in their application and proposed in Tables 2 and 3 of this document.

(2) Field Reports

Throughout the exploration drilling program, the biologists will prepare a report each day or at such other interval as required summarizing the recent results of the monitoring program. The reports will summarize the species and numbers of marine mammals sighted. These reports will be provided to NMFS as required.

(3) Technical Reports

The results of Shell's 2015 Chukchi Sea exploratory drilling monitoring program (*i.e.*, vessel-based, aerial, and acoustic) will be presented in the ''90-day'' and Final Technical reports under the proposed IHA. Shell proposes that the Technical Reports will include: (1) Summaries of monitoring effort (*e.g.*, total hours, total distances, and marine mammal distribution through study period, accounting for sea state and other factors affecting visibility and detectability of marine mammals); (2) analyses of the effects of various factors influencing detectability of marine mammals (*e.g.*, sea state, number of observers, and fog/glare); (3) species composition, occurrence, and distribution of marine mammal sightings, including date, water depth, numbers, age/size/gender categories (if determinable), group sizes, and ice cover; (4) sighting rates of marine mammals during periods with and without drilling activities (and other variables that could affect detectability); (5) initial sighting distances versus drilling state; (6) closest point of approach versus drilling state; (7) observed behaviors and types of movements versus drilling state; (8) numbers of sightings/individuals seen versus drilling state; (9) distribution around the drilling units and support vessels versus drilling state; and (10) estimates of take by harassment. This information will be reported for both the vessel-based and aerial monitoring.

Analysis of all acoustic data will be prioritized to address the primary questions, which are to: (a) Determine when, where, and what species of animals are acoustically detected on each AMAR ; (b) analyze data as a whole to determine offshore bowhead distributions as a function of time; (c) quantify spatial and temporal variability in the ambient noise; and (d) measure received levels of drilling unit activities. The detection data will be used to develop spatial and temporal animal distributions. Statistical analyses will be used to test for changes in animal detections and distributions as a function of different variables (*e.g.*, time of day, time of season, environmental conditions, ambient noise, vessel type, operation conditions).

The initial technical report is due to NMFS within 90 days of the completion of Shell's Chukchi Sea exploration drilling program. The ''90-day'' report will be subject to review and comment by NMFS. Any recommendations made by NMFS must be addressed in the final report prior to acceptance by NMFS.

(4) Notification of Injured or Dead Marine Mammals

Shell will be required to notify NMFS' Office of Protected Resources and NMFS' Stranding Network of any sighting of an injured or dead marine mammal. Based on different circumstances, Shell may or may not be required to stop operations upon such a sighting. Shell will provide NMFS with the species or description of the animal(s), the condition of the animal(s) (including carcass condition if the animal is dead), location, time of first discovery, observed behaviors (if alive), and photo or video (if available). The specific language describing what Shell must do upon sighting a dead or injured marine mammal can be found in the ''Proposed Incidental Harassment Authorization'' section later in this document.

Estimated Take by Incidental Harassment

Except with respect to certain activities not pertinent here, the MMPA defines ''harassment'' as: Any act of pursuit, torment, or annoyance which (i) has the potential to injure a marine mammal or marine mammal stock in the wild [Level A harassment]; or (ii) has the potential to disturb a marine mammal or marine mammal stock in the wild by causing disruption of behavioral patterns, including, but not limited to, migration, breathing, nursing, breeding, feeding, or sheltering [Level B harassment]. Only take by Level B behavioral harassment is anticipated as a result of the proposed drilling program. Noise propagation from the drilling units, associated support vessels (including during icebreaking if needed), and the airgun array are expected to harass, through behavioral disturbance, affected marine mammal species or stocks. Additional disturbance to marine mammals may result from aircraft overflights and visual disturbance of the drilling units or support vessels. However, based on the flight paths and altitude, impacts from aircraft operations are anticipated to be localized and minimal in nature.

The full suite of potential impacts to marine mammals from various industrial activities was described in detail in the ''Potential Effects of the Specified Activity on Marine Mammals'' section found earlier in this document. The potential effects of sound from the proposed exploratory drilling program without any mitigation might include one or more of the following: tolerance; masking of natural sounds; behavioral disturbance; non-auditory physical effects; and, at least in theory, temporary or permanent hearing impairment (Richardson *et al.,* 1995a). As discussed earlier in this document, NMFS estimates that Shell's activities will most likely result in behavioral disturbance, including avoidance of the ensonified area or changes in speed, direction, and/or diving profile of one or more marine mammals. For reasons discussed previously in this document, hearing impairment (TTS and PTS) is highly unlikely to occur based on the fact that most of the equipment to be used during Shell's proposed drilling program does not have source levels high enough to elicit even mild TTS and/or the fact that certain species are expected to avoid the ensonified areas close to the operations. Additionally, non-auditory physiological effects are anticipated to be minor, if any would occur at all.

For continuous sounds, such as those produced by drilling operations and during icebreaking activities, NMFS uses a received level of 120-dB (rms) to indicate the onset of Level B harassment. For impulsive sounds, such as those produced by the airgun array during the ZVSP surveys, NMFS uses a received level of 160-dB (rms) to indicate the onset of Level B harassment. Shell provided calculations for the 120-dB isopleths produced by aggregate sources and then used those isopleths to estimate takes by harassment. Additionally, Shell provided calculations for the 160-dB isopleth produced by the airgun array and then used that isopleth to estimate takes by harassment. Shell provides a full description of the methodology used to estimate takes by harassment in its IHA application (see **ADDRESSES**), which is also provided in the following sections.

Shell has requested authorization to take bowhead, gray, fin, humpback, minke, killer, and beluga whales, harbor porpoise, and ringed, spotted, bearded, and ribbon seals incidental to exploration drilling, ice management/icebreaking, and ZVSP activities. Additionally, Shell provided exposure estimates and requested takes of narwhal. However, as stated previously in this document, sightings of this species are rare, and the likelihood of occurrence of narwhals in the proposed

drilling area is minimal. Therefore, NMFS is not proposing to authorize take of this species.

Basis for Estimating ''Take by Harassment''

''Take by Harassment'' is described in this section and was calculated in Shell's application by multiplying the expected densities of marine mammals that may occur near the exploratory drilling operations by the area of water likely to be exposed to continuous, non-pulse sounds ≥120 dB re 1 μPa (rms) during drilling unit operations or icebreaking activities and impulse sounds ≥160 dB re 1 μPa (rms) created by seismic airguns during ZVSP activities. NMFS evaluated and critiqued the methods provided in Shell's application and determined that they were appropriate to conduct the requisite MMPA analyses. This section describes the estimated densities of marine mammals that may occur in the project area. The area of water that may be ensonified to the above sound levels is described further in the ''*Estimated Area Exposed to Sounds >120 dB or >160 dB re 1* μ*Pa rms''* subsection.

Marine Mammal Density Estimates

Marine mammal density estimates in the Chukchi Sea have been derived for two time periods, the summer period covering July and August, and the fall period including September and October. Animal densities encountered in the Chukchi Sea during both of these time periods will further depend on the habitat zone within which the activities are occurring: open water or ice margin. More ice is likely to be present in the area of activities during the July–August period, so summer ice-margin densities have been applied to 50% of the area that may be ensonified from drilling and ZVSP activities in those months. Open water densities in the summer were applied to the remaining 50 percent of the area. Less ice is likely to be present during the September–October period, so fall ice-margin densities have been applied to only 20% of the area that may be ensonified from drilling and ZVSP activities in those months. Fall open-water densities were applied to the remaining 80 percent of the area. Since ice management activities would only occur within ice-margin habitat, the entire area potentially ensonified by ice management activities has been multiplied by the ice-margin densities in both seasons.

There is some uncertainty about the representativeness of the data and assumptions used in the calculations. To provide some allowance for the uncertainties, ''maximum estimates'' as well as ''average estimates'' of the numbers of marine mammals potentially affected have been derived. For a few marine mammal species, several density estimates were available. In those cases, the mean and maximum estimates were determined from the reported densities or survey data. In other cases only one or no applicable estimate was available, so correction factors were used to arrive at ''average'' and ''maximum'' estimates. These are described in detail in the following subsections.

Detectability bias, quantified in part by f(0), is associated with diminishing sightability with increasing lateral distance from the survey trackline. Availability bias, g(0), refers to the fact that there is <100% probability of sighting an animal that is present along the survey trackline. Some sources below included these correction factors in the reported densities (*e.g.* ringed seals in Bengtson *et al.* 2005) and the best available correction factors were applied to reported results when they had not already been included (*e.g.* Moore *et al.* 2000).

(1) Cetaceans

Eight species of cetaceans are known to occur in the activity area. Three of the nine species, bowhead, fin, and humpback whales, are listed as ''endangered'' under the ESA.

(a) Beluga Whales

Summer densities of beluga whales in offshore waters are expected to be low, with somewhat higher densities in ice-margin and nearshore areas. Past aerial surveys have recorded few belugas in the offshore Chukchi Sea during the summer months (Moore *et al.* 2000). More recent aerial surveys of the Chukchi Sea from 2008–2012 flown by the NMML as part of the COMIDA project, now part of the Aerial Surveys of Arctic Marine Mammals (ASAMM) project, reported 10 beluga sightings (22 individuals) in offshore waters during 22,154 km of on-transect effort. Larger groups of beluga whales were recorded in nearshore areas, especially in June and July during the spring migration (Clarke *et al.* 2012, 2013). Additionally, only one beluga sighting was recorded during >80,000 km of visual effort during good visibility conditions from industry vessels operating in the Chukchi Sea in September–October of 2006–2010 (Hartin *et al.* 2013). If belugas are present during the summer, they are more likely to occur in or near the ice edge or close to shore during their northward migration. Effort and sightings reported by Clarke *et al.* (2012, 2013) were used to calculate the average open-water density estimate. The mean group size of the sightings was 2.2. A f(0) value of 2.841 and g(0) value of 0.58 from Harwood *et al.* (1996) were also used in the density calculation resulting in an average open-water density of 0.0024 belugas/km^2 (Table 6–1 of Shell's IHA application). The highest density from the reported survey periods (0.0049 belugas/km^2, in 2012) has been used as the maximum density that may occur in open-water habitat (Table 6–1 in Shell's IHA application). Specific data on the relative abundance of beluga in open-water versus ice-margin habitat during the summer in the Chukchi Sea is not available. However, belugas are commonly associated with ice, so an inflation factor of four was used to estimate the ice-margin densities from the open-water densities. Very low densities observed from vessels operating in the Chukchi Sea during non-seismic periods and locations in July–August of 2006–2010 (0.0–0.0003/mi^2, 0.0–0.0001/km^2; Hartin *et al.* 2013), also suggest the number of beluga whales likely to be present near the planned activities will not be large.

In the fall, beluga whale densities offshore in the Chukchi Sea are expected to be somewhat higher than in the summer because individuals of the eastern Chukchi Sea stock and the Beaufort Sea stock will be migrating south to their wintering grounds in the Bering Sea (Allen and Angliss 2012). Densities derived from survey results in the northern Chukchi Sea in Clarke and Ferguson (in prep, cited in Shell 2014) and Clarke *et al.* (2012, 2013) were used as the average density for open-water season estimates (Table 6–2 in Shell's IHA application). Clarke and Ferguson (in prep, cited in Shell 2014) and Clarke *et al.* (2012, 2013) reported 17 beluga sightings (28 individuals) during 22,255 km of on-transect effort in water depths 36–50 m during the months of July through September. The mean group size of those three sightings was 1.6. A f(0) value of 2.841 and a g(0) value of 0.58 from Harwood *et al.* (1996) were used to calculate the average open-water density of 0.0031 belugas/km^2 (Table 6–2 in Shell IHA application). The highest density from the reported periods (0.0053 belugas/km^2, in 2012) was again used as the maximum density that may occur in open-water habitat. Moore *et al.* (2000) reported lower than expected beluga sighting rates in open-water during fall surveys in the Beaufort and Chukchi seas, so an inflation value of four was used to estimate the ice-margin densities from the open-water densities. Based on the few beluga sightings from vessels operating in the Chukchi Sea

during non-seismic periods and locations in September–November of 2006–2010 (Hartin *et al.* 2013), the relatively low densities shown in Table 6–2 in Shell's IHA application are consistent with what is likely to be observed form vessels during the planned exploration drilling activities.

(b) Bowhead Whales

By July, most bowhead whales are northeast of the Chukchi Sea, within or migrating toward their summer feeding grounds in the eastern Beaufort Sea. No bowheads were reported during 10,686 km of on-transect effort in the Chukchi Sea by Moore *et al.* (2000). Bowhead whales were also rarely sighted in July-August of 2006–2010 during aerial surveys of the Chukchi Sea coast (Thomas *et al.* 2011). This is consistent with movements of tagged whales (ADFG 2010), all of which moved through the Chukchi Sea by early May 2009, and tended to travel relatively close to shore, especially in the northern Chukchi Sea.

The estimate of the July–August open-water bowhead whale density in the Chukchi Sea was calculated from the three bowhead sightings (3 individuals) and 22,154 km of survey effort in waters 36–50 m deep in the Chukchi Sea during July–August reported in Clarke and Ferguson (in prep, cited in Shell 2014) and Clarke *et al.* (2012, 2013). The mean group size from those sightings was 1. The group size value, along with a f(0) value of 2 and a g(0) value of 0.07, both from Thomas *et al.* (2002) were used to estimate a summer density of 0.0019 bowheads/km^2 (Table 6–1 in Shell's IHA application). The two sightings recorded during 4,209 km of survey effort in 2011 (Clarke *et al.* 2012) produced the highest annual bowhead density during July–August (0.0068 bowheads/km^2) which was used as the maximum open-water density (Table 6–1 in Shell's IHA application). Bowheads are not expected to be encountered in higher densities near ice in the summer (Moore *et al.* 2000), so the same density estimates have been used for open-water and ice-margin habitats. Densities from vessel based surveys in the Chukchi Sea during non-seismic periods and locations in July–August of 2006–2010 (Hartin *et al.* 2013) ranged from 0.0002–0.0008/km^2 with a maximum 95% CI of 0.0085/km^2. This suggests the densities used in the calculations and shown in Table 6–1 in Shell's IHA application are similar to what are likely to be observed from vessels near the area of planned exploration drilling activities.

During the fall, bowhead whales that summered in the Beaufort Sea and Amundsen Gulf migrate west and south to their wintering grounds in the Bering Sea, making it more likely those bowheads will be encountered in the Chukchi Sea at this time of year. Moore *et al.* (2000) reported 34 bowhead sightings during 44,354 km of on-transect survey effort in the Chukchi Sea during September–October. Thomas *et al.* (2011) also reported increased sightings on coastal surveys of the Chukchi Sea during October and November of 2006–2010. GPS tagging of bowheads appear to show that migration routes through the Chukchi Sea are more variable than through the Beaufort Sea (Quakenbush *et al.* 2010). Some of the routes taken by bowheads remain well north of the planned drilling activities while others have passed near to or through the area. Kernel densities estimated from GPS locations of whales suggest that bowheads do not spend much time (*e.g.* feeding or resting) in the north-central Chukchi Sea near the area of planned activities (Quakenbush *et al.* 2010). However, tagged whales did spend a considerable amount of time in the north-central Chukchi Sea in 2012, despite ongoing industrial activities in the region (ADFG 2012). Clarke and Ferguson (in prep, cited in Shell 2014) and Clarke *et al.* (2012, 2013) reported 72 sightings (86 individuals) during 22,255 km of on-transect aerial survey effort in waters 36–50 m deep in 2008–2012, the majority of which (53 sightings) were recorded in 2012. The mean group size of the 72 sightings was 1.2. The same f(0) and g(0) values that were used for the summer estimates above were used for the fall estimates resulting in an average September–October estimate of 0.0552 bowheads/km^2 (Table 6–2 in Shell's IHA application). The highest density form the survey periods (0.1320 bowheads/km^2; in 2012) was used as the maximum open-water density during the fall period. Moore *et al.* (2000) found that bowheads were detected more often than expected in association with ice in the Chukchi Sea in September–October, so the ice-margin densities that are used are twice the open-water densities. Densities from vessel based surveys in the Chukchi Sea during non-seismic periods and locations in September–November of 2006–2010 (Hartin *et al.* 2013) ranged from 0.0003 to 0.0052/km^2 with a maximum 95 percent CI of 0.051/km^2. This suggests the densities used in the calculations and shown in Table 6–2 in Shell's IHA application are somewhat higher than are likely to be observed from vessels near the area of planned exploration drilling activities.

(c) Gray Whales

Gray whale densities are expected to be much higher in the summer months than during the fall. Moore *et al.* (2000) found the distribution of gray whales in the planned operational area was scattered and limited to nearshore areas where most whales were observed in water less than 35 m deep. Thomas *et al.* (2011) also reported substantial declines in the sighting rates of gray whales in the fall. The average open-water summer density (Table 6–1 in Shell's IHA application) was calculated from 2008–2012 aerial survey effort and sightings in Clarke and Ferguson (in prep, cited in Shell 2014) and Clarke *et al.* (2012, 2013) for water depths 36–50 m including 98 sightings (137 individuals) during 22,154 km of on-transect effort. The average group size of those sightings was 1.4. Correction factors f(0) = 2.49 (Forney and Barlow 1998) and g(0) = 0.30 (Forney and Barlow 1998, Mallonee 1991) were used to calculate and average open-water density of 0.0253 gray whales/km2 (Table 6–1 in Shell's IHA application). The highest density from the survey periods reported in Clarke and Ferguson (in prep, cited in Shell 2014) and Clarke *et al.* (2012, 2013) was 0.0268 gray whales/km^2 in 2012 and this was used as the maximum open-water density. Gray whales are not commonly associated with sea ice, but may be present near it, so the same densities were used for ice-margin habitat as were derived for open-water habitat during both seasons. Densities from vessel based surveys in the Chukchi Sea during non-seismic periods and locations in July–August of 2006–2010 (Hartin *et al.* 2013) ranged from 0.0008/km^2 to 0.0085/km^2 with a maximum 95 percent CI of 0.0353 km^2.

In the fall, gray whales may be dispersed more widely through the northern Chukchi Sea (Moore *et al.* 2000), but overall densities are likely to be decreasing as the whales begin migrating south. A density calculated from effort and sightings (46 sightings [64 individuals] during 22,255 km of on-transect effort) in water 36–50 m deep during September–October reported by Clarke and Ferguson (in prep, cited in Shell 2014) and Clarke *et al.* (2012, 2013) was used as the average estimate for the Chukchi Sea during the fall period (0.0118 gray whales/km^2; Table 6–2 in Shell's IHA application). The corresponding group size value of 1.39, along with the same f(0) and g(0) values described above were used in the calculation. The maximum density from the survey periods (0.0248 gray whales/km^2) was reported in 2011 (Clarke *et al.*

2012) and used as the maximum fall open-water density (Table 6–2 in Shell's IHA application). Densities from vessel based surveys in the Chukchi Sea during non-seismic periods and locations in September–November of 2006–2010 (Hartin *et al.* 2013) ranged from 0.0/km² to 0.0044/km² with a maximum 95% CI of 0.0335 km².

(d) Harbor Porpoises

Harbor Porpoise densities were estimated from industry data collected during 2006–2010 activities in the Chukchi Sea. Prior to 2006, no reliable estimates were available for the Chukchi Sea and harbor porpoise presence was expected to be very low and limited to nearshore regions. Observers on industry vessels in 2006–2010, however, recorded sightings throughout the Chukchi Sea during the summer and early fall months. Density estimates from 2006–2010 observations during non-seismic periods and locations in July-August ranged from 0.0013/km² to 0.0029/km² with a maximum 95% CI of 0.0137/km² (Hartin *et al.* 2013). The average density from the summer season of those three years (0.0022/km²) was used as the average open-water density estimate while the high value (0.0029/km²) was used as the maximum estimate (Table 6–1 in Shell's IHA application). Harbor porpoise are not expected to be present in higher numbers near ice, so the open-water densities were used for ice-margin habitat in both seasons. Harbor porpoise densities recorded during industry operations in the fall months of 2006–2010 were slightly lower and ranged from 0.0/km² to 0.0044/km² with a maximum 95% CI of 0.0275/km². The average of those years (0.0021/km²) was again used as the average density estimate and the high value (0.0044/km²) was used as the maximum estimate (Table 6–2 in Shell's IHA application).

(e) Other Whales

The remaining five cetacean species that could be encountered in the Chukchi Sea during Shell's planned exploration drilling program include the humpback whale, killer whale, minke whale, and fin whale. Although there is evidence of the occasional occurrence of these five cetacean species in the Chukchi Sea, it is unlikely that more than a few individuals will be encountered during the planned exploration drilling program and therefore minimum densities have been assigned to these species (Tables 6–1 and 6–2 in Shell's IHA application). Clarke *et al.* (2011, 2013) and Hartin *et al.* (2013) reported humpback whale sightings; George and Suydam (1998) reported killer whales; Brueggeman *et al.* (1990), Hartin *et al.* (2013), Clarke *et al.* (2012, 2013), and Reider *et al.* (2013) reported minke whales; and Clarke *et al.* (2011, 2013) and Hartin *et al.* (2013) reported fin whales. With regard to humpback and fin whales, NMFS (2013) recently concluded these whales occur in very low numbers in the project area, but may be regular visitors.

Of these uncommon cetacean species, minke whale has the potential to be the most common based on recent industry surveys. Reider *et al.* (2013) reported 13 minke whale sightings in the Chukchi Sea in 2013 during Shell's marine survey program. All but one minke whale sighting in 2013, however, were observed in nearshore areas despite only minimal monitoring effort in nearshore areas compared to more offshore locations near the Burger prospect (Reider *et al.* 2013).

(2) Pinnipeds

Three species of pinnipeds under NMFS jurisdiction are likely to be encountered in the Chukchi Sea during Shell's planned exploration drilling program: Ringed seal, bearded seal, and spotted seal. Ringed and bearded seals are associated with both the ice margin and the nearshore area. The ice margin is considered preferred habitat (as compared to the nearshore areas) for ringed and bearded seals during most seasons. Spotted seals are often considered to be predominantly a coastal species except in the spring when they may be found in the southern margin of the retreating sea ice. However, satellite tagging has shown that they sometimes undertake long excursions into offshore waters during summer (Lowry *et al.* 1994, 1998). Ribbon seals have been reported in very small numbers within the Chukchi Sea by observers on industry vessels (Patterson *et al.* 2007, Hartin *et al.* 2013).

(a) Ringed and Bearded Seals

Ringed seal and bearded seals ''average'' and ''maximum'' summer ice-margin densities were available in Bengtson *et al.* (2005) from spring surveys in the offshore pack ice zone (zone 12P) of the northern Chukchi Sea. However, corrections for bearded seal availability, g(0), based on haulout and diving patterns were not available. Densities of ringed and bearded seals in open water are expected to be somewhat lower in the summer when preferred pack ice habitat may still be present in the Chukchi Sea. Average and maximum open-water densities have been estimated as 3/4 of the ice margin densities during both seasons for both species. The fall density of ringed seals in the offshore Chukchi Sea has been estimated as 2/3 the summer densities because ringed seals begin to reoccupy nearshore fast ice areas as it forms in the fall. Bearded seals may also begin to leave the Chukchi Sea in the fall, but less is known about their movement patterns so fall densities were left unchanged from summer densities. For comparison, the ringed seal density estimates calculated from data collected during summer 2006–2010 industry operations ranged from 0.0138/km² to 0.0464/km² with a maximum 95 percent CI of 0.1581/km² (Hartin *et al.* 2013).

(b) Spotted Seals

Little information on spotted seal densities in offshore areas of the Chukchi Sea is available. Spotted seal densities in the summer were estimated by multiplying the ringed seal densities by 0.02. This was based on the ratio of the estimated Chukchi populations of the two species. Chukchi Sea spotted seal abundance was estimated by assuming that 8% of the Alaskan population of spotted seals is present in the Chukchi Sea during the summer and fall (Rugh *et al.* 1997), the Alaskan population of spotted seals is 59,214 (Allen and Angliss 2012), and that the population of ringed seals in the Alaskan Chukchi Sea is ~208,000 animals (Bengtson *et al.* 2005). In the fall, spotted seals show increased use of coastal haulouts so densities were estimated to be 2/3 of the summer densities.

(c) Ribbon Seals

Four ribbon seal sightings were reported during industry vessel operations in the Chukchi Sea in 2006–2010 (Hartin *et al.* 2013). The resulting density estimate of 0.0007/km² was used as the average density and 4 times that was used as the maximum for both seasons and habitat zones.

Individual Sound Sources and Level B Radii

The assumed start date of Shell's exploration drilling program in the Chukchi Sea using the drilling units *Discoverer* and *Polar Pioneer* with associated support vessels is 4 July. Shell may conduct exploration drilling activities at up to four drill sites at the prospect known as Burger. Drilling activities are expected to be conducted through approximately 31 October 2015.

Previous IHA applications for offshore Arctic exploration programs estimated areas potentially ensonified to ≥120 or ≥160 dB re 1 μPa rms independently for each continuous or pulsed sound

source, respectively (*e.g.,* drilling, ZVSP, etc.). The primary method used in this IHA application for estimating areas ensonified to continuous sound levels ≥120 dB re 1 μPa rms by drilling-related activities involved sound propagation modeling of a variety of scenarios consisting of multiple, concurrently-operating sound sources. These ''activity scenarios'' consider additive acoustic effects from multiple sound sources at nearby locations, and more closely capture the nature of a dynamic acoustic environment where numerous activities are taking place simultaneously. The area ensonified to ≥160 dB re 1 μPa rms from ZVSP, a pulsed sound source, was treated independently from the activity scenarios for continuous sound sources.

The continuous sound sources used for sound propagation modeling of activity scenarios included (1) drilling unit and drilling sounds, (2) supply and drilling support vessels using DP when tending to a drilling unit, (3) MLC construction, (4) anchor handling in support of mooring a drilling unit, and (5) ice management activities. The information used to generate sound level characteristics for each continuous sound source is summarized below to provide background on the model inputs. A ''safety factor'' of 1.3 dB re 1 μPa rms was added to the source level for each sound source prior to modeling activity scenarios to account for variability across the project area associated with received levels at different depths, geoacoustical properties, and sound-speed profiles. The addition of the 1.3 dB re 1 μPa rms safety factor to source levels resulted in an approximate 20 percent increase in the distance to the 120 dB re 1 μPa rms threshold for each continuous source.

Table 2 summarizes the 120 dB re 1 μPa rms radii for individual sound sources, both the ''original'' radii as measured in the field, and the ''adjusted'' values that were calculated by adding the ''safety factor'' of 1.3 dB re 1 μPa rms to each source. The adjusted source levels were then used in sound propagation modeling of activity scenarios to estimate ensonified areas and associated marine mammal exposure estimates. Additional details for each of the continuous sound sources presented in Table 2 are discussed below.

The pulsed sound sources used for sound propagation modeling of activity scenarios consisted of two small airgun arrays proposed for ZVSP activities. All possible array configurations and operating depths were modeled to identify the arrangement with the greatest sound propagation characteristics. The resulting ≥160 dB re 1 μPa rms radius was multiplied by 1.5 as a conservative measure prior to estimating exposed areas, which is discussed in greater detail below.

TABLE 2—MEASURED AND ADJUSTED 120 dB re 1 μPa RADII FOR INDIVIDUAL, CONTINUOUS SOUND SOURCES

Activity/continuous sound source	Radii of 120 dB re 1 μPa (rms) isopleth (meters)	
	Original measurement	With 1.3 dB correction factor
Drilling at 1 site	1,500	1,800
Vessel in DP	4,500	5,500
Mudline cellar construction at 1 site	8,200	9,300
Anchor handling at 1 site (assumed to be 2 vessels)	19,000	22,000
Single vessel ice management	9,600	11,000

Two sound sources have been proposed by Shell for the ZVSP surveys in 2015. The first is a small airgun array that consists of three 150 in3 (2,458 cm^3) airguns for a total volume of 450 in^3 (7,374 cm^3). The second ZVSP sound source consists of two 250 in^3 (4,097 cm^3) airguns with a total volume of 500 in^3 (8,194 cm^3). Sound footprints for each of the two proposed ZVSP airgun array configurations were estimated using JASCO Applied Sciences' MONM. The model results were maximized over all water depths from 9.8 to 23 ft (3 to 7 m) to yield precautionary sound level isopleths as a function of range and direction from the source. The 450 in^3 airgun array at a source depth of 7 m yielded the maximum ranges to the ≥190, ≥180, and ≥160 dB re 1 μPa rms isopleths.

There are two reasons that the radii for the 450 in^3 airgun array are larger than those for the 500 in^3 array. First, the sound energy does not scale linearly with the airgun volume, rather it is proportional to the cube root of the volume. Thus, the total sound energy from three airguns is larger than the total energy from two airguns, even though the total volume is smaller. Second, larger volume airguns emit more low-frequency sound energy than smaller volume airguns, and low-frequency airgun sound energy is strongly attenuated by interaction with the surface reflection. Thus, the sound energy for the larger-volume array experiences more reduction and results in shorter sound threshold radii.

The estimated 95th percentile distances to the following thresholds for the 450 in^3 airgun array were: ≥190 dB re 1 μPa rms = 170 m, ≥180 dB re 1 μPa rms = 920 m, and ≥160 dB re 1 μPa rms = 7,970 m. The ≥160 dB re 1 μPa rms distance was multiplied by 1.5 for a distance of 11,960 m. This radius was used for estimating areas ensonified by pulsed sounds to ≥160 dB re 1 μPa rms during a single ZVSP survey. ZVSP surveys may occur at up to two different drill sites during Shell's planned 2015 exploration drilling program in the Chukchi Sea.

As noted above, previous IHA applications for Arctic offshore exploration programs estimated areas potentially ensonified to continuous sound levels ≥120 dB re 1 μPa rms independently for each sound source. This method was appropriate for assessing a small number of continuous sound sources that did not consistently overlap in time and space. However, many of the continuous sound sources described above will operate concurrently at one or more nearby locations in 2015 during Shell's planned exploration drilling program in the Chukchi Sea. It is therefore appropriate to consider the concurrent operation of numerous sound sources and the additive acoustic effects from combined sound fields when estimating areas potentially exposed to levels ≥120 dB re 1 μPa rms.

A range of potential ''activity scenarios'' was derived from a realistic operational timeline by considering the

various combinations of different continuous sound sources that may operate at the same time at one or more locations. The total number of possible activity combinations from all sources at up to four different drill sites would not be practical to assess or present in a meaningful way. Additionally, combinations such as concurrent drilling and anchor handling in close proximity do not add meaning to the analysis given the negligible contribution of drilling sounds to the total area ensonified by such a scenario. For these reasons, various combinations of similar activities were grouped into representative activity scenarios shown in Table 3. Ensonified areas for these representative activity scenarios were estimated through sound propagation modeling. Activity scenarios were modeled for different drill site combinations and, as a conservative measure, the locations corresponding to the largest ensonified area were chosen to represent the given activity scenario. In other words, by binning all potential scenarios into the most conservative representative scenario, the largest possible ensonified areas for all activities were identified for analysis. A total of nine representative activity scenarios were modeled to estimate areas exposed to continuous sounds ≥120 dB re 1 μPa rms for Shell's planned 2015 exploration drilling program in the Chukchi Sea (Table 3). A tenth scenario was included for the ZVSP activities.

TABLE 3—SOUND PROPAGATION MODELING RESULTS OF REPRESENTATIVE DRILLING RELATED ACTIVITY SCENARIOS AND ESTIMATES OF THE TOTAL AREA POTENTIALLY ENSONIFIED ABOVE THRESHOLD LEVELS AT THE BURGER PROSPECT IN THE CHUKCHI SEA, ALASKA, DURING SHELL'S PROPOSED 2015 EXPLORATION DRILLING PROGRAM

Activity scenario description	Threshold level (dB re 1 μPa rms)	Area potentially ensonified (km^2)	
		Summer	Fall
Drilling at 1 site	120	10.2	10.2
Drilling and DP vessel at 1 site	120	111.8	111.8
Drilling and DP vessel (1 site) + drilling and DP vessel (2nd site)	120	295.5	295.5
Mudline cellar construction at 2 different sites	120	575.5	575.5
Anchor handling at 1 site	120	1,534.9	1,534.9
Drilling and DP vessel at 1 site + anchor handling at 2nd site	120	1,759.2	1,759.2
Mudline cellar construction at 2 different sites + anchor handling at 3rd site	120	2,046.3	2,046.3
Two-vessel ice management	120	937.4	937.4
Four-vessel ice management	120	1,926.0	1,926.0
ZVSP at 2 different sites	160	0.0	898.0

Potential Number of ''Takes by Harassment''

This section provides estimates of the number of individuals potentially exposed to continuous sound levels ≥120 dB re 1 μPa rms from exploration drilling related activities and pulsed sound levels ≥160 dB re 1 μPa rms by ZVSP activities. The estimates are based on a consideration of the number of marine mammals that might be affected by operations in the Chukchi Sea during 2015 and the anticipated area exposed to those sound levels.

To account for different densities in different habitats, Shell has assumed that more ice is likely to be present in the area of operations during the July–August period than in the September–October period, so summer ice-margin densities have been applied to 50% of the area that may be exposed to sounds from exploration drilling activities in those months. Open water densities in the summer were applied to the remaining 50% of the area.

Less ice is likely to be present during the September–October period than in the July–August period, so fall ice-margin densities have been applied to only 20% of the area that may be exposed to sounds from exploration drilling activities in those months. Fall open-water densities were applied to the remaining 80% of the area. Since icebreaking activities would only occur within ice-margin habitat, the entire area potentially ensonified by icebreaking activities has been multiplied by the ice-margin densities in both seasons.

Estimates of the numbers of marine mammals potentially exposed to continuous sounds ≥120 dB re 1 μPa rms or pulsed sounds ≥160 dB re 1 μPa rms are based on assumptions that include upward scaling of source levels for all sound sources, no avoidance of activities/sounds by individual marine mammals, and 100% turnover of individuals in ensonified areas every 24 hours (except for bowhead whales, as discussed below). NMFS considers that these assumptions are overly conservative, especially for non-migratory species/periods and for cetaceans in particular, which are known to avoid anthropogenic activities and associated sounds at varying distances depending on the context in which activities and sounds are encountered (Koski and Miller 2009; Moore 2000; Moore *et al.* 2000; Treacy *et al.* 2006). Although we recognize these assumptions may be overly conservative, it is difficult to scale variables in a more precise fashion until recent evidence can be incorporated into newer estimation methods.

The following sections present a range of exposure estimates for bowhead whales and ringed seals. Estimates were generated based on an evaluation of the best available science and a consideration of the assumptions surrounding avoidance behavior and the frequency of turnover. In addition to demonstrating the sensitivity of exposure estimates to variable assumptions, the wide range of estimates is more informative for assessing negligible impact compared to a single estimated value with a high degree of uncertainty.

It is difficult to determine an appropriate, precise average turnover time for a population of animals in a particular area of the Chukchi Sea. Reasons for this include differences in residency time for migratory and non-migratory species, changes in distribution of food and other factors such as behavior that influence animal movement, variation among individuals of the same species, etc. Complete turnover of individual bowhead whales in the project area each 24-hour period may occur during fall migration when bowheads are traveling through the area. Even during this fall period, bowheads often move in pulses with one to several days between major pulses of whales (Miller *et al.* 2002). Gaps between groups of whales can probably be

accounted for partially by bowhead whales stopping to feed opportunistically when food is encountered. The extent of feeding by bowhead whales during fall migration across the Beaufort and Chukchi Seas varies greatly from year to year based on the location and abundance of prey (Shelden and Mocklin 2013). For example, if a turnover rate of 48 hours to account for intermittent periods of migrating and feeding individuals is assumed, then the number of bowhead whale being exposed would be reduced accordingly by 50%. Due to changes in the turnover rate across time, a conservative turnover rate of 24 hours has been selected to estimate the number of bowhead whales exposed.

During the summer, relatively few bowhead or beluga whales are present in the Chukchi Sea and in most cases, given that the operations area is not known to be a critical feeding area (Citta *et al.* 2014; Allen and Angliss 2014), whales would be likely to simply avoid the area of operations (Schick and Urban 2000; Richardson *et al.* 1995a). Similarly, during migration many whales would likely travel around the area (*i.e.,* avoid it) as it is not known to be important habitat for either bowheads or belugas during any portion of the year (Citta *et al.* 2014; Allen and Angliss 2014). There is a large body of evidence indicating that bowhead whales avoid anthropogenic activities and associated underwater sounds depending on the context in which these activities are encountered (LGL *et al.* 2014; Koski and Miller 2009; Moore 2000; Moore *et al.* 2000; Treacy *et al.* 2006). Increasing evidence suggests that proximity to an activity or sound source, coupled with an individual's behavioral state (*e.g.,* feeding vs traveling) among other contextual variables, as opposed to received sound level alone, strongly influences the degree to which an individual whale demonstrates aversion or other behaviors (reviewed in Richardson *et al.* 1995b; Gordon *et al.* 2004; Koski and Miller 2009).

Several historical studies provide valuable information on the distribution and behavior of bowhead whales relative to drilling activities in the Alaskan Arctic offshore. One is a 1986 study by Shell at Hammerhead and Corona prospects (Davis 1987) and another is an analysis by Schick and Urban (2000) of 1993 aerial survey data collected by Coastal Offshore and Pacific Corporation. Both studies suggest that few whales approached within ~18 km of an offshore drilling operation in the Beaufort Sea. Davis (1987) reported that the surfacing and respiration variables that are often used as indicators of behavioral disturbance seemed normal when whales were >18.5 km from the active drill site and as they circumnavigated the drilling operation. The Schick and Urban (2000) study found whales as close as 18.5–20.3 km in all directions around the active operation, suggesting that whales that had diverted returned to their normal migration routes shortly after passing the operation.

If bowhead whales avoid drilling and related support activities at distances of approximately 20 km in 2015, as was noted consistently by Davis (1987) and Schick and Urban (2002), this would preclude exposure of the vast majority of individuals to continuous sounds ≥120 dB re 1 μPa rms or pulsed sounds ≥160 dB re 1 μPa rms. The largest ensonified areas during Shell's 2012 exploration drilling program were produced by mudline cellar construction, ice management, and anchor handling (JASCO Applied Sciences and Greeneridge Sciences 2014). Only anchor handling is expected to result in the lateral propagation of continuous sound levels ≥120 dB re 1 μPa rms to distances of 20 km or greater from the source.

By assuming half of the individual bowhead whales would avoid areas with sounds at or above Level B thresholds, the exposure estimate would be reduced accordingly by 50% even if 100% turnover of migrating whales was still assumed to take place every 24 hours. Taking into consideration what is known from studies documenting temporary diversion around drilling activities, and conservative assumptions with regards to turnover rates, NMFS considers the conservative estimate associated with a 24 hour turnover and 50% avoidance to be the most reasonable estimate of individual exposures.

Table 4 presents the exposure estimates for Shell's proposed 2015 exploration drilling program in the Chukchi Sea. The table also summarizes abundance estimates for each species and the corresponding percent of each population that may be exposed to continuous sounds ≥120 dB re 1 μPa rms or pulsed sounds ≥160 dB re 1 μPa rms. With the exception of the exposure estimate for bowhead whales described above, estimates for all other species assumed 100% daily turnover and no avoidance of activities or ensonified areas.

TABLE 4—THE TOTAL NUMBER OF POTENTIAL EXPOSURES OF MARINE MAMMALS TO SOUND LEVELS ≥120 dB re 1 μPa rms OR ≥160 dB re 1 μPa rms DURING THE SHELL'S PROPOSED DRILLING ACTIVITIES IN THE CHUKCHI SEA, ALASKA, 2015

[Estimates are also shown as a percent of each population]

Species	Abundance	Number potential exposure	Percent estimated population
Beluga	42,968	974	2.3
Killer whale	2,084	14	0.8
Harbor porpoise	48,215	294	0.6
Bowhead whale	19,534	2,582	13.2
Fin whale	1,652	14	0.8
Gray whale	19,126	2,581	13.5
Humpback whale	20,800	14	0.1
Minke whale	810	41	5.1
Bearded seal	155,000	1,722	1.1
Ribbon seal	49,000	96	0.2
Ringed seal	300,000	50,433	16.8
Spotted seal	141,479	1,007	0.7

In summary, several precautionary methods were applied when calculating exposure estimates. These conservative methods and related considerations include:

- Application of a 1.3 dB re 1 μPa rms safety factor to the source level of each continuous sound source prior to sound propagation modeling of areas exposed to Level B thresholds;
- Binning of similar activity scenarios into a representative scenario, each of which reflected the largest exposed area for a related group of activities;
- Modeling numerous iterations of each activity scenario at different drill site locations to identify the spatial arrangement with the largest exposed area for each;
- Assuming 100 percent daily turnover of populations, which likely overestimates the number of different individuals that would be exposed, especially during non-migratory periods;
- Expected marine mammal densities assume no avoidance of areas exposed to Level B thresholds (with the exception of bowhead whale, for which 50% of individuals were assumed to demonstrate avoidance behavior); and
- Density estimates for some cetaceans include nearshore areas where more individuals would be expected to occur than in the offshore Burger Prospect area (*e.g.,* gray whales).

Additionally, post-season estimates of the number of marine mammals exposed to Level B thresholds per Shell 90-Day Reports from the 2012 IHA consistently support the methods used in Shell's IHA applications as precautionary. Most recently, exposure estimates reported by Reider *et al.* (2013) from Shell's 2012 exploration activities in the Chukchi Sea were considerably lower than those requested in Shell's 2012 IHA application. The following summary of the numbers of cetaceans and pinnipeds that may be exposed to sounds above Level B thresholds is best interpreted as conservatively high, particularly the larger value for each species that assumes a new population of individuals each day.

Analysis and Preliminary Determinations

Negligible Impact

Negligible impact is ''an impact resulting from the specified activity that cannot be reasonably expected to, and is not reasonably likely to, adversely affect the species or stock through effects on annual rates of recruitment or survival'' (50 CFR 216.103). A negligible impact finding is based on the lack of likely adverse effects on annual rates of recruitment or survival (*i.e.,* population-level effects). An estimate of the number of Level B harassment takes, alone, is not enough information on which to base an impact determination. In addition to considering estimates of the number of marine mammals that might be ''taken'' through behavioral harassment, NMFS must consider other factors, such as the likely nature of any responses (their intensity, duration, etc.), the context of any responses (critical reproductive time or location, migration, etc.), as well as the number and nature of estimated Level A harassment takes, the number of estimated mortalities, effects on habitat, and the status of the species.

No injuries or mortalities are anticipated to occur as a result of Shell's proposed Chukchi Sea exploratory drilling program, and none are proposed to be authorized. Injury, serious injury, or mortality could occur if there were a large or very large oil spill. However, as discussed previously in this document, the likelihood of a spill is extremely remote. Shell has implemented many design and operational standards to mitigate the potential for an oil spill of any size. NMFS does not propose to authorize take from an oil spill, as it is not part of the specified activity. Additionally, animals in the area are not expected to incur hearing impairment (*i.e.,* TTS or PTS) or non-auditory physiological effects. Instead, any impact that could result from Shell's activities is most likely to be behavioral harassment and is expected to be of limited duration. Although it is possible that some individuals may be exposed to sounds from drilling operations more than once, during the migratory periods it is less likely that this will occur since animals will continue to move across the Chukchi Sea towards their wintering grounds.

Bowhead and beluga whales are less likely to occur in the proposed project area in July and August, as they are found mostly in the Canadian Beaufort Sea at this time. The animals are more likely to occur later in the season (mid-September through October), as they head west towards Russia or south towards the Bering Sea. Additionally, while bowhead whale tagging studies revealed that animals occurred in the LS 193 area, a higher percentage of animals were found outside of the LS 193 area in the fall (Quakenbush *et al.,* 2010). Bowhead whales are not known to feed in areas near Shell's leases in the Chukchi Sea. The closest primary feeding ground is near Point Barrow, which is more than 150 mi (241 km) east of Shell's Burger prospect. Therefore, if bowhead whales stop to feed near Point Barrow during Shell's proposed operations, the animals would not be exposed to continuous sounds from the drilling units or icebreaker above 120 dB or to impulsive sounds from the airguns above 160 dB, as those sound levels only propagate 1.8 km, 11 km, and 11.9 km, respectively, which includes the inflation factor. Therefore, sounds from the operations would not reach the feeding grounds near Point Barrow.

Gray whales occur in the northeastern Chukchi Sea during the summer and early fall to feed. Hanna Shoals, an area northeast of Shell's proposed drill sites, is a common gray whale feeding ground. This feeding ground lies outside of the 120-dB and 160-dB ensonified areas from Shell's activities. While some individuals may swim through the area of active drilling, it is not anticipated to interfere with their feeding at Hanna Shoals or other Chukchi Sea feeding grounds. Other cetacean species are much rarer in the proposed project area. The exposure of cetaceans to sounds produced by exploratory drilling operations (*i.e.,* drilling units, ice management/icebreaking, and airgun operations) is not expected to result in more than Level B harassment.

Few seals are expected to occur in the proposed project area, as several of the species prefer more nearshore waters. Additionally, as stated previously in this document, pinnipeds appear to be more tolerant of anthropogenic sound, especially at lower received levels, than other marine mammals, such as mysticetes. Shell's proposed activities would occur at a time of year when the ice seal species found in the region are not molting, breeding, or pupping. Therefore, these important life functions would not be impacted by Shell's proposed activities. The exposure of pinnipeds to sounds produced by Shell's proposed exploratory drilling operations in the Chukchi Sea is not expected to result in more than Level B harassment of the affected species or stock.

Of the 12 marine mammal species or stocks likely to occur in the proposed drilling area, four are listed as endangered under the ESA: the bowhead, humpback, fin whales, and ringed seal. All four species are also designated as ''depleted'' under the MMPA. Despite these designations, the Bering-Chukchi-Beaufort stock of bowheads has been increasing at a rate of 3.4% annually for nearly a decade (Allen and Angliss, 2011), even in the face of ongoing industrial activity. Additionally, during the 2001 census, 121 calves were counted, which was the

highest yet recorded. The calf count provides corroborating evidence for a healthy and increasing population (Allen and Angliss, 2011). An annual increase of 4.8% was estimated for the period 1987–2003 for North Pacific fin whales. While this estimate is consistent with growth estimates for other large whale populations, it should be used with caution due to uncertainties in the initial population estimate and about population stock structure in the area (Allen and Angliss, 2011). Zeribini *et al.* (2006, cited in Allen and Angliss, 2011) noted an increase of 6.6% for the Central North Pacific stock of humpback whales in Alaska waters. Certain stocks or populations of gray and beluga whales and spotted seals are listed as endangered or are proposed for listing under the ESA; however, none of those stocks or populations occur in the proposed activity area. Ringed seals were recently listed under the ESA as threatened species, and are considered depleted under the MMPA. On July 25, 2014, the U.S. District Court for the District of Alaska vacated NMFS' rule listing the Beringia bearded seal DPS as threatened and remanded the rule to NMFS to correct the deficiencies identified in the opinion. None of the other species that may occur in the project area is listed as threatened or endangered under the ESA or designated as depleted under the MMPA. There is currently no established critical habitat in the proposed project area for any of these 12 species.

Potential impacts to marine mammal habitat were discussed previously in this document (see the ''Anticipated Effects on Habitat'' section). Although some disturbance is possible to food sources of marine mammals, the impacts are anticipated to be minor. Based on the vast size of the Arctic Ocean where feeding by marine mammals occurs versus the localized area of the drilling program, any missed feeding opportunities in the direct project area would be of little consequence, as marine mammals would have access to other feeding grounds.

Based on the analysis contained herein of the likely effects of the specified activity on marine mammals and their habitat, and taking into consideration the implementation of the proposed monitoring and mitigation measures, NMFS preliminarily finds that the total marine mammal take from Shell's proposed 2015 open-water exploration drilling program in the Chukchi Sea will have a negligible impact on the affected marine mammal species or stocks.

Small Numbers

The estimated takes proposed to be authorized represent less than 1% of the affected population or stock for 6 of the species and less than 5.5% for three additional species. The estimated takes for bowhead and gray whales and for ringed seals are 13.2%, 13.5%, and 16.8%, respectively. These estimates represent the percentage of each species or stock that could be taken by Level B behavioral harassment if each animal is taken only once.

The estimated take numbers are likely somewhat of an overestimate for several reasons. First, an application of a 1.3 dB safety factor to the source level of each continuous sound source prior to sound propagation modeling of areas exposed to Level B thresholds, which make the effective zones for take calculation larger than they likely would be. In addition, Shell applied binning of similar activity scenarios into a representative scenario, each of which reflected the largest exposed area for a related group of activities. Further, the take estimates assume 100% daily turnover of populations, which likely overestimates the number of different individuals that would be exposed, especially during non-migratory periods. In addition, the take estimates assume no avoidance of marine mammals in areas exposed to Level B thresholds (with the exception of bowhead whale, for which 50% of individuals were assumed to demonstrate avoidance behavior). Finally, density estimates for some cetaceans include nearshore areas where more individuals would be expected to occur than in the offshore Burger Prospect area (*e.g.,* gray whales).

Based on the analysis contained herein of the likely effects of the specified activity on marine mammals and their habitat, and taking into consideration the implementation of the mitigation and monitoring measures, NMFS preliminarily finds that small numbers of marine mammals will be taken relative to the populations of the affected species or stocks.

Impact on Availability of Affected Species or Stock for Taking for Subsistence Uses

Relevant Subsistence Uses

The disturbance and potential displacement of marine mammals by sounds from drilling activities are the principal concerns related to subsistence use of the area. Subsistence remains the basis for Alaska Native culture and community. Marine mammals are legally hunted in Alaskan waters by coastal Alaska Natives. In rural Alaska, subsistence activities are often central to many aspects of human existence, including patterns of family life, artistic expression, and community religious and celebratory activities. Additionally, the animals taken for subsistence provide a significant portion of the food that will last the community throughout the year. The main species that are hunted include bowhead and beluga whales, ringed, spotted, and bearded seals. The importance of each of these species varies among the communities and is largely based on availability.

The subsistence communities in the Chukchi Sea that have the potential to be impacted by Shell's offshore drilling program include Point Hope, Point Lay, Wainwright, Barrow, and possibly Kotzebue and Kivalina (however, these two communities are much farther to the south of the proposed project area).

(1) Bowhead Whales

Sound energy and general activity associated with drilling and operation of vessels and aircraft have the potential to temporarily affect the behavior of bowhead whales. Monitoring studies (Davis 1987, Brewer *et al.* 1993, Hall *et al.* 1994) have documented temporary diversions in the swim path of migrating bowheads near drill sites; however, the whales have generally been observed to resume their initial migratory route within a distance of 6–20 mi (10–32 km). Drilling noise has not been shown to block or impede migration even in narrow ice leads (Davis 1987, Richardson *et al.* 1991).

Behavioral effects on bowhead whales from sound energy produced by drilling, such as avoidance, deflection, and changes in surface/dive ratios, have generally been found to be limited to areas around the drill site that are ensonified to >160 dB re 1 μPa rms, although effects have infrequently been observed out as far as areas ensonified to 120 dB re 1 μPa rms. Ensonification by drilling to levels >120 dB re 1 μPa rms will be limited to areas within about 0.93 mi (1.5 km) of either drilling units during Shell's exploration drilling program. Shell's proposed drill sites are located more than 64 mi (103 km) from the Chukchi Sea coastline, whereas mapping of subsistence use areas indicates bowhead hunts are conducted within about 30 mi (48 km) of shore; there is therefore little or no opportunity for the proposed exploration drilling activities to affect bowhead hunts.

Vessel traffic along planned travel corridors between the drill sites and marine support facilities in Barrow and Wainwright would traverse some areas used during bowhead harvests by

Chukchi villages. Bowhead hunts by residents of Wainwright, Point Hope and Point Lay take place almost exclusively in the spring prior to the date on which Shell would commence the proposed exploration drilling program. From 1984 through 2009, all bowhead harvests by these Chukchi Sea villages occurred only between April 14 and June 24 (George and Tarpley 1986; George *et al.* 1987, 1988, 1990, 1992, 1995, 1998, 1999, 2000; Philo *et al.* 1994; Suydam *et al.* 1995, 1996, 1997, 2001, 2002, 2003, 2004, 2005, 2006, 2007, 2008, 2009, 2010), while Shell will not enter the Chukchi Sea prior to July 1. However, fall whaling by some of these Chukchi Sea villages has occurred since 2010 and is likely to occur in the future, particularly if bowhead quotas are not completely filled during the spring hunt, and fall weather is accommodating. A Wainwright whaling crew harvested the first fall bowhead for these villages in 90 years or more on October 7, 2010, and another in October of 2011 (Suydam *et al.* 2011, 2012, 2013). No bowhead whales were harvested during fall in 2012, but 3 were harvested by Wainwright in fall 2013.

Barrow crews have traditionally hunted bowheads during both spring and fall; however spring whaling by Barrow crews is normally finished before the date on which Shell operations would commence. From 1984 through 2011 whales were harvested in the spring by Barrow crews only between April 23 and June 15 (George and Tarpley 1986; George *et al.* 1987, 1988, 1990, 1992, 1995, 1998, 1999, 2000; Philo *et al.* 1994; Suydam *et al.* 1995, 1996, 1997, 2001, 2002, 2003, 2004, 2005, 2006, 2007, 2008, 2009, 2010, 2011, 2012, 2103). Fall whaling by Barrow crews does take place during the time period when vessels associated with Shell's exploration drilling program would be in the Chukchi Sea. From 1984 through 2011, whales were harvested in the fall by Barrow crews between August 31 and October 30, indicating that there is potential for vessel traffic to affect these hunts. Most fall whaling by Barrow crews, however, takes place east of Barrow along the Beaufort Sea coast, therefore providing little opportunity for vessel traffic associated with Shell's exploration drilling program to affect them. For example, Suydam *et al.* (2008) reported that in the previous 35 years, Barrow whaling crews harvested almost all their whales in the Beaufort Sea to the east of Point Barrow. Shell's mitigation measures, which include a system of Subsistence Advisors (SAs), Community Liaisons, and Com Centers, will be implemented to avoid any effects from vessel traffic on fall whaling in the Chukchi Sea by Barrow and Wainwright.

Aircraft traffic (helicopters and small fixed wing airplanes) between the drill sites and facilities in Wainwright and Barrow would also traverse these subsistence areas. Flights between the drill sites and Wainwright or other shoreline locations would take place after the date on which spring bowhead whaling out of Point Hope, Point Lay, and Wainwright is typically finished for the year; however, Wainwright has harvested bowheads in the fall since 2010 and aircraft may traverse areas sometimes utilized for these fall hunts. Aircraft overflights between the drill sites and Barrow or other shoreline locations could also occur over areas used by Barrow crews during fall whaling, but again, most fall whaling by Barrow crews takes place to the east of Barrow in the Beaufort Sea. The most commonly observed reactions of bowheads to aircraft traffic are hasty dives, but changes in orientation, dispersal, and changes in activity are sometimes noted. Such reactions could potentially affect subsistence hunts if the flights occurred near and at the same time as the hunt, but Shell has developed and proposes to implement a number of mitigation measures to avoid such impacts. These mitigation measures include minimum flight altitudes, employment of SAs, and Com Centers. Twice-daily calls are held during the exploration drilling program and are attended by operations staff, logistics staff, and SAs. Vessel movements and aircraft flights are adjusted as needed and planned in a manner that avoids potential impacts to bowhead whale hunts and other subsistence activities.

(2) Beluga Whale

Beluga whales typically do not represent a large proportion of the subsistence harvests by weight in the communities of Wainwright and Barrow, the nearest communities to Shell's planned exploration drilling program. Barrow residents hunt beluga in the spring (normally after the bowhead hunt) in leads between Point Barrow and Skull Cliffs in the Chukchi Sea, primarily in April–June and later in the summer (July–August) on both sides of the barrier island in Elson Lagoon/Beaufort Sea (Minerals Management Service [MMS] 2008), but harvest rates indicate the hunts are not frequent. Wainwright residents hunt beluga in April–June in the spring lead system, but this hunt typically occurs only if there are no bowheads in the area. Communal hunts for beluga are conducted along the coastal lagoon system later in July–August.

Belugas typically represent a much greater proportion of the subsistence harvest in Point Lay and Point Hope. Point Lay's primary beluga hunt occurs from mid-June through mid-July, but can sometimes continue into August if early success is not sufficient. Point Hope residents hunt beluga primarily in the lead system during the spring (late March to early June) bowhead hunt, but also in open water along the coastline in July and August. Belugas are harvested in coastal waters near these villages, generally within a few miles from shore. Shell's proposed drill sites are located more than 60 mi (97 km) offshore, therefore proposed exploration drilling in the Burger Prospect would have no or minimal impacts on beluga hunts. Aircraft and vessel traffic between the drill sites and support facilities in Wainwright, and aircraft traffic between the drill sites and air support facilities in Barrow, would traverse areas that are sometimes used for subsistence hunting of belugas.

Disturbance associated with vessel and aircraft traffic could therefore potentially affect beluga hunts. However, all of the beluga hunt by Barrow residents in the Chukchi Sea, and much of the hunt by Wainwright residents, would likely be completed before Shell activities would commence. Additionally, vessel and aircraft traffic associated with Shell's planned exploration drilling program will be restricted under normal conditions to designated corridors that remain onshore or proceed directly offshore thereby minimizing the amount of traffic in coastal waters where beluga hunts take place. The designated vessel and aircraft traffic corridors do not traverse areas indicated in recent mapping as utilized by Point Lay or Point Hope for beluga hunts, and avoids important beluga hunting areas in Kasegaluk Lagoon that are used by Wainwright. Shell has developed and proposes to implement a number of mitigation measures, *e.g.,* PSOs on board vessels, minimum flight altitudes, and the SA and Com Center programs, to ensure that there is no impact on the availability of the beluga whale as a subsistence resource.

(3) Pinnipeds

Seals are an important subsistence resource and ringed seals make up the bulk of the seal harvest. Most ringed and bearded seals are harvested in the winter or in the spring before Shell's exploration drilling program would

commence, but some harvest continues during open water and could possibly be affected by Shell's planned activities. Spotted seals are also harvested during the summer. Most seals are harvested in coastal waters, with available maps of recent and past subsistence use areas indicating seal harvests have occurred only within 30–40 mi (48–64 km) of the coastline. Shell's planned drill sites are located more than 64 statute mi (103 km) offshore, so activities within the Burger Prospect, such as drilling, would have no impact on subsistence hunting for seals. Helicopter traffic between land and the offshore exploration drilling operations could potentially disturb seals and, therefore, subsistence hunts for seals, but any such effects would be minor and temporary lasting only minutes after the flight has passed due to the small number of flights and the altitude at which they typically fly, and the fact that most seal hunting is done during the winter and spring when the exploration drilling program is not operational. Mitigation measures to be implemented by Shell include minimum flight altitudes, employment of subsistence advisors in the villages, and operation of Com Centers.

Potential Impacts to Subsistence Uses

NMFS has defined ''unmitigable adverse impact'' in 50 CFR 216.103 as: ''an impact resulting from the specified activity: (1) That is likely to reduce the availability of the species to a level insufficient for a harvest to meet subsistence needs by: (i) Causing the marine mammals to abandon or avoid hunting areas; (ii) Directly displacing subsistence users; or (iii) Placing physical barriers between the marine mammals and the subsistence hunters; and (2) That cannot be sufficiently mitigated by other measures to increase the availability of marine mammals to allow subsistence needs to be met.

Noise and general activity during Shell's proposed drilling program have the potential to impact marine mammals hunted by Native Alaskans. In the case of cetaceans, the most common reaction to anthropogenic sounds (as noted previously in this document) is avoidance of the ensonified area. In the case of bowhead whales, this often means that the animals divert from their normal migratory path by several kilometers. Helicopter activity also has the potential to disturb cetaceans and pinnipeds by causing them to vacate the area. Additionally, general vessel presence in the vicinity of traditional hunting areas could negatively impact a hunt. Native knowledge indicates that bowhead whales become increasingly ''skittish'' in the presence of seismic noise. Whales are more wary around the hunters and tend to expose a much smaller portion of their back when surfacing (which makes harvesting more difficult). Additionally, natives report that bowheads exhibit angry behaviors in the presence of seismic activity, such as tail-slapping, which translate to danger for nearby subsistence harvesters. Only limited seismic activity is planned in the vicinity of the drill units in 2015.

Plan of Cooperation or Measures To Minimize Impacts to Subsistence Hunts

Regulations at 50 CFR 216.104(a)(12) require IHA applicants for activities that take place in Arctic waters to provide a Plan of Cooperation (POC) or information that identifies what measures have been taken and/or will be taken to minimize adverse effects on the availability of marine mammals for subsistence purposes.

Shell has prepared and will implement a POC pursuant to BOEM Lease Sale Stipulation No. 5, which requires that all exploration operations be conducted in a manner that prevents unreasonable conflicts between oil and gas activities and the subsistence activities and resources of residents of the North Slope. This stipulation also requires adherence to USFWS and NMFS regulations, which require an operator to implement a POC to mitigate the potential for conflicts between the proposed activity and traditional subsistence activities (50 CFR 18.124(c)(4) and 50 CFR 216.104(a)(12)). A POC was prepared and submitted with the initial Chukchi Sea EP that was submitted to BOEM in May 2009, and approved on 7 December 2009. Subsequent POC Addendums were submitted in May 2011 with a revised Chukchi Sea EP and the IHA application for the 2012 exploration drilling program. For this IHA application, Shell has again updated the POC Addendum. The POC Addendum has been updated to include documentation of meetings undertaken to specifically gather feedback from stakeholder communities on Shell's implementation of the Chukchi Sea exploration drilling program during 2012, plus inform and obtain their input regarding the continuation of the program with the addition of a second drilling unit, additional vessels and aircraft.

The POC Addendum identifies the measures that Shell has developed in consultation with North Slope subsistence communities to minimize any adverse effects on the availability of marine mammals for subsistence uses and will implement during its planned Chukchi Sea exploration drilling program for the summer of 2015. In addition, the POC Addendum details Shell's communications and consultations with local subsistence communities concerning its planned exploration drilling program, potential conflicts with subsistence activities, and means of resolving any such conflicts (50 CFR 18.128(d) and 50 CFR 216.104(a) (12) (i), (ii), (iv)). Shell has documented its contacts with the North Slope subsistence communities, as well as the substance of its communications with subsistence stakeholder groups.

The POC Addendum report (Attachment C of the IHA application) provides a list of public meetings attended by Shell since 2012 to develop the POC and the POC Addendum. The POC Addendum is updated through July 2015, and includes sign-in sheets and presentation materials used at the POC meetings held in 2014 to present the 2015 Chukchi Sea exploration drilling information. Comment analysis tables for numerous meetings held during 2014 summarize feedback from the communities on Shell's 2015 exploration drilling and planned activities beginning in the summer of 2015.

The following mitigation measures, plans and programs, are integral to this POC and were developed during Shell's consultation with potentially affected subsistence groups and communities. These measures, plans, and programs to monitor and mitigate potential impacts to subsistence users and resources will be implemented by Shell during its exploration drilling operations in the Chukchi Sea. The mitigation measures Shell has adopted and will implement during its Chukchi Sea exploration drilling operations are listed and discussed below. These mitigation measures reflect Shell's experience conducting exploration activities in the Alaska Arctic OCS since the 1980s and its ongoing efforts to engage with local subsistence communities to better understand their concerns and develop appropriate and effective mitigation measures to address those concerns. This most recent version of Shell's planned mitigation measures was presented to community leaders and subsistence user groups starting in January 2009 and has evolved since in response to information learned during the consultation process.

To minimize any cultural or resource impacts from its exploration operations, Shell will continue to implement the following additional measures to ensure coordination of its activities with local subsistence users to minimize further the risk of impacting marine mammals

and interfering with the subsistence hunt:

(1) Communications

• Shell has developed a Communication Plan and will implement this plan before initiating exploration drilling operations to coordinate activities with local subsistence users, as well as Village Whaling Captains' Associations, to minimize the risk of interfering with subsistence hunting activities, and keep current as to the timing and status of the bowhead whale hunt and other subsistence hunts. The Communication Plan includes procedures for coordination with Com Centers to be located in coastal villages along the Chukchi Sea during Shell's proposed exploration drilling activities.

• Shell will employ local SAs from the Chukchi Sea villages that are potentially impacted by Shell's exploration drilling activities. The SAs will provide consultation and guidance regarding the whale migration and subsistence activities. There will be one per village, working approximately 8-hr per day and 40-hr per week during each drilling season. The subsistence advisor will use local knowledge (Traditional Knowledge) to gather data on subsistence lifestyle within the community and provide advice on ways to minimize and mitigate potential negative impacts to subsistence resources during each drilling season. Responsibilities include reporting any subsistence concerns or conflicts; coordinating with subsistence users; reporting subsistence-related comments, concerns, and information; coordinating with the Com and Call Center personnel; and advising how to avoid subsistence conflicts.

(2) Aircraft Travel

• Aircraft over land or sea shall not operate below 1,500 ft. (457 m) altitude unless engaged in marine mammal monitoring, approaching, landing or taking off, in poor weather (fog or low ceilings), or in an emergency situation.

• Aircraft engaged in marine mammal monitoring shall not operate below 1,500 ft. (457 m) in areas of active whaling; such areas to be identified through communications with the Com Centers.

(3) Vessel Travel

• The drilling unit(s) and support vessels will enter the Chukchi Sea through the Bering Strait on or after 1 July, minimizing effects on marine mammals and birds that frequent open leads and minimizing effects on spring and early summer bowhead whale hunting.

• The transit route for the drilling unit(s) and drilling support fleets will avoid known fragile ecosystems and the Ledyard Bay Critical Habitat Unit (LBCHU), and will include coordination through Com Centers.

• PSOs will be aboard the drilling unit(s) and transiting support vessels.

• When within 900 ft (274 m) of whales, vessels will reduce speed, avoid separating members from a group and avoid multiple changes of direction.

• Vessel speed will be reduced during inclement weather conditions in order to avoid collisions with marine mammals.

• Shell will communicate and coordinate with the Com Centers regarding all vessel transit.

(4) ZVSP

• Airgun arrays will be ramped up slowly during ZVSPs to warn cetaceans and pinnipeds in the vicinity of the airguns and provide time for them to leave the area and avoid potential injury or impairment of their hearing abilities. Ramp ups from a cold start when no airguns have been firing will begin by firing a single airgun in the array. A ramp up to the required airgun array volume will not begin until there has been a minimum of 30 min of observation of the safety zone by PSOs to assure that no marine mammals are present. The safety zone is the extent of the 180 dB radius for cetaceans and 190 dB re 1 μPa rms for pinnipeds. The entire safety zone must be visible during the 30-min lead-into an array ramp up. If a marine mammal(s) is sighted within the safety zone during the 30-min watch prior to ramp up, ramp up will be delayed until the marine mammal(s) is sighted outside of the safety zone or the animal(s) is not sighted for at least 15–30 min: 15 min for small odontocetes and pinnipeds, or 30 min for baleen whales and large odontocetes.

(5) Ice Management

• Real time ice and weather forecasting will be from SIWAC.

(6) Oil Spill Response

• Pre-booming is required for all fuel transfers between vessels.

The potentially affected subsistence communities, identified in BOEM Lease Sale, that were consulted regarding Shell's exploration drilling activities include: Barrow, Wainwright, Point Lay, Point Hope, Kotzebue, and Deering. Additionally, Shell has met with subsistence groups including the Alaska Eskimo Whaling Commission (AEWC), Inupiat Community of the Arctic Slope (ICAS), and the Native Village of Barrow, and presented information regarding the proposed activities to the North Slope Borough (NSB) and Northwest Arctic Borough (NWAB) Assemblies, and NSB and NWAB Planning Commissions during 2014. In July 2014, Shell conducted POC meetings in Chukchi villages to present information on the proposed 2015 drilling season. Shell has supplemented the IHA application with a POC addendum to incorporate these POC visits. Throughout 2014 and 2015 Shell anticipates continued engagement with the marine mammal commissions and committees active in the subsistence harvests and marine mammal research.

Shell continues to meet each year with the commissioners and committee heads of AEWC, Alaska Beluga Whale Committee, the Nanuuq Commission, Eskimo Walrus Commission, and Ice Seal Committee jointly in co-management meetings. Shell held individual consultation meetings with representatives from the various marine mammal commissions to discuss the planned Chukchi exploration drilling program. Following the drilling season, Shell will have a post-season co-management meeting with the commissioners and committee heads to discuss results of mitigation measures and outcomes of the preceding season. The goal of the post-season meeting is to build upon the knowledge base, discuss successful or unsuccessful outcomes of mitigation measures, and possibly refine plans or mitigation measures if necessary.

Shell attended the 2012–2014 Conflict Avoidance Agreement (CAA) negotiation meetings in support of exploration drilling, offshore surveys, and future drilling plans. Shell will do the same for the upcoming 2015 exploration drilling program. Shell states that it is committed to a CAA process and will make a good-faith effort to negotiate an agreement every year it has planned activities.

Unmitigable Adverse Impact Analysis and Preliminary Determination

NMFS considers that these mitigation measures including measures to reduce overall impacts to marine mammals in the vicinity of the proposed exploration drilling area and measures to mitigate any potential adverse effects on subsistence use of marine mammals are adequate to ensure subsistence use of marine mammals in the vicinity of Shell's proposed exploration drilling program in the Chukchi Sea.

Based on the description of the specified activity, the measures described to minimize adverse effects

on the availability of marine mammals for subsistence purposes, and the proposed mitigation and monitoring measures, NMFS has preliminarily determined that there will not be an unmitigable adverse impact on subsistence uses from Shell's proposed activities.

Endangered Species Act (ESA)

There are four marine mammal species listed as endangered under the ESA with confirmed or possible occurrence in the proposed project area: The bowhead, humpback, and fin whales, and ringed seals. NMFS' Permits and Conservation Division will initiate consultation with NMFS' Endangered Species Division under section 7 of the ESA on the issuance of an IHA to Shell under section 101(a)(5)(D) of the MMPA for this activity. Consultation will be concluded prior to a determination on the issuance of an IHA.

National Environmental Policy Act (NEPA)

NMFS is preparing an Environmental Assessment (EA), pursuant to NEPA, to determine whether the issuance of an IHA to Shell for its 2015 drilling activities may have a significant impact on the human environment. NMFS has released a draft of the EA for public comment along with this proposed IHA.

Proposed Authorization

As a result of these preliminary determinations, NMFS proposes to issue an IHA to Shell for conducting an exploration drilling program in the Chukchi Sea during the 2015 Arctic open-water season, provided the previously mentioned mitigation, monitoring, and reporting requirements are incorporated. The proposed IHA language is provided next.

This section contains a draft of the IHA itself. The wording contained in this section is proposed for inclusion in the IHA (if issued).

(1) This Authorization is valid from July 1, 2015, through October 31, 2015.

(2) This Authorization is valid only for activities associated with Shell's 2015 Chukchi Sea exploration drilling program. The specific areas where Shell's exploration drilling program will be conducted are within Shell lease holdings in the Outer Continental Shelf Lease Sale 193 area in the Chukchi Sea.

(3)(a) The incidental taking of marine mammals, by Level B harassment only, is limited to the following species: bowhead whale; gray whale; beluga whale; minke whale; fin whale; humpback whale; killer whale; harbor porpoise; ringed seal; bearded seal; spotted seal; and ribbon seal.

(3)(b) The taking by injury (Level A harassment), serious injury, or death of any of the species listed in Condition 3(a) or the taking of any kind of any other species of marine mammal is prohibited and may result in the modification, suspension or revocation of this Authorization.

(4) The authorization for taking by harassment is limited to the following acoustic sources (or sources with comparable frequency and intensity) and from the following activities:

(a) a three-airgun array consisting of three 150 in^3 airguns, or a two-airgun array consisting of two 250 in^3 airguns;

(b) continuous drilling unit and associated dynamic positioning sounds during active drilling operations;

(c) vessel sounds generated during active ice management or icebreaking;

(d) mudline cellar construction during the exploration drilling program;

(e) anchor handling during the exploration drilling program, and

(f) aircraft associated with marine mammal monitoring and support operations,

(5) The taking of any marine mammal in a manner prohibited under this Authorization must be reported immediately to the Chief, Permits and Conservation Division, Office of Protected Resources, NMFS or her designee.

(6) The holder of this Authorization must notify the Chief of the Permits and Conservation Division, Office of Protected Resources, at least 48 hours prior to the start of exploration drilling activities (unless constrained by the date of issuance of this Authorization in which case notification shall be made as soon as possible).

(7) General Mitigation and Monitoring Requirements: The Holder of this Authorization is required to implement the following mitigation and monitoring requirements when conducting the specified activities to achieve the least practicable impact on affected marine mammal species or stocks:

(a) All vessels shall reduce speed to a maximum of 5 knots when within 900 ft (300 yards/274 m) of whales. Those vessels capable of steering around such groups should do so. Vessels may not be operated in such a way as to separate members of a group of whales from other members of the group;

(b) Avoid multiple changes in direction and speed when within 900 ft (300 yards/274 m) of whales;

(c) When weather conditions require, such as when visibility drops, support vessels must reduce speed and change direction, as necessary (and as operationally practicable), to avoid the likelihood of injury to whales;

(d) Aircraft shall not fly within 1,000 ft (305 m) of marine mammals or below 1,500 ft (457 m) altitude (except during takeoffs, landings, or in emergency situations) while over land or sea;

(e) Utilize two, NMFS-approved, vessel-based Protected Species Observers (PSOs) (except during meal times and restroom breaks, when at least one PSO shall be on watch) to visually watch for and monitor marine mammals near the drilling units or support vessel during active drilling or airgun operations (from nautical twilight-dawn to nautical twilight-dusk) and before and during start-ups of airguns day or night. The vessels' crew shall also assist in detecting marine mammals, when practicable. PSOs shall have access to reticle binoculars (7x50 Fujinon), big-eye binoculars (25x150), and night vision devices. PSO shifts shall last no longer than 4 consecutive hours and shall not be on watch more than 12 hours in a 24-hour period. PSOs shall also make observations during daytime periods when active operations are not being conducted for comparison of animal abundance and behavior, when feasible;

(f) When a mammal sighting is made, the following information about the sighting will be recorded by the PSOs:

(i) Species, group size, age/size/sex categories (if determinable), behavior when first sighted and after initial sighting, heading (if consistent), bearing and distance from the PSO, apparent reaction to activities (*e.g.,* none, avoidance, approach, paralleling, etc.), closest point of approach, and behavioral pace;

(ii) Time, location, speed, activity of the vessel, sea state, ice cover, visibility, and sun glare; and

(iii) The positions of other vessel(s) in the vicinity of the PSO location.

(iv) The ship's position, speed of support vessels, and water temperature, water depth, sea state, ice cover, visibility, and sun glare will also be recorded at the start and end of each observation watch, every 30 minutes during a watch, and whenever there is a change in any of those variables.

(g) PSO teams shall consist of Alaska Native observers and experienced field biologists. An experienced field crew leader will supervise the PSO team onboard the survey vessel. New observers shall be paired with experienced observers to avoid situations where lack of experience impairs the quality of observations;

(h) PSOs will complete a two or three-day training session on marine mammal monitoring, to be conducted shortly

before the anticipated start of the 2015 open-water season. The training session(s) will be conducted by qualified marine mammalogists with extensive crew-leader experience during previous vessel-based monitoring programs. A marine mammal observers' handbook, adapted for the specifics of the planned program, will be reviewed as part of the training;

(i) PSO training that is conducted prior to the start of the survey activities shall be conducted with both Alaska Native PSOs and biologist PSOs being trained at the same time in the same room. There shall not be separate training courses for the different PSOs; and

(j) PSOs shall be trained using visual aids (*e.g.,* videos, photos), to help them identify the species that they are likely to encounter in the conditions under which the animals will likely be seen.

(8) ZVSP Mitigation and Monitoring Measures: The Holder of this Authorization is required to implement the following mitigation and monitoring requirements when conducting the specified activities to achieve the least practicable impact on affected marine mammal species or stocks:

(a) PSOs shall conduct monitoring while the airgun array is being deployed or recovered from the water;

(b) PSOs shall visually observe the entire extent of the exclusion zone (EZ) (180 dB re 1 μPa [rms] for cetaceans and 190 dB re 1 μPa [rms] for pinnipeds) using NMFS-qualified PSOs, for at least 30 minutes (min) prior to starting the airgun array (day or night). If the PSO finds a marine mammal within the EZ, Shell must delay the seismic survey until the marine mammal(s) has left the area. If the PSO sees a marine mammal that surfaces then dives below the surface, the PSO shall continue the watch for 30 min. If the PSO sees no marine mammals during that time, they may assume that the animal has moved beyond the EZ. If for any reason the entire radius cannot be seen for the entire 30 min period (*i.e.,* rough seas, fog, darkness), or if marine mammals are near, approaching, or in the EZ, the airguns may not be ramped-up. If one airgun is already running at a source level of at least 180 dB re 1 μPa (rms), the Holder of this Authorization may start the second airgun without observing the entire EZ for 30 min prior, provided no marine mammals are known to be near the EZ;

(c) Establish and monitor a 180 dB re 1 μPa (rms) and a 190 dB re 1 μPa (rms) EZ for marine mammals before the airgun array is in operation. Before the field verification tests, described in condition 10(c)(i) below, the 180 dB radius is temporarily designated to be 1.28 km and the 190 dB radius is temporarily designated to be 255 m;

(d) Implement a ''ramp-up'' procedure when starting up at the beginning of seismic operations. During ramp-up, the PSOs shall monitor the EZ, and if marine mammals are sighted, a power-down, or shut-down shall be implemented as though the full array were operational. Therefore, initiation of ramp-up procedures from shut-down requires that the PSOs be able to view the full EZ;

(e) Power-down or shutdown the airgun(s) if a marine mammal is detected within, approaches, or enters the relevant EZ. A shutdown means all operating airguns are shutdown (*i.e.,* turned off). A power-down means reducing the number of operating airguns to a single operating airgun, which reduces the EZ to the degree that the animal(s) is no longer in or about to enter it;

(f) Following a power-down, if the marine mammal approaches the smaller designated EZ, the airguns must then be completely shutdown. Airgun activity shall not resume until the PSO has visually observed the marine mammal(s) exiting the EZ and is not likely to return, or has not been seen within the EZ for 15 min for species with shorter dive durations (small odontocetes and pinnipeds) or 30 min for species with longer dive durations (mysticetes);

(g) Following a power-down or shut-down and subsequent animal departure, airgun operations may resume following ramp-up procedures described in Condition 8(d) above;

(h) ZVSP surveys may continue into night and low-light hours if such segment(s) of the survey is initiated when the entire relevant EZs are visible and can be effectively monitored; and

(i) No initiation of airgun array operations is permitted from a shutdown position at night or during low-light hours (such as in dense fog or heavy rain) when the entire relevant EZ cannot be effectively monitored by the PSO(s) on duty.

(9) Subsistence Mitigation Measures: To ensure no unmitigable adverse impact on subsistence uses of marine mammals, the Holder of this Authorization shall:

(b) Not enter the Bering Strait prior to July 1 to minimize effects on spring and early summer whaling;

(c) Implement the Communication Plan before initiating exploration drilling operations to coordinate activities with local subsistence users and Village Whaling Associations in order to minimize the risk of interfering with subsistence hunting activities;

(d) Participate in the Com Center Program. The Com Centers shall operate 24 hours/day during the 2015 bowhead whale hunt;

(e) Employ local Subsistence Advisors (SAs) from the Chukchi Sea villages to provide consultation and guidance regarding the whale migration and subsistence hunt;

(f) Not operate aircraft below 1,500 ft (457 m) unless engaged in marine mammal monitoring, approaching, landing or taking off, or unless engaged in providing assistance to a whaler or in poor weather (low ceilings) or any other emergency situations;

(10) Monitoring Measures:

(a) Vessel-based Monitoring: The Holder of this Authorization shall designate biologically-trained PSOs to be aboard the drilling units and all transiting support vessels. The PSOs are required to monitor for marine mammals in order to implement the mitigation measures described in conditions 7 and 8 above;

(b) Aerial Survey Monitoring: The Holder of this Authorization must implement the aerial survey monitoring program detailed in its Marine Mammal Mitigation and Monitoring Plan (4MP); and

(c) Acoustic Monitoring:

(i) Field Source Verification: the Holder of this Authorization is required to conduct sound source verification tests for the drilling units, support vessels, and the airgun array not measured in previous seasons. Sound source verification shall consist of distances where broadside and endfire directions at which broadband received levels reach 190, 180, 170, 160, and 120 dB re 1 μPa (rms) for all active acoustic sources that may be used during the activities. For the airgun array, the configurations shall include at least the full array and the operation of a single source that will be used during power downs. The test results for the airgun array shall be reported to NMFS within 5 days of completing the test.

A report of the acoustic verification measurements of the ZVSP airgun array will be submitted within 120 hr after collection and analysis of those measurements once that part of the program is implemented. The ZVSP acoustic array report will specify the distances of the exclusion zones that were adopted for the ZVSP program. Prior to completion of these measurements, Shell will use the radii in condition 8(c).

(ii) Acoustic ''Net'' Array: Deploy acoustic recorders widely across the U.S. Chukchi Sea and on the prospect in order to gain information on the distribution of marine mammals in the

region. This program must be implemented as detailed in the 4MP.

(11) Reporting Requirements: The Holder of this Authorization is required to:

(a) Within 5 days of completing the sound source verification tests for the airguns, the Holder shall submit a preliminary report of the results to NMFS. A report on the results of the acoustic verification measurements of the drilling units and support vessels, not recorded in previous seasons, will be reported in the 90-day report. The report should report down to the 120-dB radius in 10-dB increments;

(b) Submit a draft report on all activities and monitoring results to the Office of Protected Resources, NMFS, within 90 days of the completion of the exploration drilling program. This report must contain and summarize the following information:

(i) Summaries of monitoring effort (*e.g.,* total hours, total distances, and marine mammal distribution through the study period, accounting for sea state and other factors affecting visibility and detectability of marine mammals);

(ii) Sound source verification results for drilling units and vessels recorded in 2015;

(iii) Analyses of the effects of various factors influencing detectability of marine mammals (*e.g.,* sea state, number of observers, and fog/glare);

(iv) Species composition, occurrence, and distribution of marine mammal sightings, including date, water depth, numbers, age/size/gender categories (if determinable), group sizes, and ice cover;

(v) Sighting rates of marine mammals during periods with and without exploration drilling activities (and other variables that could affect detectability), such as: (A) Initial sighting distances versus drilling state; (B) closest point of approach versus drilling state; (C) observed behaviors and types of movements versus drilling state; (D) numbers of sightings/individuals seen versus drilling state; (E) distribution around the survey vessel versus drilling state; and (F) estimates of take by harassment;

(v) Reported results from all hypothesis tests should include estimates of the associated statistical power when practicable;

(vi) Estimate and report uncertainty in all take estimates. Uncertainty could be expressed by the presentation of confidence limits, a minimum-maximum, posterior probability distribution, etc.; the exact approach will be selected based on the sampling method and data available;

(vii) The report should clearly compare authorized takes to the level of actual estimated takes;

(viii) If, changes are made to the monitoring program after the independent monitoring plan peer review, those changes must be detailed in the report.

(c) The draft report will be subject to review and comment by NMFS. Any recommendations made by NMFS must be addressed in the final report prior to acceptance by NMFS. The draft report will be considered the final report for this activity under this Authorization if NMFS has not provided comments and recommendations within 90 days of receipt of the draft report.

(d) A draft comprehensive report describing the aerial, acoustic, and vessel-based monitoring programs will be prepared and submitted within 240 days of the date of this Authorization. The comprehensive report will describe the methods, results, conclusions and limitations of each of the individual data sets in detail. The report will also integrate (to the extent possible) the studies into a broad based assessment of all industry activities and their impacts on marine mammals in the Arctic Ocean during 2015.

(e) The draft comprehensive report will be subject to review and comment by NMFS, the Alaska Eskimo Whaling Commission, and the North Slope Borough Department of Wildlife Management. The draft comprehensive report will be accepted by NMFS as the final comprehensive report upon incorporation of comments and recommendations.

(12)(a) In the unanticipated event that the drilling program operation clearly causes the take of a marine mammal in a manner prohibited by this Authorization, such as an injury (Level A harassment), serious injury or mortality (*e.g.,* ship-strike, gear interaction, and/or entanglement), Shell shall immediately cease operations and immediately report the incident to the Chief of the Permits and Conservation Division, Office of Protected Resources, NMFS, by phone or email and the Alaska Regional Stranding Coordinators. The report must include the following information: (i) Time, date, and location (latitude/longitude) of the incident; (ii) the name and type of vessel involved; (iii) the vessel's speed during and leading up to the incident; (iv) description of the incident; (v) status of all sound source use in the 24 hours preceding the incident; (vi) water depth; (vii) environmental conditions (*e.g.,* wind speed and direction, Beaufort sea state, cloud cover, and visibility); (viii) description of marine mammal observations in the 24 hours preceding the incident; (ix) species identification or description of the animal(s) involved; (x) the fate of the animal(s); (xi) and photographs or video footage of the animal (if equipment is available).

Activities shall not resume until NMFS is able to review the circumstances of the prohibited take. NMFS shall work with Shell to determine what is necessary to minimize the likelihood of further prohibited take and ensure MMPA compliance. Shell may not resume their activities until notified by NMFS via letter, email, or telephone.

(b) In the event that Shell discovers an injured or dead marine mammal, and the lead PSO determines that the cause of the injury or death is unknown and the death is relatively recent (*i.e.,* in less than a moderate state of decomposition as described in the next paragraph), Shell will immediately report the incident to the Chief of the Permits and Conservation Division, Office of Protected Resources, NMFS, by phone or email and the NMFS Alaska Stranding Hotline and/or by email to the Alaska Regional Stranding Coordinators. The report must include the same information identified in Condition 12(a) above. Activities may continue while NMFS reviews the circumstances of the incident. NMFS will work with Shell to determine whether modifications in the activities are appropriate.

(c) In the event that Shell discovers an injured or dead marine mammal, and the lead PSO determines that the injury or death is not associated with or related to the activities authorized in Condition 2 of this Authorization (*e.g.,* previously wounded animal, carcass with moderate to advanced decomposition, or scavenger damage), Shell shall report the incident to the Chief of the Permits and Conservation Division, Office of Protected Resources, NMFS, by phone or email and the NMFS Alaska Stranding Hotline and/or by email to the Alaska Regional Stranding Coordinators, within 24 hours of the discovery. Shell shall provide photographs or video footage (if available) or other documentation of the stranded animal sighting to NMFS and the Marine Mammal Stranding Network. Activities may continue while NMFS reviews the circumstances of the incident.

(13) Activities related to the monitoring described in this Authorization do not require a separate scientific research permit issued under section 104 of the Marine Mammal Protection Act.

(14) The Plan of Cooperation outlining the steps that will be taken to

cooperate and communicate with the native communities to ensure the availability of marine mammals for subsistence uses must be implemented.

(15) Shell is required to comply with the Terms and Conditions of the Incidental Take Statement (ITS) corresponding to NMFS's Biological Opinion issued to NMFS's Office of Protected Resources.

(16) A copy of this Authorization and the ITS must be in the possession of all contractors and PSOs operating under the authority of this Incidental Harassment Authorization.

(17) Penalties and Permit Sanctions: Any person who violates any provision of this Incidental Harassment Authorization is subject to civil and criminal penalties, permit sanctions, and forfeiture as authorized under the MMPA.

(18) This Authorization may be modified, suspended or withdrawn if the Holder fails to abide by the conditions prescribed herein or if the authorized taking is having more than a negligible impact on the species or stock of affected marine mammals, or if there is an unmitigable adverse impact on the availability of such species or stocks for subsistence uses.

Request for Public Comment

As noted above, NMFS requests comment on our analysis, the draft authorization, and any other aspect of the Notice of Proposed IHA for Shell's 2015 Chukchi Sea exploratory drilling program. Please include, with your comments, any supporting data or literature citations to help inform our final decision on Shell's request for an MMPA authorization.

Dated: February 26, 2015.

Donna S. Wieting,

Director, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. 2015–04427 Filed 3–3–15; 8:45 am]

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Part III

Department of Defense

32 CFR Part 61

Family Advocacy Program (FAP); Final Rule

DEPARTMENT OF DEFENSE

Office of the Secretary

32 CFR Part 61

[Docket ID: DOD–2013–OS–0092]

RIN 0790–AI49

Family Advocacy Program (FAP)

AGENCY: Under Secretary of Defense for Personnel and Readiness, DoD.

ACTION: Interim final rule.

SUMMARY: This interim final rule establishes policy and assigns responsibilities for addressing child abuse and domestic abuse through the FAP. The Family Advocacy Program (FAP): Guidelines for Clinical Intervention for Persons Reported as Domestic Abusers provides clinical guidelines for the FAP assessment, clinical rehabilitative treatment, and ongoing monitoring and risk management of individuals who have reported to FAP by means of an unrestricted report for domestic abuse against current or former spouses, or intimate partners. This rule is being published as an interim final rule to broaden the scope of FAP services to include former and current same-sex spouses in a legal union recognized as a marriage by a state or other jurisdiction. This rule extends benefits to same-sex spouses of Military Service members and DoD civilians following the June 26, 2013 U.S. Supreme Court decision to declare Section Three of the Defense of Marriage Act unconstitutional.

DATES: This rule is effective March 4, 2015. Comments must be received by May 4, 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: Mary Campise, 571–372–5346.

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 Final Rule Justification

This interim final rule represents a significant update to standards that were originally published in 1992 and are long overdue. This update represents a major revision to address significant gaps in policy and procedures. Research supported clinical practices and victim advocacy services have changed substantially in the last 20 years. Delaying publication potentially poses a serious and continued risk to our most vulnerable families.

The interim final rule emphasizes the essential role FAP must fulfill in the safety and risk management of child abuse/neglect and domestic abuse incidents. This focus on safety and risk management is a significant shift in policy and procedures. Highlights include: (1) Requires the Services to develop and monitor standardized risk management plans to ensure that the safety needs of adult victims of domestic abuse and child victims of child abuse/neglect are addressed immediately; (2) establishes standards for domestic abuse victim advocates who perform essential safety planning functions; (3) establishes standards for the involvement of military family advocacy services in child abuse and neglect cases that are managed by the local or State courts, or child welfare or protection agencies. This ensures that the military family advocacy programs and the civilian child protection agencies work closely on court-managed cases involving military affiliated children. Targeted focus has been applied to families with children 0–3 who are most vulnerable to the effects of family disruption; (4) institutes research based standard decision trees in the assessment of child abuse and neglect and domestic abuse referrals. This standardization ensures that all incidents of abuse and neglect are assessed consistently and with high standards of care across all geographic locations; (5) requires the establishment of internal and external duress systems for personnel who are responding to potentially high-risk-for-violence incidents; (6) establishes standards for early intervention with new parents and families who are at high risk for child abuse/neglect; and (7) provides unprecedented and essential policy and guidance on the response, assessment, and treatment of military affiliated offenders of domestic abuse.

Executive Summary

I. Purpose of the Regulatory Action

DoD is committed to preventing child abuse and neglect and domestic abuse against current or former spouses and intimate partners by ensuring the Family Advocacy Program (FAP) provides a full range of prevention and intervention services to all eligible beneficiaries. This rule will provide guidance to military families if child abuse and neglect or domestic abuse occurs. This rule updates previous policy statements and more completely annotates references and source documents. This rule also adds new review, reporting and information protection responsibilities along with new procedures addressing those tasks.

Description of Authority Citation:

5 U.S.C. 552a; Privacy Act establishes the regulation of records maintained on individuals by any executive department, military department, Government corporation, Government controlled corporation, or other establishment in the executive branch of the Government.

10 U.S.C. 1058(b) Establishes the responsibilities of military law enforcement officials at scenes of domestic violence

10 U.S.C. 1783 establishes guidance on family members serving on advisory committees

10 U.S.C. 1787 directs the Secretary of Defense to request each State to provide for the reporting to the Secretary of any report the State receives of known or suspected instances of child abuse and neglect in which the person having care of the child is a member of the armed forces (or the spouse of the member).

10 U.S.C. 1794 directs the Secretary of Defense to maintain a special task force to respond to allegations of widespread child abuse at a military installation. The task force shall be composed of personnel from appropriate disciplines, including, where appropriate, medicine, psychology, and childhood development. In the case of such allegations, the task force shall provide assistance to the commander of the installation, and to parents at the installation, in helping them to deal with such allegations.

Public Law 103–337, Section 534(d)(2) establishes victim advocacy services for victims of family violence through the family advocacy programs of the military departments.

II. Summary of the Major Provisions of the Regulatory Action in Question

This regulatory action:

a. Establishes policy and assigns responsibilities for addressing child abuse and domestic abuse through the FAP.

b. Establishes guidance about FAP research and evaluation and participates in other federal research and evaluation projects relevant to the assessment, treatment, and risk management of domestic abuse.

c. Identifies tools to assess risk of recurrence of domestic abuse.

d. Establishes lethality risk assessment guidelines.

e. Extends benefits to same-sex spouses of Military Service members and DoD civilians.

III. Costs and Benefits

Providing the full spectrum of Family Advocacy Program services at military installations with command sponsored families as described in this Rule costs approximately 180 million annually. This cost represents the labor costs to the Department to provide these services. Without these installation-centric services, the burden would be shifted to the civilian sector. Service members and their families will return to the civilian community after their service to our country is complete. Child abuse and domestic abuse prevention and intervention services targeting at-risk military families while on active duty are designed and delivered to reduce the risk of re-occurrence of family violence after this transition is complete.

Benefit to the Department and to the public is to provide an effective and well-coordinated community response to reports of child abuse and neglect and domestic abuse involving military service members and their families that addresses the unique aspects of military life to include frequent moves, deployments, and lengthy separations. In Fiscal Year 2012, the DoD Family Advocacy Program assessed 18,671 unrestricted reports of domestic abuse and 15,646 reports of child abuse and neglect. Of those, 9,254 met the criteria for domestic abuse and 7,003 met the criteria for child abuse and neglect. The assessment of these reports is best accomplished by a standardized and well-coordinated approach involving social services, medical treatment, law enforcement, and command to promote the safety and well-being of all those referred and to preserve the readiness of our military. Referrals that meet the criteria for domestic abuse or child abuse and neglect require clinical assessment, treatment, rehabilitation and ongoing monitoring and risk management of offenders. Standard requirements and clinical guidelines based on the best available research in the field enable the Family Advocacy Program to promote effective intervention with offenders and potentially reduce recidivism thus reducing the long-term cost of domestic abuse and child abuse and neglect.

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).

It has been determined that 32 CFR part 61 is a significant regulatory action because it raises novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in these Executive Orders.

However, this rule does not:

(1) Have an annual effect on the economy of $100 million or more or adversely affect in a material way the economy; a section 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; or

(3) Materially alter the budgetary impact of entitlements, grants, user fees, or loan programs, or the rights and obligations of recipients thereof.

Unfunded Mandates Reform Act (Sec. 202, Pub. L. 104–4)

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 document 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)

It has been certified that this 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)

Section 61.5(d)(8) of this rule contains information collection requirements. DoD submitted the following proposal to OMB under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35). OMB pre-approved this collection and assigned it OMB control number 0704–0536. 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.

(1) *Title:* Central Registry: Child Maltreatment and Domestic Abuse Incident Reporting System

Type of Request: Collection in use without OMB approval.

Number of Respondents: 19,585.

Responses per Respondent: 1.

Annual Responses: 19,585.

Average Burden per Response: 2 hours.

Annual Burden Hours: 38,026 hours.

Needs and Uses: DoD Instruction 6400.01 Family Advocacy Program (FAP) establishes policy and assigns responsibility for addressing child abuse and neglect and domestic abuse through family advocacy programs and services. Each military Services delivers a family advocacy program to their respective military members and their families. Military or family members may use

these services, and voluntary personal information must be gathered to determine benefit eligibility and individual needs. Each military Service maintains a database. DMDC collects that information for DoD FAP.

OMB Desk Officer

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 Mary E. Campise at the Office of Family Policy/Children and Youth, Program Analyst for the Family Advocacy Program, 4800 Mark Center Drive, Suite 03G15, Alexandria, VA 22350–2300. 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 Mary E. Campise at the Office of Family Policy/Children and Youth, Program Analyst for the Family Advocacy Program, 4800 Mark Center Drive, Suite 03G15, Alexandria, VA 22350–2300, 571–372–5346.

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 61

Alcohol abuse, Domestic violence, Drug abuse.

Accordingly 32 CFR part 61 is added to read as follows:

PART 61—FAMILY ADVOCACY PROGRAM (FAP)

Subpart A—Family Advocacy Program (FAP)

Sec.
61.1 Purpose.
61.2 Applicability.
61.3 Definitions.
61.4 Policy.
61.5 Responsibilities.
61.6 Procedures.

Subpart B—FAP Standards

61.7 Purpose.
61.8 Applicability.
61.9 Definitions.
61.10 Policy.
61.11 Responsibilities.
61.12 Procedures.

Subpart C—[Reserved]

Subpart D—[Reserved]

Subpart E—Guidelines for Clinical Intervention for Persons Reported as Domestic Abusers

61.25 Purpose.
61.26 Applicability.
61.27 Definitions.
61.28 Policy.
61.29 Responsibilities.
61.30 Procedures.

Subpart A—Family Advocacy Program (FAP)

Authority: 5 U.S.C. 552a; 10 U.S.C. 1058(b), 1783, 1787, and 1794; Public Law 103–337, Section 534(d)(2).

§ 61.1 Purpose.

This part is composed of several subparts, each containing its own purpose. This subpart establishes policy and assigns responsibilities for addressing child abuse and domestic abuse through the FAP.

§ 61.2 Applicability.

This subpart applies to the Office of the Secretary of Defense (OSD), 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 (referred to collectively in this subpart as the ''DoD Components'').

§ 61.3 Definitions.

Unless otherwise noted, these terms and their definitions are for the purposes of this subpart.

Alleged abuser. An individual reported to the FAP for allegedly having committed child abuse or domestic abuse.

Child. An unmarried person under 18 years of age for whom a parent, guardian, foster parent, caregiver, employee of a residential facility, or any staff person providing out-of-home care is legally responsible. The term means a biological child, adopted child, stepchild, foster child, or ward. The term also includes a sponsor's family member (except the sponsor's spouse) of any age who is incapable of self-support because of a mental or physical incapacity, and for whom treatment in a DoD medical treatment program is authorized.

Child abuse. The physical or sexual abuse, emotional abuse, or neglect of a child by a parent, guardian, foster parent, or by a caregiver, whether the caregiver is intrafamilial or extrafamilial, under circumstances indicating the child's welfare is harmed or threatened. Such acts by a sibling, other family member, or other person shall be deemed to be child abuse only when the individual is providing care under express or implied agreement with the parent, guardian, or foster parent.

DoD-sanctioned activity. A DoD-sanctioned activity is defined as a U.S. Government activity or a nongovernmental activity authorized by appropriate DoD officials to perform child care or supervisory functions on DoD controlled property. The care and supervision of children may be either its primary mission or incidental in carrying out another mission (*e.g.,* medical care). Examples include Child Development Centers, Department of Defense Dependents Schools, or Youth Activities, School Age/Latch Key Programs, Family Day Care providers, and child care activities that may be conducted as a part of a chaplain's program or as part of another Morale, Welfare, or Recreation Program.

Domestic abuse. Domestic violence or a pattern of behavior resulting in emotional/psychological abuse, economic control, and/or interference with personal liberty that is directed toward a person who is:

(1) A current or former spouse.

(2) A person with whom the abuser shares a child in common; or

(3) A current or former intimate partner with whom the abuser shares or has shared a common domicile.

Domestic violence. An offense under the United States Code, the Uniform Code of Military Justice (UCMJ), or State law involving the use, attempted use, or threatened use of force or violence

against a person, or a violation of a lawful order issued for the protection of a person who is:

(1) A current or former spouse.

(2) A person with whom the abuser shares a child in common; or

(3) A current or former intimate partner with whom the abuser shares or has shared a common domicile.

Family Advocacy Command Assistance Team (FACAT). A multidisciplinary team composed of specially trained and experienced individuals who are on-call to provide advice and assistance on cases of child sexual abuse that involve DoD-sanctioned activities.

Family advocacy committee (FAC). The policy-making, coordinating, recommending, and overseeing body for the installation FAP.

FAP. A program designed to address prevention, identification, evaluation, treatment, rehabilitation, follow-up, and reporting of family violence. FAPs consist of coordinated efforts designed to prevent and intervene in cases of family distress, and to promote healthy family life.

Family Advocacy Program Manager (FAPM). An individual designated by a Secretary of a Military Department or the head of another DoD Component to manage, monitor, and coordinate the FAP at the headquarters level.

Incident determination committee (IDC). A multidisciplinary team of designated individuals working at the installation level, tasked with determining whether a report of domestic abuse or child abuse meets the relevant DoD criteria for entry into the Service FAP Central Registry as child abuse and domestic abuse incident. Formerly known as the Case Review Committee.

Incident status determination. The IDC determination of whether or not the reported incident meets the relevant criteria for alleged child abuse or domestic abuse for entry into the Service FAP central registry of child abuse and domestic abuse reports.

New Parent Support Program (NPSP). A standardized secondary prevention program under the FAP that delivers intensive, voluntary, strengths based home visitation services designed specifically for expectant parents and parents of children from birth to 3 years of age to reduce the risk of child abuse and neglect.

Restricted reporting. A process allowing an adult victim of domestic abuse, who is eligible to receive military medical treatment, including civilians and contractors who are eligible to receive military healthcare outside the Continental United States on a reimbursable basis, the option of reporting an incident of domestic abuse to a specified individual without initiating the investigative process or notification to the victim's or alleged offender's commander.

Unrestricted reporting. A process allowing a victim of domestic abuse to report an incident using current reporting channels, *e.g.* chain of command, law enforcement or criminal investigative organization, and FAP for clinical intervention.

§ 61.4 Policy.

It is DoD policy to:

(a) Promote public awareness and prevention of child abuse and domestic abuse.

(b) Provide adult victims of domestic abuse with the option of making restricted reports to domestic abuse victim advocates and to healthcare providers in accordance with DoD Instruction 6400.06, ''Domestic Abuse Involving DoD Military and Certain Affiliated Personnel'' (available at *http://www.dtic.mil/whs/directives/corres/pdf/640006p.pdf*).

(c) Promote early identification; reporting options; and coordinated, comprehensive intervention, assessment, and support to:

(1) Victims of suspected child abuse, including victims of extra-familial child abuse.

(2) Victims of domestic abuse.

(d) Provide assessment, rehabilitation, and treatment, including comprehensive abuser intervention.

(e) Provide appropriate resource and referral information to persons who are not covered by this subpart, who are victims of alleged child abuse or domestic abuse.

(f) Cooperate with responsible federal and civilian authorities and organizations in efforts to address the problems to which this subpart applies.

(g) Ensure that personally identifiable information (PII) collected in the course of FAP activities is safeguarded to prevent any unauthorized use or disclosure and that the collection, use, and release of PII is in compliance with 5 U.S.C. 552a.

(h) Develop program standards (PSs) and critical procedures for the FAP that reflect a coordinated community risk management approach to child abuse and domestic abuse.

(i) Provide appropriate individualized and rehabilitative treatment that supplements administrative or disciplinary action, as appropriate, to persons reported to FAP as domestic abusers.

(j) Maintain a central child abuse and domestic abuse database to:

(1) Analyze the scope of child abuse and domestic abuse, types of abuse, and information about victims and alleged abusers to identify emerging trends, and develop changes in policy to address child abuse and domestic abuse.

(2) Support the requirements of DoD Instruction 1402.5, ''Criminal History Background Checks on Individuals in Child Care Services'' (available at *http://www.dtic.mil/whs/directives/corres/pdf/140205p.pdf*).

(3) Support the response to public, congressional, and other government inquiries.

(4) Support budget requirements for child abuse and domestic abuse program funding.

§ 61.5 Responsibilities.

(a) The Under Secretary of Defense for Personnel and Readiness (USD(P&R)) will:

(1) Collaborate with the DoD Component heads to establish programs and guidance to implement the FAP elements and procedures in § 61.6 of this subpart.

(2) Program, budget, and allocate funds and other resources for FAP, and ensure that such funds are only used to implement the policies described in § 61.6 of this subpart.

(b) Under the authority, direction, and control of the USD(P&R), the Assistant Secretary of Defense for Readiness and Force Management (ASD(R&FM)) or designee will review FAP instructions and policies prior to USD(P&R) signature.

(c) Under the authority, direction, and control of the USD(P&R) through the ASD(R&FM), the Deputy Assistant Secretary of Defense for Military Community and Family Policy (DASD(MC&FP)) will:

(1) Develop DoD-wide FAP policy, coordinate the management of FAP with other programs serving military families, collaborate with federal and State agencies addressing FAP issues, and serve on intra-governmental advisory committees that address FAP-related issues.

(2) Ensure that the information included in notifications of extra-familial child sexual abuse in DoD-sanctioned activities is retained for 1 month from the date of the initial report to determine whether a request for a FACAT in accordance with DoD Instruction 6400.03, ''Family Advocacy Command Assistance Team'' (available at *http://www.dtic.mil/whs/directives/corres/pdf/640003p.pdf*) may be forthcoming.

(3) Monitor and evaluate compliance with this subpart.

(4) Review annual summaries of accreditation/inspection reviews submitted by the Military Departments.

(5) Convene an annual DoD Accreditation/Inspection Review Summit to review and respond to the findings and recommendations of the Military Departments' accreditation/inspection reviews.

(d) The Secretaries of the Military Departments will:

(1) Establish DoD Component policy and guidance on the development of FAPs, including case management and monitoring of the FAP consistent with 10 U.S.C. 1058(b), this subpart, and published FAP guidance, including DoD Instruction 6400.06 and DoD 6400.1–M, ''Family Advocacy Program Standards and Self-Assessment Tool'' (available at *http://www.dtic.mil/whs/directives/corres/pdf/640001m.pdf*).

(2) Designate a FAPM to manage the FAP. The FAPM will have, at a minimum:

(i) A masters or doctoral level degree in the behavioral sciences from an accredited U.S. university or college.

(ii) The highest licensure in good standing by a State regulatory board in either social work, psychology, or marriage and family therapy that authorizes independent clinical practice.

(iii) 5 years of post-license experience in child abuse and domestic abuse.

(iv) 3 years of experience supervising licensed clinicians in a clinical program.

(3) Coordinate efforts and resources among all activities serving families to promote the optimal delivery of services and awareness of FAP services.

(4) Establish standardized criteria, consistent with DoD Instruction 6025.13, ''Medical Quality Assurance (MQA) and Clinical Quality Management in the Military Health System (MHS)'' (available at *http://www.dtic.mil/whs/directives/corres/pdf/602513p.pdf*) and DoD 6025.13–R, ''Military Health System (MHS) Clinical Quality Assurance (CQA) Program'' (available at *http://www.dtic.mil/whs/directives/corres/pdf/602513r.pdf*), for selecting and certifying FAP healthcare and social service personnel who provide clinical services to individuals and families. Such staff will be designated as healthcare providers who may receive restricted reports from victims of domestic abuse as set forth in DoD Instruction 6400.06.

(5) Establish a process for an annual summary of installation accreditation/inspection reviews of installation FAP.

(6) Ensure that installation commanders or Service-equivalent senior commanders or their designees:

(i) Appoint persons at the installation level to manage and implement the local FAPs, establish local FACs, and appoint the members of IDCs in accordance with DoD 6400.1–M and supporting guidance issued by the USD(P&R).

(ii) Ensure that the installation FAP meets the standards in DoD 6400.1–M.

(iii) Ensure that the installation FAP immediately reports allegations of a crime to the appropriate law enforcement authority.

(7) Notify the DASD(MC&FP) of any cases of extra-familial child sexual abuse in a DoD-sanctioned activity within 72 hours in accordance with the procedures in § 61.6 of this subpart.

(8) Submit accurate quarterly child abuse and domestic abuse incident data from the DoD Component FAP central registry of child abuse and domestic abuse incidents to the Director of the Defense Manpower Data Center in accordance with DoD 6400.1–M–1, ''Manual for Child Maltreatment and Domestic Abuse Incident Reporting System'' (available at *http://www.dtic.mil/whs/directives/corres/pdf/640001m1.pdf*).

(9) Submit reports of DoD-related fatalities known or suspected to have resulted from an act of domestic abuse; child abuse; or suicide related to an act of domestic abuse or child abuse on DD Form 2901, ''Child Abuse or Domestic Violence Related Fatality Notification,'' by fax to the number provided on the form in accordance with DoD Instruction 6400.06 or by other method as directed by the DASD(MC&FP). The DD Form 2901 can be found at *http://www.dtic.mil/whs/directives/infomgt/forms/formsprogram.htm.*

(10) Ensure that fatalities known or suspected to have resulted from acts of child abuse or domestic violence are reviewed annually in accordance with DoD Instruction 6400.06.

(11) Ensure the annual summary of accreditation/inspection reviews of installation FAPs are forwarded to OSD FAP as directed by DASD(MC&FP).

(12) Provide essential data and program information to the USD(P&R) to enable the monitoring and evaluation of compliance with this subpart in accordance with DoD 6400.1–M–1.

(13) Ensure that PII collected in the course of FAP activities is safeguarded to prevent any unauthorized use or disclosure and that the collection, use, and release of PII is in compliance with 5 U.S.C. 552a, also known as ''The Privacy Act of 1974,'' as implemented in the DoD by 32 CFR part 310).

§ 61.6 Procedures.

(a) *FAP Elements.* FAP requires prevention, education, and training efforts to make all personnel aware of the scope of child abuse and domestic abuse problems and to facilitate cooperative efforts. The FAP will include:

(1) *Prevention.* Efforts to prevent child abuse and domestic abuse, including public awareness, information and education about the problem in general, and the NPSP, in accordance with DoD Instruction 6400.05, specifically directed toward potential victims, offenders, non-offending family members, and mandated reporters of child abuse and neglect.

(2) *Direct Services.* Identification, treatment, counseling, rehabilitation, follow-up, and other services, directed toward the victims, their families, perpetrators of abuse, and their families. These services will be supplemented locally by:

(i) A multidisciplinary IDC established to assess incidents of alleged abuse and make incident status determinations.

(ii) A clinical case staff meeting (CCSM) to make recommendations for treatment and case management.

(3) *Administration.* All services, logistical support, and equipment necessary to ensure the effective and efficient operation of the FAP, including:

(i) Developing local memorandums of understanding with civilian authorities for reporting cases, providing services, and defining responsibilities when responding to child abuse and domestic abuse.

(ii) Use of personal service contracts to accomplish program goals.

(iii) Preparation of reports, consisting of incidence data.

(4) *Evaluation.* Needs assessments, program evaluation, research, and similar activities to support the FAP.

(5) *Training.* All educational measures, services, supplies, or equipment used to prepare or maintain the skills of personnel working in the FAP.

(b) *Responding to FAP Incidents.* The USD(P&R) or designee will establish procedures for:

(1) Reporting and responding to suspected child abuse consistent with 10 U.S.C. 1787 and 1794, 42 U.S.C. 13031, and 28 CFR part 81.

(2) Providing victim advocacy services to victims of domestic abuse consistent with DoD Instruction 6400.06 and section 534(d)(2) of Public Law 103–337, ''National Defense Authorization Act for Fiscal Year 1995.''

(3) Responding to restricted and unrestricted reports of domestic abuse consistent with DoD Instruction 6400.06 and 10 U.S.C. 1058(b).

(4) Collection of FAP data into a central registry and analysis of such data in accordance with DoD 6400.1–M–1.

(5) Coordinating a comprehensive DoD response, including the FACAT, to allegations of extra-familial child sexual abuse in a DoD-sanctioned activity in accordance with DoD Instruction 6400.03 and 10 U.S.C. 1794.

(c) *Notification of Extra-Familial Child Sexual Abuse in DoD-Sanctioned Activities.* The names of the victim(s) and alleged abuser(s) will not be included in the notification. Notification will include:

(1) Name of the installation.

(2) Type of child care setting.

(3) Number of children alleged to be victims.

(4) Estimated number of potential child victims.

(5) Whether an installation response team is being convened to address the investigative, medical, and public affairs issues that may be encountered.

(6) Whether a request for the DASD(MC&FP) to deploy a FACAT in accordance with DoD Instruction 6400.03 is being considered.

Subpart B—FAP Standards

Authority: 5 U.S.C. 552a, 10 U.S.C. chapter 47, 42 U.S.C. 13031.

§ 61.7 Purpose.

(a) This part is composed of several subparts, each containing its own purpose. The purpose of the overall part is to implement policy, assign responsibilities, and provide procedures for addressing child abuse and domestic abuse in military communities.

(b) This subpart prescribes uniform program standards (PSs) for all installation FAPs.

§ 61.8 Applicability.

This subpart applies to OSD, the Military Departments, 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 in the DoD (referred to collectively in this subpart as the ''DoD Components'').

§ 61.9 Definitions.

Unless otherwise noted, the following terms and their definitions are for the purposes of this subpart.

Alleged abuser. Defined in subpart A of this part.

Case. One or more reported incidents of suspected child abuse or domestic abuse pertaining to the same victim.

Clinical case staff meeting (CCSM). An installation FAP meeting of clinical service providers to assist the coordinated delivery of supportive services and clinical treatment in child abuse and domestic abuse cases, as appropriate. They provide: clinical consultation directed to ongoing safety planning for the victim; the planning and delivery of supportive services, and clinical treatment, as appropriate, for the victim; the planning and delivery of rehabilitative treatment for the alleged abuser; and case management, including risk assessment and ongoing safety monitoring.

Child. Defined in subpart A of this part.

Child abuse. The physical or sexual abuse, emotional abuse, or neglect of a child by a parent, guardian, foster parent, or by a caregiver, whether the caregiver is intrafamilial or extrafamilial, under circumstances indicating the child's welfare is harmed or threatened. Such acts by a sibling, other family member, or other person shall be deemed to be child abuse only when the individual is providing care under express or implied agreement with the parent, guardian, or foster parent.

Clinical case management. The FAP process of providing or coordinating the provision of clinical services, as appropriate, to the victim, alleged abuser, and family member in each FAP child abuse and domestic abuse incident from entry into until exit from the FAP system. It includes identifying risk factors; safety planning; conducting and monitoring clinical case assessments; presentation to the Incident Determination Committee (IDC); developing and implementing treatment plans and services; completion and maintenance of forms, reports, and records; communication and coordination with relevant agencies and professionals on the case; case review and advocacy; case counseling with the individual victim, alleged abuser, and family member, as appropriate; other direct services to the victim, alleged abuser, and family members, as appropriate; and case transfer or closing.

Clinical intervention. A continuous risk management process that includes identifying risk factors, safety planning, initial clinical assessment, formulation of a clinical treatment plan, clinical treatment based on assessing readiness for and motivating behavioral change and life skills development, periodic assessment of behavior in the treatment setting, and monitoring behavior and periodic assessment of outside-of-treatment settings.

Domestic abuse. Domestic violence or a pattern of behavior resulting in emotional/psychological abuse, economic control, and/or interference with personal liberty that is directed toward a person who is:

(1) A current or former spouse.

(2) A person with whom the abuser shares a child in common; or

(3) A current or former intimate partner with whom the abuser shares or has shared a common domicile.

Domestic violence. An offense under the United States Code, the Uniform Code of Military Justice (UCMJ), or State law involving the use, attempted use, or threatened use of force or violence against a person, or a violation of a lawful order issued for the protection of a person who is:

(1) A current or former spouse.

(2) A person with whom the abuser shares a child in common; or

(3) A current or former intimate partner with whom the abuser shares or has shared a common domicile.

Family Advocacy Committee (FAC). Defined in subpart A of this part.

Family Advocacy Command Assistance Team (FACAT). Defined in subpart A of this part.

Family Advocacy Program (FAP). Defined in subpart A of this part.

High risk for violence. A level of risk describing families or individuals experiencing severe abuse or the potential for severe abuse, or offenders engaging in high risk behaviors such as making threats to cause grievous bodily harm, preventing victim access to communication devices, stalking, etc. Such cases require coordinated community safety planning that actively involves installation law enforcement, command, legal, and FAP.

Home visitation. A strategy for delivering services to parents in their homes to improve child and family functioning.

Home visitor. A person who provides FAP services to promote child and family functioning to parents in their homes.

IDC. Defined in subpart A of this part.

Installation. Any more or less permanent post, camp, station, base for the support or carrying on of military activities.

Installation Family Advocacy Program Manager (FAPM). The individual at the installation level designated by the installation commander in accordance with Service FAP headquarters implementing guidance to manage the FAP, supervise FAP staff, and coordinate all FAP activities. If the Service FAP headquarters implementing guidance assigns the responsibilities of the local

FAPM between two individuals, the FAPM is the individual who has been assigned the responsibility for implementing the specific procedure.

NPSP. A standardized secondary prevention program under the FAP that delivers intensive, voluntary, strengths based home visitation services designed specifically for expectant parents and parents of children from birth to 3 years of age to reduce the risk of child abuse and neglect.

Non-DoD eligible extrafamilial caregiver. A caregiver who is not sponsored or sanctioned by the DoD. It includes nannies, temporary babysitters certified by the Red Cross, and temporary babysitters in the home, and other non-DoD eligible family members who provide care for or supervision of children.

Non-medical counseling. Short term, non-therapeutic counseling that is not appropriate for individuals needing clinical therapy. Non-medical counseling is supportive in nature and addresses general conditions of living, life skills, improving relationships at home and at work, stress management, adjustment issues (such as those related to returning from a deployment), marital problems, parenting, and grief and loss. This definition is not intended to limit the authority of the Military Departments to grant privileges to clinical providers modifying this scope of care consistent with current Military Department policy.

Out-of-home care. The responsibility of care for and/or supervision of a child in a setting outside the child's home by an individual placed in a caretaker role sanctioned by a Military Service or Defense Agency or authorized by the Service or Defense Agency as a provider of care, such as care in a child development center, school, recreation program, or family child care. part.

Primary managing authority (PMA). The installation FAP that has primary authority and responsibility for the management and incident status determination of reports of child abuse and unrestricted reports of domestic abuse.

Restricted reporting. Defined in subpart A of this part.

Risk management. The process of identifying risk factors associated with increased risk for child abuse or domestic abuse, and controlling those factors that can be controlled through collaborative partnerships with key military personnel and civilian agencies, including the active duty member's commander, law enforcement personnel, child protective services, and victim advocates. It includes the development and implementation of an intervention plan when significant risk of lethality or serious injury is present to reduce the likelihood of future incidents and to increase the victim's safety, continuous assessment of risk factors associated with the abuse, and prompt updating of the victim's safety plan, as needed.

Safety planning. A process whereby a victim advocate, working with a domestic abuse victim, creates a plan, tailored to that victim's needs, concerns, and situation, that will help increase the victim's safety and help the victim to prepare for, and potentially avoid, future violence.

Service FAP headquarters. The office designated by the Secretary of the Military Department to develop and issue Service FAP implementing guidance in accordance with DoD policy, manage the Service-level FAP, and provide oversight for Service FAP functions.

Unrestricted reporting. Defined in subpart A of this part.

Victim. A child or current or former spouse or intimate partner who is the subject of an alleged incident of child maltreatment or domestic abuse because he/she was allegedly maltreated by the alleged abuser.

Victim advocate. An employee of the Department of Defense, a civilian working under contract for the Department of Defense, or a civilian providing services by means of a formal memorandum of understanding between a military installation and a local victim advocacy service agency, whose role is to provide safety planning services and comprehensive assistance and liaison to and for victims of domestic abuse, and to educate personnel on the installation regarding the most effective responses to domestic abuse on behalf of victims and at-risk family members. The advocate may also be a volunteer military member, a volunteer civilian employee of the Military Department, or staff assigned as collateral duty.

§ 61.10 Policy.

According to subpart A of this part, it is DoD policy to:

(a) Promote early identification; reporting; and coordinated, comprehensive intervention, assessment, and support to victims of child abuse and domestic abuse.

(b) Ensure that personally identifiable information (PII) collected in the course of FAP activities is safeguarded to prevent any unauthorized use or disclosure and that the collection, use, and release of PII is in compliance with 5 U.S.C. 552a.

§ 61.11 Responsibilities.

(a) Under the authority, direction, and control of the USD(P&R) through the Assistant Secretary of Defense for Readiness and Force Management, the Deputy Assistant Secretary of Defense for Military Community and Family Policy (DASD(MC&FP)):

(1) Monitors compliance with this subpart.

(2) Collaborates with the Secretaries of the Military Departments to develop policies and procedures for monitoring compliance with the PSs in § 61.12 of this subpart.

(3) Convenes an annual DoD Accreditation and Inspection Summit to review and respond to the findings and recommendations of the Military Departments' accreditation or inspection results.

(b) The Secretaries of the Military Departments:

(1) Develop Service-wide FAP policy, supplementary standards, and instructions to provide for unique requirements within their respective installation FAPs to implement the PSs in this subpart as appropriate.

(2) Require all installation personnel with responsibilities in this subpart receive appropriate training to implement the PSs in § 61.12 of this subpart.

(3) Conduct accreditation and inspection reviews outlined in § 61.12 of this subpart.

§ 61.12 Procedures.

(a) *Purposes of the standards*—(1) *Quality Assurance (QA) to address child abuse and domestic abuse.* The FAP PSs provide DoD and Service FAP headquarters QA guidelines for installation FAP-sponsored prevention and clinical intervention programs. Therefore, the PSs presented in this section and cross referenced in the Index of FAP Topics in the Appendix to § 61.12 represent the minimal necessary elements for effectively dealing with child abuse and domestic abuse in installation programs in the military community.

(2) *Minimum requirements for oversight, management, logistical support, procedures, and personnel requirements.* The PSs set forth minimum requirements for oversight, management, logistical support, procedures, and personnel requirements necessary to ensure all military personnel and their family members receive family advocacy services from the installation FAPs equal in quality to the best programs available to their civilian peers.

(3) *Measuring quality and effectiveness.* The PSs provide a basis

for measuring the quality and effectiveness of each installation FAP and for systematically projecting fiscal and personnel resources needed to support worldwide DoD FAP efforts.

(b) *Installation response to child abuse and domestic abuse*—(1) *FAC*—(i) *PS 1: Establishment of the FAC.* The installation commander must establish an installation FAC and appoint a FAC chairperson in accordance with subpart A of this part and Service FAP headquarters implementing policies and guidance to serve as the policy-making, coordinating, and advisory body to address child abuse and domestic abuse at the installation.

(ii) *PS 2: Coordinated community response and risk management plan.* The FAC must develop and approve an annual plan for the coordinated community response and risk management of child abuse and domestic abuse, with specific objectives, strategies, and measurable outcomes.

The plan is based on a review of:

(A) The most recent installation needs assessment.

(B) Research-supported protective factors that promote and sustain healthy family relationships.

(C) Risk factors for child abuse and domestic abuse.

(D) The most recent prevention strategy to include primary, secondary, and tertiary interventions.

(E) Trends in the installation's risk management approach to high risk for violence, child abuse, and domestic abuse.

(F) The most recent accreditation review or DoD Component Inspector General inspection of the installation agencies represented on the FAC.

(G) The evaluation of the installation's coordinated community response to child abuse and domestic abuse.

(iii) *PS 3: Monitoring coordinated community response and risk management plan.* The FAC monitors the implementation of the coordinated community response and risk management plan. Such monitoring includes a review of:

(A) The development, signing, and implementation of formal memorandums of understanding (MOUs) among military activities and between military activities and civilian authorities and agencies to address child abuse and domestic abuse.

(B) Steps taken to address problems identified in the most recent accreditation review of the FAP and evaluation of the installation's coordinated community response and risk management approach.

(C) FAP recommended criteria to identify populations at higher risk to commit or experience child abuse and domestic abuse, the special needs of such populations, and appropriate actions to address those needs.

(D) Effectiveness of the installation coordinated community response and risk management approach in responding to high risk for violence, child abuse, and domestic abuse incidents.

(E) Implementation of the installation prevention strategy to include primary, secondary, and tertiary interventions.

(F) The annual report of fatality reviews that Service FAP headquarters fatality review teams conduct. The FAC should also review the Service FAP headquarters' recommended changes for the coordinated community response and risk management approach. The coordinated community response will focus on strengthening protective factors that promote and sustain healthy family relationships and reduce the risk factors for future child abuse and domestic abuse-related fatalities.

(2) *Coordinated Community Response*—(i) *PS 4: Roles, functions, and responsibilities.* The FAC must ensure that all installation agencies involved with the coordinated community response to child abuse and domestic abuse comply with the defined roles, functions, and responsibilities in DoD Instruction 6400.06 and the Service FAP headquarters implementing policies and guidance.

(ii) *PS 5: MOUs.* The FAC must verify that:

(A) Formal MOUs are established as appropriate with counterparts in the local civilian community to improve coordination on: Child abuse and domestic abuse investigations; emergency removal of children from homes; fatalities; arrests; prosecutions; and orders of protection involving military personnel.

(B) Installation agencies established MOUs setting forth the respective roles and functions of the installation and the appropriate federal, State, local, or foreign agencies or organizations (in accordance with status-of-forces agreements (SOFAs)) that provide:

(*1*) Child welfare services, including foster care, to ensure ongoing and active collaborative case management between the respective courts, child protective services, foster care agencies, and FAP.

(*2*) Medical examination and treatment.

(*3*) Mental health examination and treatment.

(*4*) Domestic abuse victim advocacy.

(*5*) Related social services, including State home visitation programs when appropriate.

(*6*) Safety shelter.

(iii) *PS 6: Collaboration between military installations.* The installation commander must require that installation agencies have collaborated with counterpart agencies on military installations in geographical proximity and on joint bases to ensure coordination and collaboration in providing child abuse and domestic abuse services to military families. Collaboration includes developing MOUs, as appropriate.

(iv) *PS 7: Domestic abuse victim advocacy services.* The installation FAC must establish 24 hour access to domestic abuse victim advocacy services through personal or telephone contact in accordance with DoD Instruction 6400.06 and Service FAP headquarters implementing policy and guidance for restricted reports of domestic abuse and the domestic abuse victim advocate services.

(v) *PS 8: Domestic abuse victim advocate personnel requirements.* The installation commander must require that qualified personnel provide domestic abuse victim advocacy services in accordance with DoD Instruction 6400.06 and Service FAP headquarters implementing policy and guidance.

(A) Such personnel may include federal employees, civilians working under contract for the DoD, civilians providing services through a formal MOU between the installation and a local civilian victim advocacy service agency, volunteers, or a combination of such personnel.

(B) All domestic abuse victim advocates are supervised in accordance with Service FAP headquarters policies.

(vi) *PS 9: 24-hour emergency response plan.* An installation 24-hour emergency response plan to child abuse and domestic abuse incidents must be established in accordance with DoD Instruction 6400.06 and the Service FAP headquarters implementing policies and guidance.

(vii) *PS 10: FAP Communication with military law enforcement.* The FAP and military law enforcement reciprocally provide to one another:

(A) Within 24 hours, FAP will communicate all reports of child abuse involving military personnel or their family members to the appropriate civilian child protective services agency or law enforcement agency in accordance with subpart A of this part, 42 U.S.C. 13031, and 28 CFR 81.2.

(B) Within 24 hours, FAP will communicate all unrestricted reports of domestic abuse involving military personnel and their current or former spouses or their current or former intimate partners to the appropriate

civilian law enforcement agency in accordance with subpart A of this part, 42 U.S.C. 13031, and 28 CFR 81.2.

(viii) *PS 11: Protection of children.* The installation FAC in accordance with Service FAP headquarters implementing policies and guidance must set forth the procedures and criteria for:

(A) The safety of child victim(s) of abuse or other children in the household when they are in danger of continued abuse or life-threatening child neglect.

(B) Safe transit of such child(ren) to appropriate care. When the installation is located outside the continental United States, this includes procedures for transit to a location of appropriate care within the United States.

(C) Ongoing collaborative case management between FAP, relevant courts, and child welfare agencies when military children are placed in civilian foster care.

(D) Notification of the affected Service member's command when a dependent child has been taken into custody or foster care by local or State courts, or child welfare or protection agencies.

(3) *Risk Management*—(i) *PS 12: PMA.* When an installation FAP receives a report of a case of child abuse or domestic abuse in which the victim is at a different location than the abuser, PMA for the case must be:

(A) In child abuse cases:

(*1*) The sponsor's installation when the alleged abuser is the sponsor; a non-sponsor DoD-eligible family member; or a non-sponsor, status unknown.

(*2*) The alleged abuser's installation when the alleged abuser is a non-sponsor active duty Service member; a non-sponsor, DoD-eligible extrafamilial caregiver; or a DoD-sponsored out-of-home care provider.

(*3*) The victim's installation when the alleged abuser is a non-DoD-eligible extrafamilial caregiver.

(B) In domestic abuse cases:

(*1*) The alleged abuser's installation when both the alleged abuser and the victim are active duty Service members.

(*2*) The alleged abuser's installation when the alleged abuser is the only sponsor.

(*3*) The victim's installation when the victim is the only sponsor.

(*4*) The installation FAP who received the initial referral when both parties are alleged abusers in bi-directional domestic abuse involving dual military spouses or intimate partners.

(ii) *PS 13: Risk management approach*—(A) All installation agencies involved with the installation's coordinated community risk management approach to child abuse and domestic abuse must comply with their defined roles, functions, and responsibilities in accordance with 42 U.S.C. 13031 and 28 CFR 81.2 and Service FAP headquarters implementing policies and guidance.

(B) When victim(s) and abuser(s) are assigned to different servicing FAPs or are from different Services, the PMA is assigned according to PS 12 (paragraph (b)(3)(i) of this section), and both serving FAP offices and Services are kept informed of the status of the case, regardless of who has PMA.

(iii) *PS 14: Risk assessments.* FAP conducts risk assessments of alleged abusers, victims, and other family members to assess the risk of re-abuse, and communicate any increased levels of risk to appropriate agencies for action, as appropriate. Risk assessments are conducted:

(A) At least quarterly on all open FAP cases.

(B) Monthly on FAP cases assessed as high risk and those involving court involved children placed in out-of-home care, child sexual abuse, and chronic child neglect.

(C) Within 30 days of any change since the last risk assessment that presents increased risk to the victim or warrants additional safety planning.

(iv) *PS 15: Disclosure of information in risk assessments.* Protected information collected during FAP referrals, intake, and risk assessments is only disclosed in accordance with DoD 6025.18–R, ''DoD Health Information Privacy Regulation'' (available at *http://www.dtic.mil/whs/directives/corres/pdf/602518r.pdf*) when applicable, 32 CFR part 310, and the Service FAP headquarters implementing policies and guidance.

(v) *PS 16: Risk management and deployment.* Procedures are established to manage child abuse and domestic abuse incidents that occur during the deployment cycle of a Service member, in accordance with subpart A of this part and DoD Instruction 6400.06, and Service FAP headquarters implementing policies and guidance, so that when an alleged abuser Service member in an active child abuse or domestic abuse case is deployed:

(A) The forward command notifies the home station command when the deployed Service member will return to the home station command.

(B) The home station command implements procedures to reduce the risk of subsequent child abuse and domestic abuse during the reintegration of the Service member into the FAP case management process.

(4) *IDC*—(i) *PS 17: IDC established.* An installation IDC must be established to review reports of child abuse and unrestricted reports of domestic abuse.

(ii) *PS 18: IDC operations.* The IDC reviews reports of child abuse and unrestricted reports of domestic abuse to determine whether the reports meet the criteria for entry into the Service FAP headquarters central registry of child abuse and domestic abuse incidents in accordance with subpart A of this part and Service FAP headquarters implementing policies and guidance.

(iii) *PS 19: Responsibility for training FAC and IDC members.* All FAC and IDC members must receive:

(A) Training on their roles and responsibilities before assuming their positions on their respective teams.

(B) Periodic information and training on DoD policies and Service FAP headquarters policies and guidance.

(iv) *PS 20: IDC QA.* An IDC QA process must be established for monitoring and QA review of IDC decisions in accordance with Service FAP headquarters implementing policy and guidance.

(c) *Organization and management of the FAP*—(1) *General organization of the FAP*—(i) *PS 21: Establishment of the FAP.* The installation commander must establish a FAP to address child abuse and domestic abuse in accordance with DoD policy and Service FAP headquarters implementing policies and guidance.

(ii) *PS 22: Operations policy.* The installation FAC must ensure coordination among the following key agencies interacting with the FAP in accordance with subpart A of this part and Service FAP headquarters implementing policies and guidance:

(A) Family center(s).

(B) Substance abuse program(s).

(C) Sexual assault and prevention response programs.

(D) Child and youth program(s).

(E) Program(s) that serve families with special needs.

(F) Medical treatment facility, including:

(*1*) Mental health and behavioral health personnel.

(*2*) Social services personnel.

(*3*) Dental personnel.

(G) Law enforcement.

(H) Criminal investigative organization detachment.

(I) Staff judge advocate or servicing legal office.

(J) Chaplain(s).

(K) Department of Defense Education Activity (DoDEA) school personnel.

(L) Military housing personnel.

(M) Transportation office personnel.

(iii) *PS 23: Appointment of an installation FAPM.* The installation

commander must appoint in writing an installation FAPM to implement and manage the FAP. The FAPM must direct the development, oversight, coordination, administration, and evaluation of the installation FAP in accordance with subpart A of this part and Service FAP headquarters implementing policy and guidance.

(iv) *PS 24: Funding.* Funds received for child abuse and domestic abuse prevention and treatment activities must be programmed and allocated in accordance with the DoD and Service FAP headquarters implementing policies and guidance, and the plan developed under PS 3, described in paragraph (b)(1)(ii) of this section.

(A) Funds that OSD provides for the FAP must be used in direct support of the prevention and intervention for domestic abuse and child maltreatment; including management, staffing, domestic abuse victim advocate services, public awareness, prevention, training, intensive risk-focused secondary prevention services, intervention, record keeping, and evaluation as set forth in this subpart.

(B) Funds that OSD provides for the NPSP must be used only for secondary prevention activities to support the screening, assessment, and provision of home visitation services to prevent child abuse and neglect in vulnerable families in accordance with DoD Instruction 6400.05.

(v) *PS 25: Other resources.* FAP services must be housed and equipped in a manner suitable to the delivery of services, including but not limited to:

(A) Adequate telephones.

(B) Office automation equipment.

(C) Handicap accessible.

(D) Access to emergency transport.

(E) Private offices and rooms available for interviewing and counseling victims, alleged abusers, and other family members in a safe and confidential setting.

(F) Appropriate equipment for 24/7 accessibility.

(2) *FAP personnel*—(i) *PS 26: Personnel requirements.* The installation commander is responsible for ensuring there are a sufficient number of qualified FAP personnel in accordance with subpart A of this part, DoD Instruction 6400.06, and DoD Instruction 6400.05, and Service FAP headquarters implementing policy and guidance. FAP personnel may consist of military personnel on active duty, employees of the federal civil service, contractors, volunteers, or a combination of such personnel.

(ii) *PS 27: Criminal history record check.* All FAP personnel whose duties involve services to children require a criminal history record check in accordance with DoD Instruction 1402.5, ''Criminal History Background Checks on Individuals in Child Care Services'' (available at *http://www.dtic.mil/whs/directives/corres/pdf/140205p.pdf*).

(iii) *PS 28: Clinical staff qualifications.* All FAP personnel who conduct clinical assessment of or provide clinical treatment to victims of child abuse or domestic abuse, alleged abusers, or their family members must have all of the following minimum qualifications:

(A) A Master in Social Work, Master of Science, Master of Arts, or doctoral-level degree in human service or mental health from an accredited university or college.

(B) The highest licensure in a State or clinical licensure in good standing in a State that authorizes independent clinical practice.

(C) Two years of experience working in the field of child abuse and domestic abuse.

(D) Clinical privileges or credentialing in accordance with Service FAP headquarters policies.

(iv) *PS 29: Prevention and Education Staff Qualifications.* All FAP personnel who provide prevention and education services must have the following minimum qualifications:

(A) A Bachelor's degree from an accredited university or college in any of the following disciplines:

(*1*) Social work.

(*2*) Psychology.

(*3*) Marriage, family, and child counseling.

(*4*) Counseling or behavioral science.

(*5*) Nursing.

(*6*) Education.

(*7*) Community health or public health.

(B) Two years of experience in a family and children's services public agency or family and children's services community organization, 1 year of which is in prevention, intervention, or treatment of child abuse and domestic abuse.

(C) Supervision by a qualified staff person in accordance with the Service FAP headquarters policies.

(v) *PS 30: Victim advocate staff qualifications.* All FAP personnel who provide victim advocacy services must have these minimum qualifications:

(A) A Bachelor's degree from an accredited university or college in any of the following disciplines:

(*1*) Social work.

(*2*) Psychology.

(*3*) Marriage, family, and child counseling.

(*4*) Counseling or behavioral science.

(*5*) Criminal justice.

(B) Two years of experience in assisting and providing advocacy services to victims of domestic abuse or sexual assault.

(C) Supervision by a Master's level social worker.

(vi) *PS 31: NPSP staff qualifications.* All FAP personnel who provide services in the NPSP must have qualifications in accordance with DoD Instruction 6400.05.

(3) *Safety and home visits*—(i) *PS 32: Internal and external duress system established.* The installation FAPM must establish a system to identify and manage potentially violent clients and to promote the safety and reduce the risk of harm to staff working with clients and to others inside the office and when conducting official business outside the office.

(ii) *PS 33: Protection of home visitors.* The installation FAPM must:

(A) Issue written FAP procedures to ensure minimal risk and maximize personal safety when FAP or NPSP staff perform home visits.

(B) Require that all FAP and NPSP personnel who conduct home visits are trained in FAP procedures to ensure minimal risk and maximize personal safety before conducting a home visit.

(iii) *PS 34: Home visitors' reporting of known or suspected child abuse and domestic abuse.* All FAP and NPSP personnel who conduct home visits are to report all known or suspected child abuse in accordance with subpart A of this part and 42 U.S.C. 13031, and domestic abuse in accordance with DoD Instruction 6400.06 and the Service FAP headquarters implementing policy and guidance.

(4) *Management information system*—(i) *PS 35: Management information system policy.* The installation FAPM must establish procedures for the collection, use, analysis, reporting, and distributing of FAP information in accordance with subpart A of this part, DoD 6025.18–R, 32 CFR part 310, DoD 6400.1–M–1 and Service FAP headquarters implementing policy. These procedures ensure:

(A) Accurate and comparable statistics needed for planning, implementing, assessing, and evaluating the installation coordinated community response to child abuse and domestic abuse.

(B) Identifying unmet needs or gaps in services.

(C) Determining installation FAP resource needs and budget.

(D) Developing installation FAP guidance.

(E) Administering the installation FAP.

(F) Evaluating installation FAP activities.

(ii) *PS 36: Reporting of statistics.* The FAP reports statistics annually to the Service FAP headquarters in accordance with subpart A of this part and the Service FAP headquarters implementing policies and guidance, including the accurate and timely reporting of:

(A) *FAP metrics*—(*1*) The number of new commanders at the installation whom the Service FAP headquarters determined must receive the FAP briefing, and the number of new commanders who received the FAP briefing within 90 days of taking command.

(*2*) The number of senior noncommissioned officers (NCOs) in pay grades E–7 and higher whom the Service FAP headquarters determined must receive the FAP briefing annually, and the number of senior NCOs who received the FAP briefing within the year.

(B) *NPSP metric*—(*1*) The number of high risk families who began receiving NPSP intensive services (two contacts per month) for at least 6 months in the previous fiscal year.

(*2*) The number of these families with no reports of child maltreatment incidents that met criteria for abuse for entry into the central registry (formerly, ''substantiated reports'') within 12 months after their NPSP services ended, in accordance with DoD Instruction 6400.05.

(C) *Domestic abuse treatment metric*—(*1*) The number of allegedly abusive spouses in incidents that met FAP criteria for domestic abuse who began receiving and successfully completed FAP clinical treatment services during the previous fiscal year.

(*2*) The number of these spouses who were not reported as allegedly abusive in any domestic abuse incidents that met FAP criteria within 12 months after FAP clinical services ended.

(D) *Domestic abuse victim advocacy metrics.* The number of domestic abuse victims:

(*1*) Who receive domestic abuse victim advocacy services, and of those, the respective totals of domestic abuse victims who receive such services from domestic abuse victim advocates or from FAP clinical staff.

(*2*) Who initially make restricted reports to domestic abuse victim advocates and the total of domestic abuse victims who initially make restricted reports to FAP clinical staff, and of each of those, the total of domestic abuse victims who report being sexually assaulted.

(*3*) Whose initially restricted reports to domestic abuse victim advocates became unrestricted reports, and the total of domestic abuse victims whose initially restricted reports to FAP clinical staff became unrestricted reports.

(*4*) Initially making unrestricted reports to domestic abuse victim advocates and making unrestricted reports to FAP clinical staff and, of each of those, the total of domestic abuse victims who report being sexually assaulted.

(d) *Public awareness, prevention, NPSP, and training*—(1) *Public awareness activities*—(i) *PS 37: Implementation of public awareness activities in the coordinated community response and risk management plan.* The FAP public awareness activities highlight community strengths; promote FAP core concepts and messages; advertise specific services; use appropriate available techniques to reach out to the military community, especially to military families who reside outside of the military installation; and are customized to the local population and its needs.

(ii) *PS 38: Collaboration to increase public awareness of child abuse and domestic abuse.* The FAP partners and collaborates with other military and civilian organizations to conduct public awareness activities.

(iii) *PS 39: Components of public awareness activities.* The installation public awareness activities promote community awareness of:

(A) Protective factors that promote and sustain healthy parent/child relationships.

(*1*) The importance of nurturing and attachment in the development of young children.

(*2*) Infant, childhood, and teen development.

(*3*) Programs, strategies, and opportunities to build parental resilience.

(*4*) Opportunities for social connections and mutual support.

(*5*) Programs and strategies to facilitate children's social and emotional development.

(*6*) Information about access to community resources in times of need.

(B) The dynamics of risk factors for different types of child abuse and domestic abuse, including information for teenage family members on teen dating violence.

(C) Developmentally appropriate supervision of children.

(D) Creating safe sleep environments for infants.

(E) How incidents of suspected child abuse should be reported in accordance with subpart A of this part, 42 U.S.C. 13031, 28 CFR 81.2, and DoD Instruction 6400.03, ''Family Advocacy Command Assistance Team'' (available at *http://www.dtic.mil/whs/directives/corres/pdf/640003p.pdf*) and the Service FAP headquarters implementing policy and guidance.

(F) The availability of domestic abuse victim advocates.

(G) Hotlines and crisis lines that provide 24/7 support to families in crisis.

(H) How victims of domestic abuse may make restricted reports of incidents of domestic abuse in accordance with DoD Instruction 6400.06.

(I) The availability of FAP clinical assessment and treatment.

(J) The availability of NPSP home visitation services.

(K) The availability of transitional compensation for victims of child abuse and domestic abuse in accordance with DoD Instruction 1342.24, ''Transitional Compensation for Abused Dependents'' (available at *http://www.dtic.mil/whs/directives/corres/pdf/134224p.pdf*) and Service FAP headquarters implementing policy and guidance.

(2) *Prevention activities*—(i) *PS 40: Implementation of prevention activities in the coordinated community response and risk management plan.* The FAP implements coordinated child abuse and domestic abuse primary and secondary prevention activities identified in the annual plan.

(ii) *PS 41: Collaboration for prevention of child abuse and domestic abuse.* The FAP collaborates with other military and civilian organizations to implement primary and secondary child abuse and domestic abuse prevention programs and services that are available on a voluntary basis to all persons eligible for services in a military medical treatment facility.

(iii) *PS 42: Primary prevention activities.* Primary prevention activities include, but are not limited to:

(A) Information, classes, and non-medical counseling as defined in § 61.3 to assist Service members and their family members in strengthening their interpersonal relationships and marriages, in building their parenting skills, and in adapting successfully to military life.

(B) Proactive outreach to identify and engage families during pre-deployment, deployment, and reintegration to decrease the negative effects of deployment and other military operations on parenting and family dynamics.

(C) Family strengthening programs and activities that facilitate social connections and mutual support, link families to services and opportunities for growth, promote children's social

and emotional development, promote safe, stable, and nurturing relationships, and encourage parental involvement.

(iv) *PS 43: Identification of populations for secondary prevention activities.* The FAP identifies populations at higher risk for child abuse or domestic abuse from a review of:

(A) Relevant research findings.

(B) One or more relevant needs assessments in the locality.

(C) Data from unit deployments and returns from deployment.

(D) Data of expectant parents and parents of children 3 years of age or younger.

(E) Lessons learned from Service FAP headquarters and local fatality reviews.

(F) Feedback from the FAC, the IDC, and the command.

(v) *PS 44: Secondary prevention activities.* The FAP implements secondary prevention activities that are results-oriented and evidence-supported, stress the positive benefits of seeking help, promote available resources to build and sustain protective factors for healthy family relationships, and reduce risk factors for child abuse or domestic abuse. Such activities include, but are not limited to:

(A) Educational classes and counseling to assist Service members and their family members with troubled interpersonal relationships and marriages in improving their interpersonal relationships and marriages.

(B) The NPSP, in accordance with DoD Instruction 6400.05 and Service FAP headquarters implementing policy and guidance.

(C) Educational classes and counseling to help improve the parenting skills of Service members and their family members who experience parenting problems.

(D) Health care screening for domestic abuse.

(E) Referrals to essential services, supports, and resources when needed.

(3) *NPSP*—(i) *PS 45: Referrals to NPSP.* The installation FAPM ensures that expectant parents and parents with children ages 0–3 years may self-refer to the NPSP or be encouraged to participate by a health care provider, the commander of an active duty Service member who is a parent or expectant parent, staff of a family support program, or community professionals.

(ii) *PS 46: Informed Consent for NPSP.* The FAPM ensures that parents who ask to participate in the NPSP are provided informed consent in accordance with subpart A of this part and DoD Instruction 6400.05 and Service FAP headquarters implementing policy and guidance to be:

(A) Voluntarily screened for factors that may place them at risk for child abuse and domestic abuse.

(B) Further assessed using standardized and more in-depth measurements if the screening indicates potential for risk.

(C) Receive home visits and additional NPSP services as appropriate.

(D) Assessed for risk on a continuing basis.

(iii) *PS 47: Eligibility for NPSP.* Pending funding and staffing capabilities, the installation FAPM ensures that qualified NPSP personnel offer intensive home visiting services on a voluntary basis to expectant parents and parents with children ages 0–3 years who:

(A) Are eligible to receive services in a military medical treatment facility.

(B) Have been assessed by NPSP staff as:

(*1*) At-risk for child abuse or domestic abuse.

(*2*) Displaying some indicators of high risk for child abuse or domestic abuse, but whose overall assessment does not place them in the at-risk category.

(*3*) Having been reported to FAP for an incident of abuse of a child age 0–3 years in their care who have previously received NPSP services.

(iv) *PS 48: Review of NPSP screening.* Results of NPSP screening are reviewed within 3 business days of completion. If the screening indicates potential for risk, parents are invited to participate in further assessment by a NPSP home visitor using standardized and more in-depth measurements.

(v) *PS 49: NPSP services.* The NPSP offers expectant parents and parents with children ages 0–3, who are eligible for the NPSP, access to intensive home visiting services that:

(A) Are sensitive to cultural attitudes and practices, to include the need for interpreter or translation services.

(B) Are based on a comprehensive assessment of research-based protective and risk factors.

(C) Emphasize developmentally appropriate parenting skills that build on the strengths of the parent(s).

(D) Support the dual roles of the parent(s) as Service member(s) and parent(s).

(E) Promote the involvement of both parents when applicable.

(F) Decrease any negative effects of deployment and other military operations on parenting.

(G) Provide education to parent(s) on how to adapt to parenthood, children's developmental milestones, age-appropriate expectations for their child's development, parent-child communication skills, parenting skills, and effective discipline techniques.

(H) Empower parents to seek support and take steps to build proactive coping strategies in all domains of family life.

(I) Provide referral to additional community resources to meet identified needs.

(vi) *PS 50: NPSP protocol.* The installation FAPM ensures that NPSP personnel implement the Service FAP headquarters protocol for NPSP services, including the NPSP intervention plan with clearly measurable goals, based on needs identified by the standard screening instrument, assessment tools, the NPSP staff member's clinical assessment, and active input from the family.

(vii) *PS 51: Frequency of NPSP home visits.* NPSP personnel exercise professional judgment in determining the frequency of home visits based on the assessment of the family, but make a minimum of two home visits to each family per month. If at least two home visits are not provided to a high risk family enrolled in the program, NPSP personnel will document what circumstance(s) occurred to preclude twice monthly home visits and what services/contacts were provided instead.

(viii) *PS 52: Continuing NPSP risk assessment.* The installation FAPM ensures that NPSP personnel assess risk and protective factors impacting parents receiving NPSP home visitation services on an ongoing basis to continuously monitor progress toward intervention goals.

(ix) *PS 53: Opening, transferring, or closing NPSP cases.* The installation FAPM ensures that NPSP cases are opened, transferred, or closed in accordance with Service FAP headquarters policy and guidance.

(x) *PS 54: Disclosure of information in NPSP cases.* Information gathered during NPSP screening, clinical assessments, and in the provision of supportive services or treatment that is protected from disclosure under 5 U.S.C. 552a, DoD 6025.18–R, and 32 CFR part 310 is only disclosed in accordance with 5 U.S.C. 552a, DoD 6025.18–R, 32 CFR part 310, and the Service FAP headquarters implementing policies and guidance.

(4) *Training*—(i) *PS 55: Implementation of training requirements.* The FAP implements coordinated training activities for commanders, senior enlisted advisors, Service members, and their family members, DoD civilians, and contractors.

(ii) *PS 56: Training for commanders and senior enlisted advisors.* The

installation commander or senior mission commander must require that qualified FAP trainers defined in accordance with Service FAP headquarters implementing policy and guidance provide training on the prevention of and response to child abuse and domestic abuse to:

(A) Commanders within 90 days of assuming command.

(B) Annually to NCOs who are senior enlisted advisors.

(iii) *PS 57: Training for other installation personnel.* Qualified FAP trainers as defined in accordance with Service FAP headquarters implementing policy and guidance conduct training (or help provide subject matter experts who conduct training) on child abuse and domestic abuse in the military community to installation:

(A) Law enforcement and investigative personnel.

(B) Health care personnel.

(C) Sexual assault prevention and response personnel.

(D) Chaplains.

(E) Personnel in DoDEA schools.

(F) Personnel in child development centers.

(G) Family home care providers.

(H) Personnel and volunteers in youth programs.

(I) Family center personnel.

(J) Service members.

(iv) *PS 58: Content of training.* FAP training for personnel, as required by PS 56 and PS 57, located at paragraphs (d)(4)(ii) and (d)(4)(iii) of this section, includes:

(A) Research-supported protective factors that promote and sustain healthy family relationships.

(B) Risk factors for and the dynamics of child abuse and domestic abuse.

(C) Requirements and procedures for reporting child abuse in accordance with subpart A of this part, 42 U.S.C. 13031, 28 CFR 81.2, and DoD Instruction 6400.03.

(D) The availability of domestic abuse victim advocates and response to restricted and unrestricted reports of incidents of domestic abuse in accordance with DoD Instruction 6400.06.

(E) The dynamics of domestic abuse, reporting options, safety planning, and response unique to the military culture that establishes and supports competence in performing core victim advocacy duties.

(F) Roles and responsibilities of the FAP and the command under the installation's coordinated community response to a report of a child abuse, including the response to a report of child sexual abuse in a DoD sanctioned child or youth activity in accordance with subpart A of this part and DoD 6400.1–M–1, or domestic abuse incident, and actions that may be taken to protect the victim in accordance with subpart A of this part and DoD Instruction 6400.06.

(G) Available resources on and off the installation that promote protective factors and support families at risk before abuse occurs.

(H) Procedures for the management of child abuse and domestic abuse incidents that happen before a Service member is deployed, as set forth in PS 16, located at paragraph (b)(3)(v) of this section.

(I) The availability of transitional compensation for victims of child abuse and domestic abuse in accordance with 5 U.S.C. 552a and DoD Instruction 6400.03, and Service FAP headquarters implementing policy and guidance.

(v) *PS 59: Additional FAP training for NPSP personnel.* The installation FAPM ensures that all personnel offering NPSP services are trained in the content specified in PS 58, located at paragraph (d)(4)(iv) of this section, and in DoD Instruction 6400.05.

(e) *FAP Response to incidents of child abuse or domestic abuse*—(1) *Reports of child abuse*—(i) *PS 60: Responsibilities in responding to reports of child abuse.* The installation commander in accordance with subpart A of this part and Service FAP headquarters implementing policy and guidance must issue local policy that specifies the installation procedures for responding to reports of:

(A) Suspected incidents of child abuse in accordance with subpart A of this part, 42 U.S.C. 13031, 28 CFR 81.2, and Service FAP headquarters implementing policies and guidance, federal and State laws, and applicable SOFAs.

(B) Suspected incidents of child abuse involving students, ages 3–18, enrolled in a DoDEA school or any children participating in DoD-sanctioned child or youth activities or programs.

(C) Suspected incidents of the sexual abuse of a child in DoD-sanctioned child or youth activities or programs that must be reported to the DASD(MC&FP) in accordance with DoD Instruction 6400.03 and Service FAP headquarters implementing policies and guidance.

(D) Suspected incidents involving fatalities or serious injury involving child abuse that must be reported to OSD FAP in accordance with subpart A of this part and Service FAP headquarters implementing policies and guidance.

(ii) *PS 61: Responsibilities during emergency removal of a child from the home.* (A) In responding to reports of child abuse, the FAP complies with subpart A of this part and Service FAP headquarters implementing policy and guidance and installation policies, procedures, and criteria set forth under PS 11, located at paragraph (b)(2)(vii) of this section, during emergency removal of a child from the home.

(B) The FAP provides ongoing and direct case management and coordination of care of children placed in foster care in collaboration with the child welfare and foster care agency, and will not close the FAP case until a permanency plan for all involved children is in place.

(iii) *PS 62: Coordination with other authorities to protect children.* The FAP coordinates with military and local civilian law enforcement agencies, military investigative agencies, and civilian child protective agencies in response to reports of child abuse incidents in accordance with subpart A of this part, 42 U.S.C. 13031, 28 CFR 81.2, and DoD 6400.1–M–1 and appropriate MOUs under PS 5, located at paragraph (b)(2)(i) of this section.

(iv) *PS 63: Responsibilities in responding to reports of child abuse involving infants and toddlers from birth to age 3.* Services and support are delivered in a developmentally appropriate manner to infants and toddlers, and their families who come to the attention of FAP to ensure decisions and services meet the social and emotional needs of this vulnerable population.

(A) FAP makes a direct referral to the servicing early intervention agency, such as the Educational and Developmental Intervention Services (EDIS) where available, for infants and toddlers from birth to 3 years of age who are involved in an incident of child abuse in accordance with 20 U.S.C. 921 through 932 and chapter 33.

(B) FAP provides ongoing and direct case management services to families and their infants and toddlers placed in foster care or other out-of-home placements to ensure the unique developmental, physical, social-emotional, and mental health needs are addressed in child welfare-initiated care plans.

(v) *PS 64: Assistance in responding to reports of multiple victim child sexual abuse in dod sanctioned out-of-home care.* (A) The installation FAPM assists the installation commander in assessing the need for and implementing procedures for requesting deployment of a DoD FACAT in cases of multiple-victim child sexual abuse occurring in DoD-sanctioned or operated activities, in accordance with DoD Instruction

6400.03 and Service FAP headquarters implementing policies and guidance.

(B) The installation FAPM acts as the installation coordinator for the FACAT before it arrives at the installation.

(2) *PS 65: Responsibilities in Responding to Reports of Domestic Abuse.* Installation procedures for responding to unrestricted and restricted reports of domestic abuse are established in accordance with DoD Instruction 6400.06 and Service FAP headquarters implementing policy and guidance.

(3) *Informed consent*—(i) *PS 66: Informed consent for FAP clinical assessment, intervention services, and supportive services or clinical treatment.* Every person referred for FAP clinical intervention and supportive services must give informed consent for such assessment or services. Clients are considered voluntary, non-mandated recipients of services except when the person is:

(A) Issued a lawful order by a military commander to participate.

(B) Ordered by a court of competent jurisdiction to participate.

(C) A child, and the parent or guardian has authorized such assessment or services.

(ii) *PS 67: Documentation of informed consent.* FAP staff document that the person gave informed consent in the FAP case record, in accordance with DoD Instruction 6400.06 and the Service FAP headquarters implementing policies and guidance.

(iii) *PS 68: Privileged communication.* Every person referred for FAP clinical intervention and support services is informed of their right to the provisions of privileged communication by specified service providers in accordance with Military Rules of Evidence 513 and 514 in the Manual for Courts Martial, current edition (available at *http://www.apd.army.mil/pdffiles/mcm.pdf,* Section III, pages III–34 to III–36.).

(4) *Clinical case management and risk management*—(i) *PS 69: FAP case manager.* A clinical service provider is assigned to each FAP referral immediately when the case enters the FAP system in accordance with Service FAP headquarters implementing policy and guidance.

(ii) *PS 70: Initial risk monitoring.* FAP monitoring of the risk of further abuse begins when the report of suspected child abuse or domestic abuse is received and continues through the initial clinical assessment. The FAP case manager requests information from a variety of sources, in addition to the victim and the abuser (whether alleged or adjudicated), to identify additional risk factors and to clarify the context of the use of any violence, and ascertains the level of risk and the risk of lethality using standardized instruments in accordance with subpart A of this part and DoD Instruction 6400.06, and Service FAP headquarters policies and guidance.

(iii) *PS 71: Ongoing risk assessment.* (A) FAP risk assessment is conducted from the clinical assessment until the case closes:

(*1*) During each contact with the victim;

(*2*) During each contact with the abuser (whether alleged or adjudicated);

(*3*) Whenever the abuser is alleged to have committed a new incident of child abuse or domestic abuse;

(*4*) During significant transition periods for the victim or abuser;

(*5*) When destabilizing events for the victim or abuser occur; or

(*6*) When any clinically relevant issues are uncovered during clinical intervention services.

(B) The FAP case manager monitors risk at least quarterly when civilian agencies provide the clinical intervention services or child welfare services through MOUs with such agencies.

(C) The FAP case manager monitors risk at least monthly when the case is high risk or involves chronic child neglect or child sexual abuse.

(iv) *PS 72: Communication of increased risk.* The FAPM communicates increases in risk or risk of lethality to the appropriate commander(s), law enforcement, or civilian officials. FAP clinical staff assess whether the increased risk requires the victim or the victim advocate to be urged to review the victim's safety plan.

(5) *Clinical assessment*—(i) *PS 73: Clinical assessment policy.* The installation FAPM establishes procedures for the prompt clinical assessment of victims, abusers (whether alleged or adjudicated), and other family members, who are eligible to receive treatment in a military medical facility, in reports of child abuse and unrestricted reports of domestic abuse in accordance with subpart A of this part and DoD 6025.18–R when applicable and Service FAP headquarters policies and guidance, including:

(A) A prompt response based on the severity of the alleged abuse and further risk of child abuse or domestic abuse.

(B) Developmentally appropriate clinical tools and measures to be used, including those that take into account relevant cultural attitudes and practices.

(C) Timelines for FAP staff to complete the assessment of an alleged abuse incident.

(ii) *PS 74: Gathering and disclosure of information.* Service members who conduct clinical assessments and provide clinical services to Service member abusers (whether alleged or adjudicated) must adhere to Service policies with respect to advisement of rights in accordance with 10 U.S.C. chapter 47, also known as ''The Uniform Code of Military Justice''. Clinical service providers must also seek guidance from the servicing legal office when a question of applicability arises. Before obtaining information about and from the person being assessed, FAP staff fully discuss with such person:

(A) The nature of the information that is being sought.

(B) The sources from which such information will be sought.

(C) The reason(s) why the information is being sought.

(D) The circumstances in accordance with 5 U.S.C. 552a, DoD 6025.18–R, 32 CFR part 310, and Service FAP headquarters policies and guidance under which the information may be released to others.

(E) The procedures under 5 U.S.C. 552a, DoD 6025.18–R, 32 CFR part 310, and Service FAP headquarters policies and guidance for requesting the person's authorization for such information.

(F) The procedures under 5 U.S.C. 552a, DoD 6025.18–R, 32 CFR part 310, and Service FAP headquarters policies and guidance by which a person may request access to his or her record.

(iii) *PS 75: Components of clinical assessment.* FAP staff conducts or ensures that a clinical service provider conducts a clinical assessment of each victim, abuser (whether alleged or adjudicated), and other family member who is eligible for treatment in a military medical treatment facility, in accordance with PS 73, located at paragraph (e)(5)(i) of this section, including:

(A) An interview.

(B) A review of pertinent records.

(C) A review of information obtained from collateral contacts, including but not limited to medical providers, schools, child development centers, and youth programs.

(D) A psychosocial assessment, including developmentally appropriate assessment tools for infants, toddlers, and children.

(E) An assessment of the basic health, developmental, safety, and special health and mental health needs of infants and toddlers.

(F) An assessment of the presence and balance of risk and protective factors.

(G) A safety assessment.

(H) A lethality assessment.

(iv) *PS 76: Ethical conduct in clinical assessments.* When conducting FAP clinical assessments, FAP staff treat those being clinically assessed with respect, fairness, and in accordance with professional ethics.

(6) *Intervention strategy and treatment plan*—(i) *PS 77: Intervention strategy and treatment plan for the alleged abuser.* The FAP case manager prepares an appropriate intervention strategy based on the clinical assessment for every abuser (whether alleged or adjudicated) who is eligible to receive treatment in a military treatment facility and for whom a FAP case is opened. The intervention strategy documents the client's goals for self, the level of client involvement in developing the treatment goals, and recommends appropriate:

(A) Actions that may be taken by appropriate authorities under the coordinated community response, including safety and protective measures, to reduce the risk of another act of child abuse or domestic abuse, and the assignment of responsibilities for carrying out such actions.

(B) Treatment modalities based on the clinical assessment that may assist the abuser (whether alleged or adjudicated) in ending his or her abusive behavior.

(C) Actions that may be taken by appropriate authorities to assess and monitor the risk of recurrence.

(ii) *PS 78: Commanders' access to relevant information for disposition of allegations.* FAP provides commanders and senior enlisted personnel timely access to relevant information on child abuse incidents and unrestricted reports of domestic abuse incidents to support appropriate disposition of allegations. Relevant information includes:

(A) The intervention goals and activities described in PS 77, located at paragraph (e)(6)(i) of this section.

(B) The alleged abuser's prognosis for treatment, as determined from a clinical assessment.

(C) The extent to which the alleged abuser accepts responsibility for his or her behavior and expresses a genuine desire for treatment, provided that such information obtained from the alleged abuser was obtained in compliance with Service policies with respect to advisement of rights in accordance with 10 U.S.C. chapter 47.

(D) Other factors considered appropriate for the command, including the results of any previous treatment of the alleged abuser for child abuse or domestic abuse and his or her compliance with the previous treatment plan, and the estimated time the alleged abuser will be required to be away from military duties to fulfill treatment commitments.

(E) Status of any child taken into protective custody.

(iii) *PS 79: Supportive services plan for the victim and other family members.* The FAP case manager prepares a plan for appropriate supportive services or clinical treatment, based on the clinical assessments, for every victim or family member who is eligible to receive treatment in a military treatment facility, who expresses a desire for FAP services, and for whom a FAP case is opened. The plan recommends one or more appropriate treatment modalities or support services, in accordance with subpart A of this part and DoD Instruction 6400.05 and Service FAP headquarters policies and guidance.

(iv) *PS 80: Clinical consultation.* All FAP clinical assessments and treatment plans for persons in incidents of child abuse or domestic abuse are reviewed in the CCSM, in accordance with DoD 6025.18–R when applicable, 32 CFR part 310, and Service FAP headquarters policies and guidance.

(7) *Intervention and treatment*—(i) *PS 81: Intervention services for abusers.* Appropriate intervention services for an abuser (whether alleged or adjudicated) who is eligible to receive treatment in a military medical program are available either from the FAP or from other military agencies, contractors, or civilian services providers, including:

(A) Psycho-educationally based programs and services.

(B) Supportive services that may include financial counseling and spiritual support.

(C) Clinical treatment specifically designed to address risk and protective factors and dynamics associated with child abuse or domestic abuse.

(D) Trauma informed clinical treatment when appropriate.

(ii) *PS 82: Supportive services or treatment for victims who are eligible to receive treatment in a military treatment facility.* Appropriate supportive services and treatment are available either from the FAP or from other military agencies, contractors, or civilian services providers, including:

(A) Immediate and ongoing domestic abuse victim advocacy services, available 24 hours per day through personal or telephone contact, as set forth in DoD Instruction 6400.06 and Service FAP headquarters policies and guidance.

(B) Supportive services that may include financial counseling and spiritual support.

(C) Psycho-educationally based programs and services.

(D) Appropriate trauma informed clinical treatment specifically designed to address risk and protective factors and dynamics associated with child abuse or domestic abuse victimization.

(E) Supportive services, information and referral, safety planning, and treatment (when appropriate) for child victims and their family members of abuse by non-caretaking offenders.

(iii) *PS 83: Supportive services for victims or offenders who are not eligible to receive treatment in a military treatment facility.* Victims must receive initial safety-planning services only and must be referred to civilian support services for all follow-on care. Offenders must receive referrals to appropriate civilian intervention or treatment programs.

(iv) *PS 84: Ethical conduct in supportive services and treatment for abusers and victims.* When providing FAP supportive services and treatment, FAP staff treats those receiving such supportive services or clinical treatment with respect, fairness, and in accordance with professional ethics.

(v) *PS 85: CCSM review of treatment progress.* Treatment progress and the results of the latest risk assessment are reviewed periodically in the CCSM in accordance with subpart A of this part.

(A) Child sexual abuse cases are reviewed monthly in the CCSM.

(B) Cases involving foster care placement of children are reviewed monthly in the CCSM.

(C) All other cases are reviewed at least quarterly in the CCSM.

(D) Cases must be reviewed within 30 days of any significant event or a pending significant event that would impact care, including but not limited to a subsequent maltreatment incident, geographic move, deployment, pending separation from the Service, or retirement.

(vi) *PS 86: Continuity of services.* The FAP case manager ensures continuity of services before the transfer or referral of open child abuse or domestic abuse cases to other service providers:

(A) At the same installation or other installations of the same Service FAP headquarters.

(B) At installations of other Service FAP headquarters.

(C) In the civilian community.

(D) In child welfare services in the civilian community.

(8) *Termination and case closure*—(i) *PS 87: Criteria for case closure.* FAP services are terminated and the case is closed when treatment provided to the abuser (whether alleged or adjudicated) is terminated and treatment or

supportive services provided to the victim are terminated.

(A) Treatment provided to the abuser(s) (whether alleged or adjudicated) is terminated only if either:

(*1*) The CCSM discussion produced a consensus that clinical objectives have been substantially met and the results of a current risk assessment indicate that the risk of additional abuse and risk of lethality have declined; or

(*2*) The CCSM discussion produced a consensus that clinical objectives have not been met due to:

(*i*) Noncompliance of such abuser(s) with the requirements of the treatment program.

(*ii*) Unwillingness of such abuser(s) to make changes in behavior that would result in treatment progress.

(B) Treatment and supportive services provided to the victim are terminated only if either:

(*1*) The CCSM discussion produced a consensus that clinical objectives have been substantially met; or

(*2*) The victim declines further FAP supportive services.

(ii) *PS 88: Communication of case closure.* Upon closure of the case the FAP notifies:

(A) The abuser (whether alleged or adjudicated) and victim, and in a child abuse case, the non-abusing parent.

(B) The commander of an active duty victim or abuser (whether alleged or adjudicated).

(C) Any appropriate civilian court currently exercising jurisdiction over the abuser (whether alleged or adjudicated), or in a child abuse case, over the child.

(D) A civilian child protective services agency currently exercising protective authority over a child victim.

(E) The NPSP, if the family has been currently receiving NPSP intensive home visiting services.

(F) The domestic abuse victim advocate if the victim has been receiving victim advocacy services.

(iii) *PS 89: Disclosure of information.* Information gathered during FAP clinical assessments and during treatment or supportive services that is protected from disclosure under 5 U.S.C. 552a, DoD 6025.18–R, and 32 CFR part 310 is only disclosed in accordance with 5 U.S.C. 552a, DoD 6025.18–R, 32 CFR part 310, and Service FAP headquarters implementing policies and guidance.

(f) *Documentation and records management*—(1) *Documentation of NPSP cases*—(i) *PS 90: NPSP case record documentation.* For every client screened for NPSP services, NPSP personnel must document in accordance with Service FAP headquarters policies and guidance, at a minimum:

(A) The informed consent of the parents based on the services offered.

(B) The results of the initial screening for risk and protective factors and, if the risk was high, document:

(*1*) The assessment(s) conducted.

(*2*) The plan for services and goals for the parents.

(*3*) The services provided and whether suspected child abuse or domestic abuse was reported.

(*4*) The parents' progress toward their goals at the time NPSP services ended.

(ii) *PS 91: Maintenance, storage, and security of NPSP case records.* NPSP case records are maintained, stored, and kept secure in accordance with DoD 6025.18–R when applicable, 32 CFR part 310, and Service FAP headquarters policies and guidance.

(iii) *PS 92: Transfer of NPSP case records.* NPSP case records are transferred in accordance with DoD 6025.18–R when applicable, 32 CFR part 310, and Service FAP headquarters policies and procedures.

(iv) *PS 93: Disposition of NPSP records.* NPSP records are disposed of in accordance with DoD 6025.18–R when applicable, 32 CFR part 310, and Service FAP headquarters policies and guidance.

(2) *Documentation of reported incidents*—(i) *PS 94: Reports of child abuse and unrestricted reports of domestic abuse.* For every new reported incident of child abuse and unrestricted report of domestic abuse, the FAP documents, at a minimum, an accurate accounting of all risk levels, actions taken, assessments conducted, foster care placements, clinical services provided, and results of the quarterly CCSM from the initial report of an incident to case closure in accordance with Service FAP headquarters policies and guidance.

(ii) *PS 95: Documentation of multiple incidents.* Multiple reported incidents of child abuse and unrestricted reports of domestic abuse involving the same Service member or family members are documented separately within one FAP case record.

(iii) *PS 96: Maintenance, storage, and security of FAP case records.* FAP case records are maintained, stored, and kept secure in accordance with Service FAP headquarters policies and procedures.

(iv) *PS 97: Transfer of FAP case records.* FAP case records are transferred in accordance with DoD 6025.18–R when applicable, 32 CFR part 310, and Service FAP headquarters policies and procedures.

(v) *PS 98: Disposition of FAP records.* FAP records are disposed of in accordance with DoD Directive 5015.2, ''DoD Records Management Program'' (available at *http://www.dtic.mil/whs/directives/corres/pdf/501502p.pdf*) and Service FAP headquarters policies and guidance.

(3) *Central registry of child abuse and domestic abuse incidents*—(i) *PS 99: Recording data into the Service FAP headquarters central registry of child abuse and domestic abuse incidents.* Data pertaining to child abuse and unrestricted domestic abuse incidents reported to FAP are added to the Service FAP headquarters central registry of child and domestic abuse incidents. Quarterly edit checks are conducted in accordance with Service FAP headquarters policies and procedures. Data that personally identifies the sponsor, victim, or alleged abuser are not retained in the central registry for any incidents that did not meet criteria for entry or on any victim or alleged abuser who is not an active duty member or retired Service member, DoD civilian employee, contractor, or eligible beneficiary.

(ii) *PS 100: Access to the DoD central registry of child and domestic abuse incidents.* Access to the DoD central registry of child and domestic abuse incidents and disclosure of information therein complies with DoD 6400.1–M–1 and Service FAP headquarters policies and guidance.

(iii) *PS 101: Access to Service FAP headquarters central registry of child and domestic abuse reports.* Access to the Service FAP headquarters central registry of child and domestic abuse incidents and disclosure of information therein complies with DoD 6400.1–M–1 and Service FAP headquarters policies and procedures.

(4) *Documentation of restricted reports of domestic abuse*—(i) *PS 102: Documentation of restricted reports of domestic abuse.* Restricted reports of domestic abuse are documented in accordance with DoD Instruction 6400.06 and Service FAP headquarters policies and guidance.

(ii) *PS 103: Maintenance, storage, security, and disposition of restricted reports of domestic abuse.* Records of restricted reports of domestic abuse are maintained, stored, kept secure, and disposed of in accordance with DoD Instruction 6400.06 and Service FAP headquarters policies and procedures.

(g) *Fatality notification and review*—(1) *Fatality notification*—(i) *PS 104: Domestic abuse fatality and child abuse fatality notification.* The installation FAC establishes local procedures in compliance with Service FAP headquarters implementing policy and guidance to report fatalities known or suspected to have resulted from an act of domestic abuse, child abuse, or

suicide related to an act of domestic abuse or child abuse that involve personnel assigned to the installation or within its area of responsibility. Fatalities are reported through the Service FAP headquarters and the Secretaries of the Military Departments to the DASD(MC&FP) in compliance with subpart A of this part and DoD Instruction 6400.06, and Service FAP headquarters implementing policy and guidance.

(ii) *PS 105: Timeliness of reporting domestic abuse and child abuse fatalities to DASD(MC&FP).* The designated installation personnel report domestic abuse and child abuse fatalities through the Service FAP headquarters channels to the DASD(MC&FP) within the timeframe specified in DoD Instruction 6400.06 in accordance with the Service FAP headquarters implementing policy and guidance.

(iii) *PS 106: Reporting format for domestic abuse and child abuse fatalities.* Installation reports of domestic abuse and child abuse fatalities are reported on the DD Form 2901, ''Child Abuse or Domestic Abuse Related Fatality Notification,'' and in accordance with subpart A of this part.

(2) *Review of fatalities*—(i) *PS 107: Information forwarded to the Service FAP headquarters fatality review.* The installation provides written information concerning domestic abuse and child abuse fatalities that involve personnel assigned to the installation or within its area of responsibility promptly to the Service FAP headquarters fatality review team in accordance with DoD Instruction 6400.06 and in the format specified in the Service FAP headquarters implementing policy and guidance.

(ii) *PS 108: Cooperation with non-DoD fatality review teams.* Authorized installation personnel provide information about domestic abuse and child abuse fatalities that involve personnel assigned to the installation or within its area of responsibility to non-DoD fatality review teams in accordance with written MOUs and 5 U.S.C. 552a and 32 CFR part 310.

(h) *QA and accreditation or inspections*—(1) *QA*—(i) *PS 109: Installation FAP QA program.* The installation FAC will establish local QA procedures that address compliance with the PSs in this section in accordance with subpart A of this part and Service FAP headquarters implementing policy and guidance.

(ii) *PS 110: QA Training.* All FAP personnel must be trained in installation QA procedures.

(iii) *PS 111: Monitoring FAP compliance with PSs.* The installation FAPM monitors compliance of FAP personnel to installation QA procedures and the PSs in this section.

(2) *Accreditation or inspections*—(i) *PS 112: Accreditation or inspections.* The installation FAP undergoes accreditation or inspection at least every 4 years to monitor compliance with the PSs in this section, in accordance with subpart A of this part and Service FAP headquarters policies and guidance.

(ii) *PS 113: Review of accreditation and inspection results.* The installation FAC reviews the results of the FAP accreditation review or inspection and submits findings and corresponding corrective action plans to the Service FAP headquarters in accordance with its implementing policy and guidance.

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Subpart C—Reserved

Subpart D—Reserved

Subpart E—Guidelines for Clinical Intervention for Persons Reported as Domestic Abusers

Authority: 10 U.S.C. chapter 47, 42 U.S.C. 5106g, 42 U.S.C. 13031.

§ 61.25 Purpose.

(a) This part is composed of several subparts, each containing its own purpose. This subpart implements policy, assigns responsibilities, and provides procedures for addressing child abuse and domestic abuse in military communities.

(b) Restricted reporting guidelines are provided in DoD Instruction 6400.06, ''Domestic Abuse Involving DoD Military and Certain Affiliated Personnel'' (available at *http://www.dtic.mil/whs/directives/corres/pdf/640006p.pdf*). This subpart prescribes guidelines for Family Advocacy Program (FAP) assessment, clinical rehabilitative treatment, and ongoing monitoring of individuals who have been reported to FAP by means of an unrestricted report for domestic abuse against:

(1) Current or former spouses, or

(2) Intimate partners.

§ 61.26 Applicability.

This subpart applies to OSD, 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 in this subpart as the ''DoD Components'').

§ 61.27 Definitions.

Unless otherwise noted, the following terms and their definitions are for the purpose of this subpart.

Abuser. An individual adjudicated in a military disciplinary proceeding or civilian criminal proceeding who is found guilty of committing an act of domestic violence or a lesser included offense, as well as an individual alleged to have committed domestic abuse, including domestic violence, who has not had such an allegation adjudicated.

Abuser contract. The treatment agreement between the clinician and the abuser that specifies the responsibilities and expectations of each party. It includes specific abuser treatment goals as identified in the treatment plan and clearly specifies that past, present, and future allegations and threats of domestic abuse and child abuse or neglect will be reported to the active duty member's commander, to local law enforcement and child protective services, as appropriate, and to the potential victim.

Clinical case management. Defined in subpart B of this part.

Clinical case staff meeting (CCSM). Defined in subpart B of the part.

Clinical intervention. Defined in subpart B of this part.

Domestic abuse. Domestic violence or a pattern of behavior resulting in emotional/psychological abuse, economic control, and/or interference with personal liberty that is directed toward a person who is:

(1) A current or former spouse;

(2) A person with whom the abuser shares a child in common; or

(3) A current or former intimate partner with whom the abuser shares or has shared a common domicile.

Domestic violence. An offense under the United States Code, the UCMJ, or State law involving the use, attempted use, or threatened use of force or violence against a person, or a violation of a lawful order issued for the protection of a person, who is:

(1) A current or former spouse.

(2) A person with whom the abuser shares a child in common; or

(3) A current or former intimate partner with whom the abuser shares or has shared a common domicile.

FAP Manager. Defined in subpart A of this part.

Incident determination committee. Defined in subpart A of this part.

Intimate partner. A person with whom the victim shares a child in common, or a person with whom the victim shares or has shared a common domicile.

Risk management. Defined in subpart B of this part.

Severe abuse. Exposure to chronic pattern of emotionally abusive behavior with physical or emotional effects requiring hospitalization or long-term mental health treatment. In a spouse emotional abuse incident, this designation requires an alternative environment to protect the physical safety of the spouse. Exposure to a chronic pattern of neglecting behavior with physical, emotional, or educational effects requiring hospitalization, long-term mental health treatment, or long-term special education services. Physical abuse resulting in major physical injury requiring inpatient medical treatment or causing temporary or permanent disability or disfigurement; moderate or severe emotional effects requiring long-term mental health treatment; and may require placement in an alternative environment to protect the physical safety or other welfare of the victim. Sexual abuse involving oral, vaginal, or anal penetration that may or may not require one or more outpatient visits for medical treatment; may be accompanied by injury requiring inpatient medical treatment or causing temporary or permanent disability or disfigurement; moderate or severe emotional effects requiring long-term mental health treatment; and may require placement in an alternative environment to protect the physical safety or welfare of the victim.

Unrestricted report. A process allowing a victim of domestic abuse to report an incident using current reporting channels, *e.g.* chain of command, law enforcement or criminal investigative organization, and FAP for clinical intervention.

§ 61.28 Policy.

In accordance with subpart A of this part and DoD Instruction 6400.06, it is DoD policy to:

(a) Develop PSs and critical procedures for the FAP that reflect a coordinated community response to domestic abuse.

(b) Address domestic abuse within the military community through a coordinated community risk management approach.

(c) Provide appropriate individualized and rehabilitative treatment that supplements administrative or disciplinary action, as appropriate, to persons reported to FAP as domestic abusers.

§ 61.29 Responsibilities.

(a) The Under Secretary of Defense for Personnel and Readiness (USD(P&R)):

(1) Sponsors FAP research and evaluation and participates in other federal research and evaluation projects relevant to the assessment, treatment, and risk management of domestic abuse.

(2) Ensures that research is reviewed every 3 to 5 years and that relevant progress and findings are distributed to the Secretaries of the Military Departments using all available Web-based applications.

(3) Assists the Secretaries of the Military Departments to:

(i) Identify tools to assess risk of recurrence.

(ii) Develop and use pre- and post-treatment measures of effectiveness.

(iii) Promote training in the assessment, treatment, and risk management of domestic abuse.

(b) The Secretaries of the Military Departments issue implementing guidance in accordance with this part.

The guidance must provide for the clinical assessment, rehabilitative treatment, and ongoing monitoring and risk management of Service members and eligible beneficiaries reported to FAP for domestic abuse by means of an unrestricted report.

§ 61.30 Procedures.

(a) *General principles for clinical intervention*—(1) *Components of clinical intervention.* The change from abusive to appropriate behavior in domestic relationships is a process that requires clinical intervention, which includes ongoing coordinated community risk management, assessment, and treatment.

(2) *Military administrative and disciplinary actions and clinical intervention.* The military disciplinary system and FAP clinical intervention are separate processes. Commanders may proceed with administrative or disciplinary actions at any time.

(3) *Goals of clinical intervention.* the primary goals of clinical intervention in domestic abuse are to ensure the safety of the victim and community, and promote stopping abusive behaviors.

(4) *Therapeutic alliance*—(i) Although clinical intervention must address abuser accountability, clinical assessment and treatment approaches should be oriented to building a therapeutic alliance with the abuser so that he or she is sincerely motivated to take responsibility for his or her actions, improve relationship skills, and end the abusive behavior.

(ii) Clinical intervention will neither be confrontational nor intentionally or unintentionally rely on the use of shame to address the abuser's behavior. Such approaches have been correlated in research studies with the abuser's premature termination of or minimal compliance with treatment.

(A) It is appropriate to encourage abusers to take responsibility for their use of violence; however, in the absence of a strong, supportive, therapeutic relationship, confrontational approaches may induce shame and are likely to reduce treatment success and foster dropout. Approaches that create and maintain a therapeutic alliance are more likely to motivate abusers to seek to change their behaviors, add to their relationship skills, and take responsibility for their actions. Studies indicate that a strong therapeutic alliance is related to decreased psychological and physical aggression.

(B) A clinical style that helps the abuser identify positive motivations to change his or her behavior is effective in strengthening the therapeutic alliance while encouraging the abuser to evaluate his or her own behavior. Together, the therapist and abuser attempt to identify the positive consequences of change, identify motivation for change, determine the obstacles that lie in the path of change, and identify specific behaviors that the abuser can adopt.

(5) *Criteria for clinical intervention approaches.* Clinical intervention approaches should reflect the current state of knowledge. This subpart recommends an approach (or multiple approaches) and procedures that have one or more of these characteristics:

(i) Demonstrated superiority in formal evaluations in comparison to one or more other approaches.

(ii) Demonstrated statistically significant success in formal evaluations, but not yet supported by a consensus of experts.

(iii) The support of a consensus due to significant potential in the absence of statistically significant success.

(iv) Significant potential when consensus does not yet exist.

(6) *Clinical intervention for female abusers.* Findings from research and clinical experience indicate that women who are domestic abusers may require clinical intervention approaches other than those designed specifically for male abusers.

(i) Attention should be given to the motivation and context for their use of abusive behaviors to discover whether or not using violence against their spouse, former spouse, or intimate partner has been in response to his or her domestic abuse.

(ii) Although both men and women who are domestic abusers may have undergone previous traumatic experiences that may warrant treatment, women's traumatic experiences may require additional attention within the context of domestic abuse.

(7) *Professional standards.* Domestic abusers who undergo clinical intervention will be treated with respect, fairness, and in accordance with professional ethics. All applicable rights of abusers will be observed, including compliance with the rights and warnings in 10 U.S.C. 831, chapter 47, also known and referred to in this subpart as the ''Uniform Code of Military Justice (UCMJ)'' for abusers who are Service members.

(i) Clinical service providers who conduct clinical assessments of or provide clinical treatment to abusers will adhere to Service policies with respect to the advisement of rights pursuant to the UCMJ, will seek guidance from the supporting legal office when a question of applicability arises, and will notify the relevant military law enforcement investigative agency if advisement of rights has occurred.

(ii) Clinical service providers and military and civilian victim advocates must follow the Privacy Act of 1974, as amended, and other applicable laws, regulations, and policies regarding the disclosure of information about victims and abusers.

(iii) Individuals and agencies providing clinical intervention to persons reported as domestic abusers will not discriminate based on race, color, religion, gender, disability, national origin, age, or socioeconomic status. All members of clinical intervention teams will treat abusers with dignity and respect regardless of the nature of their conduct or the crimes they may have committed. Cultural differences in attitudes will be recognized, respected, and addressed in the clinical assessment process.

(8) *Clinical case management.* The FAP clinical service provider has the responsibility for clinical case management.

(b) *Coordinated community risk management*—(1) *General.* A coordinated community response to domestic abuse is the preferred method to enhance victim safety, reduce risk, and ensure abuser accountability. In a coordinated community response, the training, policies, and operations of all civilian and military human service and FAP clinical service providers are linked closely with one another. Since no particular response to a report of domestic abuse can ensure that a further incident will not occur, selection of the most appropriate response will be considered one of coordinated community risk management.

(2) *Responsibility for coordinated community risk management.* Overall responsibility for managing the risk of further domestic abuse, including developing and implementing an intervention plan when significant risk of lethality or serious injury is present, lies with:

(i) The Service member's commander when a Service member is a domestic abuser or is the victim (or their military dependent is the victim) of domestic abuse.

(ii) The commander of the installation or garrison on which a Service member who is a domestic abuser or who is the victim (or their military dependent who is the victim) of domestic abuse may live.

(iii) The commander of the military installation on which the civilian is housed for a civilian abuser accompanying U.S. military forces outside the United States.

(iv) The FAP clinical service provider or case manager for liaison with civilian authorities in the event the abuser is a civilian.

(3) *Implementation.* Coordinated community risk management requires:

(i) The commander of the military installation to participate in local coalitions and task forces to enhance communication and strengthen program development among activities. In the military community, this may include inviting State, local, and tribal government representatives to participate in their official capacity as non-voting guests in meetings of the Family Advocacy Committee (FAC) to discuss coordinated community risk management in domestic abuse incidents that cross jurisdictions. (See subpart B of this part for FAC standards.)

(A) Agreements with non-federal activities will be reflected in signed MOU.

(B) Agreements may be among military installations of different Military Services and local government activities.

(ii) Advance planning through the installation FAC by:

(A) The commander of the installation.

(B) FAP and civilian clinical service providers.

(C) Victim advocates in the military and civilian communities.

(D) Military chaplains.

(E) Military and civilian law enforcement agencies.

(F) Military supporting legal office and civilian prosecutors.

(G) Military and civilian mental health and substance abuse treatment agencies.

(H) DoDEA school principals or their designees.

(I) Other civilian community agencies and personnel including:

(*1*) Criminal and family court judges.

(*2*) Court probation officials.

(*3*) Child protective services agencies.

(*4*) Domestic abuse shelters.

(iii) FAP clinical service providers to address:

(A) Whether treatment approaches under consideration are based on individualized assessments and directly address other relevant risk factors.

(B) Whether the operational tempo of frequent and lengthy deployments to accomplish a military mission affects the ability of active duty Service members to complete a State-mandated treatment program.

(C) Respective responsibilities for monitoring abusers' behavior on an ongoing basis, developing procedures for disclosure of relevant information to appropriate authorities, and implementing a plan for intervention to address the safety of the victim and community.

(4) *Deployment.* Risk management of a Service member reported to FAP as a domestic abuser prior to a military deployment, when his or her deployment is not cancelled, or reported to FAP as a domestic abuser while deployed requires planning for his or her return to their home station.

(i) The installation FAC should give particular attention to special and early returns so during deployment of a unit, the forward command is aware of the procedures to notify the home station command of regularly-scheduled and any special or early returns of such personnel to reduce the risk of additional abuse.

(ii) An active duty Service member reported as a domestic abuser may be returned from deployment early for military disciplinary or civilian legal procedures, for rest and recuperation (R&R), or, if clinical conditions warrant, for treatment not otherwise available at the deployed location and if the commander feels early return is necessary under the circumstances. To prevent placing a victim at higher risk, the deployed unit commander will notify the home station commander and the installation FAP in advance of the early return, unless operational security prevents such disclosure.

(5) *Clinical case management.* Ongoing and active case management, including contact with the victim and liaison with the agencies in the coordinated community response, is necessary to ascertain the abuser's sincerity and changed behavior. Case management requires ongoing liaison and contact with multiple information sources involving both military and surrounding civilian community agencies. Clinical case management includes:

(i) *Initial clinical case management.* Initial case management begins with the intake of the report of suspected domestic abuse, followed by the initial clinical assessment.

(ii) *Periodic clinical case management.* Periodic case management includes the FAP clinical service provider's assessment of treatment progress and the risk of recurrence of abuse. Treatment progress and the results of the latest risk assessment should be discussed whenever the case is reviewed at the CCSM.

(iii) *Follow-up.* As a result of the risk assessment, if there is a risk of imminent danger to the victim or to another person, the FAP clinical service provider may need to notify:

(A) The victim or other person at risk and the victim advocate to review, and possibly revise, the safety plan.

(B) The appropriate military command, and military or civilian law enforcement agency.

(C) Other treatment providers to modify their intervention with the abuser. For example, the provider of substance abuse treatment may need to change the requirements for monitored urinalysis.

(c) *Clinical assessment*—(1) *Purposes.* A structured clinical assessment of the abuser is a critical first step in clinical intervention. The purposes of clinical assessment are to:

(i) Gather information to evaluate and ensure the safety of all parties—victim, abuser, other family members, and community.

(ii) Assess relevant risk factors, including the risk of lethality.

(iii) Determine appropriate risk management strategies, including clinical treatment; monitoring, controlling, or supervising the abuser's behavior to protect the victim and any individuals who live in the household; and victim safety planning.

(2) *Initial information gathering.* Initial information gathering and risk assessment begins when the unrestricted report of domestic abuse is received by FAP.

(i) Since the immediacy of the response is based on the imminence of risk, the victim must be contacted as soon as possible to evaluate her or his safety, safety plan, and immediate needs. If a domestic abuse victim advocate is available, the victim advocate must contact the victim. If a victim advocate is not available, the clinician must contact the victim. Every attempt must be made to contact the victim via telephone or email to request a face-to-face interview. If the victim is unable or unwilling to meet face-to-face, the victim's safety, safety plan, and immediate needs will be evaluated by telephone.

(ii) The clinician must interview the victim and abuser separately to maximize the victim's safety. Both victim and abuser must be assessed for the risk factors in paragraphs (c)(4) and (c)(6) of this section.

(A) The clinician must inform the victim and abuser of the limits of confidentiality and the FAP process before obtaining information from them. Such information must be provided in writing as early as practical.

(B) The clinician must build a therapeutic alliance with the abuser using an interviewing style that assesses readiness for and motivates behavioral change. The clinician must be sensitive

to cultural considerations and other barriers to the client's engagement in the process.

(iii) The clinician must also gather information from a variety of other sources to identify additional risk factors, clarify the context of the use of any violence, and determine the level of risk. The assessment must include information about whether the Service member is scheduled to be deployed or has been deployed within the past year, and the dates of scheduled or past deployments. Such sources of information may include:

(A) The appropriate military command.

(B) Military and civilian law enforcement.

(C) Medical records.

(D) Children and other family members residing in the home.

(E) Others who may have witnessed the acts of domestic abuse.

(F) The FAP central registry of child maltreatment and domestic abuse reports.

(iv) The clinician will request disclosure of information and use the information disclosed in accordance with 32 CFR part 310 and DoD 6025.18–R, ''DoD Health Information Privacy Regulation'' (available at *http://www.dtic.mil/whs/directives/corres/pdf/602518r.pdf*).

(3) *Violence contextual assessment.* The clinical assessment of domestic abuse will include an assessment of the use of violence within the context of relevant situational factors to guide intervention. Relevant situational factors regarding the use of violence include, but are not limited to:

(i) *Exacerbating factors.* Exacerbating factors include whether either victim or domestic abuser:

(A) Uses violence as an inappropriate means of expressing frustrations with life circumstances.

(B) Uses violence as a means to exert and maintain power and control over the other party.

(C) Has inflicted injuries on the other party during the relationship, and the extent of such injuries.

(D) Fears the other.

(ii) *Mitigating factors.* Mitigating factors include whether either victim or domestic abuser uses violence:

(A) In self-defense.

(B) To protect another person, such as a child.

(C) In retaliation, as noted in the most recent incident or in the most serious incident.

(4) *Lethality risk assessment.* The clinician must assess the risk for lethality in every assessment for domestic abuse, whether or not violence was used in the present incident. The lethality assessment will assess the presence of these factors:

(i) For both victim and domestic abuser:

(A) Increased frequency and severity of violence in the relationship.

(B) Ease of access to weapons.

(C) Previous use of weapons or threats to use weapons.

(D) Threats to harm or kill the other party, oneself, or another (especially a child of either party).

(E) Excessive use of alcohol and use of illegal drugs.

(F) Jealousy, possessiveness, or obsession, including stalking.

(ii) For the domestic abuser only:

(A) Previous acts or attempted acts of forced or coerced sex with the victim.

(B) Previous attempts to strangle the victim.

(iii) For the victim only:

(A) The victim's attempts or statements of intent to leave the relationship.

(B) If the victim is a woman, whether the victim is pregnant and the abuser's attitude regarding the pregnancy.

(C) The victim's fear of harm from the abuser to himself or herself or any child of either party or other individual living in the household.

(5) *Results of lethality risk assessment.* When one or more lethality factors are identified:

(i) The clinician will promptly contact the appropriate commander and military or civilian law enforcement agency and the victim advocate.

(ii) The commander or military law enforcement agency will take immediate steps to protect the victim, addressing the lethality factor(s) identified.

(iii) The victim advocate will contact the victim to develop or amend any safety plan to address the lethality factor(s) identified.

(iv) The commander will intensify ongoing coordinated community risk management and monitoring of the abuser.

(6) *Assessment of other risk factors.* The clinician will separately assess the victim and abuser for other factors that increase risk for future domestic abuse. Such risk factors to be assessed include, but are not limited to, the abuser's:

(i) Previous physical and sexual violence and emotional abuse committed in the current and previous relationships. The greater the frequency, duration, and severity of such violence, the greater the risk.

(ii) Use of abuse to create and maintain power and control over others.

(iii) Attitudes and beliefs directly or indirectly supporting domestic abusive behavior. The stronger the attitudes and beliefs, the greater the risk.

(iv) Blaming of the victim for the abuser's acts. The stronger the attribution of blame to the victim, the greater the risk.

(v) Denial that his or her abusive acts were wrong and harmful, or minimization of their wrongfulness and harmfulness.

(vi) Lack of motivation to change his or her behavior. The weaker the motivation, the greater the risk.

(vii) Physical and/or emotional abuse of any children in the present or previous relationships. The greater the frequency, duration, and severity of such abuse, the greater the risk.

(viii) Physical abuse of pets or other animals. The greater the frequency, duration, and severity of such abuse, the greater the risk.

(ix) Particular caregiver stress, such as the management of a child or other family member with disabilities.

(x) Previous criminal behavior unrelated to domestic abuse. The greater the frequency, duration, and severity of such criminal behavior, the greater the risk.

(xi) Previous violations of civil or criminal court orders. The greater the frequency of such violations, the greater the risk.

(xii) Relationship problems, such as infidelity or significant ongoing conflict.

(xiii) Financial problems.

(xiv) Mental health issues or disorders, especially disorders of emotional attachment or depression and issues and disorders that have not been treated successfully.

(xv) Experience of traumatic events during military service, including events that resulted in physical injuries.

(xvi) Any previous physical harm, including head or other physical injuries, sexual victimization, or emotional harm suffered in childhood and/or as a result of violent crime outside the relationship.

(xvii) Fear of relationship failure or of abandonment.

(7) *Periodic risk assessment.* The FAP clinical service provider will periodically conduct a risk assessment with input from the victim, adding the results of such risk assessments to the abuser's treatment record in accordance with subpart B of this part, and incorporating them into the abuser's clinical treatment plan and contract. Risk assessment will be conducted:

(i) At least quarterly, but more frequently as required to monitor safety when the current situation is deemed high risk.

(ii) Whenever the abuser is alleged to have committed a new incident of domestic abuse or an incident of child abuse.

(iii) During significant transition periods in clinical case management, such as the change from assessment to treatment, changes between treatment modalities, and changes between substance abuse or mental health treatment and FAP treatment.

(iv) After destabilizing events such as accusations of infidelity, separation or divorce, pregnancy, deployment, administrative or disciplinary action, job loss, financial issues, or health impairment.

(v) When any clinically relevant issues are uncovered, such as childhood trauma, domestic abuse in a prior relationship, or the emergence of mental health problems.

(8) *Assessment of events likely to trigger the onset of future abuse.* The initial clinical assessment will include a discussion of potential events that may trigger the onset of future abuse, such as pregnancy, upcoming deployment, a unilateral termination of the relationship, or conflict over custody and visitation of children in the relationship.

(9) *Tools and instruments for assessment.* The initial clinical assessment process will include the use of appropriate standardized tools and instruments, Service-specific tools, and clinical interviewing. Unless otherwise indicated, the results from one or more of these tools will not be the sole determinant(s) for excluding an individual from treatment. The tools should be used for:

(i) Screening for suitability for treatment.

(ii) Tailoring treatment approaches, modalities, and content.

(iii) Reporting changes in the level of risk.

(iv) Developing risk management strategies.

(v) Making referrals to other clinical service providers for specialized intervention when appropriate.

(d) *Clinical treatment*—(1) *Theoretical approaches.* Based on the results of the clinical assessment, the FAP clinical service provider will select a treatment approach that directly addresses the abuser's risk factors and his or her use of violence. Such approaches include, but are not limited to, cognitive and dialectical behavioral therapy, psychodynamic therapy, psycho-educational programs, attachment-based intervention, and combinations of these and other approaches. See paragraph (a)(5) of this section for criteria for clinical intervention approaches.

(2) *Treatment Planning.* A FAP clinical service provider will develop a treatment plan for domestic abuse that is based on a structured assessment of the particular relationship and risk factors present.

(i) The treatment plan will not be based on a generic ''one-size-fits-all'' approach. The treatment plan will consider that people who commit domestic abuse do not compose a homogeneous group, and may include people:

(A) Of both sexes.

(B) With a range of personality characteristics.

(C) With mental illness and those with no notable mental health problems.

(D) Who abuse alcohol or other substances and/or use illegal drugs and those who do not.

(E) Who combine psychological abuse with coercive techniques, including violence, to maintain control of their spouse, former spouse, or intimate partner and those who do not attempt to exert coercive control.

(F) In relationships in which both victim and domestic abuser use violence (excluding self-defense).

(ii) Due to the demographics of the military population, structure of military organizations, and military culture, it is often possible to intervene in a potentially abusive relationship before the individual uses coercive techniques to gain and maintain control of the other party. Thus, a reliance on addressing the abuser's repeated use of power and control tactics as the sole or primary focus of treatment is frequently inapplicable in the military community.

(iii) Treatment objectives, when applicable, will seek to:

(A) Educate the abuser about what domestic abuse is and the common dynamics of domestic abuse in order for the abuser to learn to identify his or her own abusive behaviors.

(B) Identify the abuser's thoughts, emotions, and reactions that facilitate abusive behaviors.

(C) Educate the abuser on the potential for re-abusing, signs of abuse escalation and the normal tendency to regress toward previous unacceptable behaviors.

(D) Identify the abuser's deficits in social and relationship skills. Teach the abuser non-abusive, adaptive, and pro-social interpersonal skills and healthy sexual relationships, including the role of intimacy, love, forgiveness, development of healthy ego boundaries, and the appropriate role of jealousy.

(E) Increase the abuser's empathic skills to enhance his or her ability to understand the impact of violence on the victim and empathize with the victim.

(F) Increase the abuser's self-management techniques, including assertiveness, problem solving, stress management, and conflict resolution.

(G) Educate the abuser on the socio-cultural basis for violence.

(H) Identify and address issues of gender role socialization and the relationship of such issues to domestic abuse.

(I) Increase the abuser's understanding of the impact of emotional abuse and violence directed at children and violence that is directed to an adult but to which children in the family are exposed.

(J) Facilitate the abuser's acknowledgment of responsibility for abusive actions and consequences of actions. Although the abuser's history of victimization should be addressed in treatment, it should never take precedence over his or her responsibility to be accountable for his or her abusive and/or violent behavior, or be used as an excuse, rationalization, or distraction from being held so accountable.

(K) Identify and confront the abuser's issues of power and control and the use of power and control against victims.

(L) Educate the abuser on the impact of substance abuse and its correlation to violence and domestic abuse.

(iv) These factors should inform treatment planning:

(A) *Special objectives for female abusers.* Findings from research and clinical experience indicate that clinical treatment based solely on analyses of male power and control may not be applicable to female domestic abusers. Clinical approaches must give special attention to the motivation and context for use of violence and to self-identified previous traumatic experiences.

(B) *Special Strategies for Grieving Abusers.* When grief and loss issues have been identified in the clinical assessment or during treatment, the clinician will incorporate strategies for addressing grief and loss into the treatment plan. This is especially important if a victim has decided to end a relationship with a domestic abuser because of the abuse.

(*1*) Abusers with significant attachment issues who are facing the end of a relationship with a victim are more likely to use lethal violence against the victim and children in the family. This is exemplified by the statement: ''If I can't have you no one else can have you.''

(*2*) They are also more likely to attempt suicide. This is exemplified by the statement: ''Life without you is not worth living.''

(C) *Co-Occurrence of substance abuse.* The coordinated community management of risk is made more

difficult when the person committing domestic abuse also abuses alcohol or other substances. When the person committing domestic abuse also abuses alcohol or other substances:

(*1*) Treatment for domestic abuse will be coordinated with the treatment for substance abuse and information shared between the treatment providers in accordance with applicable laws, regulations, and policies.

(*2*) Special consideration will be given to integrating the two treatment programs or providing them at the same time.

(*3*) Information about the abuser's progress in the respective treatment programs will be shared between the treatment providers. Providing separate treatment approaches with no communication between the treatment providers complicates the community's management of risk.

(D) *Co-occurrence of child abuse.* When a domestic abuser has allegedly committed child abuse, the clinician will:

(*1*) Notify the appropriate law enforcement agency and other civilian agencies as appropriate in accordance with 42 U.S.C. 13031.

(*2*) Notify the appropriate child protective services agency and the FAP supervisor to ascertain if a FAP child abuse case should be opened in accordance with DoD Instruction 6400.06 and 42 U.S.C. 5106g.

(*3*) Address the impact of such abuse of the child(ren) as a part of the domestic abuser clinical treatment.

(*4*) Seek to improve the abuser's parenting skills if appropriate in conjunction with other skills.

(*5*) Continuously assess the abuser as a parent or caretaker as appropriate throughout the treatment process.

(*6*) Address the impact of the abuser's domestic abuse directed against the victim upon children in the home as a part of the domestic abuser clinical treatment.

(E) *Occurrence of sexual abuse within the context of domestic abuse.* Although sexual abuse is a subset of domestic abuse, victims may not recognize that sexual abuse can occur in the context of a marital or intimate partner relationship. Clinicians should employ specific assessment strategies to identify the presence of sexual abuse within the context of domestic abuse.

(F) *Deployment.* Deployment of an active duty Service member who is a domestic abuser is a complicating factor for treatment delivery.

(*1*) A Service member who is scheduled to deploy in the near future may be highly stressed and therefore at risk for using poor conflict management skills.

(*2*) While on deployment, a Service member is unlikely to receive clinical treatment for the abuse due to mission requirements and unavailability of such treatment.

(*3*) A deployed Service member reported to FAP as a domestic abuser may return from deployment early for military disciplinary or civilian legal procedures, for R&R, or if clinical conditions warrant early return from deployment for treatment not otherwise available at the deployed location and if the commander feels early return is necessary under the circumstances. The home station command and installation FAP must be notified in advance of the early return of a deployed Service member with an open FAP case, unless operational security prevents disclosure, so that the risk to the victim can be assessed and managed.

(*4*) A Service member who is deployed in a combat operation or in an operation in which significant traumatic events occur may be at a higher risk of committing domestic abuse upon return.

(*5*) The Service member may receive head injuries. Studies indicate that such an injury increases the risk of personality changes, including a lowered ability to tolerate frustration, poor impulse control, and an increased risk of using violence in situations of personal conflict. If the Service member has a history of a head injury prior to or during deployment, the clinician should ascertain whether the Service member received a medical assessment, was prescribed appropriate medication, or is undergoing current treatment.

(*6*) The Service member may suffer from depression prior to, during, or after deployment and may be at risk for post-traumatic stress disorder. Studies indicate that males who are depressed are at higher risk of using violence in their personal relationships. If the Service member presents symptoms of depression, the clinician should ascertain whether the Service member has received a medical assessment, was prescribed appropriate medication, or is undergoing current treatment.

(3) *Treatment modalities.* Clinical treatment may be provided in one or more of these modalities as appropriate to the situation:

(i) *Group therapy.* Group therapy is the preferred mode of treatment for domestic abusers because it applies the concept of problem universality and offers opportunities for members to support one another and learn from other group members' experiences.

(A) The decision to assign an individual to group treatment is initially accomplished during the clinical assessment process; however, the group facilitator(s) should assess the appropriateness of group treatment for each individual on an ongoing basis.

(B) The most manageable maximum number of participants for a domestic abuser treatment group with one or two facilitators is 12.

(C) A domestic abuser treatment group may be restricted to one sex or open to both sexes. When developing a curriculum or clinical treatment agenda for a group that includes both sexes, the clinician should consider that the situations in paragraphs (d)(3)(i)(C)(*1*) through (d)(3)(i)(C)(*3*) are more likely to occur in a group that includes both sexes.

(*1*) Treatment-disruptive events such as sexual affairs or emotional coupling.

(*2*) Jealousy on the part of the non-participant victim.

(*3*) Intimidation of participants whose sex is in the minority within the group.

(D) A group may have one or two facilitators; if there are two facilitators, they may be of the same or both sexes.

(ii) *Individual treatment.* In lieu of using a group modality, approaches may be applied in individual treatment if the number of domestic abusers at the installation entering treatment is too small to create a group.

(iii) *Conjoint treatment with substance abusers.* When small numbers of both domestic abusers and substance abusers make separate treatment groups impractical, therapists should consider combining abusers into the same group because co-occurrence of domestic abuse and substance abuse has been documented in scientific literature and the content for clinical treatment of domestic abuse and substance abuse is very similar. When domestic abusers and substance abusers are combined into the same group, the facilitator(s) must be certified in substance abuse treatment as well as meeting the conditions in paragraph (e) of this section.

(iv) *Conjoint treatment of victim and abuser.* Domestic abuse in a relationship may be low-level in severity and frequency and without a pervasive pattern of coercive control.

(A) *Limitations on Use.* Conjoint treatment may be considered in such cases where the abuser and victim are treated together, but only if all of these conditions are met:

(1) Each of the parties separately and voluntarily indicates a desire for this approach.

(*2*) Any abuse, especially any violence, was infrequent, not severe, and not intended or likely to cause severe injury.

(*3*) The risk of future violence is periodically assessed as low.

(*4*) Each party agrees to follow safety guidelines recommended by the clinician.

(*5*) The clinician:

(*i*) Has the knowledge, skills, and abilities to provide conjoint treatment therapy as well as treat domestic abuse.

(*ii*) Fully understands the level of abuse and violence and specifically addresses these issues.

(*iii*) Takes appropriate measures to ensure the safety of all parties, including regular monitoring of the victim and abuser, using all relevant sources of information. The clinician will take particular care to ensure that the victim participates voluntarily and without fear and is contacted frequently to ensure that violence has not recurred.

(B) *Contra-indications.* Conjoint treatment will be suspended or discontinued if monitoring indicates an increase in the risk for abuse or violence. Conjoint treatment will not be used if one or more of these factors are present:

(*1*) The abuser:

(*i*) Has a history or pattern of violent behavior and/or of committing severe abuse.

(*ii*) Lacks a credible commitment or ability to maintain the safety of the victim or any third parties. For example, the abuser refuses to surrender personal firearms, ammunition, and other weapons.

(*2*) Either the victim or the abuser or both:

(*i*) Participates under threat, coercion, duress, intimidation, or censure, and/or otherwise participates against his or her will.

(*ii*) Has a substance abuse problem that would preclude him or her from substantially benefiting from conjoint treatment.

(*iii*) Has one or more significant mental health issues (*e.g.,* untreated mood disorder or personality disorder) that would preclude him or her from substantially benefiting from conjoint treatment.

(v) *Couple's meetings.* Periodic case management meetings with the couple, as opposed to the ongoing conjoint therapy of a single victim and abuser, may be used only after the clinician (or clinicians) has made plans to ensure the safety of the victim. All couples meetings must be structured and co-facilitated by the clinician(s) providing treatment to the abusers and support for the victims to ensure support and protection for the victims.

(4) *Treatment contract.* Properly informing the abuser of the treatment rules is a condition for treating violations as a risk management issue. The clinician will prepare and discuss with the abuser an agreement between them that will serve as a treatment contract. The agreement will be in writing and the clinician will provide a copy to the abuser and retain a copy in the treatment record. The contract will include:

(i) *Goals.* Specific abuser treatment goals, as identified in the treatment plan.

(ii) *Time and attendance requirements.* The frequency and duration of treatment and the number of absences permitted.

(A) Clinicians may follow applicable State standards specifying the duration of treatment as a benchmark unless otherwise indicated.

(B) An abuser may not be considered to have successfully completed clinical treatment unless he or she has completed the total number of required sessions. An abuser may not miss more than 10 percent of the total number of required sessions. On a case-by-case basis, the facilitator should determine whether significant curriculum content has been missed and make-up sessions are required.

(iii) *Crisis plan.* A response plan for abuser crisis situations (information on referral services for 24-hour emergency calls and walk-in treatment when in crisis).

(iv) *Abuser responsibilities.* The abuser must agree to:

(A) Abstain from all forms of domestic abuse.

(B) Accept responsibility for previous abusive and violent behavior.

(C) Abstain from purchasing or possessing personal firearms or ammunition.

(D) Talk openly and process personal feelings.

(E) Provide financial support to his or her spouse and children per the terms of an agreement with the spouse or court order.

(F) Treat group members, facilitators, and clinicians with respect.

(G) Contact the facilitator prior to the session when unable to attend a treatment session.

(H) Comply with the rules concerning the frequency and duration of treatment, and the number of absences permitted.

(v) *Consequences of treatment contract violations.* Violation of any of the terms of the abuser contract may lead to termination of the abuser's participation in the clinical treatment program.

(A) Violations of the abuser contract may include, but are not limited to:

(*1*) Subsequent incidents of abuse.

(*2*) Unexcused absences from more than 10 percent of the total number of required sessions.

(*3*) Statements or behaviors of the abuser that show signs of imminent danger to the victim.

(*4*) Behaviors of the abuser that are escalating in severity and may lead to violence.

(*5*) Non-compliance with co-occurring treatment programs that are included in the treatment contract.

(B) If the abuser violates any of the terms of the abuser contract, the clinician or facilitator may terminate the abuser from the treatment program; notify the command, civilian criminal justice agency, and/or civilian court as appropriate; and notify the victim if contact will not endanger the victim.

(C) The command should take any action it deems appropriate when notified that the abuser's treatment has been terminated due to a contract violation.

(vi) *Conditions of information disclosure.* The circumstances and procedures, in accordance with applicable laws, regulations, and policies, under which information may be disclosed to the victim and to any court with jurisdiction.

(A) Past, present, and future acts and threats of child abuse or neglect will be reported to the member's commander; child protective services, when appropriate; and the appropriate military and/or civilian law enforcement agency in accordance with applicable laws, regulations, and policies.

(B) Recent and future acts and threats of domestic abuse will be reported to the member's commander, the appropriate military and/or civilian law enforcement agency, and the potential victim in accordance with applicable laws, regulations, and policies.

(vii) *Complaints.* The procedures according to which the abuser may complain regarding the clinician or the treatment.

(5) *Treatment outside the FAP.* If the abuser's treatment is provided by a clinician outside the FAP, the FAP clinical service provider will follow procedures in accordance with relevant laws, regulations, and policies regarding the confidentiality and disclosure of information. FAP may not close an open FAP case as resolved if the abuser does not consent to release of information from the outside provider confirming goal achievement, treatment progress, or risk reduction.

(6) *Criteria for evaluating treatment progress and risk reduction.* The FAP clinical service provider will assess progress in treatment and reduction of

risk consistent with subpart B of this part. If a risk factor is not addressed within the FAP but is being addressed by a secondary clinical service provider, the FAP clinical service provider will ascertain the treatment progress or results in consultation with the secondary clinical service provider. Treatment progress should be assessed periodically using numerous sources, especially, but not limited to, the victim. In making contact with the victim and in using the information, promoting victim safety is the priority. Progress in clinical treatment and risk reduction is indicated by a combination of:

(i) *Abuser behaviors and attitudes.* An abuser is demonstrating progress in treatment when, among other indicators, he or she:

(A) Demonstrates the ability for self-monitoring and assessment of his or her behavior.

(B) Is able to develop a relapse prevention plan.

(C) Is able to monitor signs of potential relapse.

(D) Has completed all treatment recommendations.

(ii) *Information from the victim and other relevant sources.* The abuser is demonstrating progress in treatment when the victim and other relevant sources of information state any one or combination of the following: That the abuser has:

(A) Ceased all domestic abuse.

(B) Reduced the frequency of non-violent abusive behavior.

(C) Reduced the severity of non-violent abusive behavior.

(D) Delayed the onset of abusive behavior.

(E) Demonstrated the use of improved relationship skills.

(iii) *Reduced ratings on risk assessment variables that are subject to change.* The abuser has successfully reduced risk when the assessment of his or her risk is rated at the level the Military Service has selected for case closure.

(e) *Personnel qualifications*—(1) *Minimum qualifications.* All personnel who conduct clinical assessments of and provide clinical treatment to domestic abusers must have these minimum qualifications:

(i) A master's or doctoral-level human service and/or mental health professional degree from an accredited university or college.

(ii) The highest license in a State or clinical license in good standing in a State that authorizes independent clinical practice.

(iii) 1 year of experience in domestic abuse and child abuse counseling or treatment.

(2) *Additional training.* All personnel who conduct clinical assessments of and/or provide clinical treatment to domestic abusers must undergo this additional training:

(i) Within 6 months of employment, orientation into the military culture. This includes training in the Service rank structures and military protocol.

(ii) A minimum of 15 hours of continuing education units within every 2 years that are relevant to domestic abuse and child abuse. This includes, but is not limited to, continuing education in interviewing adult victims of domestic abuse, children, and domestic abusers, and conducting treatment groups.

(iii) Service FAP Managers must develop policies and procedures for continued education with clinical skills training that validates clinical competence, and not rely solely on didactic or computer disseminated training to meet continuing education requirements.

(f) *QA*—(1) *QA procedures.* The FAP Manager must ensure that clinical intervention undergoes these QA procedures:

(i) A quarterly peer review of a minimum of 10 percent of open clinical records that includes procedures for addressing any deficiencies with a corrective action plan

(ii) A quarterly administrative audit of a minimum of 10 percent of open records that includes procedures for addressing any deficiencies with a corrective action plan.

(2) *FAC responsibilities.* The installation FAC will analyze trends in risk management, develop appropriate agreements and community programs with relevant civilian agencies, promote military interagency collaboration, and monitor the implementation of such agreements and programs on a regular basis consistent with subpart B of this part.

(3) *Evaluation and accreditation review.* The installation domestic abuse treatment program will undergo evaluation and/or accreditation every 4 years, including an evaluation and/or accreditation of its coordinated community risk management program consistent with subpart B of this part.

Dated: February 25, 2015.

Aaron Siegel,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

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Part IV

Federal Communications Commission

47 CFR Part 20

Wireless E911 Location Accuracy Requirements; Final Rule

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 20

[PS Docket No. 07–114; FCC 15–9]

Wireless E911 Location Accuracy Requirements

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: In this *Fourth Report and Order,* the Federal Communications Commission (Commission) adopts measures that will significantly enhance the ability of Public Safety Answering Points (PSAPs) to accurately identify the location of wireless 911 callers when the caller is indoors. It also strengthens its existing E911 location accuracy rules to improve location determination for outdoor as well as indoor calls.

DATES: This final rule is effective April 3, 2015 except for 47 CFR 20.18(i)(2)(ii)(A) and (B); 20.18(i)(2)(iii); 20.18(i)(3)(i) and (ii); 20.18(i)(4)(i), (ii), (iii) and (iv); and 20.18(j)(2) and (3), which contains information collection requirements that have not been approved by the Office of Management and Budget. The Commission will publish a document in the **Federal Register** announcing OMB approval and the effective date.

FOR FURTHER INFORMATION CONTACT: Dana Zelman of the Policy and Licensing Division of the Public Safety and Homeland Security Bureau, (202) 418–0546 or *dana.zelman@fcc.gov.* For additional information concerning the Paperwork Reduction Act information collection requirements contained in this document, contact Benish Shah, (202) 418–7866, or send an email to *PRA@fcc.gov.*

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's *Fourth Report and Order* in PS Docket No. 07–114, released on February 3, 2015. The full text of this document is available for public inspection during regular business hours in the FCC Reference Center, Room CY–A257, 445 12th Street SW., Washington, DC 20554, or online at *https://apps.fcc.gov/edocs_public/Query.do?numberFld=15-9&numberFld2=&docket=07-114&dateFld=&docTitleDesc=.*

Synopsis of the Fourth Report and Order

I. Introduction and Executive Summary

1. In this *Fourth Report and Order,* we adopt measures that will significantly enhance the ability of Public Safety Answering Points (PSAPs) to accurately identify the location of wireless 911 callers when the caller is indoors. We also strengthen our existing E911 location accuracy rules to improve location determination for outdoor as well as indoor calls.

2. Our actions in this order respond to major changes in the wireless landscape since the Commission first adopted its wireless Enhanced 911 (E911) location accuracy rules in 1996 and since the last significant revision of these rules in 2010. Consumers are increasingly replacing traditional landline telephony with wireless phones; the majority of wireless calls are now made indoors; and the majority of calls to 911 are from wireless phones. This increases the likelihood that wireless 911 calls will come from indoor environments where traditional location accuracy technologies optimized for outdoor calling often do not work effectively or at all. This gap in the performance of 911 location service needs to be closed: The public rightfully expects 911 location technologies to work effectively regardless of whether a 911 call originates indoors or outdoors.

3. The record in this proceeding also indicates that a range of potential solutions to this gap already exist and have the potential to be implemented over the next few years through concerted effort by Commercial Mobile Radio Service (CMRS) providers and PSAPs. These solutions will both lead to more accurate horizontal location of indoor calls, and add the capacity to provide vertical location information for calls originating in multi-story buildings. In addition, the record makes clear that the potential exists to move beyond coordinate-based location and to provide PSAPs with ''dispatchable location'' information for many indoor 911 calls, *i.e.,* a street address plus sufficient information, such as floor and room number, to identify the location of the caller in the building.

4. To be sure, no single technological approach will solve the challenge of indoor location, and no solution can be implemented overnight. The requirements we adopt are technically feasible and technologically neutral, so that providers can choose the most effective solutions from a range of options. In addition, our requirements allow sufficient time for development of applicable standards, establishment of testing mechanisms, and deployment of new location technology in both handsets and networks. Our timeframes also take into account the ability of PSAPs to process enhancements in the location data they receive. Clear and measurable timelines and benchmarks for all stakeholders are essential to drive the improvements that the public reasonably expects to see in 911 location performance.

5. In determining the appropriate balance to strike in our requirements and timeframes, we give significant weight to the ''Roadmap for Improving E911 Location Accuracy'' (Roadmap) that was agreed to in November 2014 by the Association of Public Safety Communications Officials (APCO), the National Emergency Number Association (NENA), and the four national wireless CMRS providers, and supplemental commitments related thereto as discussed below. We give similar weight to the ''Parallel Path for Competitive Carriers' Improvement of E911 Location Accuracy Standards'' (''Parallel Path'') that was submitted by the Competitive Carriers Association (CCA). We believe the Roadmap and the Parallel Path establish an essential foundation for driving improvements to indoor location accuracy, and we therefore incorporate their overall timelines and many of their provisions into the rules adopted in this order. In addition, to provide greater certainty and accountability in areas that the Roadmap and the Parallel Path do not fully address, the rules we adopt today include additional elements with ''backstop'' requirements derived from our proposals in the *Third Further Notice,* 79 FR 17820 (Mar. 28, 2014), and recent *ex parte* submissions by the parties to the Roadmap.

6. Incorporating all of these elements, we adopt the following E911 location rules:

Horizontal Location

- All CMRS providers must provide (1) dispatchable location, or (2) x/y location within 50 meters, for the following percentages of wireless 911 calls within the following timeframes, measured from the effective date of rules adopted in this Order (''Effective Date''):
  - *Within 2 years:* 40 percent of all wireless 911 calls.
  - *Within 3 years:* 50 percent of all wireless 911 calls.
  - *Within 5 years:* 70 percent of all wireless 911 calls.
  - *Within 6 years:* 80 percent of all wireless 911 calls.
- Non-nationwide CMRS providers (regional, small, and rural carriers) can extend the five- and six-year deadlines based on the timing of Voice over Long Term Evolution (VoLTE) deployment in the networks.

Vertical Location

• All CMRS providers must also meet the following requirements for provision of vertical location information with wireless 911 calls, within the following timeframes measured from the Effective Date:

○ *Within 3 years:* All CMRS providers must make uncompensated barometric data available to PSAPs from any handset that has the capability to deliver barometric sensor data.

○ *Within 3 years:* Nationwide CMRS providers must use an independently administered and transparent test bed process to develop a proposed z-axis accuracy metric, and must submit the proposed metric to the Commission for approval.

○ *Within 6 years:* Nationwide CMRS provides must deploy either (1) dispatchable location, or (2) z-axis technology that achieves the Commission-approved z-axis metric, in each of the top 25 Cellular Market Areas (CMAs):

▪ Where dispatchable location is used: The National Emergency Address Database (NEAD) must be populated with a total number of dispatchable location reference points in the CMA equal to 25 percent of the CMA population.

▪ Where z-axis technology is used: CMRS providers must deploy z-axis technology to cover 80 percent of the CMA population.

○ *Within 8 years:* Nationwide CMRS providers must deploy dispatchable location or z-axis technology in accordance with the above benchmarks in each of the top 50 CMAs.

○ Non-nationwide carriers that serve any of the top 25 or 50 CMAs will have an additional year to meet these benchmarks.

Reporting and Compliance Measures

• Compliance with the above metrics will be determined by reference to quarterly live 911 call data reported by CMRS providers in six cities (San Francisco, Chicago, Atlanta, Denver/Front Range, Philadelphia, and Manhattan Borough, New York City) and their surrounding areas that have been determined to be representative of dense urban, urban, suburban, and rural areas nationally. Quarterly reporting of this data will begin no later than 18 months from the Effective Date.

• Beginning no later than 18 months from the Effective Date, CMRS providers in the six cities will also provide quarterly live call data on a more granular basis that allows evaluation of the performance of individual location technologies within different morphologies (*e.g.,* dense urban, urban, suburban, rural). This more granular data will be used for evaluation and not for compliance purposes.

• PSAPs will be entitled to obtain live call data from CMRS providers and seek Commission enforcement of these requirements within their jurisdictions, but they may seek enforcement only so long as they have implemented policies that are designed to obtain all 911 location information made available by CMRS providers pursuant to our rules.

• In order to gauge progress on the development of improved indoor location accuracy solutions and the implementation of these rules, nationwide CMRS providers must submit reports on their initial plans for implementing improved indoor location accuracy and must submit subsequent reports on their progress.

The foregoing rules leverage many aspects of the Roadmap and the Parallel Path to improve indoor location accuracy in a commercially reasonable manner. They do not change, or seek to change, the voluntary commitment that both nationwide and non-nationwide CMRS providers voluntarily have entered into and have already made progress towards. The rules are intended to build confidence in the technical solutions outlined in the Roadmap and Parallel Path, and to establish clear milestones that gauge progress and ensure that there is clear accountability for all CMRS providers.

7. In addition, we revise our regulatory framework for all 911 calls, both indoor and outdoor, as follows:

• We adopt a 30-second limit on the time period allowed for a CMRS provider to generate a location fix in order for the 911 call to be counted towards compliance with existing Phase II location accuracy requirements that rely on outdoor testing, but we do not extend this provision to the new indoor-focused requirements adopted in this order.

• We require that confidence and uncertainty data for all wireless 911 calls—whether placed from indoors or outdoors—be delivered at the request of a PSAP, on a per-call basis, with a uniform confidence level of 90 percent.

• We require CMRS providers to provide 911 call data, including (1) the percentage of wireless 911 calls to the PSAP that include Phase II location information, and (2) per-call identification of the positioning source method or methods used to derive location coordinates and/or dispatchable location, to any requesting PSAP. Compliance with the 30-second time limit will also be measured from this data.

8. In establishing these requirements, our ultimate objective is that all Americans using mobile phones—whether they are calling from urban or rural areas, from indoors or outdoors—have technology that is functionally capable of providing accurate location information so that they receive the support they need in times of emergency. We also view these requirements as a floor, not a ceiling. We encourage CMRS providers to take advantage of the potential of rapidly-developing location technology to exceed the thresholds and timelines established by this order. In addition, we encourage CMRS providers to work with public safety organizations and consumer organizations, including disability organizations, to develop new and innovative solutions that will make all Americans safer.

II. Background

9. In February 2014, we released the *Third Further Notice* in which we proposed to revise our existing E911 framework to require delivery of accurate location information to PSAPs for wireless 911 calls placed from indoors. In the near term, we proposed to establish interim indoor accuracy metrics that would provide approximate location information sufficient to identify the building for most indoor calls, as well as vertical location (z-axis or elevation) information that would enable first responders to identify floor level for most calls from multi-story buildings. In the long term, we sought comment on how to develop more granular indoor location accuracy requirements that would provide for delivery to PSAPs of in-building location information at the room or office suite level. In addition, we sought comment on other steps the Commission should take to strengthen our existing E911 location accuracy rules to ensure delivery of more timely, accurate, and actionable location information for all 911 calls. We also asked whether we should revisit the timeframe established by the Commission in 2010 for replacing the current handset- and network-based outdoor location accuracy requirements with a unitary requirement, in light of the rapid proliferation of Assisted Global Navigation Satellite Systems (A–GNSS) technology in wireless networks and the prospect of improved location technologies that will soon support 911 communication over LTE networks. A detailed examination of these proposals and the subsequent comment record is discussed below.

10. In setting forth these proposals, we emphasized that our ultimate

objective was that all Americans using mobile phones—whether calling from urban or rural areas, from indoors or outdoors—have technology that is capable of providing accurate location information in times of an emergency. We sought comment on whether our proposals were the best way to achieve this objective, and we also ''encourage[d] industry, public safety entities, and other stakeholders to work collaboratively to develop alternative proposals for our consideration.''

11. On November 18, 2014, APCO, NENA, AT&T Mobility, Sprint Corporation, T-Mobile USA, Inc., and Verizon Wireless (collectively, ''Roadmap Parties'') submitted the Roadmap. According to the Roadmap Parties, the Roadmap ''marks a new course using indoor technologies to deliver a 'dispatchable location' for indoor 9–1–1 calls'' and ''contrasts with current and proposed outdoor technologies that provide estimates of location and face challenges with indoor location accuracy,'' adding that ''the Roadmap commits to meaningful improvements and FCC-enforceable timeframes to deliver effective location solutions.'' On November 20, 2014, we sought expedited comment on the Roadmap. We received extensive comment in response, both supportive and critical of the Roadmap.

12. Following the submission of comments on the Roadmap, CCA submitted its Parallel Path proposal on behalf of its members, which include most of the nation's non-nationwide CMRS providers, including small, regional, and rural carriers. The Parallel Path for the most part tracks the Roadmap, and commits the non-nationwide CMRS providers to the same approach and requirements for improving indoor location that the nationwide CMRS providers committed to in the Roadmap. However, the Parallel Path proposes to modify certain Roadmap benchmarks and timeframes to afford non-nationwide CMRS providers more time and flexibility to meet their commitments.

13. Most recently, in response to criticism of the Roadmap by some commenters and to concerns raised by Commission staff, the Roadmap Parties have amended the Roadmap to strengthen certain provisions and incorporate additional commitments by the nationwide CMRS providers, particularly with respect to deployment of dispatchable location and z-axis technologies.

III. Indoor Location Accuracy Requirements

14. The record in this proceeding demonstrates that circumstances affecting wireless location accuracy have changed dramatically since the Commission first adopted its Phase II location accuracy rules. As discussed in the *Third Further Notice,* the great majority of calls to 911 now originate on wireless phones, and the majority of wireless calls now originate indoors. These changes increase the importance of ensuring that indoor 911 calls can be accurately located. The record also indicates that, while PSAPs and CMRS providers may be able to address some of the challenges through technological and operational improvements, the outdoor-oriented focus of the Commission's Phase II rules to date has created a regulatory gap: By focusing on outdoor requirements for verifying compliance, our rules currently provide no remedy to address poor performance of location technologies indoors.

15. The record in this proceeding—including the CSRIC test bed results, the Amended Roadmap and Parallel Path, and other evidence indicating further improvements to indoor location technologies—also demonstrates that there has also been progress in the development of technologies that can support improved indoor location accuracy. Accordingly, we find that it is now appropriate to implement measures designed to address public safety's critical need for obtaining indoor location information, and to ensure that wireless callers receive the same protection whether they place a 911 call indoors or outdoors.

A. Ubiquity and Challenges of Indoor Wireless Calling

16. *Background.* In the *Third Further Notice,* we noted that the large increase in indoor wireless usage over the last decade has made indoor location accuracy increasingly important. Accordingly, we sought more granular information regarding the percentage of wireless calls placed from indoors and, to the extent available, the percentage of wireless calls to 911 from indoors. We also sought further data on the types of indoor environments from which 911 calls are placed, *e.g.,* in the caller's own home, his or her work location or in public accommodations such as airports, schools and movie theaters; and whether it is possible to identify the type of building morphology where current location technologies routinely fail to provide accurate location information. In response to this inquiry, commenters indicate an ''ongoing, dramatic increase'' in the number of wireless calls placed from indoors.

17. In the *Third Further Notice,* we also noted that indoor locations pose particular challenges for first responders attempting to find the caller. We sought comment on whether and how the increase in wireless calls to 911 from indoors has affected the delivery of E911 information and the ability of public safety officials to respond to calls for help. APCO indicates that location accuracy for wireless calls placed from indoors is currently inferior to both wireline calls placed from indoors and wireless calls placed from outdoors. The Department of Emergency Management for San Francisco (DEMSF) states that problems with wireless indoor location accuracy are particularly acute ''in dense urban environments with multiple, adjacent high-rise buildings.'' Commenters indicate that the increase in wireless 911 calls from indoors has affected the delivery of E911 information and eroded the ability of public safety officials to respond to calls for help, and to keep first responders safe.

18. *Discussion.* The record confirms that more wireless 911 calls are coming from indoors, and indoor 911 calls pose challenges for location that will lead to further degradation of 911 services if not addressed. In 1996 there were approximately 33 million cellular subscribers in the United States. By the end of 2013, there were nearly 336 million wireless subscriber connections. At the end of 2007, only 15.8 percent of American households were wireless-only. During the first half of 2014, that number increased to 44 percent (more than two of every five American homes), an increase of more than 3.0 percentage points since the second half of 2013. Furthermore, adults living in or near poverty and younger Americans are more likely to live in wireless-only homes than are higher-income adults. Several major CMRS providers reflect this trend by marketing wireless service as a replacement in the home for traditional landline service.

19. The record also indicates that the increase in wireless calls to 911 from indoors has reduced the quality of location information available to first responders in the absence of compensatory technologies to enhance location. Specifically, satellite-based location technologies do not provide accurate location data for many wireless calls placed from indoor locations, particularly in urban areas where a growing number of Americans reside. This highlights the critical importance of the enhanced indoor wireless indoor location accuracy rules that we adopt

today, which will enhance public safety and address the need to develop alternative technological approaches to address indoor location.

B. E911 Location Accuracy Requirements

20. In this *Fourth Report and Order,* we adopt E911 location accuracy requirements that codify major elements of the Roadmap, the Parallel Path, and the additional commitments that CMRS providers have made in recent *ex parte* filings. These requirements afford CMRS providers flexibility to develop dispatchable location solutions, but also include requirements and timeframes for provision of x/y and z-axis information in the event that dispatchable location is not available.

21. CMRS providers must certify at 36 months and again at 72 months that they have deployed compliant technology throughout their networks to improve indoor location accuracy, consistent with the compliant technology's performance in an independent test bed. To demonstrate further compliance with these metrics, CMRS providers must submit aggregated live 911 call data from the six cities recommended for indoor testing by the Alliance for Telecommunications Industry Solutions Emergency Services Interconnection Forum (ATIS ESIF). CMRS providers that provide dispatchable location must also provide x/y coordinates to the PSAP (as well as z coordinates where feasible and appropriate). This will enable PSAPs to corroborate the validity of dispatchable location information, but the coordinates will not be considered for FCC compliance purposes.

1. Incorporation of Roadmap and Parallel Path Commitments

22. *Background.* In the *Third Further Notice,* we proposed that within two years of the Effective Date CMRS providers must locate 67 percent of indoor 911 calls within 50 meters, and that within five years, they must achieve 50-meter accuracy for 80 percent of indoor 911 calls. We further proposed that within three years of the Effective Date, CMRS providers must deliver vertical (z-axis) data within 3 meters accuracy for 67 percent of indoor calls, and 3-meter accuracy for 80 percent of calls within five years. We proposed establishment of an indoor location accuracy test bed for demonstrating compliance with these requirements, and asked about other approaches to validating compliance.

23. We also invited comment on alternative approaches that would best weigh the costs and benefits of implementing an indoor location requirement with technical feasibility, timing, and other implementation concerns. In particular, we invited industry and public safety stakeholders to propose consensus-based, voluntary commitments that would address the public safety goals set forth in this proceeding and facilitate closing the regulatory gap between indoor and outdoor location accuracy without the need to adopt regulatory requirements.

24. Subsequent to the close of the comment period, NENA, APCO, and the four national CMRS providers submitted the Roadmap agreement. The Roadmap provides that, within one year, the signatory CMRS providers will establish a test bed for 911 location technologies and, within three years, they will establish a national location database for provision of dispatchable location information from in-building beacons and hotspots (*e.g.,* Wi-Fi and Bluetooth). The Roadmap also specifies that, beginning at Year 2 of Roadmap implementation and extending through Year 8, the CMRS providers will introduce VoLTE-capable handsets that (1) support satellite-based location using multiple positioning systems (*e.g.,* GLONASS in addition to GPS), (2) can deliver Wi-Fi and Bluetooth beacon information, and (3) can deliver z-axis information.

25. As originally proposed, the Roadmap contained the following horizontal location accuracy performance benchmarks:

- Within two years of the Roadmap's execution, CMRS providers will use ''heightened location accuracy technologies'' to locate 40 percent of all 911 calls (indoor and outdoor). ''Heightened location accuracy technologies'' consist of: (1) Satellite-based (A–GNSS) location, (2) dispatchable location, or (3) ''any other technology or hybrid of technologies capable of location accuracy performance of 50 m[enters].''
- Within three years, CMRS providers will use the above ''heightened location accuracy technologies'' to provide location for 50 percent of all 911 calls (indoor and outdoor).
- Within five years, CMRS providers will use the above ''heightened location accuracy technologies'' to provide location for 75 percent of all VoLTE 911 calls (indoor and outdoor).
- Within six years, CMRS providers will use the above ''heightened location accuracy technologies'' to provide location for 80 percent of all VoLTE 911 calls (indoor and outdoor).

26. In recent *ex parte* filings, the nationwide CMRS providers have modified the five-year and six-year Roadmap benchmarks so that they will apply to all wireless 911 calls, not just VoLTE calls. To adjust for the inclusion of non-VoLTE calls, the nationwide CMRS providers propose to lower the five-year benchmark from 75 percent to 60 percent. No adjustment is proposed to the six-year deadline or the 80 percent benchmark for all calls, however.

27. The Roadmap commits CMRS providers to use live 911 call data to demonstrate compliance with these metrics. The data will be collected monthly in the six cities that ATIS ESIF has recommended for indoor location technology testing (San Francisco, Chicago, Atlanta, Denver/Front Range, Philadelphia, and Manhattan). Providers will provide reports to APCO and NENA on a quarterly basis, subject to appropriate confidentiality protections, with the first report due 18 months after the Effective Date. All CMRS providers, along with APCO and NENA, will use the data from these reports to assess the trend in positioning performance over time.

28. Rather than propose a specific z-axis metric, the Roadmap focuses on dispatchable location solutions to identify floor level. After 36 months, the parties will determine if these efforts are ''on track,'' and only if they are ''off track'' are the CMRS providers obligated to pursue development of a standards-based z-axis solution (*e.g.,* use of barometric sensors in handsets). In recent *ex parte* filings, however, the nationwide CMRS providers have committed to begin delivering uncompensated barometric data from barometer-equipped handsets within three years, and have offered additional commitments with respect to deployment of both dispatchable location and z-axis solutions.

29. The Parallel Path incorporates the same two- and three-year horizontal accuracy benchmarks as the Roadmap, and proposes slightly different five- and six-year benchmarks. Under the Parallel Path, non-nationwide CMRS providers would use heightened accuracy technologies in 70 percent of all wireless 911 calls (VoLTE and non-VoLTE) within five years or within six months of having a commercially operating VoLTE platform in their network, whichever is later. Similarly, non-nationwide CMRS providers would achieve heightened accuracy for 80 percent of all wireless 911 calls within six years or within one year of having a commercially operating VoLTE platform in their network, whichever is later.

30. Regarding data reporting, the Parallel Path commits non-nationwide CMRS providers to collect data for live wireless 911 calls that would show the percentage of time that each ''positioning source method'' (*e.g.,* dispatchable location, A–GPS, A–GNSS, OTDOA, AFLT, RTT, Cell ID, which are discussed in greater detail in Section III.B.3.b(i) below) is used to deliver a wireless 911 call. Small CMRS providers that operate in one of the six ATIS ESIF regions will collect and report data for that region.

31. For z-axis location information, the Parallel Path provides that for small CMRS providers whose service footprints include any county or county equivalent with a population density of 20.0 people per square mile or more (per most recent U.S. Census data), those providers agree to deliver uncompensated barometric pressure data to PSAPs from any voice-capable handset that supports such a capability within four (4) years of that agreement, while such providers whose serve designated areas with population densities of 19.9 or less will be exempt from providing any uncompensated barometric pressure data to PSAPs.

32. Some vendors praise the Roadmap as a meaningful step toward improved indoor location. For example, TCS states that the proposals in the Roadmap are more realistic than the proposals in the *Third Further Notice* because it acknowledges CMRS providers' inability to distinguish between indoor and outdoor wireless calls.

33. However, some public safety entities, consumer advocacy groups, and other vendors express strong concern about the Roadmap proposals. Multiple commenters argue that the Roadmap dilutes the Commission's efforts to adopt indoor location accuracy rules and does not present a viable alternative to the proposals in the *Third Further Notice.* Though it regards the Roadmap as a step in the right direction, TDI submits that the Roadmap should serve only as a complement, not a replacement, to the Commission's rules. The Associated Firefighters of Illinois believe that the Roadmap pushes out the timeline for improved location accuracy too far. IACP and Fairfax County support the concept of dispatchable location, but question the feasibility of the Roadmap's dispatchable location provisions. Multiple commenters express concern at the Roadmap's blended metric for indoor and outdoor calls. TruePosition cautions that the use of GLONASS for 911 may raise political and security issues, though APCO, CTIA and TCS dispute that use of GLONASS poses a security threat. Numerous parties highlight concerns with the Roadmap's proposal for the National Emergency Address Database (NEAD). Some Roadmap Parties submit rebuttals to these concerns raised in the record.

34. *Discussion.* As discussed in detail below, the Roadmap and Parallel Path contain numerous positive elements that will help drive improvements in indoor location. In particular, they lay the foundation for development of a location technology test bed, a national location database, and introduction of improved location technology into VoLTE handsets and networks. The Roadmap and Parallel Path also for the first time commit CMRS providers to using live 911 call data, not just test data, to measure progress and compliance with location accuracy metrics. They also commit CMRS providers to a timetable for achieving improved horizontal and vertical location accuracy in the absence of a dispatchable location solution.

35. Critics of the Roadmap and the Parallel Path have raised legitimate concerns regarding the sufficiency of the commitments made by CMRS providers therein. However, we believe that the recent amendments to both the Roadmap and the Parallel Path have substantially strengthened these commitments and provide the basis for ensuring measurable improvements in indoor location while holding CMRS providers accountable for results. Of particular significance, the horizontal accuracy benchmarks in both the Amended Roadmap and the Parallel Path now apply uniformly to all wireless 911 calls rather than some benchmarks applying to VoLTE calls only. Similarly, the nationwide CMRS providers' commitment to begin delivering uncompensated barometric data within three years will provide an important near-term opportunity for PSAPs that have the strongest interest in obtaining vertical location information, while development of enhanced vertical location technologies proceeds in parallel. Finally, the new provisions in the Amended Roadmap for development of a z-axis standard and the inclusion of timeframes for deployment of dispatchable location and z-axis technology will drive investment in solutions to the challenge of identifying the floor level—or preferably, the dispatchable location—of 911 calls originated from multi-story buildings.

36. We applaud the process that resulted in these commitments and the benefits that will flow to the American people as a result. To ensure that all parties make progress as promised, and to ensure that all stakeholders and the Commission have adequate assurances that parties are held accountable, we are codifying these commitments through the rules we adopt today. We are also including reporting, recordkeeping, and retention obligations associated both with the technology test bed and live 911 call information that will illuminate the implementation of the dispatchable location standard, and the real world performance of the horizontal and vertical location technologies that have been put forward in the record.

37. In this respect, to ensure transparency and accountability, we require that nationwide CMRS providers report to the Commission on their plans and progress towards implementing improved indoor location accuracy no later than 18 months from the Effective Date, and that non-nationwide CMRS providers submit their plans no later than 24 months from the Effective Date. These reports should include details as to each provider's implementation plan to meet our requirements. For the nationwide CMRS providers, this report must also include detail as to steps taken and future plans to implement the NEAD, which is discussed in further detail below. These reports will provide a baseline for measuring the subsequent progress made by each provider toward improving indoor location accuracy. In addition we require each CMRS provider to file a progress report at 36 months indicating what progress the provider has made consistent with its implementation plan. Nationwide CMRS providers shall include in their 36-month reports an assessment of their deployment of dispatchable location solutions. For any CMRS provider participating in the development of the NEAD database, this progress report must also include detail as to implementation of the database. Furthermore, we encourage CMRS providers to share these reports and discuss their implementation plans with public safety, consumer, and disability groups. We incorporate these requirements into our rules.

38. In the Roadmap, the CMRS providers state that within six to twelve months they intend to test ''improved'' A–GNSS technologies that can augment GPS-only geolocation by obtaining positioning information from other international satellite positioning systems, including the Russian GLONASS system. TruePosition contends that the potential use of GLONASS to support E911 location ''raises a wide range of national security, reliability, liability, and economic trade issues,'' and should be rejected by the Commission. CTIA, however, explains that ''the Roadmap never states that GLONASS will be the

exclusive source of user location data, and instead makes clear that both GPS and GLONASS will be tested as positioning sources . . . this bogeyman is nothing more than a desperate attempt to distract the stakeholders and the Commission and undermine the actual merits of the Roadmap.'' CTIA asserts that ''the use of GLONASS chips in handsets does not give Russia power over U.S. wireless communications,'' and that ''[t]here simply is no national security risk whatsoever with the Roadmap.''

39. To date, none of the CMRS provider parties to the Roadmap have submitted, nor has the Commission approved, any waiver petition or application that would seek authorized use of any non-U.S. Radionavigation Satellite Service (RNSS) system to support E911 location or general location-based services. Indeed, the Roadmap only states that the signatory CMRS providers intend to test the potential use of non-U.S. systems (such as GLONASS or Galileo) to support E911 location. It does not call for the Commission to approve operations with any non-U.S. satellite systems, either explicitly or implicitly, in this proceeding, and we decline to do so. Thus, the parties to the Roadmap and other CMRS providers must comply with the location accuracy requirements established by this order regardless of the disposition of any future request they may make under FCC rules to operate with any non-U.S. satellite systems in support of E911 location. Moreover, any such request will be subject to a full review and federal inter-agency coordination of all relevant issues, including technical, economic, national security, and foreign policy implications.

40. We do not decide the issue of operating with non-U.S. satellite signals in this proceeding, which would require consideration of a variety of issues, including its potential impact on the use of adjacent bands. Therefore, nothing in today's decision authorizes the use of any non-U.S. satellite system in conjunction with the 911 system, including the 911 location accuracy rules we adopt today. Moreover, A–GNSS technologies used to augment GPS may increase the potential exposure of devices to interference by increasing the number of unwanted signals and the number of signals that can introduce data integrity problems. We believe that CMRS providers seeking to use non-U.S. satellites should also conduct testing to ensure that operation with these signals does not inadvertently introduce vulnerabilities to the devices that could impair E911 performance or compromise data integrity. For example, devices that are augmented to receive signals from multiple satellite constellations may be more susceptible to radio frequency interference than devices that receive signals from GPS alone. Devices should also be evaluated to determine their capabilities to detect and mitigate the effects of inaccurate or corrupted data from any RNSS system that could result in incorrect location information, or no information at all, being relayed to a PSAP. We expect CMRS providers, at the time they certify their compliance with the Commission's location accuracy requirements, to also certify that any devices on their network operating with foreign A–GNSS signals for 911 location accuracy have proper authorizations in place to permit such use. Before incorporating foreign A–GNSS into E911, CMRS providers must coordinate plans for foreign A–GNSS signal integration with the Public Safety and Homeland Security Bureau to confirm that signals are interoperable with GPS and that measures to prevent interference are appropriate. Furthermore, CMRS providers are expected to certify that the devices have been tested to determine their ability to detect and mitigate the effects of harmful interference.

2. Dispatchable Location

41. In the *Third Further Notice,* we identified the delivery by CMRS providers to PSAPs of ''dispatchable address'' information as a long-term objective to improve indoor location. While we proposed indoor accuracy requirements based on x/y/z coordinate information, we noted that public safety needs would be better served if PSAPs could receive the caller's building address, floor level, and suite/room number. Therefore, we sought comment on whether to adopt an alternative indoor location requirement that CMRS providers could satisfy by delivering a caller's building address and floor level.

42. Although we viewed development of dispatchable location capability as a long-term goal in the *Third Further Notice,* the subsequent comment record and the Roadmap indicate the proliferation of in-building technology such as small cells and Wi-Fi and Bluetooth beacons, which can be used together, has made dispatchable location solutions technically feasible in a much shorter timeframe than we initially anticipated. Therefore, as described below, we conclude that CMRS providers should be allowed to use dispatchable location to comply with our indoor location accuracy requirements.

a. Definition of Dispatchable Location

43. The Roadmap uses the term ''dispatchable location'' rather than ''dispatchable address'' to describe the same objective identified in the *Third Further Notice.* The Roadmap defines ''dispatchable location'' as ''the civic address of the calling party plus additional information such as floor, suite, apartment or similar information that may be needed to adequately identify the location of the calling party.''

44. For the purposes of this rulemaking, we define ''dispatchable location'' as the verified or corroborated street address of the calling party plus additional information such as floor, suite, apartment or similar information that may be needed to adequately identify the location of the calling party. We note that while all dispatchable addresses are necessarily civic addresses, not all civic addresses are ''dispatchable,'' *e.g.,* P.O. Boxes, diplomatic or armed forces pouch addresses, *etc.* PSAPs currently use street address in dispatch systems, the very essence of any ''dispatchable'' location solution. Public safety organizations have described dispatchable location as the ''gold standard'' in terms of location accuracy and utility for allocating emergency resources in the field. Accordingly, we adopt a definition similar to the one offered in the Roadmap, but substitute the term ''street address'' to provide clarity and ensure that dispatchers are not sent to addresses which may not be street addresses, and therefore, may not be ''dispatchable.'' Although IMSA contends that the Roadmap's definition of dispatchable location lacks specificity, we find that this definition strikes the appropriate balance between specificity and flexibility.

b. Technological Feasibility and Implementation Issues

45. In the *Third Further Notice,* we recognized that provision of a dispatchable location would most likely be through the use of in-building location systems and network access devices, which could be programmed to provide granular information on the 911 caller's location, including building address and floor level. We noted that CMRS providers are already deploying in-building technologies to improve and expand their network coverage and speed, and asked how these technologies could be leveraged to support indoor 911 location, as well as any challenges to implementation. For the reasons stated below, we believe the Roadmap commitments, including those

made in the Addendum, and the comments in the record demonstrate that a dispatchable location solution is feasible and achievable on the timetable we establish, and that in light of our predictive judgment about the future course of development of various wireless location technologies, this approach provides appropriate incentives for CMRS providers to achieve our foregoing goals as effectively and promptly as practicable. In the absence of an approved z-axis metric alternative, CMRS providers will be obligated to rely on dispatchable location.

(i) In-Building Infrastructure

46. Commenters confirm that the feasibility of dispatchable location is linked to the proliferation of indoor, infrastructure-based technologies, including small cell technology, distributed antenna systems (DAS), Wi-Fi access points, beacons, commercial location-based services (cLBS), institutional and enterprise location systems, and smart building technology. These technologies can be used in a location system information ''stack'' that would allow a CMRS provider's location server to compile and compare location fixes from multiple sources, to identify and disregard inaccurate fixes, and otherwise synthesize available location data.

47. The record also confirms that many of these technologies can contribute to the development of dispatchable location solutions in the near term. Nearly all wireless phones are now equipped with Bluetooth and Wi-Fi capabilities, though some standardization work remains. Small cells are increasingly deployed in urban areas, and all four nationwide CMRS providers currently sell or plan to sell in-home consumer products designed to provide improved wireless coverage indoors, but which could also be leveraged to provide dispatchable location information. Indeed, the Roadmap commits to making all CMRS provider-provided small cell equipment compatible with any dispatchable location solution. Additionally, Bluetooth beacons and Wi-Fi hotspots are increasingly deployed in public spaces. For example, TCS estimates that there are more than 126 million Wi-Fi access points nationwide, with approximately 40 million in commercial settings and 86 million in residential settings. Cisco and TCS assert that, using Cisco's wireless local area network and TCS's gateway client technology for commercial location solutions, they can already provide a '' 'dispatchable' location—indicating street address, building identifier, floor number, and suite number—along with a floor plan . . . showing the location of the phone,'' with accuracy between five and ten meters. Though much of the deployment of indoor location-capable infrastructure thus far has been commercial, there are a growing number of residential products that easily be used as a source of location in a comprehensive dispatchable location solution. Nevertheless, some commenters still argue that beacon and Wi-Fi technologies have not been thoroughly enough tested to justify reliance on them in any dispatchable location solution. Others submit that the Commission should open a separate proceeding dedicated to dispatchable location.

48. CMRS commenters note that much of the in-building infrastructure that will be needed to support dispatchable location lies outside their control and will require building owners and other third-party stakeholders to be involved in the deployment process. T-Mobile submits that ''[t]o attain truly actionable indoor locations requires buy-in and development from all stakeholders—not just wireless carriers, but also public safety, . . . state and local governments who regulate building codes, and, perhaps most critically, premises owners.'' T-Mobile suggests that state and local governments should modify building and fire codes to require deployment of such devices throughout a building.

(ii) Handset Hardware and Software Changes

49. Despite the widespread availability of Wi-Fi- and Bluetooth-equipped phones, commenters observe that implementation of dispatchable location solutions may require hardware, firmware, and/or software modifications to handsets to enable them to communicate with in-building infrastructure such as Wi-Fi or Bluetooth beacons. Several commenters also note that in order for handsets to use Wi-Fi or Bluetooth to search for nearby location beacons when a caller places a 911 call, handset operating systems will need to be configured to activate Wi-Fi and Bluetooth automatically, in the same manner that current GPS-capable handsets activate GPS automatically when the user calls 911. The Roadmap Parties commit to work with device manufacturers and operating system developers in order to implement these changes.

50. The Roadmap also anticipates the need for deployment of new handsets to accommodate dispatchable location technologies, and commits the signatory CMRS providers to equip all carrier-provided VoLTE handset models with the ''capability to support delivery of beacon information, *e.g.,* Bluetooth LE and WiFi, to the network'' no later than 36 months after completion of relevant standards, including interim benchmarks at the 24 and 30 month timeframes. The parties also agree to enable their VoLTE networks to deliver beacon-based location information from handsets within 24 months after the completion of relevant standards.

51. The Parallel Path offers similar commitments on a longer timeframe, including a suggestion that all VoLTE handset models for non-nationwide CMRS providers would support the same delivery of beacon information no later than 48 months after the completion of relevant standards. The Parallel Path commits to the delivery of beacon information by their VoLTE networks within 36 months after completion of standards, or 12 months of their VoLTE networks becoming operational, with full end to end functionality for dispatchable location for their VoLTE networks within 60 months (or 12 months of becoming operational).

52. Some commenters stress the need for further development of standards to ensure that location applications originally developed for cLBS have the level of quality, reliability and redundancy needed to support emergency location. We note that efforts are already under way to develop such standards. The 3rd Generation Partnership Project (3GPP) and Open Mobile Alliance (OMA) have been in cooperative efforts to enhance LTE to meet public safety application requirements, and 3GPP has been prioritizing indoor positioning in developing its most recent release for LTE. In addition, CSRIC IV Working Group 1 was charged to examine whether CMRS providers transitioning to VoLTE platforms should still heed recommendations from an earlier CSRIC report on testing methodology and parameters as they began ''blending'' GPS handset-based location data with network-based data, per Section 20.18(h) of the Commission's rules. Among other findings, CSRIC notes that ''[i]n addition to the committed LTE location methods discussed . . ., other location methods such as Wi-Fi for VoLTE have been standardized. Wi-Fi for position calculation has been standardized in Secure User Plane (''SUPL'') 2.0 and is available for deployment on GSM, UMTS, CDMA and LTE.''

53. The Roadmap commits the four nationwide CMRS providers to promote

development and approval of standards within 18 months of the date of the Agreement, as well as to formally sponsor standards efforts regarding the use and delivery of Bluetooth LE and Wi-Fi information to the network. Additionally, the Roadmap Parties committed to participate actively in standards setting work, as well as to engage with technology companies and others in the private sector to promote the prioritization and completion of standards setting work. The parties also agree to sponsor standards activities to operationalize the display of dispatchable location in pre-NG911 PSAPs.

(iii) Location Database Development and Management

54. We sought comment in the *Third Further Notice* on the use of location databases by CMRS providers to verify location information, as well as the privacy and security implications raised by these databases. Commenters note that some of the database infrastructure that would be needed to support dispatchable location already exists. TCS states that it has database access to the location of more than 38 million Wi-Fi nodes to assist in locating users of cLBS applications. However, existing databases that map in-building infrastructure may not provide the level of reliability and security needed to support 911 location. Commenters assert that any database used to support dispatchable location will require mechanisms to enable PSAPs to access the location data, verify the trustworthiness and accuracy of the data, and keep the data up-to-date. CMRS providers also contend that developing and managing secure location databases will require the cooperation of building owners and state and local governments.

55. The Roadmap addresses the database issue by proposing a plan for the implementation of a National Emergency Address Database (NEAD). As envisioned in the Roadmap, the NEAD will contain media access control (MAC) address information of fixed indoor access points, which a device would ''see'' upon initiating a wireless 911 call. When the device ''sees'' the MAC address of this particular device, the CMRS network would cross-reference this MAC address with a dispatchable address, which would be made available to the PSAP. The Roadmap Parties have committed to work together to develop the design, operations, and maintenance requirements for the NEAD within 12 months of the Agreement. The Parallel Path makes a similar commitment within the 12-month timeframe. The parties also agree to ''work together to establish a database owner, funding mechanisms, provisions for defining security/privacy, performance, and management aspects, and to launch the initial database within 12–24 months after the development of the design requirements.'' Finally, the parties agree to work together to integrate dispatchable location information from third-party sources into the NEAD, and to enlist the support of other organizations to achieve this goal.

56. In response to the Roadmap's NEAD proposal, numerous commenters express concern that the proposal lacks critical details and leaves too many issues unresolved, some of which could hamper development. For example, NASNA states that ''the carriers promised to 'take steps to make non-NEAD dispatchable location information available for delivery of PSAPs,' but did not describe when or how those steps would be taken. It may be surmised from the discussion in the Roadmap at 2.b.i, ii and iii that this would occur within 30 days of the anniversary of the agreement, but that is not clear.'' NASNA also notes that Roadmap does not specify how it will incorporate existing legacy location databases and new or soon-to-be operational NG911 location databases. To address this concern, Sprint submits that the Commission could play an important role in the development and implementation of the NEAD: ''the Commission could, for example, include in its equipment authorization rules, procedures or training materials for telecommunications certification bodies a labeling requirement instructing the consumer or installer of the equipment to register it in the NEAD.''

57. Additionally, a number of commenters express concern with regard to the preservation of individual privacy throughout the implementation and subsequent use of the NEAD. Specifically, Public Knowledge cautions that the NEAD would contain sensitive personal information, and that the proposal as written in the Roadmap lacks safeguards to ensure ''that the database will be secure, used only for E911 purposes, and never sold to or otherwise shared with third parties, including government entities.'' Public Knowledge suggests that the Commission should require communications providers, cable operators, and satellite providers offering wireless consumer home products to allow consumers to ''opt out'' of including their products in such a database. Public Knowledge asks the Commission to clarify that location information collected from a consumer's device and stored in the NEAD would be considered customer proprietary network information (CPNI), and determine what safeguards would apply to information that may not constitute CPNI. Public Knowledge urges that the Commission address these privacy issues now and encourages the Commission to adopt a ''privacy by design'' approach. Public Knowledge also recommends that the Commission adopt regulations that ''require CMRS carriers and others to treat mobile 911 location information and NEAD as protected information and prohibit its sharing with third parties.''

58. On the other hand, TCS states that ''the technologies suggested by the Roadmap raise no new privacy concerns that do not already exist with today's 9–1–1 solutions; and the security concerns raised are no greater than those already facing public safety with regards to [NG911] technologies.'' TCS adds that ''our current public safety infrastructure contains much more sensitive information than what the Roadmap envisions.'' AT&T submits that the Roadmap's proposal is ''basically analogous to how 911 location has always been performed on the PSTN,'' and stresses that the NEAD database would be limited ''to access for 911 purposes and only during the processing of 911 calls.'' Sprint states that privacy related concerns ''will be addressed in the context of working groups.''

59. In response to these concerns, the Roadmap Parties filed an Addendum that sets forth measures they will take to address privacy and security concerns related to the implementation of the NEAD. In particular, the Roadmap Parties commit to (1) ''engage with various industry experts on privacy and security to ensure that best practices are followed in the development and operation of the database''; and (2) ''require the vendor(s) selected for the NEAD administration to develop a Privacy and Security Plan in advance of going live and transmit it to the FCC.'' New America, Public Knowledge, and other privacy advocates suggest that these measures remain insufficient, however, and urge the Commission to take additional actions to promote privacy and security.

(iv) PSAPs' Ability To Use Dispatchable Location Information

60. Finally, we sought comment in the *Third Further Notice* on whether and how PSAPs would be able to use dispatchable location information. NASNA submits that ''E911 location databases and call-handling software

products have a field that is used in wireline calls to identify apartment numbers. This field could be used to display this information.'' In addition, NASNA states that ''[i]f the LBS data are converted to lat/long or a civic address, NASNA does not know why it would cause any issues.'' Cisco states that ''a 911 Service Provider, would query enterprise networks located in and around the cell site where a 911 call originates, using a new gateway device to access the location data for that particular end user device,'' a process which it describes as ''relatively simple straightforward.'' Nevertheless, Intrado and TCS caution that changes at the PSAP level would be necessary.

61. The commitments in the Roadmap regarding dispatchable location are not contingent on a PSAP's ability to accept such information, but the Roadmap does include a caveat that ''implementation and execution of the elements within this document may be subject to a number of variables, including but not limited to . . . third party resources, which may require the signatories to reassess the progress'' of the Roadmap. However, the Roadmap also states that the parties ''will work with public safety to study and consider further steps to providing wireline-equivalent routing for wireless consumer home products that provide a dispatchable location.''

c. Discussion

62. Although we originally proposed dispatchable location as a long-term goal, the record shows that technology exists today that could be used to implement various dispatchable location solutions in the near term, as evidenced by the Amended Roadmap's provisions for immediate commencement of development of dispatchable location solutions and the Parallel Path's provisions committing to the implementation of dispatchable location technologies into wireless consumer home products and wireless handsets. Moreover, CMRS providers are already incentivized to deploy many of these technologies to expand coverage and to manage network capacity more efficiently. For example, Cisco notes that in 2013, ''approximately 45 percent of all mobile data traffic was offloaded on the fixed network via Wi-Fi or femtocell'' and further estimates that ''by 2018, more traffic will be offloaded on to Wi-Fi networks than will be carried over cellular networks.'' Given the commercial benefits of deploying the technologies that would support improved indoor location accuracy, we anticipate that commercial location systems will continue to proliferate, providing additional resources that could be leveraged for E911 use.

63. The record also confirms the clear public safety benefits of implementing dispatchable location as a core component of our approach to improving wireless indoor location. As APCO and NENA point out, dispatchable location represents the ''gold standard'' for first responders, because it provides the functional equivalent of address-based location information provided with wireline 911 calls. We note that wireline-equivalent location accuracy is of particular importance to individuals who are deaf, hard of hearing, deaf-blind, and/or have speech disabilities, and we believe the approach adopted here serves as a significant step in the right direction towards achieving such location accuracy.

64. We recognize, nonetheless, that dispatchable location cannot be achieved overnight, that the implementation concerns raised by commenters must be addressed, and that we must adopt timeframes that afford sufficient time to address these concerns. We agree with Verizon that any indoor location solution that can be scaled nationwide ''will depend on third parties or require cooperation with vendors in order to comply with any standards the Commission may adopt,'' but also that ''[t]he need for engagement with other stakeholders merely reflects the diversity of the wireless communications ecosystem consisting of service providers, solution vendors, manufacturers, and others and already exists today.''

65. We believe the Amended Roadmap provides the appropriate foundation for our approach. With regard to standards, as described above, the standards development process for many dispatchable location technologies is already under way, and the Amended Roadmap contains commitments to advance the development and approval of standards for many relevant technologies. The Amended Roadmap also offers a reasonable path forward with respect to deployment of in-building infrastructure and introducing necessary hardware and software modifications into new handsets. The Parallel Path makes similar commitments for non-nationwide CMRS providers. In light of the Amended Roadmap and Parallel Path, we find that the implementation timeframes adopted today sufficiently consider these issues and provide adequate time for all CMRS providers to plan for and implement a compliant dispatchable location solution if they so choose.

66. In evaluating dispatchable location, the Addendum also proposes that compliance with vertical accuracy requirements would be satisfied in a CMA where the total number of ''dispatchable location reference points'' in that CMA meets or exceeds the population of the CMA divided by a concentration factor of 4 within six years, based on 2010 census data. The Addendum commits parties to populate the NEAD with MAC address or Bluetooth reference points for dispatchable location reference points under their direct control for all CMAs. We agree with this approach, and find that a location solution that provides dispatchable location information to PSAPs in accordance with the prescribed benchmarks and meets the density calculation recommended by the Addendum will be considered in compliance with the vertical location accuracy requirements adopted herein. We concur that given the average population per household in the top 50 CMAs and typical Wi-Fi usage scenarios, the density calculation recommended in the Addendum should provide adequate coverage, particularly in light of the horizontal accuracy benchmarks described below that CMRS providers using dispatchable location must ensure that they meet.

67. The Parallel Path suggests that non-nationwide providers would be able to take certain steps in advance of the NEAD's implementation to develop dispatchable location ability, and that such CMRS providers commit to development, design and implementation of the NEAD, population of its data, and support of the database in concert with NENA, APCO and other stakeholders. They also commit to certain timeframes associated with handset and network design and development to support delivery of beacon information.

68. With respect to the proposal to develop and implement the NEAD to support dispatchable location, we recognize that while the NEAD has significant public safety value, there are significant privacy and security concerns associated with the aggregation of critical infrastructure and private intellectual property data. Although some commenters contend that the NEAD does not present a greater threat to data privacy than already exists today, the Roadmap and Parallel Path Parties agree that there is a need for privacy and security measures to be implemented with the NEAD. We emphasize that privacy and security concerns must be addressed during the design and development of the NEAD from its earliest stages. We will hold the

NEAD administrator, as well as individual CMRS providers that utilize the NEAD, accountable for protecting the privacy and security of consumers' location information.

69. *Development of the NEAD Privacy and Security Plan.* We require each of the nationwide CMRS providers to develop and submit for Commission approval a detailed Privacy and Security Plan for the NEAD, to be submitted with the interim progress reports discussed above, due 18 months from the Effective Date. We note that the Roadmap Parties specifically commit ''to require the vendor(s) selected for the NEAD administration to develop a Privacy and Security Plan in advance of going live and transmit it to the FCC.'' While we require the nationwide CMRS providers (rather than the vendor) to submit the Privacy and Security Plan, our approach is otherwise consistent with this commitment. The Roadmap Parties also pledge to collaborate with ''industry experts on privacy and security to ensure that best practices are followed in the development and operation of the database.'' In this regard, we expect the providers to develop the plan in close collaboration with a broad range of relevant stakeholders, including network security and reliability experts, equipment manufacturers (including device, software and network manufacturers), public interest advocacy groups (including privacy advocates, and consumer and disabilities rights groups), and other, non-nationwide communications service providers. The plan should appoint an administrator for the NEAD, prior to the database's activation, who will serve as a single point of contact for the Commission on the security, privacy, and resiliency measures that will be implemented in the NEAD.

70. We will make the NEAD Privacy and Security Plan available for public notice and comment to promote openness and transparency, and to ensure that the plan addresses the full range of security and privacy concerns that must be resolved prior to use of the database. Upon review of the plan and the record generated in response, we will evaluate the need to take any additional measures to protect the privacy, security, and resiliency of the NEAD and any associated data. In this respect, while commenters have raised important issues, we need not address their specific concerns regarding the treatment of data within the NEAD at this time, as such concerns can be raised and fully addressed in connection with our evaluation of any specific plan that may be filed.

71. *Privacy and Security Measures Applicable to Individual CMRS Providers.* In addition to the NEAD Privacy and Security Plan, we believe that certain explicit requirements on individual CMRS providers are necessary to ensure the privacy and security of NEAD data and any other information involved in the determination and delivery of dispatchable location. We require that, as a condition of using the NEAD or any information contained therein to meet our 911 location requirements, and prior to use of the NEAD, CMRS providers must certify that they will not use the NEAD or associated data for any purpose other than for the purpose of responding to 911 calls, except as required by law. Additionally, should aspects of a CMRS provider's dispatchable location operations not be covered by the NEAD privacy and security plan, the provider should file an addendum to ensure that the protections outlined in the NEAD plan will cover the provider's dispatchable location transactions end-to-end. We note that there is support for this requirement in the record, including by the Roadmap Parties. For example, AT&T pledges that the information contained in the NEAD will not be used for any non-emergency purposes. Likewise, Verizon affirms that ''the Roadmap signatories committed to addressing the security and privacy of customers' information as part of the NEAD's development, *which will be used exclusively for 911 purposes.*'' To the extent location information (by itself or in conjunction with other data concerning the customer) constitutes proprietary information protected under Section 222 of the Communications Act, we note that Section 222 expressly allows for the provision of a user's call location information to certain emergency response providers, in order to respond to the user's call for emergency services. In light of the Section 222 exception for 911 calls and the required certification by CMRS that NEAD data will only be used for 911 location purposes, nothing in this *Fourth Report and Order* should be construed to permit any use of customer or location information stored in the NEAD in any other context.

72. *PSAP Ability To Use Dispatchable Location Information.* We disagree with commenters who argue that PSAPs will not be able to accept dispatchable location information. First, PSAPs already receive location data in street address format (as opposed to geodetic coordinates) for wireline 911 calls. This capacity to receive non-geodetic data can be readily leveraged to accept delivery of dispatchable location information from wireless calls as well. Second, under the approach we adopt today, PSAPs retain the choice of whether to accept dispatchable location information (where available) or to request that the CMRS provider provide only geodetic coordinates to that PSAP. Even where PSAPs choose to accept dispatchable location information with 911 calls, CMRS providers should also make coordinate information for such calls available to the PSAP whenever feasible. Although PSAPs may need to make adjustments in procedure and additional personnel training may be necessary, we do not believe these factors justify a delay in adopting indoor location accuracy requirements that encourage dispatchable location solutions.

73. We applaud the commitments for dispatchable location set forth in the Amended Roadmap and Parallel Path, as they represent a meaningful and actionable plan for achieving dispatchable location for wireless 911 calls, particularly indoor calls. The Roadmap and Parallel Path also state that the signatory CMRS providers will work with public safety to study and consider further steps to providing wireline-equivalent routing for wireless consumer home products that provide a dispatchable location. However, as many commenters point out, the Roadmap contains no guarantee that dispatchable location will be successfully deployed or will function as intended. Therefore, to ensure sufficient location accuracy for all wireless indoor 911 calls, we find it necessary to adopt coordinate-based requirements for both the x- and y-axes and the z-axis as alternatives to dispatchable location. We discuss these requirements below.

3. Horizontal Location Information

74. In the *Third Further Notice,* we proposed a horizontal accuracy standard of 50 meters for indoor wireless calls, to be achieved by 67 percent of indoor 911 calls within two years and 80 percent of indoor 911 calls within five years. As discussed in Section III.B.2, *supra,* we are incorporating the Roadmap's provisions for implementation of dispatchable location as an alternative means to provide accurate indoor location information with a 911 call. However, the Roadmap also provides that CMRS providers will meet their commitments by providing coordinate information based on a 50-meter standard, in the event a dispatchable location solution is unavailable. Therefore, the rules we adopt include a

standard for coordinate-based location as an alternative to dispatchable location. In addition, we modify our originally proposed horizontal location benchmarks and timelines to incorporate elements from the Roadmap (including the slightly more generous timeframes and percentage benchmarks from the Addendum and the Parallel Path), but we also include backstop elements adapted from our original proposals:

- Nationwide CMRS providers must provide (1) dispatchable location, or (2) x/y location within 50 meters, for the following percentages of wireless 911 calls within the following timeframes, measured from the effective date of rules adopted in this Order (''Effective Date''):
  - Within 2 years: 40 percent of all wireless 911 calls.
  - Within 3 years: 50 percent of all wireless 911 calls.
  - Within 5 years: 70 percent of all wireless 911 calls.
  - Within 6 years: 80 percent of all wireless 911 calls.
- Non-nationwide CMRS providers are subject to the same two- and three-year benchmarks as nationwide CMRS providers *(i.e.,* 40 percent at 2 years, and 50 percent at 3 years). At years 5 and 6, non-nationwide CMRS providers are subject to the rules as follows:
  - Within the later of five years from the Effective Date or six months of having an operational VoLTE platform in their network, 70 percent of all wireless 9–1–1 calls (including VoLTE calls); and
  - within the later of six years from the Effective Date or six months of having an operational VoLTE platform in their network, 80 percent of all wireless 9–1–1 calls (including VoLTE calls).

We discuss the elements of these requirements below.

a. 50-Meter Search Ring

75. *Background.* In the *Third Further Notice,* we proposed to require CMRS providers to identify an indoor 911 caller's horizontal location within 50 meters. We reasoned that a search radius of 50 meters had a reasonable likelihood of identifying the building from which the call originated, while a search radius larger than 50 meters was unlikely to assist first responders in building identification. We also proposed to implement the 50-meter accuracy requirement in two stages with different reliability thresholds (67 percent in two years and 80 percent in five years). We noted that our current outdoor-based location accuracy rules use a ''dual search ring'' approach, with separate metrics for 50-meter and 150-meter accuracy. However, given the limited utility of a search radius larger than 50 meters for indoor location, we proposed a single-ring rather than a dual-ring approach.

76. Public safety commenters overwhelmingly support the proposed 50-meter standard, although some express a preference for a smaller search radius than 50 meters. Some CMRS providers argue against setting a 50-meter standard. AT&T, for example, argues that such a requirement is of ''dubious value to public safety'' for indoor location dense-urban and urban morphologies.'' CMRS providers also argue that it is more efficient to concentrate their resources on achieving dispatchable location rather than meeting a 50-meter standard that provides only approximate location. The Roadmap, however, provides that technologies capable of achieving 50-meter indoor horizontal accuracy qualify as ''heightened location accuracy technologies'' that may be used to meet the accuracy benchmarks in the agreement.

77. *Discussion.* We find it in the public interest to require CMRS providers to provide location information based on a horizontal 50-meter search radius where a dispatchable location is not available. Public safety commenters overwhelmingly confirm that a 50-meter x/y capability would be of significant benefit in helping to locate indoor 911 callers. Moreover, the Roadmap effectively adopts a 50-meter standard for indoor horizontal location. The record further indicates that provision of tighter geodetic data can contribute to better provision of a dispatchable location by, for example, helping to incorporate and distinguish accurate WLAN-based signals of opportunity as well as by providing more accurate geodetic location information for reverse geo-coding.

b. 50-Meter Compliance Thresholds and Timeframes

(i) Background

78. In the *Third Further Notice,* we proposed a two-stage implementation timeframe for the 50-meter horizontal requirement, with a reliability threshold of 67 percent to be achieved in two years and an 80 percent threshold to be achieved in five years. We stated our belief that even if currently available location technology could not satisfy the proposed 50-meter standard in the most challenging indoor environments, the proposed timeframe would be sufficient for the development of improved technology and deployment of such technology by CMRS providers as needed to comply with the proposed requirements. We sought comment on our proposed timeframe and various alternatives, and received substantial comment on these issues.

79. CMRS providers generally object to the *Third Further Notice* proposal, contending that the proposed two- and five-year benchmarks cannot be met with existing technology and do not provide enough time for technological improvements. Many other commenters, however, argue that the *Third Further Notice's* benchmarks and timeframes are both achievable and reasonable.

80. The Roadmap proposes horizontal location benchmarks and timeframes that, like those in the *Third Further Notice,* require CMRS providers to achieve a defined level of accuracy for a specified percentage of 911 calls over a series of interim and longer-term deadlines. The details of the Roadmap proposal, however, differ from the *Third Further Notice* proposal in several respects. First, the Roadmap proposes to use live call data that would combine indoor and outdoor calls for purposes of measuring location accuracy performance, where the *Third Further Notice* proposed an indoor-specific standard with test-bed data used to measure compliance. Second, the Roadmap sets forth different compliance percentages and timeframes than the *Third Further Notice:* As an interim threshold, the *Third Further Notice* proposes 50-meter accuracy for 67 percent of indoor calls after two years, while the Roadmap would require heightened accuracy for 40 percent of combined indoor and outdoor calls after two years and for 50 percent of combined calls after three years. For the longer term, the *Third Further Notice* proposes 50-meter accuracy for 80 percent of indoor calls after five years, while the Roadmap sets benchmarks of 75 and 80 percent of combined indoor and outdoor calls for the fifth and sixth years, respectively, and would have limited the calculation to VoLTE calls.

81. The parties to the Roadmap contend that the Roadmap benchmarks and timelines offer significant advantages over the corresponding proposals in the *Third Further Notice.* The Roadmap parties also argue that the proposals included in the Roadmap are technically achievable, whereas the proposals of the *Third Further Notice* were not. Many other commenters cite similar reasons for supporting the proposed Roadmap horizontal location metrics. For example, CCA believes the Roadmap ''is a well-balanced proposal aimed at improving enhanced location

accuracy standards for both outdoor and indoor calls to 911, while also establishing benchmarks for providing 'dispatchable location' to first responders.''

82. However, many other commenters criticize the proposed Roadmap benchmarks and timeframes as inadequate to improve indoor location accuracy. These commenters contend that because the Roadmap accuracy benchmarks blend indoor and outdoor measurements, CMRS providers can meet the benchmarks primarily through improvements to satellite-based location that enhance outdoor location accuracy without achieving any significant improvement to indoor location accuracy. They also criticize the fact that the Roadmap sets lower percentage thresholds than the *Third Further Notice,* particularly in the early stages (*e.g.,* 40 percent of calls compared to 67 percent of calls at the two year mark), and extends the overall implementation period from five to six years. Many commenters also object strongly to the five- and six-year Roadmap benchmarks because they only consider VoLTE 911 calls in measuring compliance. These commenters generally argue that the Commission should reject the Roadmap and simply adopt the original benchmarks and timeframes proposed in the *Third Further Notice.*

83. In debating the relative merits of the proposed benchmarks and timeframes for horizontal location in the *Third Further Notice* and the Roadmap, commenters present contrasting views of the viability of certain location technologies to improve horizontal location accuracy, particularly indoors. In particular, commenters focus on the following technologies: (1) Observed Time Distance of Arrival (OTDOA), (2) terrestrial beacon systems, (3) Uplink Time Distance to Arrival (UTDOA), (4) Radio Frequency (RF) fingerprinting, and (5) in-building infrastructure, including Wi-Fi and Bluetooth.

84. *OTDOA.* OTDOA is a location technology that uses the time difference observed by user equipment between the reception of downlink signals from two different cells. CMRS providers plan to implement OTDOA in conjunction with the rollout of VoLTE. While Qualcomm states that initial field trials have shown that OTDOA ''is able to provide accuracy to within a few tens of meters both indoors and outdoors when carriers deploy and configure their networks appropriately,'' it adds that OTDOA has not been sufficiently tested yet and that its deployment ''will require extensive infrastructure improvements and capital expenditures by each carrier.''

85. *Terrestrial Beacons.* The principal proponent of terrestrial beacons is NextNav, which tested a first-generation version of its Metropolitan Beacon System (MBS) in the 2013 CSRIC test bed. NextNav asserts that its second-generation system has achieved significantly improved horizontal accuracy in urban, dense urban, and suburban areas, and could meet a five-year performance metric of 50 meters for 80 percent of indoor calls. NextNav also believes its technology will be standardized in 2015 and that comprehensive network construction would require fifteen to eighteen months in most urban markets. Commenters challenge NextNav's ability to meet the indoor horizontal requirement in the timeframe proposed in the *Third Further Notice,* arguing, for example, that NextNav's claimed indoor location accuracy results may be overstated because it has only tested a technology prototype.

86. *UTDOA.* This is a network-based system developed by TruePosition that determines location based on the time it takes the 911 caller's cell phone signal to travel to nearby receivers called Location Measurement Units (LMUs). TruePosition claims that 2014 test results demonstrate that UTDOA technology could meet the Commission's proposed two-year accuracy standard today, and could meet the proposed five-year standard assuming sufficient density of LMU deployments; it also asserts that UTDOA is commercially available, that LMUs could be deployed rapidly, and that implementation does not require replacement or upgrading of handsets. CMRS providers dispute these assertions, arguing that UTDOA is not compatible with the evolving design of 3G and 4G networks and that it requires handsets to operate at increased power that will cause disruptive interference.

87. *RF Fingerprinting.* This technology locates wireless calls by analyzing radio frequency measurements from all available sources (including A–GNSS, OTDOA, and small cells or Wi-Fi hotspots), and matching them against a geo-referenced database of the radio environment. Its principal proponent, Polaris, states that it has been able to ''demonstrate [ ] indoor location accuracies of approximately 30–40m across a variety of indoor morphologies'' and that it can meet the Commission's proposed horizontal accuracy requirements within the proposed timeframe. Some commenters, however, question the viability of Polaris' technology, arguing that it has received only limited testing and that its accuracy in measuring horizontal location degrades with the height of the test point.

88. *In-Building Infrastructure.* Several commenters note that indoor, infrastructure-based technologies that can support dispatchable location, as discussed in Section III.B.2.b *infra,* may also be able to provide geodetic coordinates that could improve indoor location. For example, Rx Networks submits that ''proliferation of Wi-Fi enabled devices such as door locks, thermostats, security systems, and light bulbs will increase the density of indoor Wi-Fi devices thereby providing a greater number of points that can be located (either through self-location or crowd sourcing the location) which will result in improved multilateration fixes,'' while TIA asserts that application of this standard to Wi-Fi based location ''will be capable of producing 10 feet of accuracy on a horizontal X/Y axis 90% of the time.''

(ii) Discussion

89. As noted, both the *Third Further Notice* and the Amended Roadmap propose horizontal location benchmarks and timeframes that require CMRS providers to achieve a defined level of accuracy for a specified percentage of 911 calls over a series of deadlines, but the proposals diverge in some details. In comparing the two, we conclude that some elements of the Amended Roadmap proposal offer advantages over our original proposal. In particular, the Amended Roadmap offers more clarity by identifying the categories of technologies that would be deemed to provide ''heightened location accuracy'' sufficient to meet its benchmarks. At the same time, it provides flexibility for CMRS providers to choose from a wide array of different technological approaches to achieve heightened location accuracy, and provides a mechanism for development and test-based validation of new location technologies. These elements are consistent with our strong preference for flexible and technologically neutral rules, as we stated in the *Third Further Notice.*

90. Another key strength of the Amended Roadmap is its use of live 911 call data as opposed to relying solely on test data to measure compliance with location accuracy requirements. While test data also plays an important role in validating location accuracy performance, both in the Amended Roadmap and in the rules we adopt in this *Report and Order,* the Amended Roadmap commitment to use live call data establishes for the first time an empirical basis for measuring the use and performance of different

technologies in delivering location data to PSAPs, and holds CMRS providers accountable based on actual 911 calls rather than solely on test calls. Therefore, we believe it is appropriate to incorporate this element of the Amended Roadmap into our rules.

91. We also modify our original proposal to establish horizontal location benchmarks at two and five years, instead adopting benchmarks at two, three, five, and six years that are more reflective of the Amended Roadmap timetable. While many commenters would prefer us to adopt our original timetable, we also received extensive comment indicating that adhering to overly aggressive deadlines could end up being counterproductive. In this respect, we believe the general timeframes and benchmarks offered in the Amended Roadmap, which were the product of intense negotiation among the Roadmap parties, are more realistic and therefore more likely to result in concrete improvements in location accuracy. We also note that Roadmap's six-year timeframe is not significantly longer than the five-year timeframe proposed in the *Third Further Notice.*

92. Regarding horizontal location information, the Parallel Path commits the non-nationwide CMRS providers to providing dispatchable location or x/y location within 50 meters for the following percentages of calls:

- 40 percent of all wireless 911 calls within two (2) years;
- 50 percent of all wireless 911 calls within three (3) years;
- 70 percent of all wireless 911 calls (including VoLTE calls) within the later of five (5) years, from the date of this Agreement or six months of having an operational VoLTE platform in their network; and
- 80 percent of all wireless 911 calls (including VoLTE calls) within the later of six (6) years from the date of this Agreement or one year of having an operational VoLTE platform in their network.

93. We conclude that it is in the public interest to codify the horizontal location benchmarks in the Amended Roadmap (as modified for small CMRS providers in the Parallel Path) in this *Report and Order.* We recognize that this approach differs from that of the *Third Further Notice,* which proposed indoor-specific benchmarks for which compliance would be measured by testing in a variety of indoor environments. However, the approach adopted here, based on the Amended Roadmap, will enable measurement of location accuracy performance based on live calls, an approach that has substantial benefits. When using live call data, it is difficult to distinguish individual 911 calls based on whether they were originated indoors or outdoors, as numerous commenters point out. Thus, establishing an indoor-specific benchmark that relies solely on live call data may not be practical.

94. As noted above, some commenters have criticized allowing CMRS providers to blend location accuracy data from outdoor as well as indoor calls. However, we do not believe it is practical or appropriate to establish compliance benchmarks that are limited to indoor calls or indoor-oriented solutions, or that the foregoing concerns outweigh the substantial benefits of live call data. For example, the record indicates that satellite-based A–GNSS location is not only capable of providing a location fix of 50 meters or less outdoors, but will also be able to locate callers in indoor environments where satellite signal reception is not compromised (*e.g.,* in single-story wood frame buildings or in larger structures where the caller is located near a window). NextNav has cited data from the 2013 CSRIC III test bed report indicating that the percentage of successful indoor GPS fixes was 23 percent in urban environments and 11 percent even in dense urban environments. We see no reason to discount reliance by CMRS providers on such successful indoor fixes in promoting our goals for indoor location accuracy. Conversely, particularly in light of the rapidly accelerating trend toward indoor wireless calls, we do not believe these figures provide any significant disincentive for CMRS providers to pursue alternative solutions for indoor calls in more challenging indoor locations. Indeed, CMRS providers have significant incentive in many indoor situations to pair A–GNSS with other location technologies. As CSRIC notes, ''[m]ultiple combinations of different technologies can be combined together to produce a more reliable and accurate position estimate than any one system alone.'' In regard to LTE specifically, CSRIC notes that ''[location a]ccuracy may be improved because LTE supports more flexible hybrid positioning methods than 2G/3G. The [Serving Mobile Location Center] can initiate multiple location methods at once.''

95. CMRS providers will be able to choose from a variety of technology solutions that are either already commercially available or close to commercial availability, because they have already recognized the potential need to rely on these technologies to meet their commitments if there is no timely dispatchable location solution, and because CMRS providers will have substantial time and flexibility to implement the best solution or combination of solutions. To the extent that CMRS providers choose to move forward with dispatchable location, as discussed in Section III.B.2.b, *infra,* any dispatchable location solution will count towards the horizontal benchmark at the appropriate thresholds. In addition, CMRS providers have the option of leveraging indoor infrastructure such as small cells and Wi-Fi hotspots to provide x/y location within 50 meters as opposed to dispatchable location. Similarly, providers may use OTDOA to comply with the horizontal benchmark to the extent that OTDOA is determined through testing to meet the 50-meter standard. This is consistent with the CMRS providers' commitment in the Roadmap to deploy OTDOA in their roll-out of VoLTE and to use it in conjunction with A–GNSS as a primary location solution.

96. In addition to dispatchable location and OTDOA, CMRS providers have several other technologies to choose from. While NextNav's first-generation beacon technology fell short of 50-meter accuracy in some environments in the CSRIC test bed, subsequent testing indicates that its second-generation MBS technology can achieve 50-meter accuracy in suburban, urban, and dense urban environments. Moreover, the additional year CMRS providers will have to meet our benchmarks should provide sufficient time for deployment of MBS-capable handsets.

97. UTDOA technology is also sufficiently developed to present a viable option for CMRS providers. Although TruePosition has not tested UTDOA with LTE networks, CSRIC notes that ''[l]ocation accuracy of UTDOA deployed on LTE networks should be comparable to, or better than, the accuracy achieved by UTDOA deployed on 3G or 2G networks . . .'' UTDOA is already commercially available from two different vendors and does not require any handset replacement, only updates to the CMRS providers' networks. While some commenters question UTDOA's viability because it relies on ''powering up'' by the handset, this is not an insurmountable problem. Powering up already occurs for emergency voice calls on GSM networks, adjustment of handset power is incorporated into industry standards, and any power-up requirements for emergency calls would be fairly brief and limited exclusively to 911 calls. We also find that should CMRS providers decide to pursue

UTDOA as a solution, the additional year afforded them to meet the benchmarks should provide sufficient time to address any issues regarding the impact of LMU deployment on network performance.

98. Polaris Wireless' RF fingerprinting technology will also likely be able to meet our requirements in many indoor environments when used in conjunction with other location technologies. Radio Frequency (RF) fingerprinting can be used in conjunction with OTDOA and other location technologies, with no handset replacement necessary because the RF mapping capability is implemented from the network side. Thus, if CMRS providers wish to use RF mapping, the technology is also likely to be sufficiently developed that it can be used in a hybrid solution to help meet both our horizontal location accuracy requirements.

c. Geographic Scope of Horizontal Location Requirements for Non-Nationwide CMRS Providers

99. In the *Third Further Notice,* we proposed to apply the horizontal indoor location accuracy requirements on a nationwide-basis, across all geographic areas, under the belief that only a limited number of environments would require CMRS providers to deploy additional infrastructure to satisfy our proposed indoor accuracy requirements, so that applying the requirements nationwide would be both technologically feasible and economically reasonable. Nevertheless, we sought comment on an alternative proposal to apply the proposed indoor location accuracy requirement in a more targeted fashion based on population and multi-story building density. We also sought comment on whether exclusions based on population density or dense forestation should apply, as well as how compliance based on one or more test beds would affect the definition of areas to exclude.

100. In response to the *Third Further Notice,* several commenters express support for a targeted application of indoor location requirements based on population density. Taking it a step further, several small and regional CMRS providers argue that it would also be appropriate to *exclude* rural areas from indoor-focused location accuracy requirements. Absent any such exclusion, RWA expresses concerns about the ability of small and rural CMRS providers to achieve compliance with the indoor horizontal location accuracy requirements in the proposed timeframe. SouthernLINC submits that ''a significant proportion of the nation's regional and rural carriers are . . . transitioning their networks and systems to LTE'' and adds that if the nationwide carriers are able to achieve'' the proposed milestones of the Roadmap, ''regional and rural carriers should be able to achieve them . . ., but would need additional time because the necessary technology, equipment, and vendor support will generally not become available to them until after the nationwide carriers have completed . . . implementation.'' Similarly, CCA remarks that non-nationwide providers are not on the same LTE and VoLTE deployment timelines as the nationwide CMRS providers. In the Parallel Path, CCA urges the Commission to consider providing non-nationwide providers additional time to meet the five and six-year horizontal location accuracy benchmarks of the Roadmap, so that those providers can ''gain access'' to VoLTE handsets.

101. *Discussion.* To ensure compliance with our indoor-focused location accuracy standards, we provide an approach that addresses the concerns of non-nationwide CMRS providers and provides them flexibility as they migrate to VoLTE networks. For purposes of the instant *Report and Order,* we refer to providers with networks that are limited to regional and local areas—as ''non-nationwide providers.'' We recognize that, compared to the four nationwide CMRS providers that are parties to the Roadmap, our indoor-focused location accuracy requirements will substantially affect non-nationwide CMRS providers, particularly in years five and six under horizontal location accuracy requirements we adopt today. In this regard, we decline to phase in our horizontal location requirements based on population density. Satellite-based location technology has already proven able to meet our horizontal location requirements in rural areas and should provide the same capability soon in urban clusters. Accordingly, small and rural, as well as some regional, CMRS providers will likely need to make little additional expenditure to comply with our two and three-year horizontal location accuracy requirements. Similarly, we do not expect other providers to need to expend substantial additional resources to meet our requirements in the less densely populated areas that they serve. Rather, the non-nationwide providers can focus their resources on investing for and meeting our indoor-focused horizontal location requirements in years five and six as set forth below.

102. Moreover, our existing E911 exclusions apply only to outdoor areas in which naturally-formed physical characteristics of the area prevent the CMRS provider from obtaining accurate location information on the 911 caller. Because the rules we adopt today are focused on indoor 911 calls—which are not hindered by naturally-formed physical characteristics—there is no need to adopt similar exclusions here. Moreover, applying these requirements uniformly nationwide is consistent with the principle that improving 911 location is just as important in the least populous markets as in the most populous.

103. First, for compliance with the horizontal indoor location metrics, we require that the non-nationwide CMRS providers provide either dispatchable location or x/y location within 50 meters for the same percentages of all wireless 911 calls, applicable to the nationwide providers, 40 and 50 percent at the two-year and three-year timeframes, respectively, that are measured from the Effective Date. As noted above, the record shows that non-nationwide CMRS providers that use handset-based location technologies already rely extensively on satellite-based location technologies. Further, our requirement allows them to comply with the indoor-based location accuracy requirements by using any location technologies or combinations thereof. Similarly, current network-based non-nationwide CMRS providers can either continue to use their non-satellite technologies that provide x/y coordinates or combine them with implementing hybrid location technologies within the initial timeframes we require. These providers also have the option and incentive to commence working on dispatchable location technologies and resources to satisfy both our horizontal and vertical requirements.

104. Second, compared to the horizontal location metrics for years five and six under the Roadmap, we require that non-nationwide CMRS providers that have deployed a commercially operating VoLTE platform in their network shall provide dispatchable location or x/y location within 50 meters for the same percentages of all wireless 911 calls applicable to the nationwide providers as follows: (i) 70 percent within the later of five years or six months of deploying a commercially operating VoLTE platform, and (ii) 80 percent of all wireless 911 calls within the later of six years or one year of deploying a commercially operating VoLTE platform. We agree with CCA that the disadvantages non-nationwide CMRS providers face in deploying LTE networks warrant flexibility as they migrate to VoLTE networks over the next few years. Non-nationwide

providers are not on the same LTE and VoLTE deployment timelines as the nationwide providers. As CCA notes, non-nationwide providers face ''resource constraints, spectrum constraints, and lack of equipment availability'' that mean they ''are often not able to deploy LTE (much less VoLTE) on the same or even similar timeline as the nationwide carriers.'' More specifically, due to the limited scale and scope of their networks, non-nationwide CMRS providers often have limited access to handsets that incorporate the latest technologies driven by the handset product cycles of the nationwide CMRS providers. In light of these challenges, some non-nationwide provides may face unavoidable delays in obtaining VoLTE-capable handsets and testing and deploying them in their networks. Therefore, we conclude it is reasonable to provide non-nationwide CMRS providers with greater flexibility than the nationwide providers to extend the five and six-year benchmarks until they have had a reasonable opportunity to deploy and begin offering VoLTE on their networks. This additional flexibility will enable non-nationwide small CMRS providers to integrate the measures needed to meet our location accuracy standards into their plans to acquire, test, and deploy VoLTE handsets and networks.

4. Vertical Location Information

a. Background

105. In the *Third Further Notice,* we proposed that CMRS providers identify an indoor caller's vertical location within 3 meters for 67 percent of calls within three years, and for 80 percent of calls within five years. We noted that at least one vendor had developed and tested vertical location technology that could locate callers to within 2.9 meters at the 90th percentile and demonstrated improvements in subsequent testing, and other vendors estimated having similar granular capabilities within three to five years. Moreover, by the time the *Third Further Notice* was released, nearly all smartphones had been equipped with sensors that can determine speed, compass direction, and movement, and in some cases, height above sea level. These developments indicated that vertical location technology had sufficiently matured to propose the inclusion of vertical location information for indoor wireless 911 calls. We sought comment on whether an initial benchmark of three years would be achievable.

106. Public safety and consumer commenters urge the Commission to adopt indoor location accuracy requirements as quickly as possible, but the record is divided with regard to the technical feasibility of the proposed vertical location accuracy requirements and timeframe for implementation. Some commenters argue that the proposed requirements are technically feasible, particularly if multifaceted approaches are used. Other commenters, however, argue that current vertical location technologies are not sufficiently precise to support the proposed level of vertical accuracy, and that it will take significantly more time than estimated in the *Third Further Notice* to achieve such accuracy levels.

107. The comments suggest two potential paths for providing floor-level information with indoor 911 calls: (1) Programming physical fixed infrastructure such as beacons or Wi-Fi access points with accurate floor-level information, and (2) using barometric pressure sensors in handsets to determine the caller's altitude, which is then used to identify the caller's floor level. With respect to the second option, commenters note that barometric sensors are increasingly common in handsets, and some analysts project that the number of smartphones equipped with such sensors will increase to 681 million new units per year in 2016. Bosch, a leading international supplier of sensors, notes that the large volume of sensors being produced has resulted in significant economies of scale, which it estimates will drive the per-unit cost downward to between $0.24 and $0.35 by 2017.

108. Despite the widespread commercial availability of barometric sensors, CMRS providers question the accuracy of the current generation of sensors and argue that it will take significant time to develop and standardize barometrically-generated vertical location information for 911 calls. These commenters stress that barometer readings must be calibrated in order to provide first responders with meaningful information, a process which is currently unstandardized. However, NENA and several vendor commenters submit that calibration is not a difficult process, and that while calibrated data would provide more accurate information and is preferable, even uncalibrated data would be useful to first responders.

109. The Roadmap, Addendum, and additional filings reflect the parties' preference for using dispatchable location as the primary means to provide vertical location information, but they also make specific and measureable commitments to develop and deploy capabilities to determine z-axis vertical location information. First, in the Amended Roadmap, the CMRS provider parties commit to develop and deliver uncompensated barometric pressure sensor data to PSAPs from compatible handsets that support such a delivery capability within three years. Second, they commit ''to develop a specific z-axis location accuracy metric that would be used as the standard for any future deployment of z-axis solutions.'' To demonstrate progress along this path, the parties agree to ''promote the development and approval of standards'' for barometer-based solutions within 18 months. The parties also agree to complete (i) a study within six months to evaluate options for using barometric pressure data to obtain a z-axis, and (ii) a further study within 24 months that would include test bed evaluation of barometric and other z-axis solutions. The Addendum further commits the nationwide CMRS providers to deploy z-axis solutions according to specific benchmarks for major population centers in the event they are unable to provide dispatchable location. The Addendum provides a quantifiable z-axis backstop if a provider has not met the dispatchable location benchmark by year 6 in any of the most populous 50 CMAs. Further, a CMRS provider ''will be deemed to have implemented a Z-axis location solution in that CMA if its Z-axis solution provides coverage for at least 80% of the population of the CMA within 8 years'' and ''at least 50% of all new handset model offerings everywhere must be z-capable by year 7, and 100% of all new handset models by year 8.''

110. Numerous commenters oppose the Roadmap's vertical location provisions, particularly objecting to the fact that the Roadmap proposes no specific standard for providing vertical location information in the event that a dispatchable location solution cannot be achieved. On the other hand, the parties to the Roadmap offer a vigorous defense of its vertical location proposals. For example, Verizon submits that ''Roadmap opponents that support the NPRM's proposed vertical location rules . . . disregard critical facts that would limit the availability of barometric pressure sensor-based solutions like NextNav's and Polaris Wireless's to consumers in even the best of circumstances,'' as well as ''vendors' dependence on spectrum licenses; their ability and willingness to deploy their solution throughout its licensed area; and a PSAP's need to update its own system and equipment to handle the vertical information.'' NENA argues that the Roadmap adequately addresses

vertical location and does not foreclose the possibility of the four nationwide CMRS providers providing a comprehensive vertical location accuracy solution independent from dispatchable location. Also, CCA supports a requirement for non-nationwide providers operating in the top 25 to 50 CMAs ''to count uncompensated barometric pressure data towards meeting additional [z-axis] requirements'' following the 36 month assessment of dispatchable location solutions. Several other parties offer their support for the Roadmap's proposals for vertical location, including two public safety commenters. iPosi suggests a compromise that there be a vertical location accuracy ''target'' of 10 meters within two years of the adoption of rules. Further still, several commenters raise concerns that the Addendum fails to offer specific benchmarks for vertical location. Polaris Wireless believes that CMRS providers are restricting indoor solutions to just a fraction of their networks and questions the impact on communities, including two-thirds of state capitols, that are not included within the top 50 CMAs. TruePosition argues that the Addendum proposes to use ''an alternative z-axis solution, but one that is far inferior and much later in availability than what the FCC has proposed.''

111. We also sought comment in the *Third Further Notice* on whether PSAPs are ready to accept z-axis information today, and if not, how long it will take for a sufficient number of PSAPs to develop this capability so that it would be reasonable to impose a z-axis requirement on CMRS providers. Some commenters argue that PSAPs could receive and process vertical location information immediately on existing consoles, even if they have not upgraded to NG911. Other commenters argue that even if vertical location information were available, a majority of PSAPs will not be able to use it effectively. Verizon argues that any implementation deadlines for vertical location information should be tied to PSAP readiness across large regional areas. APCO argues that even if many PSAPs currently cannot process vertical location information, the Commission should establish vertical location accuracy requirements and timetables now because PSAPs are unlikely to make the necessary upgrades to their systems without certainty that CMRS providers will begin delivery of such information by a specified deadline.

b. Discussion

112. Based on the record, we find that there is a need for vertical location information in connection with indoor 911 calls, and that adopting clear timelines for providers to deliver vertical location information is in the public interest. The Amended Roadmap affirms the importance and need for floor-level location information to be provided to emergency responders. Moreover, the Roadmap, the Addendum, and additional filings provide a backstop mechanism using both uncompensated barometric data and a specific z-axis location accuracy metric to obtain vertical location information for PSAPs as an alternative to dispatchable location. Therefore, while 911 calls that provide dispatchable location information, as discussed in Section III.B.2 above, will count towards the vertical location accuracy requirement, the vertical location rules adopted herein are also designed to provide for a potential alternative to the Road Map parties' preferred solution.

113. We find that it is reasonable to establish a z-axis metric standard for vertical accuracy as an alternative to providing floor-level accuracy by means of dispatchable location. Although some commenters support immediate adoption of a three-meter standard to provide PSAPs with accurate floor-level information, we believe that, in light of the substantial dispute in the record about the feasibility of achieving a z-axis metric on the timetable proposed in the *Third Further Notice,* additional testing and standardization are appropriate in order to determine the appropriate accuracy benchmark. Although market availability of devices with barometric devices has increased, and multiple vendors, including those who participated in the CSRIC test bed, have continued to develop and test vertical location technologies, challenges remain. We note that vertical location information can be provided at varying levels of accuracy. For example, uncalibrated barometric pressure data provides some idea of the vertical height of a device, but would become more accurate with calibration. Even more accurate than calibrated barometric data would be floor-level information included as part of the programmed dispatchable location of a fixed beacon or Wi-Fi access point, which could be validated as the proper location by a barometric pressure sensor on the phone. We recognize the challenges with standardization and achieving sufficient handset penetration to be able to implement a calibrated barometric pressure-based solution within three years, as proposed in the *Third Further Notice.* We find that at present, vertical technologies are not as tested nor widely deployed as horizontal ones, which justifies applying tailored implementation timeframes for achieving indoor location accuracy in the two different dimensions, as reflected in the Addendum proposals and the rules we adopt here. We conclude that more than three years is likely to be needed for industry to deploy infrastructure, to change out handset models, and to configure networks and location systems to incorporate vertical location information.

114. Therefore, we adopt rules that (1) require the provision of uncompensated barometric pressure readings to PSAPs from capable devices within three years of the Effective Date, and (2) require CMRS providers to meet a specific z-axis metric and deploy such technology in major CMAs beginning six years from the Effective Date.

115. *Uncompensated Barometric Data.* Within three years of the Effective Date, all CMRS providers must provide uncompensated barometric data to PSAPs from any handset that has the capability of delivering barometric sensor data. This codifies the commitment that CMRS providers have made in the Roadmap and Parallel Path to provide such data. The record indicates that handsets with barometric sensors are already widely available and we expect the total number of handsets with this capability to increase over the next three years. Moreover, while some commenters assert that uncompensated barometric data is not reliable, NENA notes that uncompensated barometric pressure data would be useful to first responders searching for a 911 caller within a building, because once in the building, the first responders could compare barometric readings from their own devices to the barometric readings from the caller's handset in the same building, eliminating the need for compensated data. Uncompensated barometric data also serves as a readily available data point for calls for which dispatchable location is not available or a z-axis metric solution has not yet been deployed. Nevertheless, we do not require CMRS providers to begin delivery of uncompensated barometric data immediately. Although barometric sensors are available in handsets today, CMRS providers, service providers, and PSAPs alike will need time to incorporate and configure this new data into their systems. We believe that a three-year deadline provides sufficient time for development of these

capabilities. We also recognize that non-nationwide CMRS providers seek an additional year before being required to provide this information, but we find that is not necessary. The rule we adopt today applies only to devices with barometric sensors and delivery capability that the CMRS provider may choose to offer to consumers and does not require any CMRS provider to make such devices available to subscribers.

116. *Z-Axis Metric.* Within three years of the Effective Date, we require nationwide CMRS providers to use an independently administered and transparent test bed process to develop a proposed z-axis accuracy metric and to submit the proposed metric to the Commission for approval. We believe the testing, standard setting process and formal showing to the Commission will ensure industry-wide cooperation to determine the most feasible z-axis metric that can be established within the timeframes adopted today. We intend that the proposal will be placed out for public comment. Any such z-axis metric approved, and, if adopted by the Commission, will serve as an alternate six- and eight-year benchmark for vertical location should dispatchable location not be utilized by a CMRS provider for compliance.

117. Within six years of the Effective Date, nationwide CMRS providers will be required to either (1) meet the dispatchable location benchmark described herein; or (2) deploy z-axis technology that achieves any such Commission-approved z-axis metric in each of the top 25 CMAs and covers 80 percent of the population in each of those CMAs. Within eight years of the Effective Date, nationwide CMRS providers will be required to either meet the dispatchable location benchmark described herein, or (2) deploy z-axis technology that achieves any such Commission approved z-axis metric in the top 50 CMAs and covers 80 percent of the population in each of those CMAs. The same requirements will apply to non-nationwide CMRS providers serving the top 25 and top 50 CMAs, except that the six- and eight-year benchmarks will be extended to 7 and 9 years, respectively. Taken together, and based on the progress identified to date in concert with the rapid rollout of VoLTE phones, it is our predictive judgment that the extended six- and eight-year timetable for compliance will be more than adequate for nationwide CMRS providers, as will the extension by one year each for non-nationwide CMRS providers. Our solution recognizes the substantial but still incomplete technological progress achieved to date and makes the most effective use of the Amended Roadmap to work toward a backstop solution in the event the failure of a dispatchable location approach requires it. It also provides reasonable and appropriate incentives for CMRS providers to ensure the success of their preferred dispatchable location solution and/or a z-axis metric alternative.

118. To further ensure that nationwide CMRS providers are on track to provide a proposed z-axis metric for vertical location at three years, we require that they report to the Commission on their progress towards testing and developing the proposed metric 18 months from the Effective Date. As part of the 18-month report, at a minimum, CMRS providers must show how they are testing and developing z-axis solutions and, consistent with their commitment in the Roadmap, demonstrate their efforts to promote the development and approval of standards to support such solutions. We find that the requirements and adjusted timeframe we adopt today sufficiently address concerns raised by commenters with regard to technical feasibility, the time necessary for standards development and deployment of new technologies, and for integration into PSAP systems and procedures.

119. We also find that the current limitations on the ability of PSAPs to use vertical location information fail to justify delaying adoption of vertical location accuracy requirements beyond the timeframes adopted in this order. Indeed, public safety commenters argue that even imperfect vertical location information would be of use to them. We believe the provision of uncompensated barometric pressure data mitigates that problem in the near term. We also agree with APCO that PSAPs are unlikely to invest in upgrading their equipment and software unless there are requirements in place to ensure that the information will soon be available to them. While PSAPs may not be able to utilize vertical location information immediately, the six-year timeframe associated with this requirement provides ample time for PSAPs to develop such capability.

120. Finally, although we adopt a nationwide requirement for all CMRS providers to provide uncompensated barometric pressure data to PSAPs from any capable handset, we decline to apply a similar requirement at this time to the deployment of z-axis metric solution. We anticipate that the provision of dispatchable location obviates the need for nationwide deployment within the timeframes adopted today. Again, we find that the requirements and adjusted timeframe adopted herein sufficiently take into account concerns raised by commenters with regard to technical feasibility, the time necessary for standards development and deployment of new technologies, and for integration into PSAP systems and procedures even in rural areas.

5. Implementation Issues

a. Compliance Testing for Indoor Location Accuracy Requirements

121. *Background.* In the *Third Further Notice,* we found that CSRIC WG3 demonstrated the feasibility of establishing a test bed for purposes of evaluating the accuracy of different indoor location technologies across various indoor environments. Accordingly, we found that a test bed approach, representative of real-life call scenarios, would be the most practical and cost-effective method for testing compliance with indoor location accuracy requirements. We proposed two approaches based on representative real-life call scenarios, one centered on participation in an independently administered test bed program and the second centered on alternative but equivalent testing methodologies. Under either proposal, certification would provide a ''safe harbor'' in which CMRS providers, upon certification that a technology meets our location requirements and has been deployed in a manner consistent with the test bed parameters, would be presumed to comply with the Commission's rules, without the need for the provider to conduct indoor testing in all locations where the technology is actually deployed.

122. Commenters generally support the establishment of a test bed for technology vendors and CMRS providers to demonstrate indoor location accuracy. CMRS providers urge establishment of an independent test bed, and argued that requiring testing in all markets served by CMRS providers could delay or impede identifying candidate technologies. A number of commenters agree that testing in representative environments that include rural, suburban, urban and dense urban morphologies provides an acceptable proxy to conducting market-by-market testing. Other commenters argue that live 911 call data should be compared to any certified results achieved in a test bed environment in order for PSAPs to determine if service providers are meeting compliance requirements in their area.

123. In June 2014, CSRIC IV WG1 released its Final Report on specifications for an indoor location

accuracy test bed that included recommendations for methodology, management framework, funding, and logistical processes. CSRIC IV recommended adopting the CSRIC III test methodology and establishing permanent regional test bed facilities in six representative cities distributed across the U.S. While CSRIC IV focused on development of the test bed for experimental testing, it did not extend the scope of its recommendations to the potential use of test bed data to demonstrate compliance with location accuracy benchmarks.

124. The Roadmap provides for establishment of a test bed modeled on the CSRIC III recommendations. The Roadmap test bed would facilitate testing of both indoor and outdoor 911 location technologies and would include both experimental testing and compliance components. The Roadmap signatories pledge to establish the test bed by November 2015 and to operate it in a technology neutral manner in order to test and validate existing and future location technologies, including ''OTDOA/A–GNSS, dispatchable location solutions, and other possible location solutions (including but not limited to technologies described in PS Docket No. 07–114).'' The Roadmap also provides for use of the test bed data to demonstrate CMRS provider compliance with location accuracy performance benchmarks. However, rather that measuring compliance based on test data alone, the Roadmap would measure compliance based on actual use of the tested technologies in live 911 calls.

125. Most commenters approve of the Roadmap's commitment to establish a test bed consistent with CSRIC III's recommendations. However, some commenters question whether test bed performance data can provide sufficient certainty that the tested technologies will perform as well in the real world environment as in the test environment. Other commenters contend that the Roadmap test bed proposal has limited value because the Roadmap does not contain sufficiently rigorous requirements to deploy successfully tested technologies. Some commenters contend that the Roadmap test bed proposal leaves out key performance indicators which serve to demonstrate whether a technology meets Commission benchmarks. Finally, rural CMRS providers express concern that due to the limited number of test bed locations, there will be no test bed facilities in their service areas and they therefore may be forced to conduct more expensive individualized testing.

126. *Discussion.* The record strongly supports establishing a test bed regime modeled on the CSRIC III recommendations that CMRS providers can use to test and verify that location technologies are capable of meeting our indoor accuracy requirements. CSRIC III demonstrated the feasibility of establishing a test bed and methodology for purposes of evaluating the accuracy of different indoor location technologies across various indoor environments. CSRIC IV WG1 further validated this approach, formally recommending that the Commission adopt CSRIC III's methodologies and outlining additional recommendations regarding the management, funding and logistical aspects of operating a test bed. The Roadmap builds on these recommendations with its commitment to establish a test bed regime consistent with the CSRIC principles.

127. *Test Bed Requirements.* While the Roadmap establishes an appropriate framework for development of a test bed regime, we believe that the test bed must conform to certain minimal requirements in order for test results derived from the test bed to be considered valid for compliance purposes. Specifically, the test bed must (1) include testing in representative indoor environments; (2) test for certain performance attributes (known as key performance indicators, or KPIs); and (3) require CMRS providers to show that the indoor location technology used for purposes of its compliance testing is the same technology (or technologies) that it is deploying in its network, and is being tested as it will actually be deployed in the network.

128. *Representative Environment.* The test bed shall reflect a representative sampling of the different real world environments in which CMRS providers will be required to deliver indoor location information. Therefore, each test bed should include dense urban, urban, suburban and rural morphologies, as defined by the ATIS–0500013 standard. We believe these morphologies are sufficiently representative and inclusive of the variety of indoor environments in which wireless 911 calls are made.

129. *Performance Attributes.* Testing of any technology in the test bed must include testing of the following key performance attributes: Location accuracy, latency (Time to First Fix), and reliability (yield). For purposes of determining compliance with location accuracy and latency requirements, testing should at a minimum follow the CSRIC III test bed methodology. With respect to yield, the CSRIC test bed defined the ''yield of each technology . . . as the [percentage] of calls with delivered location to overall 'call attempts' at each test point.'' As with indoor calls in real-world scenarios, however, not all test call attempts will actually connect with the testing network established for the test bed and therefore constitute ''completed'' calls. In view of the difficulties that CSRIC III encountered in testing indoor locations, we adopt the following definition of yield for testing purposes: The yield percentage shall be based on the number of test calls that deliver a location in compliance with any applicable indoor location accuracy requirements, compared to the total number of calls that successfully connect to the testing network. CMRS providers may exclude test calls that are dropped or otherwise disconnected in 10 seconds or less from calculation of the yield percentage (both the denominator and numerator). We require CMRS providers to measure yield separately for each individual indoor location morphology (dense urban, urban, suburban, and rural) in the test bed, and based upon the specific type of location technology that the provider intends to deploy in real-world areas represented by that particular morphology.

130. *Testing to Emulate Actual Network Deployment.* CMRS providers must show both (1) that any indoor location technology used in compliance testing is the same technology that will be deployed in its network, and (2) that the technology is being tested as it will actually be deployed in the CMRS provider's network. In order to count use of any tested technology towards any of our accuracy thresholds, CMRS providers must certify that they have deployed the technology throughout their networks in the same manner as tested. CMRS providers must also update their certifications whenever they introduce a new technology into their networks or otherwise modify their technology use in such a manner that previous compliance testing in the test bed would no longer be representative of the technology's current use.

131. *Confidentiality of Test Results.* In the *Third Further Notice,* we noted that under the CSRIC III test bed regime, all parties agreed that raw test results would be made available only to the vendors whose technology was to be tested, to the participating CMRS providers, and to the third-party testing house. In order to protect vendors' proprietary information, only summary data was made available to all other parties. At this time, we will not require CMRS providers to make public the details of test results for technologies that have been certified by the independent test bed administrator. We believe the test administrators'

certification is sufficient notification that a technology meets our key performance indicators.

132. With regard to non-nationwide CMRS providers that cannot participate directly in the test bed, we find that the test bed administrator shall make available to them the same data available to participating CMRS providers and under the same confidentiality requirements established by the test bed administrator. This will enable such CMRS providers to determine whether to deploy that technology in their own networks. Enabling non-nationwide CMRS providers to access test data under the same confidentiality conditions as participating CMRS providers obviates the need for individual testing by those providers.

b. Use of Live 911 Call Data To Verify Compliance

133. *Background.* The Roadmap submitted by the four nationwide providers commits to collecting and reporting live 911 call data in six test cities recommended by ATIS ESIF on a quarterly basis to NENA and APCO, including data on the ''positioning source method'' used to deliver each wireless 911 call.

134. In response to the Roadmap, multiple commenters support the collection and reporting of live call data. For example, Cisco submits that ''[l]ive call data is an important step and necessitated by the commitments made in the Roadmap.'' NASNA contends that CMRS providers should report live call data to NASNA and the Commission as well, consistent with existing outdoor location accuracy reporting requirements. The Lackawanna County, PA District Attorney argues that this information should also be made available to law enforcement upon request. Small and rural CMRS providers, however, argue that live 911 call tracking and reporting would be overly burdensome for them. For example, though it supports the use of live call data, CCA notes that its members ''may not hold licenses for spectrum or otherwise operate in any of the six ATIS ESIF regions, much less the single location ultimately selected for the test bed,'' and therefore, the Commission should improve upon the proposal included in the Roadmap to accommodate smaller CMRS providers. In its Parallel Path proposal, CCA suggests that non-nationwide providers would also collect and report data if a given provider operates in one of the six regions, and if it operates in more than one it would collect and report only in half of the regions (as selected by the CMRS provider) in order to minimize burdens. For those providers not operating in any of the six regions, CCA suggests that a provider would collect and report data based on the largest county within its footprint, and in where serving more than one of the ATIS ESIF morphologies it would also include a sufficient number of representative counties to cover each morphology. They suggest that such reports would be provided within 60 days following each of the two-, three-, five-, and six-year benchmarks.

135. *Discussion.* We adopt a modified version of the Roadmap's commitment to quarterly reporting of aggregate live 911 call data for nationwide providers. We require the nationwide CMRS providers, subject to certain confidentiality protections, to aggregate live 911 call data on a quarterly basis and report that data to APCO, NENA, the National Association of State 911 Administrators (NASNA), and the Commission, with the first report due 18 months after the Effective Date of this requirement. CMRS providers must retain this data for two years. The Commission will not publish provider-specific data, but may publish aggregate data on its Web site.

136. We further adopt the Parallel Path's proposal for non-nationwide CMRS providers. We modify, however, the frequency of reporting for non-nationwide providers to every six months, beginning at 18 months following the Effective Date of the reporting requirement. In this respect, and as herein, we seek to inform our understanding of z-axis technologies by providing clear, real world data to augment the record data to date. While this may represent a slight increase in burden for smaller providers, we find that the clear benefit of this actual data in our future review of z-axis metrics outweighs those considerations. However, as discussed in Section IV.D, all CMRS providers must retain and will be required to produce live call data to requesting PSAPs in their service areas as a check on such certification.

137. We will use this data as a complement to the test bed in determining compliance. The performance of positioning source methods, whether based on geodetic coordinate information or dispatchable location, will first be determined based on performance of the technology in the test bed. CMRS providers must then certify to the Commission that they have deployed the tested technology throughout their service areas in a manner that is consistent with the deployment of that technology in the test bed, such that the test bed results can be reasonably relied upon as representative of the technology's real-word performance. Each CMRS provider must make this certification on or before our three- and six-year benchmarks, and will need to re-certify when implementing new technology or otherwise making a significant change to its network, such that previous test bed performance is no longer representative of the network or technology as now deployed. The certification will establish a presumption that 911 location performance results derived from live call data from the six ATIS ESIF test cities are representative of the CMRS provider's E911 location performance throughout in areas outside the reporting areas.

138. In this respect, submission of test and live call data will augment our understanding of the progress of such technologies as we consider the providers' proposal for a six-year benchmark when filed in the future. In order to maximize the utility of such data for those purposes, as well as for compliance, while balancing the potential burden of such reporting, we require all providers to include the following in their reports.

139. First, the live call data will include identification of the positioning source method or methods used for each call. The test bed performance of each positioning source method will then determine the degree to which that method can be counted towards the required location accuracy thresholds each time that positioning source method is used.

140. Second, to the extent available, live call data for all providers shall delineate based on a per technology basis accumulated and so identified for: (1) Each of the ATIS ESIF morphologies; (2) on a reasonable community level basis; *or* (3) by census block. In this respect, we expect that data will provide a viable, real world evaluation of particular indoor location technologies that will inform our ability to evaluate the nationwide providers' six-year bench mark proposal, and to prove out the various claims in the record as to technical achievability.

141. Finally, in order to verify compliance based on dispatchable location, we adopt the Addendum's proposed calculation regarding reference point ''density'' within a CMA. We require that nationwide CMRS providers include such calculation for relevant CMAs in their quarterly reporting. We find that this formulation will be reasonably representative of the capability of a

provider to utilize dispatchable location in a particular CMA.

c. Enforcement of Location Accuracy Requirements

142. *Background.* Under Section 20.18(h) of the Commission's rules, licensees subject to Section 20.18(h) must satisfy the existing E911 Phase II requirements at either a county- or PSAP-based geographic level. In the *Third Further Notice,* we proposed to adopt this same approach to enforcement for indoor location accuracy requirements, noting that CMRS providers could choose different technologies to best meet the needs of a given area based on individualized factors like natural and network topographies. We also recognized, however, that a county- or PSAP-based requirement may be difficult to verify if testing is performed within a more geographically constrained test bed, as discussed above. Ultimately, we proposed that enforcement of our indoor location accuracy requirements would be measured with actual call data within a PSAP's jurisdiction, but as a precondition, the PSAP would be required to demonstrate that they have implemented bid/re-bid policies that are designed to obtain all 911 location information made available to them by CMRS providers pursuant to our rules. We observed that accurate and reliable delivery of E911 location information depends upon the willingness and readiness of PSAPs and CMRS providers to work together.

143. In response, NASNA supports enforcement on a county/PSAP-level basis, and ''agrees with the concept of a CMRS provider being required to demonstrate compliance with the test,'' but also expresses concern that any presumptive compliance demonstrated in the test bed ''not hinder or prevent a state or local jurisdiction from taking effective action to resolve a problem with any carrier that does not meet the location accuracy requirements.'' NextNav submits that applying a PSAP-level enforcement regime to indoor calls ''would ensure that compliance testing reflects the actual makeup in each county and would ensure the performance fulfills the expectations of the callers in each area,'' as well as ''facilitate comparison of county or PSAP level compliance testing with the actual daily operational results experienced in each county or PSAP service area.''

144. On the other hand, several commenters argue that the proposed test bed approach would obviate the need for a county- or PSAP-level enforcement regime. Verizon states that compliance testing at the county- or PSAP-level ''is not feasible without different test bed parameters for each county or PSAP,'' and therefore, enforcement at this level would ''defeat the purpose and promised efficiencies of a test bed in the first place.'' Sprint submits that the *Third Further Notice* ''does not explain how the specific morphology associated with a particular county or PSAP will be defined,'' and that ''[t]here will be PSAPs and counties that contain multiple different morphologies, which will make it more difficult to assess overall compliance.'' Sprint then suggests that ''building morphology districts be identified within PSAP jurisdictions. Within each morphology district, the various building use types and any exempt spaces within a specific building should be identified.'' AT&T argues that the number of jurisdictions and PSAPs creates an ''administrative nightmare'' and that ''the only realistic and reasonable way to measure compliance would be to establish an independently administered and FCC-sanctioned test-bed mechanism that accounts for all the morphologies by which conformance to the standards could be fairly measured for all PSAPs.''

145. With respect to whether enforcement should be preconditioned on PSAPs' use of all available location data, APCO ''understands the Commission's desire to ensure that PSAPs use rebidding before filing complaints, but is concerned that the proposed standard is vague as there may be differing views regarding what constitutes a 'rebidding policy.' Moreover, the proposed rebidding condition on complaints will be irrelevant and unnecessary to the extent that future location technologies do not require rebidding to meet accuracy requirements.''

146. We also sought comment in the *Third Further Notice* on whether we should establish a specialized complaint process as part of our E911 enforcement strategy. We proposed that, with the filing of an informal complaint, PSAPs would have to demonstrate that they have implemented bid/re-bid policies designed to enable PSAPs to obtain the 911 location information that CMRS providers make available. Some public safety groups support this approach, in hopes of encouraging expeditious resolution of location accuracy issues, but CMRS providers generally oppose such a process. For example, CTIA submits that ''the test bed safe harbor approach will become useless if the FCC entertains complaints seeking in-building field testing in particular markets. Such a complaint process would effectively require CMRS providers to test deployments in all markets, which would be inconsistent with the Commission's findings that ubiquitous testing is both costly and impractical.'' Verizon and CCA argue that ''a PSAP that believes it is experiencing degraded performance in its area should first bring its concerns to the service provider before lodging an informal complaint with the Commission, so that the provider has an opportunity to work in good faith to timely address it.''

147. *Discussion.* Consistent with our existing E911 requirements, the rules we adopt today will be enforced by measuring the provider's performance at the county or PSAP level. In response to commenters' arguments that the test bed regime obviates the need for enforcement at a more granular level, we note that a CMRS provider's test bed results create only a presumption of compliance with the location accuracy standards with respect to a particular technology used within the provider's network. If that presumption can be rebutted with live call data or other objective measurements showing lack of compliance with our location accuracy requirements, we must be able to enforce our rules.

148. We agree with Verizon and CCA, however, that PSAPs should first engage with relevant service providers to see whether an issue could be resolved without Commission involvement. As discussed above, we require CMRS providers to collect live call data to the extent of their coverage footprint in the six ATIS ESIF test cities, for purposes of compliance and quarterly reporting to NENA, APCO, NASNA, and the Commission. In addition, we require CMRS providers to collect live 911 call data for its entire service area to make available to PSAPs upon request. By enabling PSAPs to obtain meaningful data regarding the quality of location fixes delivered with 911 calls, we intend to facilitate the ability of PSAPs and CMRS providers to troubleshoot and identify issues regarding E911 location accuracy. Accordingly, before a PSAP may seek an enforcement action through the Commission, PSAPs should first attempt to resolve the issue with the CMRS provider. We also require that, before seeking enforcement action, a PSAP must show that (1) it has implemented policies (whether through re-bidding or other mechanisms) to retrieve all location information being made available by the CMRS provider in conjunction with 911 calls and (2) provide the CMRS provider with [30] days written notice of the PSAP's intention to seek Commission enforcement, which shall include all of

the documentation upon which the PSAP intends to rely in demonstrating the CMRS provider's noncompliance to the Commission. We believe these conditions will serve to foster cooperation and transparency among the parties.

149. PSAPs may also file an informal complaint pursuant to the Commission's existing complaint procedures. We find that our existing informal complaint procedures should be sufficient to address PSAP concerns. At the same time, however, given the critical importance of addressing any concerns regarding the delivery of location information in connection with wireless 911 calls, we encourage parties submitting informal complaints to provide copies to PSHSB staff directly. In this regard, we seek to ensure that PSAPs and other stakeholders receive immediate consideration in the event there is an issue regarding E911 location accuracy.

150. Finally, we emphasize that CMRS providers and other stakeholders, such as SSPs, share responsibility to ensure the end-to-end transmittal of wireless 911 call location information to PSAPs, in compliance with our E911 location accuracy requirements. All stakeholders must collaborate to ensure the delivery of accurate location information, as well as the delivery of associated data to help PSAPs interpret location information, such as confidence and uncertainty data. PSAP call-takers must be able to quickly evaluate, trust, and act on such information to dispatch first responders to the correct location. In the event any party in the end-to-end delivery of location information fails to satisfy its obligation under our E911 location accuracy requirements, we reserve the right to pursue enforcement action or take other measures as appropriate.

d. Liability Protection

151. *Background.* In general, liability protection for provision of 911 service is governed by state law and has traditionally been applied only to local exchange carriers (LECs). However, Congress has expanded the scope of state liability protection by requiring states to provide parity in the degree of protection provided to traditional and non-traditional 911 providers, and more recently, to providers of NG911 service.

152. We understand commenters' arguments that liability protection is necessary in order for CMRS providers to fully comply with location accuracy requirements. In the *Third Further Notice,* we noted that the recent NET 911 Act and Next Generation 911 Advancement Act significantly expanded the scope of available 911 liability protection, and that we believe this provides sufficient liability protection for CMRS providers. Nevertheless, we sought comment on whether there are additional steps the Commission could or should take—consistent with our regulatory authority—to provide additional liability protection to CMRS providers. We also sought comment on liability concerns that may be raised in conjunction with the possible adverse effect on indoor location accuracy from signal boosters, as CMRS providers commenting in the *Signal Booster Report and Order* were concerned about liability for location accuracy when those capabilities are affected by signal booster use.

153. The record in response to the *Third Further Notice* contains little substantive comment with regard to liability protection issues. CTIA calls for a nationwide liability protection standard for entities providing 911 service. BRETSA emphasizes that liability protection for 911 services should be a matter of state—not federal—law. Qualcomm states that ''[t]o the extent the Commission seeks to encourage CMRS providers to incorporate potentially inaccurate Wi-Fi location information into the location determinations calculus, clarification of liability for such unreliable data sources will be needed.'' No commenter discussed how liability protection would be impacted by the use of signal boosters.

154. *Discussion.* In our *Text-to-911 Order,* we construed the Next Generation 911 Advancement Act's definition of ''other emergency communication service providers'' as inclusive of over-the-top interconnected text providers to the extent that they provide text-to-911 service. Similarly, we believe that the term ''other emergency communications service providers'' also reasonably includes any communications service provider to the extent that it provides E911 service. We believe that the liability protection set forth in the Next Generation 911 Advancement Act and other statutes provide adequate liability protection for CMRS providers subject to our rules. Moreover, we find that the rules we adopt today serve to mitigate or eliminate any regulatory uncertainty about 911 indoor location accuracy requirements. We take no action at this time with regard to liability protection of E911 service providers.

e. Specialized Waiver Process

155. *Background.* We sought comment in the *Third Further Notice* on whether we should adopt a specific waiver process for CMRS providers who seek relief from our indoor location accuracy requirements. In general, the Commission's rules may be waived for good cause shown, pursuant to a request or by the Commission's own motion. In the context of its E911 Phase II requirements, the Commission recognized that technology-related issues or exceptional circumstances could delay providers' ability to comply with the requirements, and that such cases could be dealt with through individual waivers as implementation issues were more precisely identified. Accordingly, we sought comment on whether and what criteria would be appropriate for any E911-specific waiver process, as well as whether providers who believe they cannot comply with a particular indoor location accuracy benchmark, despite good faith efforts, may submit a certification to this effect six months prior to the applicable benchmark.

156. A number of commenters support, or at least do not oppose, the idea of an E911-specific waiver relief process. TruePosition identifies several factors specific to indoor 911 location that may be appropriate as a basis for an E911-specific waiver process: ''if a carrier has ordered the necessary equipment (network hardware, handsets, etc.) that would, if delivered on time, meet the indoor safety standards, that type of 'good faith' effort should be considered as fair grounds for granting the service provider additional time.'' BRETSA submits a similar argument for ''good faith efforts'' as a basis for granting waiver relief. RWA submits that the Commission ''should adopt a safe harbor for waiver applicants based on a showing of technical infeasibility or financial difficulty,'' which should ''on its own should justify a waiver.'' NTCA notes that ''for the small rural carriers who comprise NTCA's membership, the expense of a waiver can impose a substantial financial burden, and the regulatory uncertainty can be disruptive to business planning and operations,'' but nevertheless supports the adoption of a streamlined waiver process if the Commission were to adopt the location requirements. However, CTIA opposes the establishment of a specific waiver process, arguing that ''a waiver standard that requires a commitment to achieve compliance within a specific timeframe . . . is problematic given the uncertainties associated with technology availability and deployability.'' CTIA argues further that ''the waiver process should not be a

weigh station [*sic*] on the way to enforcement.''

157. *Discussion.* Any CMRS provider that is unable to comply with the rules or deadlines adopted herein may seek waiver relief. The Commission may grant relief pursuant to the waiver standards set forth in Sections 1.3 and 1.925 of its rules, and we believe these provisions are sufficient to address any requests for relief of the indoor location accuracy requirements, which we will evaluate based on the facts and circumstances of the particular request. Therefore, we decline to adopt additional waiver criteria at this time that would be specific to waiver requests of our indoor accuracy requirements.

C. Benefits and Costs of Indoor Location Accuracy

158. In this section, we demonstrate that the benefits of building upon the Amended Roadmap and Parallel Path with the wireless location accuracy rules we adopt today outweigh the costs. In developing a regulatory framework for indoor location accuracy, our objective is to implement rules that serve the public safety goals established by Congress. While in the *Third Further Notice* we acknowledged the potential difficulty of quantifying benefits and burdens, we sought to measure how the availability of indoor location information will benefit the public through reduced emergency response times, as well as how to maximize these benefits, while taking into consideration the burden of compliance to CMRS providers. We discuss these issues here.

1. Benefits of Improved Indoor Wireless Location Accuracy

159. *Background.* In the *Third Further Notice,* we sought comment on the extent to which improvements in indoor location accuracy would result in tangible benefits with respect to the safety of life and property. We also noted our belief that improving location accuracy for wireless calls to 911, including from indoor environments, would be particularly important for persons with disabilities and for those who may not be able to provide their address or otherwise describe their location and sought comment on the increased value and benefits of providing more accurate location information for certain populations, such as people with disabilities, victims of crime, senior citizens and children.

160. We cited to a study examining emergency incidents during 2001 in the Salt Lake City area which found that a decrease in ambulance response times reduced the likelihood of mortality (*Salt Lake City Study*). From the results of this study, we reasoned that the location accuracy improvements we proposed could save approximately 10,120 lives annually, at a value of $9.1 million per life, for an annual benefit of approximately $92 billion. We also noted a 2002 study focusing on cardiac emergencies in Pennsylvania, which showed that when location information was provided contemporaneously with a 911 call, the reduction in response time correlated with a reduction in mortality rates from cardiac arrest (*Cardiac Study*). Based on this study, we estimated that for cardiac incidents alone, the proposed indoor location rules may well save at least 932 lives nationwide each year, yielding an annual benefit of almost $8.5 billion. Furthermore, as location information quality improves and latency declines, we noted our expectation that this will result in an even greater improvement in patient medical outcomes. We sought comment on the reasonableness of our analyses of these studies and our underlying assumptions, as well as on whether the time benefit of vertical location, given the spread in horizontal location, is likely to be more, less, or comparable to the estimated gains in the *Salt Lake City Study and the Cardiac Study* when moving from basic 911 to enhanced 911 services.

161. The large majority of commenters affirm the importance of improvements to indoor location accuracy. Several commenters state that improved location accuracy would lead to more rapid response time by eliminating time and resources spent pursuing incorrect addresses and locations. The Commission's expectation that improving location information quality would lead to a decline in latency was further confirmed by recent testing conducted by public safety representatives in the CSRIC test bed. Many commenters also agree that shorter response times lead to not only reductions in mortality, but better prognoses for many non-life-threatening cases. Many commenters also concur that improved location information can be particularly important for saving the lives of persons with disabilities and for those who may not be able to adequately communicate their location to a 911 call-taker. AT&T is the only commenter that does not agree that the *Salt Lake City Study's* findings are indicative of benefits that the public should expect from the implementation of tighter location accuracy requirements.

162. *Discussion.* We conclude that the location accuracy rules we adopt today will improve emergency response times, which, in turn, will improve patient outcomes, and save lives. Requiring location information for wireless calls to 911 from indoors is thus consistent with our statutory goal of ''promoting safety of life and property.'' Further, we must be more inclusive in our requirements than those proposed by the Roadmap because its five-year and six-year location accuracy metrics risk stranding non-VoLTE consumers without the life-saving benefits of improved wireless indoor location accuracy technology. Finally, by providing a z-axis metric as a backstop to dispatchable location for identifying floor level of 911 calls from multi-story buildings, we ensure that vertical location accuracy is achieved within the timeframe laid out by the Roadmap. These commercially reasonable requirements ensure that the full benefits of improved wireless indoor location accuracy are realized by addressing gaps in the Roadmap proposal while adopting and codifying its major elements and adapting our rules to its overall timeframe.

163. The location accuracy rules we adopt today are a measured response to the critical public safety need for improved wireless indoor location accuracy. While AT&T makes an array of arguments against the benefits the Commission has identified as a likely result of improved indoor location accuracy, we find that the *Salt Lake City Study* offers a relevant basis upon which to base the projected benefits of the location accuracy requirements we adopt in this item, and that the value of statistical life (VSL) offers an appropriate measurement for the public's valuation of lives saved as a result of these rules.

164. The *Salt Lake City Study* demonstrates that faster response time lowers mortality risk. Changes in cellphone usage patterns do not undermine this finding. AT&T argues that even if the *Salt Lake City Study* demonstrated that delayed response time might increase mortality, it does not necessarily follow that improved response times would *reduce* mortality. However, the record shows that for certain medical emergencies like sudden cardiac arrest (SCA), the length of response time may be determinative of whether or not a patient survives. Sudden cardiac arrest is the leading cause of death of American adults over age 40, with 9 out of 10 incidents resulting in death. The Sudden Cardiac Arrest Foundation states that ''SCA victims can survive if they receive immediate CPR and are treated quickly with defibrillators,'' but caveats that ''[t]o be effective, this treatment must be delivered quickly—ideally, within three to five minutes after collapse.''

Considering the high mortality rate and time-sensitive nature of this increasingly widespread health risk, it follows that improved location accuracy leading to shorter response times would reduce mortality rates for this very large group of medical emergencies. We also disagree with AT&T's argument that the *Salt Lake City Study's* findings are inapposite because the increase in wireless cellular phone usage has already shortened the amount of time that individuals delay before calling 911. The time that it takes for an individual to respond appropriately to an unexpected emergency is a function of a wide variety of factors beyond cellphone proximity.

165. The DoT's VSL was designed to calculate the value of preventing injuries or deaths. That makes VSL an appropriate metric for our analysis of the projected benefits of the wireless location accuracy rules we adopt today. AT&T argues that our use of DoT's VSL statistic is inapposite because those affected by our wireless location accuracy rules have already contracted a disease or been seriously injured. As stated by AARP, however, the relevant timeframe during which a life should be valued for the purpose of our analysis is not the moment at which that individual dials 911, but the time when a presumptively healthy consumer decides whether to buy a given cellphone product based at least in part on their perception that they will be able to use that cellphone to timely summon life-saving assistance.

166. We conclude that the location accuracy improvements we adopt today have the potential to save approximately 10,120 lives annually, at a value of $9.1 million per life, for an annual benefit of approximately $92 billion, or $291 per wireless subscriber. We find that our reliance on the *Salt Lake City Study* to arrive at those figures is well-placed, and that our analysis as to the applicability of that study to the rules we adopt today is fundamentally sound. We are not persuaded by AT&T's counterarguments with respect to the projected benefits because of its unsupported assumptions about the relationship between response time and mortality risk, and its misguided approach to valuing human life that presupposes life-threatening conditions. Even if we were to adopt AT&T's perspective, however, it still stands to reason that the average wireless subscriber would likely be willing to pay $291 per year to live an extra 23.7 days, the average increase in life expectancy that the *Salt Lake City Study* leads us to believe should be expected to result from the rules we adopt today.

2. Costs of Improved Indoor Wireless Location Accuracy

167. *Background.* In the *Third Further Notice* we noted that implementation of stricter indoor location accuracy requirements will likely impose significant costs on providers and sought comment generally on the costs of such requirements, as well as detailed information on all of the costs providers estimate our proposed indoor location rules would impose on them, and how these costs were determined. We also sought comment on what universal costs would be necessary across all indoor location technologies, as well as on any specific costs that are unique to different technologies; and on whether additional costs would be passed on to consumers, resulting in higher rates and, if so, how much rates would increase. Finally, we indicated our belief that any costs imposed by our rules might be mitigated, at least to some degree, by the fact that providers are already undertaking significant indoor location technology research and development on their own for commercial, non-911 reasons and sought further comment on the degree to which commercial development—unrelated to any Commission indoor location capability requirement—could be leveraged to mitigate the costs of compliance. We asked whether additional costs would be imposed by the potential indoor location requirements set forth in the *Third Further Notice* above and beyond the costs that CMRS providers would already have in implementing indoor location capabilities for commercial purposes.

168. *Technology-Specific Costs.* While commenters do not make nuanced statements about costs that will confront the industry in order to attain compliance with our proposed indoor location accuracy standards, they offer a variety of opinions on the costs presented by the adoption of specific technologies. Commenters agree that barometric pressure sensors are already ''relatively inexpensive,'' and, consistent with the general cost-based observations made in Section III.B.4.a above, conclude that the price should be expected to continue to fall at a rate of approximately 15 percent per year as adoption grows. Commenters also agree that establishing improved wireless indoor location accuracy through a solution utilizing terrestrial beacons would entail an additional per-unit cost of $1,500–$3,000, plus additional site lease charges. According to NextNav, receivers utilizing UTDOA are already deployed within CMRS networks and are already supported by handsets, and such a ''broadcast-only location network requires no additional transmitters or spectrum, nor does it entail expensive backhaul, or extensive antennae arrays.'' Commenters also state that consumer handsets already contain GPS receivers, and the technology has robustly responded to technological change, proving highly reliable results across multiple generations of technology, and avoiding the risk of stranded investment. Finally, Rx Networks, on behalf of smaller CMRS providers, advocates for the establishment of a centralized and standardized service to process location requests. Such a clearinghouse solution would entail a base station almanac of Cell-IDs and Wi-Fi access point locations, and cost-effective provisioning of A–GNSS and barometric pressure data among CMRS providers. Rx Networks asserts that such a solution bridges technical gaps, and simplifies business relationships while minimizing capital outlays.

169. *Cost Mitigation.* Commenters agree that CMRS provider costs can be diminished through the sharing of infrastructural solutions and that the growth in national demand for these technologies will eventually drive these costs down. Commenters also agree that CMRS providers are already in the midst of a transition to all-digital, all-IP networks, and have already begun work to improve location accuracy within their systems for commercial reasons. For these reasons, according to Motorola, CMRS providers have already added the permanent employees needed to engineer and manage the processes required for further improvements to location accuracy. Additionally, TruePosition opines that one of the benefits of today's proceeding is that it may entail cost savings upwards of $100 billion for CMRS providers who ultimately retire their traditional circuit-switched copper-loop networks and complete their transition to an all-digital IP ecosystem. Moreover, according to NENA, ''[u]nlike 2000, handsets today can already leverage existing capabilities for horizontal and, in some cases, vertical location determination. This means that carriers need only close the gap between already-deployed capabilities and the Commission's proposed requirement, rather than starting from scratch.''

170. *Discussion.* We find that among the myriad potential costs posed by the variety of location accuracy technologies discussed in this section, all share the commonality that their price will decline as demand grows. In light of our commitment to technology neutrality, as we emphasized in the

Third Further Notice, we do not mandate any particular model for implementing the location accuracy rules we adopt today, and apply these requirements on a technologically neutral and provider-neutral basis. That said, we note that NextNav reports on their Web site that it recently secured $70 million in funding to maintain and operate its MBS network. This indicates that there are solutions available to achieve the indoor wireless location accuracy standards we adopt today at a cost that is far less than their $92 billion minimum benefit floor. Finally, we acknowledge that the costs imposed by the rules we adopt today may present a proportionately greater burden to smaller CMRS providers, including the costs associated with participation in the test bed. So, although the cost of meeting our indoor location accuracy rules has not yet been determined to a dollar amount, commenters provide the Commission with a paradigm for understanding the shape that such costs will take.

IV. Improving the Delivery of Phase II Location Information

171. In the following sections, we adopt measures to ensure that PSAPs receive Phase II information in a swift and consistent format, and to improve the quality of the Phase II information. Through these measures, we seek to ensure that PSAPs receive the full breadth of information they need to respond swiftly and effectively to emergency calls.

A. Latency (Time to First Fix)

172. *Background.* The Commission's current E911 location accuracy rules do not require CMRS providers to test for or to meet a specific latency threshold, commonly known as ''Time to First Fix'' (TTFF). In the *Third Further Notice,* we proposed to require CMRS providers to deliver Phase II-compliant location information to the network's location information center within 30 seconds in order for the location fix to count in a CMRS provider's calculation of percentage of calls that comply with our rules. We also proposed to exclude from this compliance calculation any wireless 911 calls lasting 10 seconds or less, an interval which is often too short for a CMRS network to feasibly generate and deliver a location fix to its location information center. We ultimately proposed to include calls lasting more than 10 seconds in the calculation.

173. A number of public safety and industry commenters support a maximum latency of 30 seconds for obtaining a location fix as reasonable based on the performance of current handset and network-based technologies. Some commenters, however, urge the Commission to set maximum latency at less than 30 seconds. Industry commenters also oppose the proposal to exclude only calls of less than 10 seconds. They argue that it is unreasonable to allow CMRS providers up to 30 seconds to obtain a location fix while also including calls lasting more than 10 but less than 30 seconds in the compliance calculation. AT&T submits that ''all calls should be given at least 30 seconds for purposes of calculating the location-accuracy success rate'' and that to ''do [otherwise] would unfairly mischaracterize the provider's compliance with location-accuracy benchmarks.''

174. *Discussion.* We add a maximum latency requirement of 30 seconds to the existing E911 Phase II rules applicable to outdoor calls, but we conclude it is premature to include this requirement as part of the new rules adopted in this order for indoor location. Thus, for a 911 call to meet Phase II requirements, a CMRS provider must deliver Phase II-compliant information to its location information center within 30 seconds, as measured from the start of the call to when the information is delivered to the location information center. In calculating percentages of Phase II-compliant calls, CMRS providers must include calls lasting 30 seconds or more for which they are unable to deliver a Phase II location fix. We apply this requirement only to our existing E911 regime, which determines compliance based on outdoor measurements only. Thus, compliance with our TTFF requirement will be based on the results of outdoor testing, and will not be measured from the live 911 call data from the six test cities.

175. We find that a 30-second maximum latency period appropriately balances the need for first responders to obtain a prompt location fix and the need to allow sufficient time for location accuracy technologies to work effectively. Excessive delay in the provision of location information can undermine or negate its benefits to public safety, but providing sufficient time for location technologies to work can lead to improved accuracy that reduces overall response time. As CSRIC III noted, 30 seconds is ''generally accepted as the *de facto* standard for maximum latency in E9–1–1 location delivery.'' The record in this proceeding similarly indicates that a maximum latency interval of 30 seconds is technically achievable using current location technology, and that improved chipsets in devices will further reduce the frequency of calls where the TTFF takes longer than 30 seconds.

176. In fact, we expect technology to reduce latency for many wireless 911 calls to significantly less than 30 seconds. CMRS providers indicate that new satellite positioning technologies they are planning to implement in conjunction with deployment of VoLTE will likely reduce latency fix for wireless 911 calls from outdoor locations. For example, newer-generation A–GNSS may be capable of generating a location fix within 12–15 seconds. Nevertheless, even in such cases, allowing up to 30 seconds provides additional time to refine the location information and potentially return a more accurate location fix. On balance, we find that a 30-second maximum latency period will encourage solutions that deliver location information to first responders quickly while providing flexibility for solutions that can deliver greater accuracy over a modestly longer time interval. Establishing a maximum latency period will also ensure that PSAPs and CMRS providers have the same expectations regarding the timeframe for delivering location information.

177. While we adopt the 30-second maximum latency period for outdoor calls as proposed in the *Third Further Notice,* we decline to adopt our proposal to exclude calls of 10 seconds or less while including calls of 10 to 30 seconds in the compliance calculation. We agree with industry commenters that where a call lasts less than 30 seconds, we should not penalize the provider for failing to obtain a Phase II-compliant fix that requires up to 30 seconds to generate and that would count towards compliance if the call lasted 30 seconds or more. Therefore, we will allow CMRS providers to exclude from their compliance calculation any wireless 911 call lasting less than 30 seconds for which the provider is unable to deliver a Phase II-compliant fix. On the other hand, to provide an incentive for CMRS providers to reduce latency below 30 seconds, CMRS providers may count any Phase II-compliant call in which the location fix is delivered in less than 30 seconds, regardless of the duration of the call.

178. Finally, as noted above, we limit the scope of the 30-second latency requirement to wireless 911 calls covered by our existing Phase II rules, as we believe it is premature to impose a latency standard for indoor calls at this time. Compliance will be measured by evaluating the results of each CMRS providers' outdoor drive testing. CMRS providers have yet to test location for latency, among other metrics, in

generating dispatchable location information derived from various indoor access points or beacons. Moreover, although location information from beacons and small cells could likely be determined almost instantaneously, the various new technologies that are included in ''heightened location accuracy technologies'' under the Roadmap have not yet been tested for latency. Therefore, while the record suggests that existing and developing indoor location technologies should be capable of delivering accurate location information in 30 seconds or less for most calls, we conclude that consideration of this issue should be deferred. Once there has been an opportunity to evaluate the performance of indoor location technologies based on test bed results and live call data from the six geographic test regions, we will be better able to determine whether to extend latency requirements to these new location technologies.

B. Retaining E911 Phase II Location Accuracy Standards for Outdoor Measurements

179. *Background.* In light of advancements made in A–GPS technology and the migration of some CMRS providers from GSM networks and network-based location to 4G and LTE networks and handset-based location, the *Third Further Notice* sought comment on whether all CMRS providers reasonably could comply with a 50-meter accuracy/67 percent reliability requirement within two years pursuant to a unitary location accuracy requirement for both indoor and outdoor calls. Prior to the submission of the Roadmap, some public safety and industry commenters supported a unitary accuracy standard. Other commenters expressed that it is premature for the Commission to establish such a standard. However, because CMRS providers do not yet have the technical capability to distinguish indoor from outdoor calls, we address below the reasons for retaining our existing E911 location rules that are based on outdoor testing measurements.

180. *Discussion.* We find that it is premature to eliminate the current E911 Phase II rules and replace them with a unitary location accuracy standard at this time. The current E911 Phase II rules provide a set of established outdoor-focused location accuracy benchmarks for CMRS providers using either network-based or handset-based location technologies and allow the network-based CMRS providers to switch to handset-based technologies. The current outdoor-based rules thus serve to maintain regulatory certainty for CMRS providers that continue to provide service on their legacy systems while they are planning to migrate to VoLTE networks. The major CMRS providers that either have initiated VoLTE service or plan to deploy it in 2015 must also continue to comply with the benchmarks under the Commission's rules for measuring the accuracy of outdoor calls. Thus, the additional location accuracy requirements we adopt in this order, which focus on improving indoor location accuracy, will serve to complement rather than replace the existing Phase II rules based on outdoor testing measurements.

181. We recognize that the six-year timeframe adopted in this order for indoor-focused accuracy standards may ultimately moot the issue of whether to replace the current outdoor-based accuracy requirements for E11 Phase II. The five and six-year benchmarks in the new rules, set to take effect in 2020 and 2021, will require 50-meter accuracy for 70 and 80 percent of all wireless 911 calls, respectively, and will apply to indoor and outdoor calls, thus exceeding the current Phase II handset-based standard of 50-meter accuracy for 67 percent of calls, based on outdoor measurements only. The last handset-based benchmark under the current Phase II requirements will occur in January 18, 2019. Thus, once the last Phase II benchmark has passed, we may revisit the issue of when to sunset date the current Phase II requirements and establish a unitary accuracy standard.

C. Confidence and Uncertainty (C/U) Data

182. *Background.* The Commission's current E911 Phase II rules require that CMRS providers provide confidence and uncertainty (C/U) data on a per-call basis upon PSAP request. C/U data reflects the degree of certainty that a 911 caller is within a specified radius of the location provided by the CMRS provider. The *Third Further Notice* recognized, however, that C/U data is not always utilized by PSAPs and that sought comment on how C/U data could be provided in a more useful manner. In particular, we sought comment on the provision of C/U data for all wireless 911 calls, whether outdoor or indoor, on a per-call basis at the request of a PSAP, with a uniform confidence level of 90 percent. Additionally, the *Third Further Notice* sought comment on standardization of the delivery and format for C/U data to PSAPs.

183. In response, most public safety and industry commenters agree that a standardized confidence level of 90 percent would provide important, useful information to PSAPs in interpreting the quality of location information and would rectify the current CMRS provider practice of using varying confidence levels in providing uncertainty data.

184. *Discussion.* We find that requiring CMRS providers to furnish C/U data based on a standardized confidence value will provide significant benefits to PSAP call-takers and can be furnished to PSAPs at minimal cost to CMRS providers. We therefore require that C/U data for all wireless 911 calls—whether placed from indoors or outdoors—be delivered on a per-call basis at the request of a PSAP, with a uniform confidence level of 90 percent. The record reflects that CMRS providers currently use varying levels of confidence in their C/U data, resulting in potential confusion among call-takers. We find that a uniform confidence level will help PSAPs understand and better utilize location information. By standardizing confidence levels, call-takers will more easily be able to identify when a location fix is less trustworthy due to larger uncertainties. As TCS explains, with a standardized confidence value, ''if the uncertainty of the location fix . . . is within a reasonable margin,'' the PSAP ''call taker should have enough assurance to dispatch emergency services.'' Further, the magnitude of the uncertainty value varying with a standardized confidence value could also convey meaningful information to the call-taker regarding the type of location fix being provided. For example, in the event a CMRS provider is delivering dispatchable location information, the uncertainty value would either be zero or a very tight geometric figure with a radius less than 50 meters.

185. Moreover, the record indicates that a standardized 90 percent confidence value will serve to eliminate confusion on the part of emergency call-takers and is supported by numerous commenters. As ATIS explains, a 90 percent confidence level will provide ''for the consistent interpretation of location data by the PSAP staff without significantly affecting the integrity of the calculated [uncertainty].'' We note that some commenters recommend an even higher standardized confidence value, *e.g.,* 95 percent, either in the near term or as new technologies are implemented in the long-term. On the other hand, RWA alleges in its initial comments that ''[a] confidence level of 90% is too high for rural carriers to meet without the expensive construction of additional cell sites.'' We find that a

confidence level of 90 percent, while accompanied by an uncertainty radius that will vary, strikes an appropriate balance. While we recognize that a standardized value of 90 percent will result in larger reported uncertainties for some 911 calls, there will be a greater probability that callers will be found within the area of uncertainty. As technology evolves and as location accuracy improves over time, we may revisit whether to adopt an even higher required confidence level.

186. In light of these public interest benefits, we disagree with commenters who oppose standardizing a set of confidence and uncertainty values. For example, while Verizon ''agrees that there may be value'' in establishing a uniform confidence level, it nevertheless asserts that the delivery of C/U data should be ''appropriately left to standards or best practices, as PSAP[s] need to determine what approach makes sense . . .'' Others contend that further study is necessary, especially as location technologies evolve. We see no reason to delay the delivery of more uniform C/U data. By reducing the variability in C/U information, we can help ensure that call-takers more fully understand the location information that is provided to them, enabling them to respond more efficiently to emergencies.

187. Requiring a standardized confidence level of 90 percent (with varying uncertainty values) will also provide CMRS providers with regulatory certainty as they configure C/U data using newly implemented location technologies. Ensuring the continued provision of C/U data, in a manner that allows PSAPs to fully utilize and understand that data, is particularly timely as providers migrate to 4G VoLTE networks. CSRIC IV WG1 reports that ''[t]he content of the Phase II location estimate delivered to the PSAP'' for a VoLTE 4G network ''includes the same position, confidence, and uncertainty parameters used in 2G/3G networks for technologies that directly generate geographic (*i.e.,* X,Y) location.'' CSRIC IV adds that these parameters can be ''formatted appropriately for legacy PSAPs as well as NG9–1–1 PSAPs.''

188. We find that the costs of implementing a standardized confidence level should be minimal. Because CMRS providers are currently required to deliver C/U data to requesting PSAPs on a per-call basis, they have already programmed their networks to furnish a confidence value, with some CMRS providers already either delivering or testing for it with a 90 percent confidence level. Moreover, RWA does not offer support for its allegation that a 90 percent standard confidence level would necessitate the construction of additional cell sites and therefore create a burden on small CMRS providers. Likewise, we find that the costs for SSPs to continue to transport C/U data to ensure its delivery to PSAPs would be minimal. Like CMRS providers, SSPs currently must ensure that PSAPs receive C/U data on a per-call basis. The requirement we adopt for C/U data will continue to apply to all entities responsible for transporting C/U data between CMRS providers and PSAPs, including LECs, CLECs, owners of E911 networks, and emergency service providers, to enable the transmission of such data to the requesting PSAP.

189. Finally, we note that commenters generally support the delivery of C/U data to PSAPs using a consistent format. As discussed above, we believe that consistency in the delivery of C/U data will promote PSAP call-takers' ability to more readily evaluate the C/U data being delivered. We therefore urge stakeholders to work together to develop a consistent format for the delivery of C/U data that considers the different capabilities of PSAPs to receive both geodetic and dispatchable location information. We also encourage the public safety community to continue to take measures to ensure that PSAP call-takers can fully benefit from the availability of C/U data, including obtaining upgraded CPE and programming, as well as providing relevant education and training.

D. Provision of Live 911 Call Data

190. *Background.* The *Third Further Notice* sought comment on whether the Commission should require providers to periodically report E911 Phase II call tracking information, and if so, on the scope of information that should be reported. Numerous commenters support this proposal. For instance, Verizon submits that such data could be ''helpful in evaluating . . . delivery issues associated with particular PSAPs, or in assessing if a location solution faces particular topology and RF challenges in a particular geographic area.'' NextNav submits that reporting the TTFF, yield, and type of technology used to obtain a location fix should be sufficient to evaluate whether a CMRS provider's performance is consistent with test bed performance. RWA, however, contends that ''the cost of providing the FCC with call tracking information is high,'' with ''little certainty'' as to its utility to the Commission.

191. *Discussion.* We require all CMRS providers to collect and retain for two years 911 call tracking data for all wireless 911 calls placed on their networks. This requirement is separate from, and in addition to, the provisions for quarterly reporting of live call data by CMRS providers in the six test cities as discussed in Section III.B.5.b above, though for CMRS providers in the six test cities, some of the data will overlap. Aside from those quarterly aggregate reporting requirements, we do not require CMRS providers to report general call tracking data. However, upon request of a PSAP within a CMRS provider's service area, the CMRS provider must provide the PSAP with call tracking data for all 911 calls delivered to that PSAP. The call tracking data should include, but need not be limited to: (1) The date, time, and length of each call; (2) the class of service of the call (*i.e.,* whether a call was delivered with Phase I or Phase II information, or other type of information); (3) the percentage of calls lasting 30 seconds or more that achieved a Phase II-compliant fix; (4) confidence and uncertainty data for each call; and (5) the positioning source method used for determining a location fix. In order to comply with this requirement and to be able to provide such data upon individual PSAP request, CMRS providers must collect data on all 911 calls throughout their service area. Some commenters suggest that delivering this additional information in real time may be confusing to PSAP call-takers, but our requirement requires only that CMRS providers collect this information; the PSAP must request to receive some or all of the data in real time, or in the aggregate on a monthly or quarterly basis.

192. In sum, our call tracking requirements will empower multiple stakeholders to monitor and ensure that location information is compliant with our E911 requirements, and will provide PSAPs and CMRS providers with an objective set of data that can help inform decision-making in the event of a service issue or dispute between the parties as to E911 compliance. In this regard, our call tracking requirement will serve to encourage transparency, accountability, and cooperation among stakeholders.

E. Outdoor Compliance Testing and Reporting

193. *Background.* In the *Third Further Notice,* we proposed that periodic testing would be necessary as providers upgrade their networks and migrate to handset-based technologies. We also sought comment on the

recommendations set forth in CSRIC WG3's *Outdoor Location Accuracy Report.* CSRIC WG3's central recommendation was that ''[a]lternative testing methods replace full compliance testing'' every 24 months, using a testing scheme that rested on certain ATIS Technical Reports. Subsequently, CSRIC IV WG1 found the ''location performance with VoLTE to be slightly better than or equivalent to 2G and 3G performance,'' and recommended that ''these expectations should be validated via the maintenance testing methodology, including representative testing or 'spot-checking,' '' as previously recommended by CSRIC WG3.

194. Public safety commenters support the periodic testing proposal and suggest that testing requirements should cover both indoor and outdoor location accuracy performance. For instance, APCO agrees with the recommendations in the CSRIC WG3 report and ''urg[ed] the Commission to adopt appropriate rules to implement those recommendations.''

195. CMRS providers oppose the Commission's proposal as costly and unnecessary. For example, RWA and CCA oppose periodic testing as burdensome on small rural CMRS providers. However, both RWA and CCA submit that periodic testing is appropriate in case of substantial network changes.

196. *Discussion.* We believe that conducting periodic testing continues to be appropriate to ensure compliance with outdoor location accuracy parameters. CMRS providers' efforts to measure for, and ensure continuing compliance with, the Commission's outdoor-based location accuracy requirements are critical to public safety, particularly as new networks and technologies are implemented. Further, we find that periodic testing will support the reporting of outdoor call data that is included in the Roadmap as part of the live call data. Because CMRS providers will blend all 911 call data, CMRS providers should incorporate an approach to test for compliance with the current outdoor-based location accuracy standards. For instance, CMRS providers may need to undertake drive testing in certain counties or PSAP service areas where they have migrated to VoLTE and that are outside the six test regions.

197. While we do not codify any particular approach, we find that the ongoing maintenance testing framework set forth in the CSRIC III WG3 and CSRIC IV WG1 recommendations provides a reasonable and adequate basis for ensuring continued compliance with our E911 location accuracy requirements. We urge CMRS providers to undertake periodic testing to ensure continued compliance accordingly. Moreover, such ongoing testing enables CMRS providers to implement testing protocols more efficiently and without the cost burdens associated with periodic testing pursuant to a mandatory, established timetable (*e.g.,* every two years). Consistent with CSRIC's recommendations, CMRS providers should conduct testing upon any significant technology changes or upgrades to their networks, including those changes accompanying the deployment of VoLTE networks. As CSRIC IV WG 1 emphasizes, ''the goal of maintenance testing is to identify a method that verifies continued optimal performance of E9–1–1 location systems at the local level.'' This recommended testing protocol includes several components, including: (1) Key Performance Indicators (KPIs) that ''are routinely monitored to help identify instances where system performance has degraded''; and (2) ''[s]pot-checking using empirical field-testing . . . on an as needed basis, for example, as determined by KPI monitoring or legitimate performance concerns from a PSAP.'' We find that this emphasis on KPI testing will provide CMRS providers with a testing approach that they can apply in a variety of circumstances. Moreover, this ongoing testing approach provides CMRS providers with the means to validate latency (TTFF) and C/U Data, as standardized in the rule changes we adopt today.

198. Finally, consistent with our views on KPI testing, we are revising the Commission's outdoor requirement for C/U data, which currently specifies that ''[o]nce a carrier has established baseline confidence and uncertainty levels in a county or PSAP service area . . . additional testing shall not be required.'' We remove the language excluding additional testing. Although CSRIC III WG3 stated that ''[u]ncertainty estimates, when taken on average over time, can indicate a *trend* that may reflect continued proper system operation or system problems,'' CSRIC III WG3 also noted the importance of C/U data for monitoring location accuracy as one part of a CMRS providers testing program for other KPIs. As discussed above, KPI testing should continue as part of CMRS providers' best practices, along with other recommended testing procedures, such as spot-testing.

F. Roaming Issues

199. The *Third Further Notice* sought comment on whether the provision of Phase II information continues to be a concern for consumers when they are roaming, or whether this concern has been addressed by the evolution of location technology. Specifically, we invited comment on whether the implementation of our indoor location proposals would create any challenges in the roaming context that the Commission should address. The few comments filed generally indicate that the migration to VoLTE networks should resolve the roaming issue because it is probable ''that all emergency calls (routing and location) will either be handled by the visited network or through a location roaming scenario.'' As TruePosition submits, ''it is entirely likely that complementary technologies will exist and operate side-by-side in a given city, town or county.''

200. After considering the views of the commenters, we refrain from taking action with respect to roaming at this time. We believe the better course is to monitor progress on the roaming issue as CMRS providers fully deploy VoLTE, and to examine any problems that may arise during this implementation process. We reserve the right to take action in the future, if necessary, to ensure that accurate location information is provided for wireless calls to 911 while roaming.

V. Procedural Matters

A. Accessible Formats

201. To request materials in accessible formats for people with disabilities (braille, large print, electronic files, audio format), send an email to *fcc504@fcc.gov* or call the Consumer & Governmental Affairs Bureau at 202–418–0530 (voice), 202–418–0432 (TTY).

B. Paperwork Reduction Analysis

202. This *Fourth Report and Order* contains proposed new information collection requirements. The Commission, as part of its continuing effort to reduce paperwork burdens, invites the general public and OMB to comment on the information collection requirements contained in this document, as required by Paperwork Reduction Act (PRA). In addition, pursuant to the Small Business Paperwork Relief Act of 2002, we seek specific comment on how we might ''further reduce the information collection burden for small business concerns with fewer than 25 employees.''

C. Congressional Review Act

203. The Commission will send a copy of this *Fourth Report and Order* in a report to be sent to Congress and the

Government Accountability Office pursuant to the Congressional Review Act (CRA), *see* 5 U.S.C. 801(a)(1)(A).

VI. Final Regulatory Flexibility Analysis

204. As required by the Regulatory Flexibility Act of 1980, as amended (RFA), an Initial Regulatory Flexibility Analysis (IRFA) was incorporated into the *Third Further Notice of Proposed Rulemaking* in this proceeding. The Commission sought written public comment on the proposals in the Notice, including comment on the IRFA. Any comments received are discussed below. This present Final Regulatory Flexibility Analysis (FRFA) conforms to the RFA.

A. Need for, and Objectives of, the Rules Adopted

205. In this *Fourth Report and Order,* the Commission adopts measures that will significantly enhance the ability of Public Safety Answering Points (PSAPs) to accurately identify the location of wireless 911 callers when the caller is located indoors, and strengthen existing E911 location accuracy rules to improve location determination for outdoor as well as indoor calls. These actions respond to major changes in the wireless landscape since the Commission first adopted its wireless Enhanced 911 (E911) location accuracy rules in 1996 and since the last significant revision of these rules in 2010. As consumers increasingly replace traditional landline telephony with wireless phones, a majority of wireless calls are now made indoors, increasing the likelihood that wireless 911 calls will come from indoor environments where traditional location accuracy technologies optimized for outdoor calling often do not work effectively or at all. A significant objective of this proceeding is to close the gap between the performance of 911 calls made from outdoors with similar calls made indoors.

206. The Commission adopts rules applicable to CMRS providers that reflect technical feasibility and are technologically neutral, so that providers can choose the most effective solutions from a range of options. Further, the rules allow sufficient time for development of applicable standards, establishment of testing mechanisms, and deployment of new location technology in both handsets and networks, on timeframes that account for the ability of PSAPs to process enhancements in the location data they receive. In determining the appropriate balance to strike between its requirements and timeframes, the Commission gave significant weight to the ''Roadmap for Improving E911 Location Accuracy'' (Roadmap) that was agreed to in November 2014 by the Association of Public Safety Communications Officials (APCO), the National Emergency Number Association (NENA), and the four national wireless CMRS providers, as well as the ''Parallel Path for Competitive Carriers' Improvement of E911 Location Accuracy Standards'' (''Parallel Path'') that was submitted by the Competitive Carriers Association (CCA). At the same time, in order to provide greater certainty and accountability in areas that the Amended Roadmap does not fully address, the rules incorporate ''backstop'' requirements derived from the Commission's original proposals in the *Third Further Notice.*

207. The rules the Commission adopts are designed to increase indoor location accuracy in a commercially reasonable manner by leveraging many aspects of the Amended Roadmap. They do not change, or seek to change, the commitment that the four nationwide CMRS providers voluntarily entered into and have already made progress towards. The Amended Roadmap is intended to build confidence in the technical solutions outlined therein, and it establishes clear milestones to gauge progress and ensure that if the signatory parties fail to deliver on their commitments, there is clear accountability for the integrity of location accuracy using metrics adopted at earlier stages in this proceeding. The rules the Commission adopts are in addition to, not a replacement of, its existing E911 location rules applicable to outdoor calls, which remain in effect, unless otherwise amended herein. In establishing these requirements, the Commission's objective is that all Americans using mobile phones—whether they are calling from urban or rural areas, from indoors or outdoors—have technology that is functionally capable of providing accurate location information so that they receive the support they need in times of emergency.

B. Summary of Significant Issues Raised by Public Comments in Response to the IRFA

208. No comments were submitted specifically in response to the IRFA. Nevertheless, small and rural CMRS providers suggested that compliance with the rules (as proposed in both the *Third Further Notice* and the Roadmap) could be burdensome:

- Blooston believes ''that substantial investments in new E911 equipment that small rural carriers will be required to make in order to comply with the proposed new E911 requirements will soon become unrecoverable stranded investments when NG911 technology is deployed.''
- CCA is concerned that small and rural CMRS providers may not hold licenses for spectrum or otherwise operate in the single location defined implied in the Roadmap and will thus be forced to commit to individualized testing of a particular heightened location accuracy technology should it utilize any component of their network (such as an RF-based technology), possibly placing a substantial burden on these smaller CMRS providers.
- Several small and regional CMRS providers argue that it would also be appropriate either to exclude rural areas from indoor location accuracy requirements, or to phase-in any requirements.
- Regarding technology-specific costs, Rx Networks proposes establishment of a central and standardized service to process location requests. Such a clearinghouse solution would entail a base station almanac of Cell-IDs and Wi-Fi access point locations, and cost-effective provisioning of A–GNSS and barometric pressure data among CMRS providers, which could bridge technical gaps while minimizing capital outlays.
- Small and rural CMRS providers generally believe that live 911 call tracking and reporting will be overly burdensome for them.
- Regarding outdoor compliance and reporting, RWA and CCA oppose periodic testing as burdensome on small rural CMRS providers, but both agree that periodic testing is appropriate in case of substantial network changes.
- SouthernLINC Wireless believes that any delays in implementing any adopted rules by the nationwide carriers will necessarily create downstream delays for regional and rural carriers that are beyond the smaller carriers' control.

C. Description and Estimate of the Number of Small Entities to Which Rules Will Apply

209. The RFA directs agencies to provide a description of and, where feasible, an estimate of the number of small entities that may be affected by the proposed rules. The RFA generally defines the term ''small entity'' as having the same meaning as the terms ''small business,'' ''small organization,'' and ''small governmental jurisdiction.'' In addition, the term ''small business'' has the same meaning as the term ''small business concern'' under the Small Business Act. A small business

concern is one which: (1) Is independently owned and operated; (2) is not dominant in its field of operation; and (3) satisfies any additional criteria established by the Small Business Administration (SBA).

210. *Small Businesses, Small Organizations, and Small Governmental Jurisdictions.* Our action may, over time, affect small entities that are not easily categorized at present. We therefore describe here, at the outset, three comprehensive, statutory small entity size standards. First, nationwide, there are a total of approximately 27.9 million small businesses, according to the SBA. In addition, a ''small organization'' is generally ''any not-for-profit enterprise which is independently owned and operated and is not dominant in its field.'' Nationwide, as of 2007, there were approximately 1,621,315 small organizations. Finally, the term ''small governmental jurisdiction'' is defined generally as ''governments of cities, towns, townships, villages, school districts, or special districts, with a population of less than fifty thousand.'' Census Bureau data for 2011 indicate that there were 89,476 local governmental jurisdictions in the United States. We estimate that, of this total, as many as 88,506 entities may qualify as ''small governmental jurisdictions.'' Thus, we estimate that most governmental jurisdictions are small.

1. Telecommunications Service Entities

a. Wireless Telecommunications Service Providers

211. Pursuant to 47 CFR 20.18(a), the Commission's 911 service requirements are only applicable to Commercial Mobile Radio Service (CMRS) ''[providers], excluding mobile satellite service operators, to the extent that they: (1) Offer real-time, two way switched voice service that is interconnected with the public switched network; and (2) Utilize an in-network switching facility that enables the provider to reuse frequencies and accomplish seamless hand-offs of subscriber calls. These requirements are applicable to entities that offer voice service to consumers by purchasing airtime or capacity at wholesale rates from CMRS licensees.''

212. Below, for those services subject to auctions, we note that, as a general matter, the number of winning bidders that qualify as small businesses at the close of an auction does not necessarily represent the number of small businesses currently in service. Also, the Commission does not generally track subsequent business size unless, in the context of assignments or transfers, unjust enrichment issues are implicated.

213. *Wireless Telecommunications Carriers (except satellite).* This industry comprises establishments engaged in operating and maintaining switching and transmission facilities to provide communications via the airwaves. Establishments in this industry have spectrum licenses and provide services using that spectrum, such as cellular phone services, paging services, wireless Internet access, and wireless video services. The appropriate size standard under SBA rules is for the category Wireless Telecommunications Carriers. The size standard for that category is that a business is small if it has 1,500 or fewer employees. For this category, census data for 2007 show that there were 11,163 establishments that operated for the entire year. Of this total, 10,791 establishments had employment of 999 or fewer employees and 372 had employment of 1000 employees or more. Thus under this category and the associated small business size standard, the Commission estimates that the majority of wireless telecommunications carriers (except satellite) are small entities that may be affected by our proposed action.

214. *Incumbent Local Exchange Carriers (Incumbent LECs).* Neither the Commission nor the SBA has developed a small business size standard specifically for incumbent local exchange services. The appropriate size standard under SBA rules is for the category Wired Telecommunications Carriers. Under that size standard, such a business is small if it has 1,500 or fewer employees. Census Bureau data for 2007, which now supersede data from the 2002 Census, show that there were 3,188 firms in this category that operated for the entire year. Of this total, 3,144 had employment of 999 or fewer, and 44 firms had had employment of 1000 or more. According to Commission data, 1,307 carriers reported that they were incumbent local exchange service providers. Of these 1,307 carriers, an estimated 1,006 have 1,500 or fewer employees and 301 have more than 1,500 employees. Consequently, the Commission estimates that most providers of local exchange service are small entities that may be affected by the rules and policies proposed in the Notice. Thus under this category and the associated small business size standard, the majority of these incumbent local exchange service providers can be considered small.

215. *Competitive Local Exchange Carriers (Competitive LECs), Competitive Access Providers (CAPs), Shared-Tenant Service Providers, and Other Local Service Providers.* Neither the Commission nor the SBA has developed a small business size standard specifically for these service providers. The appropriate size standard under SBA rules is for the category Wired Telecommunications Carriers. Under that size standard, such a business is small if it has 1,500 or fewer employees. Census Bureau data for 2007, which now supersede data from the 2002 Census, show that there were 3,188 firms in this category that operated for the entire year. Of this total, 3,144 had employment of 999 or fewer, and 44 firms had had employment of 1,000 employees or more. Thus under this category and the associated small business size standard, the majority of these Competitive LECs, CAPs, Shared-Tenant Service Providers, and Other Local Service Providers can be considered small entities. According to Commission data, 1,442 carriers reported that they were engaged in the provision of either competitive local exchange services or competitive access provider services. Of these 1,442 carriers, an estimated 1,256 have 1,500 or fewer employees and 186 have more than 1,500 employees. In addition, 17 carriers have reported that they are Shared-Tenant Service Providers, and all 17 are estimated to have 1,500 or fewer employees. In addition, 72 carriers have reported that they are Other Local Service Providers. Of the 72, seventy have 1,500 or fewer employees and two have more than 1,500 employees. Consequently, the Commission estimates that most providers of competitive local exchange service, competitive access providers, Shared-Tenant Service Providers, and Other Local Service Providers are small entities that may be affected by rules adopted pursuant to the Notice.

216. *Broadband Personal Communications Service.* The broadband personal communications services (PCS) spectrum is divided into six frequency blocks designated A through F, and the Commission has held auctions for each block. The Commission initially defined a ''small business'' for C- and F-Block licenses as an entity that has average gross revenues of $40 million or less in the three previous calendar years. For F-Block licenses, an additional small business size standard for ''very small business'' was added and is defined as an entity that, together with its affiliates, has average gross revenues of not more than $15 million for the preceding three calendar years. These small business size standards, in the context of

broadband PCS auctions, have been approved by the SBA. No small businesses within the SBA-approved small business size standards bid successfully for licenses in Blocks A and B. There were 90 winning bidders that claimed small business status in the first two C-Block auctions. A total of 93 bidders that claimed small business status won approximately 40 percent of the 1,479 licenses in the first auction for the D, E, and F Blocks. On April 15, 1999, the Commission completed the reauction of 347 C-, D-, E-, and F-Block licenses in Auction No. 22. Of the 57 winning bidders in that auction, 48 claimed small business status and won 277 licenses.

217. On January 26, 2001, the Commission completed the auction of 422 C and F Block Broadband PCS licenses in Auction No. 35. Of the 35 winning bidders in that auction, 29 claimed small business status. Subsequent events concerning Auction 35, including judicial and agency determinations, resulted in a total of 163 C and F Block licenses being available for grant. On February 15, 2005, the Commission completed an auction of 242 C-, D-, E-, and F-Block licenses in Auction No. 58. Of the 24 winning bidders in that auction, 16 claimed small business status and won 156 licenses. On May 21, 2007, the Commission completed an auction of 33 licenses in the A, C, and F Blocks in Auction No. 71. Of the 12 winning bidders in that auction, five claimed small business status and won 18 licenses. On August 20, 2008, the Commission completed the auction of 20 C-, D-, E-, and F-Block Broadband PCS licenses in Auction No. 78. Of the eight winning bidders for Broadband PCS licenses in that auction, six claimed small business status and won 14 licenses.

218. *Narrowband Personal Communications Services.* To date, two auctions of narrowband personal communications services (PCS) licenses have been conducted. For purposes of the two auctions that have already been held, ''small businesses'' were entities with average gross revenues for the prior three calendar years of $40 million or less. Through these auctions, the Commission has awarded a total of 41 licenses, out of which 11 were obtained by small businesses. To ensure meaningful participation of small business entities in future auctions, the Commission has adopted a two-tiered small business size standard in the Narrowband PCS Second Report and Order. A ''small business'' is an entity that, together with affiliates and controlling interests, has average gross revenues for the three preceding years of not more than $40 million. A ''very small business'' is an entity that, together with affiliates and controlling interests, has average gross revenues for the three preceding years of not more than $15 million. The SBA has approved these small business size standards.

219. *AWS Services (1710–1755 MHz and 2110–2155 MHz bands (AWS–1); 1915–1920 MHz, 1995–2000 MHz, 2020–2025 MHz and 2175–2180 MHz bands (AWS–2); 2155–2175 MHz band (AWS–3)).* For the AWS–1 bands, the Commission defined a ''small business'' as an entity with average annual gross revenues for the preceding three years not exceeding $40 million, and a ''very small business'' as an entity with average annual gross revenues for the preceding three years not exceeding $15 million. In 2006, the Commission conducted its first auction of AWS–1 licenses. In that initial AWS–1 auction, 31 winning bidders identified themselves as very small businesses. Twenty-six of the winning bidders identified themselves as small businesses. In a subsequent 2008 auction, the Commission offered 35 AWS–1 licenses. Four winning bidders identified themselves as very small businesses, and three of the winning bidders identified themselves as a small business. For AWS–2 and AWS–3, although we do not know for certain which entities are likely to apply for these frequencies, we note that the AWS–1 bands are comparable to those used for cellular service and personal communications service. The Commission has adopted size standards for the AWS–2 or AWS–3 bands similar to broadband PCS service and AWS–1 service due to the comparable capital requirements and other factors, such as issues involved in relocating incumbents and developing markets, technologies, and services. In the AWS–3 auction, 70 applicants were found qualified to participate, and 46 of those have claimed themselves eligible for a designated entity bidding credit.

220. *Rural Radiotelephone Service.* The Commission has not adopted a size standard for small businesses specific to the Rural Radiotelephone Service. A significant subset of the Rural Radiotelephone Service is the Basic Exchange Telephone Radio System (''BETRS''). In the present context, we will use the SBA's small business size standard applicable to Wireless Telecommunications Carriers (except Satellite), *i.e.,* an entity employing no more than 1,500 persons. There are approximately 1,000 licensees in the Rural Radiotelephone Service, and the Commission estimates that there are 1,000 or fewer small entity licensees in the Rural Radiotelephone Service that may be affected by the rules and policies adopted herein.

221. *Wireless Communications Services.* This service can be used for fixed, mobile, radiolocation, and digital audio broadcasting satellite uses in the 2305–2320 MHz and 2345–2360 MHz bands. The Commission defined ''small business'' for the wireless communications services (WCS) auction as an entity with average gross revenues of $40 million for each of the three preceding years, and a ''very small business'' as an entity with average gross revenues of $15 million for each of the three preceding years. The SBA has approved these definitions. The Commission auctioned geographic area licenses in the WCS service. In the auction, which commenced on April 15, 1997 and closed on April 25, 1997, there were seven bidders that won 31 licenses that qualified as very small business entities, and one bidder that won one license that qualified as a small business entity.

222. *700 MHz Guard Band Licenses.* In the *700 MHz Guard Band Order,* the Commission adopted size standards for ''small businesses'' and ''very small businesses'' for purposes of determining their eligibility for special provisions such as bidding credits and installment payments. A small business in this service is an entity that, together with its affiliates and controlling principals, has average gross revenues not exceeding $40 million for the preceding three years. Additionally, a ''very small business'' is an entity that, together with its affiliates and controlling principals, has average gross revenues that are not more than $15 million for the preceding three years. SBA approval of these definitions is not required. An auction of 52 Major Economic Area (MEA) licenses commenced on September 6, 2000, and closed on September 21, 2000. Of the 104 licenses auctioned, 96 licenses were sold to nine bidders. Five of these bidders were small businesses that won a total of 26 licenses. A second auction of 700 MHz Guard Band licenses commenced and closed in 2001. All eight of the licenses auctioned were sold to three bidders. One of these bidders was a small business that won a total of two licenses.

223. *Upper 700 MHz Band Licenses.* In the *700 MHz Second Report and Order,* the Commission revised its rules regarding Upper 700 MHz licenses. On January 24, 2008, the Commission commenced Auction 73 in which several licenses in the Upper 700 MHz band were available for licensing: 12

Regional Economic Area Grouping licenses in the C Block, and one nationwide license in the D Block. The auction concluded on March 18, 2008, with 3 winning bidders claiming very small business status (those with attributable average annual gross revenues that do not exceed $15 million for the preceding three years) and winning five licenses.

224. *Lower 700 MHz Band Licenses.* The Commission previously adopted criteria for defining three groups of small businesses for purposes of determining their eligibility for special provisions such as bidding credits. The Commission defined a ''small business'' as an entity that, together with its affiliates and controlling principals, has average gross revenues not exceeding $40 million for the preceding three years. A ''very small business'' is defined as an entity that, together with its affiliates and controlling principals, has average gross revenues that are not more than $15 million for the preceding three years. Additionally, the lower 700 MHz Service had a third category of small business status for Metropolitan/Rural Service Area (MSA/RSA) licenses—''entrepreneur''—which is defined as an entity that, together with its affiliates and controlling principals, has average gross revenues that are not more than $3 million for the preceding three years. The SBA approved these small size standards. An auction of 740 licenses (one license in each of the 734 MSAs/RSAs and one license in each of the six Economic Area Groupings (EAGs)) was conducted in 2002. Of the 740 licenses available for auction, 484 licenses were won by 102 winning bidders. Seventy-two of the winning bidders claimed small business, very small business or entrepreneur status and won licenses. A second auction commenced on May 28, 2003, closed on June 13, 2003, and included 256 licenses. Seventeen winning bidders claimed small or very small business status, and nine winning bidders claimed entrepreneur status. In 2005, the Commission completed an auction of 5 licenses in the Lower 700 MHz band. All three winning bidders claimed small business status.

225. In 2007, the Commission reexamined its rules governing the 700 MHz band in the *700 MHz Second Report and Order.* An auction of A, B and E block 700 MHz licenses was held in 2008. Twenty winning bidders claimed small business status (those with attributable average annual gross revenues that exceed $15 million and do not exceed $40 million for the preceding three years). Thirty three winning bidders claimed very small business status (those with attributable average annual gross revenues that do not exceed $15 million for the preceding three years).

226. *Offshore Radiotelephone Service.* This service operates on several UHF television broadcast channels that are not used for television broadcasting in the coastal areas of states bordering the Gulf of Mexico. There are presently approximately 55 licensees in this service. We are unable to estimate at this time the number of licensees that would qualify as small under the SBA's small business size standard for the category of Wireless Telecommunications Carriers (except Satellite). Under that SBA small business size standard, a business is small if it has 1,500 or fewer employees. Census data for 2007, which supersede data contained in the 2002 Census, show that there were 1,383 firms that operated that year. Of those 1,383, 1,368 had fewer than 100 employees, and 15 firms had more than 100 employees. Thus, under this category and the associated small business size standard, the majority of firms can be considered small.

227. *Wireless Telephony.* Wireless telephony includes cellular, personal communications services, and specialized mobile radio telephony carriers. As noted, the SBA has developed a small business size standard for Wireless Telecommunications Carriers (except Satellite). Under the SBA small business size standard, a business is small if it has 1,500 or fewer employees. According to *Trends in Telephone Service* data, 413 carriers reported that they were engaged in wireless telephony. Of these, an estimated 261 have 1,500 or fewer employees and 152 have more than 1,500 employees. Therefore, more than half of these entities can be considered small.

228. The second category, *i.e.,* ''All Other Telecommunications,'' comprises ''establishments primarily engaged in providing specialized telecommunications services, such as satellite tracking, communications telemetry, and radar station operation. This industry also includes establishments primarily engaged in providing satellite terminal stations and associated facilities connected with one or more terrestrial systems and capable of transmitting telecommunications to, and receiving telecommunications from, satellite systems. Establishments providing Internet services or Voice over Internet Protocol (VoIP) services via client-supplied telecommunications connections are also included in this industry.'' For this category, Census Bureau data for 2007 show that there were a total of 2,623 firms that operated for the entire year. Consequently, the Commission estimates that the majority of All Other Telecommunications firms are small entities that might be affected by rules proposed in the *Third Further Notice.*

b. Equipment Manufacturers

229. *Radio and Television Broadcasting and Wireless Communications Equipment Manufacturing.* The Census Bureau defines this category as follows: ''This industry comprises establishments primarily engaged in manufacturing radio and television broadcast and wireless communications equipment. Examples of products made by these establishments are: Transmitting and receiving antennas, cable television equipment, GPS equipment, pagers, cellular phones, mobile communications equipment, and radio and television studio and broadcasting equipment.'' The SBA has developed a small business size standard for Radio and Television Broadcasting and Wireless Communications Equipment Manufacturing which is: All such firms having 750 or fewer employees. According to Census Bureau data for 2007, there were a total of 939 establishments in this category that operated for part or all of the entire year. Of this total, 784 had less than 500 employees and 155 had more than 100 employees. Thus, under this size standard, the majority of firms can be considered small.

230. *Semiconductor and Related Device Manufacturing.* These establishments manufacture ''computer storage devices that allow the storage and retrieval of data from a phase change, magnetic, optical, or magnetic/optical media. The SBA has developed a small business size standard for this category of manufacturing; that size standard is 500 or fewer employees storage and retrieval of data from a phase change, magnetic, optical, or magnetic/optical media.'' According to data from the 2007 U.S. Census, in 2007, there were 954 establishments engaged in this business. Of these, 545 had from 1 to 19 employees; 219 had from 20 to 99 employees; and 190 had 100 or more employees. Based on this data, the Commission concludes that the majority of the businesses engaged in this industry are small.

D. Description of Projected Reporting, Recordkeeping, and Other Compliance Requirements for Small Entities

231. In this *Fourth Report and Order,* we require nationwide CMRS providers

report to the Commission on their plans for implementing improved indoor location accuracy no later than 18 months from the date when the rules contained herein become effective. To address concerns raised by small and regional CMRS providers, non-nationwide CMRS providers will have an additional six months to submit their plans. These initial reports will include details as to the CMRS provider's implementation plan to meet our requirements in the three- and six-year timeframes, and these one-time reports will ensure that each CMRS provider (including small and/or rural) makes at least some progress toward improving indoor location accuracy in the near term. Furthermore, all CMRS providers must also report to the Commission on their progress toward implementation of their plans no later than 36 months from the Effective Date. We believe the global data provided through these reports may enable the Commission to identify efficiencies and facilitate coordination among providers, and may help ensure that CMRS providers do not invest too heavily in duplicative technologies or in technology and system design that proves unusable.

232. The rules we adopt today require that:

- All CMRS providers must provide (1) dispatchable location, or (2) x/y (horizontal) location within 50 meters, for the following percentages of wireless 911 calls within the following timeframes, measured from the Effective Date of rules adopted in this *Fourth Report and Order:*
  - ○ Within 2 years: 40 percent of all wireless 911 calls.
  - ○ Within 3 years: 50 percent of all wireless 911 calls.
  - ○ Within 5 years: 70 percent of all wireless 911 calls.
  - ○ Within 6 years: 80 percent of all wireless 911 calls.
- Non-nationwide CMRS providers (regional, small, and rural providers) can extend the five and six-year deadlines based on the timing of VoLTE deployment in the networks.

233. All CMRS providers must meet the following requirements for provision of vertical location information with wireless 911 calls:

- ○ Within 3 years, all CMRS providers must make uncompensated barometric data available to PSAPs from any handset that has the capability to deliver barometric sensor data.
- ○ Within 3 years, nationwide CMRS providers must use an independently administered and transparent test bed process to develop a proposed z-axis accuracy metric, and must submit the proposed metric to the Commission for approval.
- ○ Within 6 years, nationwide CMRS provides must deploy either (1) dispatchable location, or (2) z-axis technology that achieves the Commission-approved z-axis metric, in each of the top 25 CMAs:
  - ▪ The National Emergency Address Database (NEAD) must be populated with a total number of dispatchable location reference points in the CMA equal to 25 percent of the CMA population if dispatchable location is used.
  - ▪ CMRS providers must deploy z-axis technology to cover 80 percent of the CMA population if z-axis technology is used.
- ○ Within 8 years, nationwide CMRS providers must deploy dispatchable location or z-axis technology in accordance with the above benchmarks in each of the top 50 CMAs.
- ○ Non-nationwide carriers that serve any of the top 25 or 50 CMAs will have an additional year to meet the latter two benchmarks (*i.e.,* relating to years 6 and 8).

234. Quarterly reporting of live 911 data will begin no later than 18 months from the date the rules become effective; CMRS providers will also provide quarterly live call data on a more granular basis that allows evaluation of the performance of individual location technologies within different morphologies (*e.g.,* dense urban, urban, suburban, rural). Public Safety Answering Points (PSAPs) will be entitled to obtain live call data from CMRS providers and seek Commission enforcement of these requirements within their jurisdictions, but they may seek enforcement only so long as they have implemented policies that are designed to obtain all 911 location information made available by CMRS providers pursuant to our rules.

235. We adopt a 30-second limit on the time period allowed for a CMRS provider to generate a location fix in order for the 911 call to be counted towards compliance with existing Phase II location accuracy requirements that rely on outdoor testing, but we do not extend this provision to the new indoor-focused requirements adopted in this order. We require that confidence and uncertainty data for all wireless 911 calls—whether placed from indoors or outdoors—be delivered at the request of a PSAP, on a per-call basis, with a uniform confidence level of 90 percent.

236. We require CMRS providers to provide 911 call data, including (1) the percentage of wireless 911 calls to the PSAP that include Phase II location information, and (2) per-call identification of the positioning source method or methods used to derive location coordinates and/or dispatchable location, to any requesting PSAP. Compliance with the 30-second time limit will also be measured from this data.

E. Steps Taken To Minimize the Significant Economic Impact on Small Entities, and Significant Alternatives Considered

237. The RFA requires an agency to describe any significant alternatives that it has considered in developing its approach, which may include the following four alternatives (among others): ''(1) The establishment of differing compliance or reporting requirements or timetables that take into account the resources available to small entities; (2) the clarification, consolidation, or simplification of compliance and reporting requirements under the rule for such small entities; (3) the use of performance rather than design standards; and (4) an exemption from coverage of the rule, or any part thereof, for such small entities.''

238. We received comments from entities representing small and/or rural interests, suggesting that the rules would apply a unique burden on small and/or rural entities, and raising the possibility of exemptions or waivers for small or rural entities. In the *Fourth Report and Order,* we explicitly acknowledge that the costs imposed by the rules adopted herein ''may present a proportionately greater burden to smaller CMRS providers, including the costs associated with participation in the test bed.'' Nevertheless, we conclude that overriding public safety concerns require our rules to apply equally to all CMRS providers, regardless of location or size—911 location accuracy is paramount in all portions of the Nation, and all CMRS providers must be on an equal footing in their ability to provide correct 911 location accuracy.

239. To accommodate the unique circumstances facing small and rural carriers, the rules we adopt today include the following steps that we believe will minimize the impact on such carriers:

- While all CMRS providers (including small providers) must provide dispatchable location or x/y (horizontal) location within 50 meters for certain percentages of wireless 911 calls at Years 2, 3, 5, and 6 after the rules in this *Fourth Report and Order* become effective, non-nationwide CMRS providers (*i.e.,* regional, small, and rural carriers) can extend the five and six-year deadlines based on the

timing of Voice-over-LTE (VoLTE) deployment in their networks.

• Regarding vertical location accuracy, while all CMRS providers (including small providers) must make uncompensated barometric data available to PSAPs from any handset that has the capability to deliver barometric sensor data within 3 years of the rules in this *Fourth Report and Order* becoming effective, small carriers have an additional year beyond what nationwide carriers must comply with (*i.e.,* Year 6 requirements extend to Year 7; Year 8 requirements extend to Year 9).

• While nationwide CMRS providers must report to the Commission on their plans and progress towards implementing improved indoor location accuracy no later than 18 months of the date the rules in this *Fourth Report and Order* become effective, smaller CMRS providers have 24 months.

• While nationwide CMRS providers must aggregate live 911 call data on a quarterly basis and report that data to the Association of Public-Safety Communications Officials (APCO), National Emergency Number Association (NENA), and the National Association of State 911 Administrators (NASNA), small providers must do so on a biannual basis.

240. Regarding the overall scope of the indoor 911 location accuracy rules we adopt in this *Fourth Report and Order,* we note that in the *Third Further Notice,* we proposed to apply the horizontal indoor location accuracy requirements on a nationwide-basis, across all geographic areas. In response, several small and regional CMRS providers proposed that rural areas from indoor location accuracy requirements be excluded from the rules, either entirely or for a certain ''phase-in'' period. Absent any such exclusion, RWA believes the ability of small and rural CMRS providers to achieve compliance with the indoor horizontal location accuracy requirements in the proposed timeframe would be problematic. In response, we state that because the rules we adopt today relate to indoor 911 calls—and therefore are not hindered by naturally-formed physical characteristics—there is no need to adopt similar exclusions. We believe that the design of our indoor location accuracy requirements and the timeframe allotted for compliance adequately addresses commenters' concerns about being able to implement indoor location solutions throughout all morphologies within their coverage footprint. Moreover, applying these requirements uniformly nationwide is consistent with the principle that improving 911 location is just as important in the least populous markets as in the most populous.

241. We sought comment in the *Third Further Notice* on whether we should adopt a specific waiver process for CMRS providers who seek relief from our indoor location accuracy requirements. In particular, we sought comment on whether and what criteria would be appropriate for any E911-specific waiver process, as well as whether providers who believe they cannot comply with a particular indoor location accuracy benchmark, despite good faith efforts, may certify this six months prior to the applicable benchmark. In response, RWA suggests the Commission adopt a safe harbor for waiver applicants based on a showing of technical infeasibility or financial difficulty, while NTCA notes that the expense of a waiver can impose a substantial financial burden for small rural carriers, and the regulatory uncertainty can be disruptive to business planning and operations. We ultimately determined not to adopt a specific waiver standard applicable only to the indoor location accuracy requirements we adopt today, noting that '[a]ny CMRS provider that is unable to meet the deadlines adopted herein may seek waiver relief. The Commission may grant relief pursuant to the waiver standards set forth in Sections 1.3 and 1.925 of its rules, and we believe these provisions are sufficient to address any requests for relief of the indoor location accuracy requirements . . .''

F. Report to Congress

242. The Commission will send a copy of the *Report and Order,* including this FRFA, in a report to be sent to Congress pursuant to the Congressional Review Act. In addition, the Commission will send a copy of the *Report and Order,* including this FRFA, to the Chief Counsel for Advocacy of the SBA. A copy of the *Report and Order* and FRFA (or summaries thereof) will also be published in the **Federal Register**.

VII. Ordering Clauses

243. *It is further ordered,* pursuant to Sections 1, 2, 4(i), 7, 10, 201, 214, 222, 251(e), 301, 302, 303, 303(b), 303(r), 307, 307(a), 309, 309(j)(3), 316, 316(a), and 332, of the Communications Act of 1934, 47 U.S.C. 151, 152(a), 154(i), 157, 160, 201, 214, 222, 251(e), 301, 302, 303, 303(b), 303(r), 307, 307(a), 309, 309(j)(3), 316, 316(a), 332; the Wireless Communications and Public Safety Act of 1999, Public Law 106–81, 47 U.S.C. 615 note, 615, 615a, 615b; and Section 106 of the Twenty-First Century Communications and Video Accessibility Act of 2010, Public Law 111–260, 47 U.S.C. 615c, that this *Fourth Report and Order* is hereby *adopted.*

244. *It is further ordered* that part 20 of the Commission's rules, 47 CFR part 20, *is amended* as specified in this order, effective April 3, 2015, except that those amendments which contain new or modified information collection requirements that require approval by the Office of Management and Budget under the Paperwork Reduction Act *will become effective* after the Commission publishes a notice in the **Federal Register** announcing such approval and the relevant effective date.

245. *It is further ordered* that the Final Regulatory Flexibility Analysis in Appendix C hereto *is adopted.*

246. *It is further ordered* that, pursuant to Section 801(a)(1)(A) of the Congressional Review Act, 5 U.S.C. 801(a)(1)(A), the Commission *shall send* a copy of this Report and Order to Congress and to the Government Accountability Office.

247. *It is further ordered* that the Commission's Consumer and Governmental Affairs Bureau, Reference Information Center, *shall send* a copy of this *Fourth Report and Order,* including the Final Regulatory Flexibility Analysis, to the Chief Counsel for Advocacy of the Small Business Administration.

List of Subjects in 47 CFR Part 20

Communications common carriers, Communications equipment, Radio.

Federal Communications Commission.

Marlene H. Dortch,

Secretary.

Final Rules

For the reasons discussed in the preamble, the Federal Communications Commission amends 47 CFR part 20 as follows:

PART 20—COMMERCIAL MOBILE RADIO SERVICES

■ 1. The authority for part 20 is revised to read as follows:

Authority: 47 U.S.C. 151, 152(a), 154(i), 157, 160, 201, 214, 222, 251(e), 301, 302, 303, 303(b), 303(r), 307, 307(a), 309, 309(j)(3), 316, 316(a), 332, 615, 615a, 615b, 615c.

■ 2. Section 20.18 is amended by revising paragraph (h)(3) and re-designating paragraphs (i) through (n) as paragraphs (l) through (q), and adding new paragraphs (i) through (k), and revising newly redesignated paragraph (m)(1) to read as follows:

§ 20.18 911 Service.

* * * * *

(h) * * *

(3) *Latency (Time to First Fix).* For purposes of measuring compliance with the location accuracy standards of this paragraph, a call will be deemed to satisfy the standard only if it provides the specified degree of location accuracy within a maximum latency period of 30 seconds, as measured from the time the user initiates the 911 call to the time the location fix appears at the location information center: Provided, however, that the CMRS provider may elect not to include for purposes of measuring compliance therewith any calls lasting less than 30 seconds.

(i) *Indoor location accuracy for 911 and testing requirements*—(1) *Definitions:* The terms as used in this section have the following meaning:

(i) *Dispatchable location:* A location delivered to the PSAP by the CMRS provider with a 911 call that consists of the street address of the calling party, plus additional information such as suite, apartment or similar information necessary to adequately identify the location of the calling party. The street address of the calling party must be validated and, to the extent possible, corroborated against other location information prior to delivery of dispatchable location information by the CMRS provider to the PSAP.

(ii) *Media Access Control (MAC) Address.* A location identifier of a Wi-Fi access point.

(iii) *National Emergency Address Database (NEAD).* A database that utilizes MAC address information to identify a dispatchable location for nearby wireless devices within the CMRS provider's coverage footprint.

(iv) *Nationwide CMRS provider:* A CMRS provider whose service extends to a majority of the population and land area of the United States.

(v) *Non-nationwide CMRS provider:* Any CMRS provider other than a nationwide CMRS provider.

(vi) *Test Cities.* The six cities (San Francisco, Chicago, Atlanta, Denver/Front Range, Philadelphia, and Manhattan Borough) and surrounding geographic areas that correspond to the six geographic regions specified by the February 7, 2014 ATIS Document, ''Considerations in Selecting Indoor Test Regions,'' for testing of indoor location technologies.

(2) *Indoor location accuracy standards:* CMRS providers subject to this section shall meet the following requirements:

(i) *Horizontal location.* (A) Nationwide CMRS providers shall provide; dispatchable location, or ; x/y location within 50 meters, for the following percentages of wireless 911 calls within the following timeframes, measured from the effective date of the adoption of this rule:

(1) Within 2 years: 40 percent of all wireless 911 calls.

(2) Within 3 years: 50 percent of all wireless 911 calls.

(3) Within 5 years: 70 percent of all wireless 911 calls.

(4) Within 6 years: 80 percent of all wireless 911 calls.

(B) Non-nationwide CMRS providers shall provide; dispatchable location or; x/y location within 50 meters, for the following percentages of wireless 911 calls within the following timeframes, measured from the effective date of the adoption of this rule:

(1) Within 2 years: 40 percent of all wireless 911 calls.

(2) Within 3 years: 50 percent of all wireless 911 calls.

(3) Within 5 years or within six months of deploying a commercially-operating VoLTE platform in their network, whichever is later: 70 percent of all wireless 911 calls.

(4) Within 6 years or within one year of deploying a commercially-operating VoLTE platform in their network, whichever is later: 80 percent of all wireless 911 calls.

(ii) *Vertical location.* CMRS providers shall provide vertical location information with wireless 911 calls as described in this section within the following timeframes measured from the effective date of the adoption of this rule:

(A) *Within 3 years:* All CMRS providers shall make uncompensated barometric data available to PSAPs with respect to any 911 call placed from any handset that has the capability to deliver barometric sensor information.

(B) *Within 3 years:* Nationwide CMRS providers shall develop one or more z-axis accuracy metrics validated by an independently administered and transparent test bed process as described in paragraph (i)(3)(i) of this section, and shall submit the proposed metric or metrics, supported by a report of the results of such development and testing, to the Commission for approval.

(C) Within 6 years: In each of the top 25 CMAs, nationwide CMRS providers shall deploy either;) dispatchable location, or ; z-axis technology in compliance with any z-axis accuracy metric that has been approved by the Commission,

(1) In each CMA where dispatchable location is used: nationwide CMRS providers must ensure that the NEAD is populated with a sufficient number of total dispatchable location reference points to equal 25 percent of the CMA population.

(2) In each CMA where z-axis technology is used: nationwide CMRS providers must deploy z-axis technology to cover 80 percent of the CMA population.

(D) Within 8 years: In each of the top 50 CMAs, nationwide CMRS providers shall deploy either

(1) Dispatchable location or;

(2) Such z-axis technology in compliance with any z-axis accuracy metric that has been approved by the Commission.

(E) Non-nationwide CMRS providers that serve any of the top 25 or 50 CMAs will have an additional year to meet each of the benchmarks in paragraphs (i)(2)(ii)(C) and (D) of this section.

(iii) *Compliance.* Within 60 days after each benchmark date specified in paragraphs (i)(2)(i) and (ii) of this section, CMRS providers must certify that they are in compliance with the location accuracy requirements applicable to them as of that date. CMRS providers shall be presumed to be in compliance by certifying that they have complied with the test bed and live call data provisions described in paragraph (i)(3) of this section.

(A) All CMRS providers must certify that the indoor location technology (or technologies) used in their networks are deployed consistently with the manner in which they have been tested in the test bed. A CMRS provider must update certification whenever it introduces a new technology into its network or otherwise modifies its network, such that previous performance in the test bed would no longer be consistent with the technology's modified deployment.

(B) CMRS providers that provide quarterly reports of live call data in one or more of the six test cities specified in paragraph (i)(1)(vi) of this section must certify that their deployment of location technologies throughout their coverage area is consistent with their deployment of the same technologies in the areas that are used for live call data reporting.

(C) Non-nationwide CMRS providers that do not provide service or report quarterly live call data in any of the six test cities specified in paragraph (i)(1)(vi) of this section must certify that they have verified based on their own live call data that they are in compliance with the requirements of paragraphs (i)(2)(i)(B) and (ii) of this section.

(iv) *Enforcement.* PSAPs may seek Commission enforcement within their geographic service area of the requirements of paragraphs (i)(2)(i) and (ii) of this section, but only so long as they have implemented policies that are

designed to obtain all location information made available by CMRS providers when initiating and delivering 911 calls to the PSAP. Prior to seeking Commission enforcement, a PSAP must provide the CMRS provider with [30] days written notice, and the CMRS provider shall have an opportunity to address the issue informally. If the issue has not been addressed to the PSAP's satisfaction within 90 days, the PSAP may seek enforcement relief.

(3) *Indoor location accuracy testing and live call data reporting*—(i) *Indoor location accuracy test bed.* CMRS providers must establish the test bed described in this section within 12 months of the effective date of this rule. CMRS providers must validate technologies intended for indoor location, including dispatchable location technologies and technologies that deliver horizontal and/or vertical coordinates, through an independently administered and transparent test bed process, in order for such technologies to be presumed to comply with the location accuracy requirements of this paragraph. The test bed shall meet the following minimal requirements in order for the test results to be considered valid for compliance purposes:

(A) Include testing in representative indoor environments, including dense urban, urban, suburban and rural morphologies;

(B) Test for performance attributes including location accuracy (ground truth as measured in the test bed), latency (Time to First Fix), and reliability (yield); and

(C) Each test call (or equivalent) shall be independent from prior calls and accuracy will be based on the first location delivered after the call is initiated.

(D) In complying with paragraph (i)(3)(i)(B) of this section, CMRS providers shall measure yield separately for each individual indoor location morphology (dense urban, urban, suburban, and rural) in the test bed, and based upon the specific type of location technology that the provider intends to deploy in real-world areas represented by that particular morphology. CMRS providers must base the yield percentage based on the number of test calls that deliver a location in compliance with any applicable indoor location accuracy requirements, compared to the total number of calls that successfully connect to the testing network. CMRS providers may exclude test calls that are dropped or otherwise disconnected in 10 seconds or less from calculation of the yield percentage (both the denominator and numerator).

(ii) *Collection and reporting of aggregate live 911 call location data.* CMRS providers providing service in any of the Test Cities or portions thereof must collect and report aggregate data on the location technologies used for live 911 calls in those areas.

(A) CMRS providers subject to this section shall identify and collect information regarding the location technology or technologies used for each 911 call in the reporting area during the calling period.

(B) CMRS providers subject to this section shall report Test City call location data on a quarterly basis to the Commission, the National Emergency Number Association, the Association of Public Safety Communications Officials, and the National Association of State 911 Administrators, with the first report due 18 months from the effective date of rules adopted in this proceeding.

(C) CMRS providers subject to this section shall also provide quarterly live call data on a more granular basis that allows evaluation of the performance of individual location technologies within different morphologies (*e.g.,* dense urban, urban, suburban, rural). To the extent available, live call data for all CMRS providers shall delineate based on a per technology basis accumulated and so identified for:

(1) Each of the ATIS ESIF morphologies;

(2) On a reasonable community level basis; or

(3) By census block. This more granular data will be used for evaluation and not for compliance purposes.

(D) Non-nationwide CMRS providers that operate in a single Test City need only report live 911 call data from that city or portion thereof that they cover. Non-nationwide CMRS providers that operate in more than one Test City must report live 911 call data only in half of the regions (as selected by the provider). In the event a non-nationwide CMRS provider begins coverage in a Test City it previously did not serve, it must update its certification pursuant to paragraph (i)(2)(iii)(C) of this section to reflect this change in its network and begin reporting data from the appropriate areas. All non-nationwide CMRS providers must report their Test City live call data every 6 months, beginning 18 months from the effective date of rules adopted in this proceeding.

(E) Non-nationwide CMRS providers that do not provide coverage in any of the Test Cities can satisfy the requirement of paragraph (i)(3)(ii) of this section by collecting and reporting data based on the largest county within its footprint. In addition, where a non-nationwide CMRS provider serves more than one of the ATIS ESIF morphologies, it must include a sufficient number of representative counties to cover each morphology.

(iii) *Data retention.* CMRS providers shall retain testing and live call data gathered pursuant to this section for a period of 2 years.

(4) *Submission of plans and reports.* The following reporting and certification obligations apply to all CMRS providers subject to this section, which may be filed electronically in PS Docket No. 07–114:

(i) *Initial implementation plan.* No later than 18 months from the effective date of the adoption of this rule, nationwide CMRS providers shall report to the Commission on their plans for meeting the indoor location accuracy requirements of paragraph (i)(2) of this section. Non-nationwide CMRS providers will have an additional 6 months to submit their implementation plans.

(ii) *Progress reports.* No later than 18 months from the effective date of the adoption of this rule, each CMRS provider shall file a progress report on implementation of indoor location accuracy requirements. Non-nationwide CMRS providers will have an additional 6 months to submit their progress reports. All CMRS providers shall provide an additional progress report no later than 36 months from the effective date of the adoption of this rule. The 36-month reports shall indicate what progress the provider has made consistent with its implementation plan, and the nationwide CMRS providers shall include an assessment of their deployment of dispatchable location solutions. For any CMRS provider participating in the development of the NEAD database, this progress report must include detail as to the implementation of the NEAD database described in paragraphs (i)(4)(iii) and (iv) of this section.

(iii) *NEAD privacy and security plan.* Prior to activation of the NEAD but no later than 18 months from the effective date of the adoption of this rule, the nationwide CMRS providers shall file with the Commission and request approval for a security and privacy plan for the administration and operation of the NEAD. The plan must include the identity of an administrator for the NEAD, who will serve as a point of contact for the Commission and shall be accountable for the effectiveness of the security, privacy, and resiliency measures.

(iv) *NEAD use certification.* Prior to use of the NEAD or any information contained therein to meet such requirements, CMRS providers must

certify that they will not use the NEAD or associated data for any non-911 purpose, except as otherwise required by law.

(j) *Confidence and uncertainty data.* (1) Except as provided in paragraphs (j)(2)–(3) of this section, CMRS providers subject to this section shall provide for all wireless 911 calls, whether from outdoor or indoor locations, x- and y-axis (latitude, longitude) confidence and uncertainty information (C/U data) on a per-call basis upon the request of a PSAP. The data shall specify

(i) The caller's location with a uniform confidence level of 90 percent, and;

(ii) The radius in meters from the reported position at that same confidence level. All entities responsible for transporting confidence and uncertainty between CMRS providers and PSAPs, including LECs, CLECs, owners of E911 networks, and emergency service providers, must enable the transmission of confidence and uncertainty data provided by CMRS providers to the requesting PSAP.

(2) Upon meeting the 3-year timeframe pursuant to paragraph (i)(2)(i) of this section, CMRS providers shall provide with wireless 911 calls that have a dispatchable location the C/U data for the x- and y-axis (latitude, longitude) required under paragraph (j)(1) of this section.

(3) Upon meeting the 6-year timeframe pursuant to paragraph (i)(2)(i) of this section, CMRS providers shall provide with wireless 911 calls that have a dispatchable location the C/U data for the x- and y-axis (latitude, longitude) required under paragraph (j)(1) of this section.

(k) *Provision of live 911 call data for PSAPs.* Notwithstanding other 911 call data collection and reporting requirements in paragraph (i) of this section, CMRS providers must record information on all live 911 calls, including, but not limited to, the positioning source method used to provide a location fix associated with the call. CMRS providers must also record the confidence and uncertainty data that they provide pursuant to paragraphs (j)(1) through (3) of this section. This information must be made available to PSAPs upon request, and shall be retained for a period of two years.

* * * * *

(m) *Conditions for enhanced 911 services*—(1) *Generally.* The requirements set forth in paragraphs (d) through (h)(2) and in paragraph (j) of this section shall be applicable only to the extent that the administrator of the applicable designated PSAP has requested the services required under those paragraphs and such PSAP is capable of receiving and utilizing the requested data elements and has a mechanism for recovering the PSAP's costs associated with them.

* * * * *

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Part V

The President

Proclamation 9235—American Red Cross Month, 2015
Proclamation 9236—Irish-American Heritage Month, 2015
Proclamation 9237—National Colorectal Cancer Awareness Month, 2015
Proclamation 9238—Women's History Month, 2015
Proclamation 9239—National Consumer Protection Week, 2015
Proclamation 9240—Read Across America Day, 2015

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Presidential Documents

Title 3—

The President

Proclamation 9235 of February 27, 2015

American Red Cross Month, 2015

By the President of the United States of America

A Proclamation

For more than 130 years, the devoted women and men of the American Red Cross have responded to challenges at home and abroad with compassion and generosity. In times of conflict and great tragedy, they deliver humanitarian relief, save lives, and offer hope for a brighter tomorrow. Their service has meant so much to so many, and it reflects a fundamental American truth: we look out for one another and we do not leave anyone behind. This month, we renew our sense of common purpose and honor all those whose sacrifices have made our society more prepared, resilient, and united.

As a nurse and educator, Clara Barton dedicated her life to caring for others and alleviating suffering. After years of tending to soldiers and families in their hour of need, she established the American Red Cross, creating a force for peace and recovery in the wake of the Civil War and opening paths for millions across our Nation to serve their brothers and sisters. In the generations that followed, the American Red Cross and other service and relief organizations have combated pandemics, supported our Armed Forces, and provided disaster relief and mitigation worldwide.

In big cities and rural towns, American Red Cross volunteers support their communities, helping people donate blood, teaching first aid, and increasing local preparedness. Last year, our Nation once again bore witness to their grit and resolve as thousands mobilized in response to devastating mudslides, tornadoes, wildfires, and other emergencies. As selfless individuals step forward—as neighbors assist neighbors, schools transform into shelters, and donations become hot meals and dry clothes—they carry forward Barton's legacy and safeguard the promise that in moments of darkness, there is hope. They remind us that when we stand together, America emerges stronger.

Our Nation has always been shaped by ordinary Americans who dedicate their lives to achieving the extraordinary. During American Red Cross Month, let us ask what we can do for those around us and resolve to make service to others a part of our everyday lives.

NOW, THEREFORE, I, BARACK OBAMA, President of the United States of America and Honorary Chairman of the American Red Cross, by virtue of the authority vested in me by the Constitution and the laws of the United States, do hereby proclaim March 2015 as American Red Cross Month. I encourage all Americans to observe this month with appropriate programs, ceremonies, and activities, and by supporting the work of service and relief organizations.

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

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Billing code 3295–F5

Presidential Documents

Proclamation 9236 of February 27, 2015

Irish-American Heritage Month, 2015

By the President of the United States of America

A Proclamation

The vibrant culture and rich heritage of the Irish people shaped many of the earliest chapters of America's story. Our common values and shared vision for the future laid the foundation for an eternal friendship between Ireland and the United States, and today, daughters and sons of Erin continue to enrich our Nation. This month, we reaffirm the bonds of affection between our two great countries, and we honor the courage and perseverance of the Irish-American community.

From ethereal green shores, generations of Irishmen and women set out across an ocean to seek a new life in the New World. Often without family or funds, these brave souls put their faith in the ideas at the heart of our democracy—that we make our own destiny, and if we work hard and live responsibly, we can build a better future for our children and grandchildren. Early immigrants from Ireland shaped our founding documents, and in the decades and centuries since, Irish-American heroes—like the courageous members of the Fighting 69th—have fought and died to protect a Government of, by, and for the people.

Today, tens of millions of Americans proudly trace their heritage to the Emerald Isle. They are descendants of our Founding Fathers, heirs to a resilient spirit forged during the Great Hunger and painful periods of discrimination, and the latest in a long line of Irish Americans who have poured their energy and passion into perfecting our Union. With grit and determination, they have enhanced our communities, bolstered our economy, and strengthened our Nation. And their brogue continues to ring out from our halls of government and every place people strive to make our society more free, more fair, and more just.

The Irish story is one of hope and resolve—in it Americans see our own dreams and aspirations. Our pasts are bound by blood and belief, by culture and commerce, and our futures are equally, inextricably linked. During Irish-American Heritage Month, let us celebrate the people-to-people ties between our nations and continue together our work to forge a brighter tomorrow for every American and Irish child.

NOW, THEREFORE, I, BARACK OBAMA, President of the United States of America, by virtue of the authority vested in me by the Constitution and the laws of the United States, do hereby proclaim March 2015 as Irish-American Heritage Month. I call upon all Americans to observe this month with appropriate ceremonies, activities, and programs.

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

[FR Doc. 2015–04514
Filed 3–3–15; 11:15 am]
Billing code 3295–F5

Presidential Documents

Proclamation 9237 of February 27, 2015

National Colorectal Cancer Awareness Month, 2015

By the President of the United States of America

A Proclamation

Colorectal cancer is the second leading cause of cancer deaths in the United States. This year, more than 130,000 Americans will be diagnosed with this cancer, and nearly 50,000 will die from it. Friends and loved ones will be taken from us too soon by this disease, and the pain of cancer will touch too many families. During National Colorectal Cancer Awareness Month, we recognize all those who have been affected by this disease, and we renew our commitment to a lifesaving endeavor: raising awareness of colorectal cancer and the importance of screening.

Colorectal cancer is often preventable, and early detection and treatment are critical. However, this disease does not always cause symptoms, and most colorectal cancer occurs in individuals with no family history. That is why it is crucial for people of all ages to discuss colorectal cancer with their health care providers and understand the recommendations for, and benefits of, screening. And, people between ages 50 and 75 should get regular screenings. Not only can testing save your life, it can also provide peace of mind to your family and loved ones. I encourage Americans to learn more about the risk factors and symptoms of colorectal cancer by visiting *www.Cancer.gov.*

Every American deserves health security, and that is why I fought so hard for the Affordable Care Act. Under the law, more families have access to quality, affordable health care, and most insurance plans are required to cover recommended preventive services without copays, including colorectal cancer screenings for adults over 50. Earlier this year, I also announced the Precision Medicine Initiative to accelerate the design and testing of treatments tailored to individual patients. This bold new effort aims to revolutionize how our Nation fights disease, and it brings us closer to curing cancer.

Even as we continue the urgent work of improving care, we cannot fill the void left in the lives of those who know the true anguish of colorectal cancer. This month, we honor the loved ones we have lost to this disease and those who battle it today. Let us stand with their families and all who are committed to advancing the fight against cancer through research, advocacy, and quality care. Together, we can build a future free from cancer in all its forms.

NOW, THEREFORE, I, BARACK OBAMA, President of the United States of America, by virtue of the authority vested in me by the Constitution and the laws of the United States, do hereby proclaim March 2015 as National Colorectal Cancer Awareness Month. I encourage all citizens, government agencies, private businesses, non-profit organizations, and other groups to join in activities that will increase awareness and prevention of colorectal cancer.

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

[FR Doc. 2015–04515
Filed 3–3–15; 11:15 am]
Billing code 3295–F5

Presidential Documents

Proclamation 9238 of February 27, 2015

Women's History Month, 2015

By the President of the United States of America

A Proclamation

Throughout history, extraordinary women have fought tirelessly to broaden our democracy's reach and help perfect our Union. Through protest and activism, generations of women have appealed to the values at the heart of our Nation and fought to give meaning to the idea that we are all created equal. As today's women and girls reach for new heights, they stand on the shoulders of all those who have come before and carry forward their legacy of proud achievement. This month, we celebrate countless pioneering women and the victories they won, and we continue our work to build a society where our daughters have the same possibilities as our sons.

Courageous women have called not only for the absence of oppression, but for the presence of opportunity. They have demonstrated for justice, but also for jobs—ones that promise equal pay for equal work. And they have marched for the right to vote not just so their voices would be heard, but so they could have a seat at the head of the table. With grit and resolve, they have fought to overcome discrimination and shatter glass ceilings, and after decades of slow, steady, and determined progress, they have widened the circle of opportunity for women and girls across our country.

Today, more women are their family's main breadwinner than ever before. Women are nearly half of our Nation's workers, and they are increasingly among the most skilled. At the same time, more than 60 percent of women with children under the age of 5 participate in the labor force. This increasing participation of women in our workforce has bolstered our economy and strengthened our families, and it has demonstrated that the policies that benefit women and working families benefit all of us.

But not all of the rules that govern our workplaces have caught up with this reality, and today, too many of the opportunities that our mothers and grandmothers fought for are going unrealized. That is why I am committed to tearing down the barriers to full and equal participation in our economy and society that still exist for too many women. All women deserve equal pay for equal work and a living wage; the Congress needs to raise the minimum wage and pass a law that ensures a woman is paid the same as a man for doing the same work. I continue to call for increased workplace flexibility and access to paid leave—including paid sick leave—so that hardworking Americans do not have to choose between being productive employees and responsible family members. And I have proposed a plan that would make quality child care available to every middle-class and low-income family in America with young children. These are not only women's issues—they are family issues and national economic priorities.

We know that when women succeed, America succeeds. The strength of our economy rests on whether we make it possible for every citizen to contribute to our growth and prosperity. As we honor the many patriots who have shaped not only the destinies of other women, but also the direction of our history, let us resolve to build on their efforts in our own time. As a Nation, we must join our voices with the chorus of history and push forward with unyielding faith to forge a more equal society for

all our daughters and granddaughters—one where a woman's potential is limited only by the size of her dreams and the power of her imagination.

NOW, THEREFORE, I, BARACK OBAMA, President of the United States of America, by virtue of the authority vested in me by the Constitution and the laws of the United States, do hereby proclaim March 2015 as Women's History Month. I call upon all Americans to observe this month and to celebrate International Women's Day on March 8, 2015, with appropriate programs, ceremonies, and activities. I also invite all Americans to visit *www.WomensHistoryMonth.gov* to learn more about the generations of women who have left enduring imprints on our history.

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

[FR Doc. 2015–04516
Filed 3–3–15; 11:15 am]
Billing code 3295–F5

Presidential Documents

Proclamation 9239 of February 27, 2015

National Consumer Protection Week, 2015

By the President of the United States of America

A Proclamation

As Americans, we believe that our destiny is written by us—not for us—and that ours is a country where hard work should pay off and responsibility should be rewarded. Through all of the challenges we have overcome and the grueling work required to bring our economy out of the worst financial crisis since the Great Depression, we have held on to that promise. Yet each day, fraud, abuse, and theft threaten the economic well-being of individuals and families across our Nation who spend their lives striving to build a sense of security. During National Consumer Protection Week, we redouble our efforts to protect Americans from financial fraud and identity theft, and to ensure our economy gives every person a chance to succeed.

Over the past 6 years, my Administration has been committed to protecting the hard-earned money and privacy of our citizens. In today's digital age, we are more connected and do more online than ever before. Unfortunately, the very technologies that empower us to do great good can also be used to undermine us and inflict great harm. That is why my Administration is working to create a single, strong national standard so people know when their information has been stolen or misused, and why we are encouraging companies to equip consumers with their credit scores free of charge so they can quickly detect and deal with fraud. I also continue to call on the Congress to enact overdue cybersecurity legislation that will help protect Americans—particularly by clarifying companies' obligations when sensitive data is breached.

As part of our BuySecure Initiative, the Federal Government is leading the way by transitioning to a more secure chip and PIN payment system—because you should be able to visit our National Parks or use the Postal Service without risking your identity. Earlier this year, we convened the first-ever White House Summit on Cybersecurity and Consumer Protection, and we are taking new steps to assist the victims of identity theft. Furthermore, Americans who responsibly prepare for retirement should not be taken advantage of, so we are proposing a new rule to require retirement advisors to put their clients' financial interests before their own. We have also introduced a discussion draft of legislation for a new Consumer Privacy Bill of Rights to safeguard basic principles that both defend personal privacy and allow industry to keep innovating.

Consumers can also take steps to protect themselves and their families. Predatory and deceptive lending practices, identity theft, financial scams, and fraud can cause lasting devastation for victims. By empowering ourselves with information about our rights and the resources available to us, we can be prepared and make better-informed decisions. I encourage everyone to visit *www.NCPW.gov* and *www.IdentityTheft.gov* to learn more about the risks and vulnerabilities we all face, as well as the steps we can take to defend ourselves and the tools and support available to help save time, money, and heartache.

When we, as Americans, put our minds together and our shoulders to the wheel, we can accomplish anything. The United States created the Internet and a new age of information—but we also pioneered the Bill

of Rights, and we believe individuals have a sphere of privacy around them that should not be breached. This week, let us recommit to safeguarding consumers, and let us strive to grow our economy in ways that preserve the values we hold dear so that each of us has the power to translate our dreams into reality.

NOW, THEREFORE, I, BARACK OBAMA, President of the United States of America, by virtue of the authority vested in me by the Constitution and the laws of the United States, do hereby proclaim March 1 through March 7, 2015, as National Consumer Protection Week. I call upon government officials, industry leaders, and advocates across the Nation to share information about consumer protection and provide our citizens with information about their rights as consumers.

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

[FR Doc. 2015–04517
Filed 3–3–15; 11:15 am]
Billing code 3295–F5

Presidential Documents

Proclamation 9240 of February 27, 2015

Read Across America Day, 2015

By the President of the United States of America

A Proclamation

As a Nation, one of our greatest responsibilities is to ensure every American child can experience the transformative power of reading. Literacy is the gateway to all other learning, and it is the most basic building block of opportunity in an economy increasingly built on knowledge and innovation. On Read Across America Day, we celebrate the ways literacy has enhanced our lives and recommit to empowering every student with a strong start and a passion for reading.

The written word provides a window to a larger world. From prose and poetry, we learn our earliest lessons about tolerance and empathy, and on the pages of great books, children can see for the first time that their potential is limited only by the size of their dreams and the power of their imaginations. Literature captures moral dilemmas that persist across generations, chronicles our greatest achievements as a people, and reminds us of painful chapters in our past so we do not repeat our mistakes. In powerful tales and in the voices of complex characters, we learn eternal truths that illuminate the spirit of America and the intimacy of the human condition.

Brilliant writers enable us to stand in someone else's shoes and identify with their hopes and struggles—even if they do not look like us or share our beliefs. They transport us to distant times and faraway lands, and today we honor a storyteller who brought these new worlds into classrooms and bedrooms all around the globe. The works of Theodor Seuss Geisel, better known to us as Dr. Seuss, have sparked a love for reading in generations of students. His whimsical wordplay and curious characters inspire children to dream big and remind readers of all ages that ''a person's a person no matter how small.''

Reading is the means by which we discover new ideas and unlock the potential of tomorrow's leaders. As we recognize the importance of literacy, let us resolve to play a part in developing the next generation of readers and writers. As mentors, friends, and caring adults, we can raise our voices to support the resources our students need in classrooms and libraries, and take time to engage young people in this critical endeavor. Together, we can enrich our souls, strengthen our society, and give every child a chance to succeed.

NOW, THEREFORE, I, BARACK OBAMA, President of the United States of America, by virtue of the authority vested in me by the Constitution and the laws of the United States, do hereby proclaim March 2, 2015, as Read Across America Day. I call upon children, families, educators, librarians, public officials, and all the people of the United States to observe this day with appropriate programs, ceremonies, and activities.

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

[FR Doc. 2015–04518
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CFR Checklist. Effective January 1, 2009, the CFR Checklist no longer appears in the Federal Register. This information can be found online at **http://bookstore.gpo.gov/.**

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