AUTHENTICATED
U.S. GOVERNMENT
INFORMATION
GPO

FEDERAL REGISTER

Vol. 78 Wednesday,
No. 108 June 5, 2013

Pages 33689–33954

OFFICE OF THE FEDERAL REGISTER

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

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

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

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

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

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

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

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

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

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

SUBSCRIPTIONS AND COPIES

PUBLIC

Subscriptions:

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

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

Single copies/back copies:

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

FEDERAL AGENCIES

Subscriptions:

Paper or fiche	**202–741–6005**
Assistance with Federal agency subscriptions	**202–741–6005**

FEDERAL REGISTER WORKSHOP

THE FEDERAL REGISTER: WHAT IT IS AND HOW TO USE IT

FOR: Any person who uses the Federal Register and Code of Federal Regulations.

WHO: Sponsored by the Office of the Federal Register.

WHAT: Free public briefings (approximately 3 hours) to present:

1. The regulatory process, with a focus on the Federal Register system and the public's role in the development of regulations.
2. The relationship between the Federal Register and Code of Federal Regulations.
3. The important elements of typical Federal Register documents.
4. An introduction to the finding aids of the FR/CFR system.

WHY: To provide the public with access to information necessary to research Federal agency regulations which directly affect them. There will be no discussion of specific agency regulations.

WHEN: Tuesday, June 11, 2013
9 a.m.–12:30 p.m.

WHERE: Office of the Federal Register
Conference Room, Suite 700
800 North Capitol Street, NW.
Washington, DC 20002

RESERVATIONS: (202) 741–6008

Printed on recycled paper.

Contents

Federal Register

Vol. 78, No. 108

Wednesday, June 5, 2013

Agriculture Department
See Animal and Plant Health Inspection Service
See Federal Crop Insurance Corporation
See Forest Service
See Rural Housing Service
See Rural Utilities Service

Animal and Plant Health Inspection Service
NOTICES
Environmental Assessments; Availability, etc.:
Oral Rabies Vaccine Trial, 33798–33799
Meetings:
National Poultry Improvement Plan; General Conference Committee, 33799

Antitrust Division
NOTICES
Membership Changes:
DIE Products Consortium, 33859
PXI Systems Alliance, Inc., 33859–33860

Antitrust
See Antitrust Division

Coast Guard
RULES
Safety Zones:
Great Western Tube Float, Colorado River, Parker, AZ, 33703–33705
Special Local Regulations:
Pleasantville Aquatics 15th Annual 5K Open Water Swim, Intracoastal Waterway; Atlantic City, NJ, 33700–33703
PROPOSED RULES
Ballast Water Management Reporting and Recordkeeping, 33774–33784
NOTICES
Meetings:
Merchant Mariner Medical Advisory Committee, 33855–33856

Commerce Department
See Foreign-Trade Zones Board
See Industry and Security Bureau
See International Trade Administration
See National Oceanic and Atmospheric Administration
NOTICES
Privacy Act; Systems of Records, 33807–33808

Comptroller of the Currency
NOTICES
Agency Information Collection Activities; Proposals, Submissions, and Approvals:
Examination Questionnaire, 33892–33893

Consumer Product Safety Commission
NOTICES
Consumer Product Safety Commission Safety Academy, 33836–33837

Corporation for National and Community Service
NOTICES
Agency Information Collection Activities; Proposals, Submissions, and Approvals, 33837

Department of Transportation
See Pipeline and Hazardous Materials Safety Administration

Education Department
NOTICES
Agency Information Collection Activities; Proposals, Submissions, and Approvals:
Experimental Sites Data Collection Instrument, 33837–33838

Employment and Training Administration
NOTICES
Workforce Investment Act Incentive Funding Availability Based on Program Year 2011 Performance; Correction, 33860

Energy Department
See Energy Efficiency and Renewable Energy Office

Energy Efficiency and Renewable Energy Office
NOTICES
DOE Participation in Development of the International Energy Conservation Code, 33838–33839

Environmental Protection Agency
RULES
Pesticide Tolerances:
Imidacloprid, 33736–33744
Propamocarb, 33731–33736
Sedaxane, 33744–33748
State Air Quality Implementation Plans; Approvals and Promulgations:
Kentucky; Kentucky Portion of Cincinnati–Hamilton, Revision to the Motor Vehicle Emissions Budgets, 33726–33731
Tolerance Exemptions:
Diisopropyl adipate, 33748–33753
PROPOSED RULES
Pesticide Petitions Filed for Residues of Pesticide Chemicals in or on Various Commodities, 33785–33790
State Air Quality Implementation Plans; Approvals and Promulgations:
Kentucky; Kentucky Portion of Cincinnati–Hamilton, Supplement Motor Vehicle Emissions Budget Update, 33784–33785
NOTICES
Access to Confidential Business Information:
Various Contractors, 33839–33840

Executive Office of the President
See Presidential Documents
See Privacy and Civil Liberties Oversight Board
See Trade Representative, Office of United States

Federal Aviation Administration
PROPOSED RULES
Airworthiness Directives:
Agusta S.p.A. (Type Certificate currently held by AgustaWestland S.p.A.) Helicopters (Agusta), 33768–33770
Bell Helicopter Textron, Inc. Helicopters, 33770–33772
Eurocopter France (Eurocopter) Helicopters, 33766–33768
Eurocopter France Helicopters, 33764–33766
Class E Airspace; Modifications:
Brigham City, UT, 33772–33773

Federal Crop Insurance Corporation
RULES
Common Crop Insurance:
Pecan Crop Insurance Provisions; Correction, 33690–33691

Federal Maritime Commission
NOTICES
Agreements Filed, 33840
Ocean Transportation Intermediary License Applicants, 33841
Ocean Transportation Intermediary License Revocations, 33841

Federal Railroad Administration
RULES
Railroad Workplace Safety:
Adjacent-Track On-Track Safety for Roadway Workers, 33754

Federal Reserve System
NOTICES
Federal Open Market Committee:
Domestic Policy Directive of April 30–May 1, 2013, 33841
Formations of, Acquisitions by, and Mergers of Bank Holding Companies, 33841–33842

Federal Transit Administration
NOTICES
Agency Information Collection Activities; Proposals, Submissions, and Approvals, 33889–33890
Limitations on Claims against Proposed Public Transportation Projects, 33890–33891

Financial Crimes Enforcement Network
PROPOSED RULES
Financial Institutions of Primary Money Laundering Concern:
Imposition of Special Measure Against Banco Delta Asia, Including Its Subsidiaries Delta Asia Credit Limited and Delta Asia Insurance Ltd.; Proposed Renewal Without Change; Comment Request, 33774

Fish and Wildlife Service
PROPOSED RULES
Endangered and Threatened Wildlife and Plants:
12-Month Findings on Petitions to Delist U.S. Captive Populations of the Scimitar–horned Oryx, Dama Gazelle, and Addax, 33790–33797
NOTICES
Meetings:
North American Wetlands Conservation Council; Neotropical Migratory Bird Conservation Advisory Group, 33857–33858
Sport Fishing and Boating Partnership Council, 33856–33857

Food and Drug Administration
RULES
New Animal Drugs:
Dexmedetomidine; Lasalocid; Melengestrol; Monensin; and Tylosin; Correction, 33698–33699
NOTICES
Agency Information Collection Activities; Proposals, Submissions, and Approvals:
Foreign Clinical Studies Not Conducted Under an Investigational New Drug Application, 33847–33848
Reporting of Biological Product Deviations and Human Cells, Tissues, and Cellular and Tissue-Based Product Deviations in Manufacturing, 33846–33847
Revision of the Requirements for Constituent Materials, 33845–33846
Draft Guidance for Industry; Availabity:
Human Immunodeficiency Virus–1 Infection; Developing Antiretroviral Drugs for Treatment, 33848–33849
Meetings:
Battery-Powered Medical Devices Workshop: Challenges and Opportunities, 33849–33851
Lung Cancer Patient-Focused Drug Development, 33851–33852

Foreign-Trade Zones Board
NOTICES
Production Activities:
Panasonic Corp. of North America, Foreign-Trade Zone 50, Long Beach, CA, 33808
Proposed Production Activities:
Foreign-Trade Zone 39, Lasko Products, Inc., Fort Worth, TX, 33808–33809
Roper Corp., Subzone 26G, Lafayette, GA, 33809

Forest Service
RULES
Postdecisional Administrative Review Process for Occupancy or Use of National Forest System Lands and Resources, 33705–33726
NOTICES
Newspapers Used for Publication of Legal Notices by the Intermountain Region:
Utah, Idaho, Nevada, and Wyoming, 33799–33800

Health and Human Services Department
See Food and Drug Administration
See National Institutes of Health
See Substance Abuse and Mental Health Services Administration
NOTICES
Determinations:
Emergency Use of In Vitro Diagnostics for Detection of Middle East Respiratory Syndrome Coronavirus, 33842–33843
Incidental Findings that Arise in the Clinical, Research, and Direct-to-Consumer Contexts; Related Issues; Comments Request, 33843
Requests for Information:
Action Plan for the Prevention, Care, and Treatment of Viral Hepatitis, 33843–33845

Homeland Security Department
See Coast Guard

Industry and Security Bureau
RULES
Implementation of the Understandings Reached at the 2012 Australia Group (AG) Plenary Meeting and the 2012 AG Intersessional Decisions:
Changes to Select Agent Controls, 33692–33698

Interior Department
See Fish and Wildlife Service
See Land Management Bureau
See Ocean Energy Management Bureau

Internal Revenue Service
NOTICES
Agency Information Collection Activities; Proposals, Submissions, and Approvals, 33893

International Trade Administration
NOTICES
Antidumping Duty Administrative Reviews; Results, Extensions, Amendments, etc.:
Seamless Carbon and Alloy Steel Standard, Line, and Pressure Pipe From the People's Republic of China, 33809–33810

Justice Department
See Antitrust Division

Labor Department
See Employment and Training Administration
See Occupational Safety and Health Administration

Land Management Bureau
NOTICES
Agency Information Collection Activities; Proposals, Submissions, and Approvals, 33858–33859

Legal Services Corporation
NOTICES
Meetings; Sunshine Act, 33862

National Institutes of Health
NOTICES
Meetings:
Center for Scientific Review, 33853
National Heart, Lung, and Blood Institute, 33852–33853
National Institute on Drug Abuse, 33853

National Oceanic and Atmospheric Administration
NOTICES
Fishing Capacity Reduction Program for the Southeast Alaska Purse Seine Salmon Fishery, 33810–33811
Permits:
Marine Mammals; File No. 17941, 33811
Takes of Marine Mammals:
Low-Energy Marine Geophysical Survey in the Tropical Western Pacific Ocean, September to October 2013, 33811–33836

Nuclear Regulatory Commission
RULES
Distribution of Source Material to Exempt Persons and to General Licensees and Revision of General License and Exemptions:
Interim Staff Guidance, 33691–33692
NOTICES
Draft Emergency Preparedness Frequently Asked Questions, 33862–33863
Regulatory Issue Summaries; Availabiltiy, etc.:
Relationship Between General Design Criteria and Technical Specification Operability, 33863

Occupational Safety and Health Administration
NOTICES
Agency Information Collection Activities; Proposals, Submissions, and Approvals:
Crawler, Locomotive, and Truck Cranes Standard, 33860–33862

Ocean Energy Management Bureau
NOTICES
Commercial Wind Lease Issuances and Site Assessment Activities:
Atlantic Outer Continental Shelf Offshore Rhode Island and Massachusetts, 33908–33909
Final Sales:
Atlantic Wind Lease Sale 2 Commercial Leasing for Wind Power Offshore Rhode Island and Massachusetts, 33898–33908
Outer Continental Shelf Geological and Geophysical Exploration Activities in the Gulf of Mexico; Correction, 33859

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

Overseas Private Investment Corporation
NOTICES
Meetings; Sunshine Act, 33863–33864

Personnel Management Office
PROPOSED RULES
Phased Retirement, 33912–33939

Pipeline and Hazardous Materials Safety Administration
NOTICES
Safety Advisories:
Compressed Gas Cylinders That Have Not Been Tested Properly, 33891

Postal Regulatory Commission
NOTICES
Negotiated Service Agreements, 33864–33866

Presidential Documents
EXECUTIVE ORDERS
Iran; Iran Freedom and Counter-Proliferation Act of 2012, Implementing Sanctions (EO 13645), 33945–33953
ADMINISTRATIVE ORDERS
Foreign Narcotics Kingpin Designation Act; Delegation of Functions (Memorandum of May 31, 2013), 33941–33943

Privacy and Civil Liberties Oversight Board
RULES
Organization and Delegation of Powers and Duties, 33689–33690

Rural Housing Service
NOTICES
Funding Availabilities:
Section 515 Multi-Family Housing Preservation Revolving Loan Fund Demonstration Program for Fiscal Year 2013, 33800–33806

Rural Utilities Service
PROPOSED RULES
Project Financing Loans, 33755–33757
Rural Determination and Financing Percentage, 33757–33764

Securities and Exchange Commission
NOTICES
Self-Regulatory Organizations; Proposed Rule Changes:
Chicago Board Options Exchange, Inc., 33868–33869
Depository Trust Co., 33876–33877
EDGA Exchange, Inc., 33880–33882
EDGX Exchange, Inc., 33871–33873
NASDAQ OMX PHLX LLC, 33873–33880
NYSE Arca, Inc., 33869–33870
NYSE MKT LLC, 33866–33867
Trading Suspension Orders:
3CI Complete Compliance Corp., et al., 33882–33885

State Department
RULES
Visas:
Classification of Immediate Family Members as G Nonimmigrants, 33699–33700
NOTICES
Culturally Significant Objects Imported for Exhibition:
Fauno Rosso, 33885

Substance Abuse and Mental Health Services Administration
NOTICES
National Registry of Evidence-based Programs and Practices:
Open Submission Period for Fiscal Year 2014, 33853–33855

Surface Transportation Board
NOTICES
Abandonment Exemptions:
North Central Railway Association, Inc., in Franklin and Hardin Counties, IA, 33891–33892

Trade Representative, Office of United States
NOTICES
Identification of Ukraine as a Priority Foreign Country and Initiation of Investigation, 33886–33888

Transportation Department
See Federal Aviation Administration
See Federal Railroad Administration
See Federal Transit Administration
See Pipeline and Hazardous Materials Safety Administration
See Surface Transportation Board
NOTICES
Meetings:
National Freight Advisory Committee, 33888–33889

Treasury Department
See Comptroller of the Currency
See Financial Crimes Enforcement Network
See Internal Revenue Service

U.S.–China Economic and Security Review Commission
NOTICES
Public Hearings, 33894

Veterans Affairs Department
NOTICES
Agency Information Collection Activities; Proposals, Submissions, and Approvals, 33894
Agency Information Collection Activities; Proposals, Submissions, and Approvals:
Open Burn Pit Registry Airborne Hazard Self-Assessment Questionnaire, 33894–33895

Separate Parts In This Issue

Part II
Interior Department, Ocean Energy Management Bureau, 33898–33909

Part III
Personnel Management Office, 33912–33939

Part IV
Presidential Documents, 33941–33943, 33945–33953

Reader Aids

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

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

CFR PARTS AFFECTED IN THIS ISSUE

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

3 CFR

Executive Orders:

13622 (Amended by EO 13645).....33945
13645.....33945

Administrative Orders:

Memorandums:
Memorandum of May 31, 2013.....33943

5 CFR

Proposed Rules:

581.....33912
582.....33912
831.....33912
838.....33912
841.....33912
842.....33912
843.....33912
848.....33912
870.....33912
890.....33912

6 CFR

1000.....33689

7 CFR

457.....33690

Proposed Rules:

1710 (2 documents) 33755, 33757

10 CFR

30.....33691
40.....33691
70.....33691
170.....33691
171.....33691

14 CFR

Proposed Rules:

39 (4 documents) 33764, 33766, 33768, 33770
71.....33772

15 CFR

740.....33692
742.....33692
774.....33692

21 CFR

522.....33698

22 CFR

41.....33699

31 CFR

Proposed Rules:

1010.....33774

33 CFR

100.....33700
165.....33703

Proposed Rules:

151.....33774

36 CFR

212.....33705
214.....33705
215.....33705
222.....33705
228.....33705
241.....33705
254.....33705
292.....33705

40 CFR

52.....33726
180 (4 documents) 33731, 33736, 33744, 33748

Proposed Rules:

52.....33784
180.....33785

49 CFR

214.....33754

50 CFR

Proposed Rules:

17.....33790

Rules and Regulations

Federal Register
Vol. 78, No. 108
Wednesday, June 5, 2013

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

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

PRIVACY AND CIVIL LIBERTIES OVERSIGHT BOARD

6 CFR Part 1000

[PCLOB; Docket No. 2013–0005; Sequence 2]

RIN 0311–AA02

Organization and Delegation of Powers and Duties

AGENCY: Privacy and Civil Liberties Oversight Board.

ACTION: Final rule.

SUMMARY: The Privacy and Civil Liberties Oversight Board is issuing this rule to provide information to the public about the Board's organization, function, and operations.

DATES: This rule is effective June 5, 2013.

FOR FURTHER INFORMATION CONTACT: Susan Reingold, Chief Administrative Officer, Privacy and Civil Liberties Oversight Board, at 202–331–1986.

SUPPLEMENTARY INFORMATION: This rule informs the public about the structure, function, and operation of the Privacy and Civil Liberties Oversight Board, as required by 5 U.S.C. 552(a)(1).

I. Background

The Privacy and Civil Liberties Oversight Board (Board) was created as an independent agency within the executive branch by the Implementing Recommendations of the 9/11 Commission Act of 2007. It has two primary purposes: (1) To analyze and review actions the executive branch takes to protect the United States from terrorism, ensuring that the need for such actions is balanced with the need to protect privacy and civil liberties; and (2) to ensure that liberty concerns are appropriately considered in the development and implementation of laws, regulations, and policies related to efforts to protect the Nation against terrorism. This rule describes the Board's organization and functioning and, therefore, is exempt from requirements related to notice and comment under 5 U.S.C. 553(b)(3)(A).

II. Regulatory Analysis and Notices

Executive Order 12866

This rule is not a ''significant regulatory action'' within the meaning of Executive Order 12866.

Regulatory Flexibility Act, as Amended

The Administrative Procedure Act does not require a notice of proposed rulemaking for this rule, therefore, the provisions of the Regulatory Flexibility Act (as amended by the Small Business Regulatory Enforcement Act of 1996) do not apply.

Unfunded Mandates Reform Act of 1995

The Unfunded Mandates Reform Act of 1995 requires agencies to prepare a written statement of economic and regulatory alternatives anytime a proposed or final rule imposes a new or additional enforceable duty on any state, local, or tribal government or the private sector that causes those entities to spend, in aggregate, $100 million or more (adjusted for inflation) in any one year (a ''federal mandate''). The Board determined that such a written statement is not required in connection with this rule because it does not impose a federal mandate.

National Environmental Policy Act

The Board analyzed this action for the purpose of the National Environmental Policy Act of 1969 and determined that it would not significantly affect the environment; therefore, an environmental impact statement is not required.

Paperwork Reduction Act

This rule does not include an information collection for purposes of the Paperwork Reduction Act of 1995.

Executive Order 13132 (Federalism)

The Board analyzed this action in accordance with Executive Order 13132 and determined that a Federalism Assessment is not necessary.

List of Subjects in 6 CFR Part 1000

Authority delegations (Government agencies), Organization and functions (Government agencies).

In consideration of the foregoing, the Board establishes chapter X of title 6, Code of Federal Regulations, consisting of parts 1000 through 1099, to read as follows:

CHAPTER X—PRIVACY AND CIVIL LIBERTIES OVERSIGHT BOARD

PART 1000—ORGANIZATION AND DELEGATION OF POWERS AND DUTIES OF THE PRIVACY AND CIVIL LIBERTIES OVERSIGHT BOARD

Sec.
1000.1 Purpose.
1000.2 Definitions.
1000.3 Organization.
1000.4 Functions.
1000.5 Delegations of authority.

Authority: 5 U.S.C. 552.

§ 1000.1 Purpose.

This part describes the organization of the Board, and the assignment of authorities and the responsibilities of the Board, individual Board members, and employees.

§ 1000.2 Definitions.

As used in this part:

Board means the Privacy and Civil Liberties Oversight Board, established by the Implementing Recommendations of the 9/11 Commission Act of 2007, Public Law 110–53.

Chairman means the Chairman of the Board, as appointed by the President and confirmed by the Senate under section 801(a) of the Implementing Recommendations of the 9/11 Commission Act of 2007, Public Law 110–53.

General Counsel means the Board's principal legal advisor.

Member means an individual appointed by the President, with the advice and consent of the Senate, to be a member of the Board.

§ 1000.3 Organization.

(a) The Board is comprised of four part-time Board members and a full-time Chairman, each appointed by the President with the advice and consent of the Senate.

(b) The Board's staff is comprised of the following administrative units:

(1) Office of Management and Operations;

(2) Office of the General Counsel; and

(3) Office of Liaison and Oversight.

§ 1000.4 Functions.

(a) The Board provides advice and counsel to the President and executive departments and agencies to ensure that privacy and civil liberties are appropriately considered in proposed legislation, regulations, and policies, and in the implementation of new and existing legislation, regulations, and policies, related to efforts to protect the Nation from terrorism;

(b) The Board oversees actions by the executive branch relating to efforts to protect the Nation from terrorism to determine whether such actions appropriately protect privacy and civil liberties and are consistent with governing laws, regulations, and policies regarding privacy and civil liberties; and

(c) The Board receives and reviews reports and other information from privacy and civil liberties officers under 42 U.S.C. 2000ee-1 and, when appropriate, makes recommendations to and coordinates the activities of privacy and civil liberties officers on relevant interagency matters.

§ 1000.3 Delegations of authority.

(a) *The Board.* The Board is the head of the agency. The Board is responsible for the overall planning, direction, and control of the agency's agenda. The delegations of authority in this part do not extend to the following actions which are reserved to the Board:

(1) Disposition of all rulemaking and similar proceedings involving the promulgation of rules or the issuance of statements of general policy.

(2) Determination of advice or recommendations to the President or executive departments and agencies regarding the matters described in 42 U.S.C. 2000ee(d).

(3) Determination of the Board's annual agenda or other statement of operational priorities; and

(4) Redelegation to one or more Board members or staff of those responsibilities delegated to the Chairman in § 1000.3(b), in the event of a vacancy.

(5) Any authority that is not delegated by the Board in this part, or otherwise vested in officials other than the Board, is reserved to the Board. Except as otherwise provided, the Board may exercise powers and duties delegated or assigned to individuals other than the Board.

(b) *The Chairman.* The Chairman is the executive and administrative head of the Board. The Chairman has the authority, duties, and responsibilities assigned to the Chairman under 42 U.S.C. 2000ee(h)(5) and (j)(1) and is responsible for the agency's day-to-day operations. The Chairman is delegated the authority to:

(1) Exercise control over the Board's management and functioning;

(2) Implement and execute the Board's budget;

(3) Develop and effectively use staff support to carry out the functions of the Board, including, but not limited to, the supervision and removal of Board employees and the assignment and distribution of work among staff;

(4) Convene and preside at all meetings of the Board and ensure that every vote and official act of the Board required by law to be recorded is accurately and promptly recorded by the General Counsel;

(5) Act as the Board's spokesman on all matters where an official expression of the Board is required, or as otherwise directed by the Board;

(6) Approve for publication all publicly issued documents, except:

(i) Those authorized by an individual Board Member;

(ii) Decisions or informal opinions of the Board; and

(iii) The semi-annual report required to be published by the Board under 42 U.S.C. 2000ee(e).

(7) Serve as the Board's Chief FOIA Officer under 5 U.S.C. 552(j).

(8) Serves as the Board's Equal Employment Opportunity Director, as described in 29 CFR Part 1614.

(9) Redelegate to one or more Board staff persons those responsibilities delegated to the Executive Director or General Counsel under this part, in the event that either position is unfilled.

(10) Authorize any officer, employee, or administrative unit of the Board to perform a function vested in, delegated, or otherwise designated to the Chairman.

(c) *Executive Director.* The Executive Director manages the staff and assists the Chairman with the day-to-day operation of the Board. The Executive Director is delegated authority to:

(1) Formulate and implement plans and policies designed to assure the effective administration of the Board's operations and the efficient operations of the staff;

(2) Serve as the Board's Senior Agency Official for Privacy;

(3) Administer the Board's programs under the Freedom of Information Act, 5 U.S.C. 552, and the Privacy Act of 1974, 5 U.S.C. 552a.; and

(4) Authorize any officer or employee of the Board to perform a function vested in, delegated, or otherwise designated to the Executive Director.

(d) *General Counsel.* The General Counsel is the Board's chief legal officer, and serves as legal advisor to the Board. The General Counsel is delegated authority to:

(1) Serve as the Board's Designated Ethics Official in accordance with 5 CFR 2638.202;

(2) Certify Board votes consistent with Board policies and procedures; and

(3) Authorize any officer or employee of the Board to perform a function vested in, delegated, or otherwise designated to the General Counsel.

(e) *Individual Board Members.* Any member delegated authority vested in the Chairman under paragraph (a) of this section may redelegate that authority to one or more Board employees.

(f) *Exercise of authority.* In carrying out any functions delegated under this part, members and staff are governed in the exercise of those functions by all applicable Federal statutes and regulations, and by the regulations, orders, and rules of the Board.

PARTS 1001–1099—[RESERVED]

Dated: May 29, 2013.

Claire McKenna,

Legal Counsel.

[FR Doc. 2013–13166 Filed 6–4–13; 8:45 am]

BILLING CODE 6820–B3–P

DEPARTMENT OF AGRICULTURE

Federal Crop Insurance Corporation

7 CFR Part 457

[Docket No. FCIC–11–0008]

RIN 0563–AC35

Common Crop Insurance Regulations; Pecan Crop Insurance Provisions; Correction

AGENCY: Federal Crop Insurance Corporation, USDA.

ACTION: Final rule; correcting amendment.

SUMMARY: This document contains a correction to the final regulation that was published Thursday, February 28, 2013 (78 FR 13454–13460). The regulation pertains to the insurance of Pecans.

DATES: *Effective Date:* June 5, 2013.

FOR FURTHER INFORMATION CONTACT: Tim Hoffmann, Director, Product Administration and Standards Division, Risk Management Agency, United States Department of Agriculture, Beacon Facility, Stop 0812, Room 421, PO Box 419205, Kansas City, MO 64141–6205, telephone (816) 926–7730.

SUPPLEMENTARY INFORMATION:

Background

The final regulation that is the subject of this correction revised the Pecan Crop Insurance Provisions that published on Thursday, February 28, 2013 (78 FR 13454–13460).

Need for Correction

As published, the final regulation contained a clerical error that may prove to be misleading and needs to be clarified. In section 4(d), text was added in the incorrect part of the paragraph and instructions describing where to add the text was inadvertently added to the paragraph.

List of Subjects in 7 CFR Part 457

Crop insurance, Pecan revenue, Reporting and recordkeeping requirements.

Correction of Publication

Accordingly, 7 CFR part 457 is corrected by making the following correcting amendment:

PART 457—COMMON CROP INSURANCE REGULATIONS

■ 1. The authority citation for 7 CFR Part 457 continues to read as follows:

Authority: 7 U.S.C. 1506(l), 1506(o).

■ 2. Amend § 457.167 by revising section 4(d) to read as follows:

§ 457.167 Pecan revenue crop insurance provisions.

* * * * *

4. * * *

* * * * *

(d) After the contract change date, all changes specified in section 4(b) will also be available upon request from your crop insurance agent. You will be provided, in writing, a copy of the changes to the Basic Provisions, Crop Provisions, and a copy of the Special Provisions. If changes are made that will be effective for the second year of the two-year coverage module, such copies will be provided not later than 30 days prior to the termination date. If changes are made that will be effective for a subsequent two-year coverage module, such copies will be provided not later than 30 days prior to the cancellation date. If available from us, you may elect to receive these documents and changes electronically. For changes effective for subsequent two-year coverage modules, acceptance of the changes will be conclusively presumed in the absence of written notice from you to change or cancel your insurance coverage in accordance with the terms of this policy.

* * * * *

Signed in Washington, DC, on May 29, 2013.

Brandon Willis,

Manager, Federal Crop Insurance Corporation.

[FR Doc. 2013–13358 Filed 6–4–13; 8:45 am]

BILLING CODE 3410–08–P

NUCLEAR REGULATORY COMMISSION

10 CFR Parts 30, 40, 70, 170, and 171

[NRC–2011–0003]

RIN 3150–AH15

Distribution of Source Material to Exempt Persons and to General Licensees and Revision of General License and Exemptions

AGENCY: Nuclear Regulatory Commission.

ACTION: Interim staff guidance; issuance.

SUMMARY: The U.S. Nuclear Regulatory Commission (NRC) is issuing interim staff guidance for implementation of the final rule, Distribution of Source Material to Exempt Persons and to General Licensees and Revision of General License and Exemptions (Distribution of Source Material Rule). The Distribution of Source Material Rule amended the NRC's regulations to require that the initial distribution of source material to exempt persons or to general licensees be explicitly authorized by a specific license. The Distribution of Source Material Rule also modified the existing possession and use requirements of the general license for small quantities of source material and revised, clarified, or deleted certain source material exemptions from licensing.

DATES: This interim staff guidance is effective August 27, 2013.

ADDRESSES: Please refer to Docket ID NRC–2011–0003 when contacting the NRC about the availability of information regarding this document. You may access information related to this document, which the NRC possesses and is publicly available using the following methods:

- *Federal Rulemaking Web site:* Go to *http://www.regulations.gov* and search for Docket ID NRC–2011–0003. Documents related to the Distribution of Source Material Rule can be found by searching on Docket ID NRC–2009–0084. Address questions about NRC dockets to Carol Gallagher; telephone: 301–492–3668; 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 access publicly available documents online in the NRC Library at *http://www.nrc.gov/reading-rm/adams.html*. To begin the search, select *''ADAMS Public Documents''* and then select *''Begin Web-based ADAMS Search.''* For problems with ADAMS, please contact the NRC's Public Document Room (PDR) reference staff at 1–800–397–4209 or 301–415–4737, or by email to *PDR.Resource@nrc.gov*. The interim staff guidance is available in ADAMS under Accession No. ML13051A824.
- *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: Gary Comfort, Office of Federal and State Materials and Environmental Management Programs, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, telephone: 301–415–8106, email: *Gary.Comfort@nrc.gov* or Tomas Herrera, Office of Federal and State Materials and Environmental Management Programs, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, telephone: 301–415–7138, email: *Tomas.Herrera@nrc.gov*.

SUPPLEMENTARY INFORMATION:

Discussion

The NRC's Distribution of Source Material Rule (78 FR 32310; May 29, 2013) amended the NRC's regulations in parts 30, 40, 70, 170, and 171 of Title 10 of the *Code of Federal Regulations* (10 CFR) to require that the initial distribution of source material to exempt persons or general licensees be explicitly authorized by a specific license. The Distribution of Source Material Rule also included new reporting requirements. The rule will affect manufacturers and distributors of certain products and materials containing source material and certain persons using source material under general license and under exemptions from licensing. The Distribution of Source Material Rule goes into effect on August 27, 2013.

In conjunction with the Distribution of Source Material Rule, the NRC has developed interim staff guidance, which provides guidance to a licensee or applicant for implementation of the amended regulations. It is intended for use by applicants, licensees, Agreement States, and the NRC staff. On January 7, 2011, the NRC published the draft

interim staff guidance in the **Federal Register** (76 FR 1100) for public comment. Two comment letters were received and considered during the revision of the draft interim staff guidance. The guidance was also enhanced based on comments received on the proposed rule.

The interim staff guidance document describes methods acceptable to the NRC staff for implementing the new requirements in the Distribution of Source Material Rule. The approaches and methods described in the document are provided for information only. Methods and solutions different from those described in the document are acceptable if they meet the revised requirements. The guidance is provided in the form of questions and answers on the primary provisions of the Distribution of Source Material Rule. Guidance consistent with the revised 10 CFR part 40 will be incorporated into the next revision of relevant volumes of NUREG–1556, ''Consolidated Guidance About Materials Licenses'' (current ADAMS Accession Nos. ML022830847 and ML003681951).

Congressional Review Act

This interim staff guidance is a rule as designated in the Congressional Review Act of 1996 (5 U.S.C. 801–808). However, the Office of Management and Budget has not found it to be a major rule as designated in the Congressional Review Act.

Dated at Rockville, Maryland, this 30th day of May, 2013.

For the Nuclear Regulatory Commission.

Brian J. McDermott,

Director, Division of Materials Safety and State Agreements, Office of Federal and State Materials and Environmental Management Programs.

[FR Doc. 2013–13344 Filed 6–4–13; 8:45 am]

BILLING CODE 7590–01–P

DEPARTMENT OF COMMERCE

Bureau of Industry and Security

15 CFR Parts 740, 742, and 774

[Docket No. 120806310–2310–01]

RIN 0694–AF76

Implementation of the Understandings Reached at the 2012 Australia Group (AG) Plenary Meeting and the 2012 AG Intersessional Decisions; Changes to Select Agent Controls

AGENCY: Bureau of Industry and Security, Commerce.

ACTION: Final rule.

SUMMARY: The Bureau of Industry and Security (BIS) publishes this final rule to amend the Export Administration Regulations (EAR) to implement the understandings reached at the June 2012 plenary meeting of the Australia Group (AG) and the 2012 AG intersessional decisions. Specifically, this rule amends the Commerce Control List (CCL) entry in the EAR that controls human and zoonotic pathogens and ''toxins'' to reflect changes to the AG ''List of Biological Agents for Export Control'' that were made based on the understandings adopted at the June 2012 AG plenary meeting. These changes included the addition of three pathogens and clarifications to two other items. This rule also amends the CCL entry in the EAR that controls plant pathogens to reflect: The 2012 AG Plenary agreement to add five pathogens to the AG ''List of Plant Pathogens for Export Control;'' and the AG intersessional clarifications to six pathogens identified on this AG list. In addition, the CCL entry in the EAR that controls equipment capable of handling biological materials is amended to reflect the 2012 AG intersessional decision to add certain spray-drying equipment to the AG ''Control List of Dual-Use Biological Equipment and Related Technology and Software.'' This rule also removes the CCL entry that controls select agents not identified on any of the AG common controls lists, but identified on the CCL because they are (or were, until recently) subject to controls maintained by the Centers for Disease Control and Prevention (CDC), U.S. Department of Health and Human Services, and the Animal and Plant Health Inspection Service (APHIS), U.S. Department of Agriculture, on their possession, use, and transfer within the United States. Rather than continuing to control these select agents in a separate CCL entry, this rule adds those select agents that remain subject to the CDC/APHIS controls (as well as a recent addition to the list of select agents) to the AG-related CCL entries that control human and zoonotic pathogens and ''toxins'' and plant pathogens, respectively.

DATES: This rule is effective June 5, 2013.

ADDRESSES: Send comments regarding this collection of information, including suggestions for reducing the burden, to Jasmeet Seehra, Office of Management and Budget (OMB), by email to *Jasmeet_K._Seehra@omb.eop.gov,* or by fax to (202) 395–7285; and to the Regulatory Policy Division, Bureau of Industry and Security, Department of Commerce, 14th Street & Pennsylvania Avenue NW., Room 2705, Washington, DC 20230.

FOR FURTHER INFORMATION CONTACT: Elizabeth Sangine, Director, Chemical and Biological Controls Division, Office of Nonproliferation and Treaty Compliance, Bureau of Industry and Security, Telephone: (202) 482–3343.

SUPPLEMENTARY INFORMATION:

Background

The Bureau of Industry and Security (BIS) is amending the Export Administration Regulations (EAR) to implement the understandings reached at the Australia Group (AG) plenary meeting held in Paris, France, on June 12–15, 2012. This rule also implements the recommendations presented at the AG intersessional implementation meeting held in Ottawa, Canada, on February 14–16, 2012, and adopted pursuant to the AG silent approval procedure, which closed on March 23, 2012. The AG is a multilateral forum consisting of 40 participating countries that maintain export controls on a list of chemicals, biological agents, and related equipment and technology that could be used in a chemical or biological weapons program. The AG periodically reviews items on its control list to enhance the effectiveness of participating governments' national controls and to achieve greater harmonization among these controls.

June 2012 AG Plenary Changes

The June 2012 AG plenary meeting adopted understandings that affected the AG ''List of Biological Agents for Export Control'' and the AG ''List of Plant Pathogens for Export Control.''

This rule amends Export Control Classification Number (ECCN) 1C351 to reflect the AG plenary changes to the ''List of Biological Agents for Export Control.'' Specifically, ECCN 1C351 (Human and zoonotic pathogens and ''toxins'') is amended by adding botulinum neurotoxin producing strains of the following bacteria to 1C351.c: Clostridium argentinense (formerly known as Clostridium botulinum Type G); Clostridium baratii; and Clostridium butyricum. ECCN 1C351.c is partially renumbered to control these bacteria under 1C351.c.8., .c.9, and .c.11, respectively, while the bacteria previously controlled under these subparagraphs (Clostridium botulinum; Clostridium perfringens, epsilon toxin producing types; and Coxiella burnetii) are now controlled under 1C351.c.10, .c.12. and .c.13, respectively. In addition, bacteria previously controlled under 1C351.c.12 through .c.17 are now controlled under 1C351.c.14 through

.c.16 (Francisella tularensis; Rickettsia prowazekii; and Salmonella typhi) and 1C351.c.18 through .c 20 (Shigella dysenteriae; Vibrio cholerae; and Yersinia pestis). Also note, with respect to ECCN 1C351.c.15 as amended by this rule, that the listing for the bacterium ''Rickettsia prowasecki (a.k.a. Rickettsia prowazekii)'' is amended to read ''Rickettsia prowazekii,'' consistent with the listing of this bacterium in the AG ''List of Biological Agents for Export Control'' and the commonly accepted spelling of this bacterium within the scientific community.

This rule also amends ECCN 1C351.c to clarify that the controls on ''Escherichia coli and other verotoxin producing serotypes'' apply to ''Shiga toxin producing Escherichia coli (STEC) of serogroups O26, O45, O103, O104, O111, O121, O145, O157, and other shiga toxin producing serogroups.'' These bacteria are now controlled under 1C351.c.17. Prior to the publication of this rule and the partial renumbering of 1C351.c, these bacteria were controlled under 1C351.c.11. In addition, this rule amends 1C351.d.14 to clarify that the controls on ''Staphylococcus aureus toxins'' apply to ''Staphylococcus aureus enterotoxins, hemolysin alpha toxin, and toxic shock syndrome toxin (formerly known as Staphylococcus enterotoxin F).''

This rule amends ECCN 1C354 (Plant pathogens) to reflect the AG plenary changes to the ''List of Plant Pathogens for Export Control.'' Specifically, ECCN 1C354 is amended by adding the following five fungi to 1C354.b: Peronosclerospora philippinensis (Peronosclerospora sacchari); Sclerophthora rayssiae var. zeae; Synchytrium endobioticum; Tilletia indica; and Thecaphora solani. These fungi are controlled under 1C354.b.7 through .b.11, respectively.

2012 AG Intersessional Changes

This rule also implements the recommendations presented at the AG intersessional implementation meeting held in February 2012 and adopted pursuant to the AG silent approval procedure. These recommendations included changes to the AG ''List of Plant Pathogens for Export Control'' and the AG ''Control List of Dual-Use Biological Equipment and Related Technology and Software.'' This rule amends ECCN 1C354 (Plant pathogens) to reflect the AG intersessional changes to the ''List of Plant Pathogens for Export Control.'' Specifically, ECCN 1C354.a (Bacteria) is amended to clarify that the controls for ''Xanthomonas campestris pv. citri'' in 1C354.a.2 apply to ''Xanthomonas axonopodis pv. citri (Xanthomonas campestris pv. citri A) (Xanthomonas campestris pv. citri)'' and that the controls for ''Ralstonia solanacearum'' in 1C354.a.5 apply to ''Ralstonia solanacearum, race 3, biovar 2.'' This rule also amends ECCN 1C354.b (Fungi) to reorder the wording of the controls for ''Colletotrichum coffeanum var. virulans (Colletotrichum kahawae)'' in 1C354.b.1 to read ''Colletotrichum kahawae (Colletotrichum coffeanum var. virulans).'' In addition, this rule amends the controls for ''Puccinia graminis'' in 1C354.b.4 to clarify that they apply to ''Puccinnia graminis ssp. graminis var. graminis/Puccinia graminis ssp. graminis var. stakmanii (Puccinia graminis [syn. Puccinia graminis f. sp. tritici])'' and the controls for ''Magnaporthe grisea'' in 1C354.b.6 to clarify that they apply to ''Magnaporthe oryzae (Pyricularia oryzae).'' Furthermore, this rule amends 1C354.c to clarify the controls for ''Potato Andean latent tymovirus'' in 1C354.c.1 to read ''Andean potato latent virus (Potato Andean latent tymovirus).''

In addition, this rule amends ECCN 2B352 (Equipment capable of use in handling biological materials) to reflect the AG intersessional changes to the ''Control List of Dual-Use Biological Equipment and Related Technology and Software.'' Specifically, this rule adds controls for certain spray-drying equipment under 2B352.f. Those items that were controlled under 2B352.f through .h, prior to the publication of this rule, are now controlled under 2B352.g through .i, respectively. ECCN 2B352.f, as revised by this rule, now controls spray-drying equipment capable of drying toxins or pathogenic microorganisms and having all of the following characteristics: (1) A water evaporation capacity of ≥ 0.4 kg/h and ≤ 400 kg/h; (2) the ability to generate a typical mean product particles size of ≤ 10 micrometers with existing fittings or by minimal modification of the spray-dryer with atomization nozzles enabling generation of the required particle size; and (3) capable of being sterilized or disinfected in situ.

Select Agent Changes to the CCL

This rule removes ECCN 1C360 (Select agents). This ECCN controlled select agents not included on any of the AG common controls lists that were identified on the CCL because they are (or were, until recently) subject to controls maintained by the Animal and Plant Health Inspection Service (APHIS), U.S. Department of Agriculture, and the Centers for Disease Control and Prevention (CDC), U.S. Department of Health and Human Services, on their possession, use, and transfer within the United States.

As a result of amendments by CDC to the list of ''HHS select agents'' in 42 CFR 73.3 and the list of ''Overlap select agents and toxins'' in 42 CFR 73.4 and amendments by APHIS to the list of ''Plant Protection and Quarantine (PPQ) select agents and toxins'' in 7 CFR 331.3 and the list of ''Veterinary Services (VS) select agents and toxins'' in 9 CFR 121.3, ten of the eighteen select agents that were listed in ECCN 1C360 are no longer included on the CDC/APHIS select agents lists. For this reason, as well as to assist exporters to more easily identify all of the select agents that are subject to the chemical/biological (CB) controls described in Section 742.2(a)(1) of the EAR (i.e., CB Column 1), BIS is removing ECCN 1C360 from the CCL and adding the select agents that were controlled by ECCN 1C360, and continue to be identified on the CDC/APHIS lists, to the appropriate AG-related ECCNs on the CCL (i.e., ECCNs 1C351 and 1C354). Prior to the publication of this rule, the CDC/APHIS select agents listed in these ECCNs included only those select agents that were also identified on one of the AG common control lists.

As a result of the changes described above, the following select agents that were controlled by ECCN 1C360 are no longer listed on the CCL: Central European tick-borne encephalitis viruses (i.e., Absettarov, Hanzalova, Hypr, and Kumlinge); Cercopithecine herpesvirus 1 (Herpes B virus); Flexal virus; Akabane virus; Bovine spongiform encephalopathy agent; Camel pox virus; Malignant catarrhal fever virus; Menangle virus; Erhlichia ruminantium (a.k.a. Cowdria ruminantium); and Xylella fastidiosa pv. citrus variegated chlorosis (CVC).

Three select agents that were controlled under ECCN 1C360 and continue to be identified on the CDC/APHIS select agents lists are now controlled on the CCL, as follows: Reconstructed replication competent forms of the 1918 pandemic influenza virus containing any portion of the coding regions of all eight gene segments (now controlled under ECCN 1C351.b.1); Rathayibacter toxicus (now controlled under ECCN 1C354.a.6); and Phoma glycinicola, formerly Pyrenochaeta glycines (now controlled under ECCN 1C354.b.12). None of these select agents are identified on any of the AG common control lists; however, they continue to be subject to CB controls (for those destinations indicated under CB Column 1 on the Commerce Country Chart in Supplement No. 1 to part 738 of the EAR), as well as anti-terrorism

(AT) controls (for those destinations indicated under AT Column 1 on the Commerce Country Chart—Country Group E:1, in Supplement No. 1 to part 740 of the EAR, lists those countries designated as ''terrorist-supporting countries'' for purposes of the AT controls in the EAR).

In addition, three select agents that were controlled under ECCN 1C360, and continue to be identified on the APHIS select agents lists, have been added to the AG ''List of Plant Pathogens for Export Control,'' in accordance with the understandings reached at the 2012 AG Plenary (see the discussion of the 2012 AG Plenary changes, above). These select agents are now controlled on the CCL as follows: Peronosclerospora philippinensis (Peronosclerospora sacchari) (now controlled under ECCN 1C354.b.7); Sclerophthora rayssiae var. zeae (now controlled under ECCN 1C354.b.8); and Synchytrium endobioticum (now controlled under ECCN 1C354.b.9). This rule also amends ECCN 1C354.a.3 to include the species of proteobacteria identified as *Xanthomonas oryzae,* which is identified on the APHIS list of PPQ select agents and toxins; however, only the pathovar *Xanthomonas oryzae pv. oryzae* (syn. *Pseudomonas campestris* pv. *oryzae*) is identified on the AG ''List of Plant Pathogens for Export Control.'' Like all other items controlled under ECCN 1C354, these select agents are subject to CB Column 1 controls, as well as AT Column 1 controls.

Furthermore, this rule eliminates redundant controls on two bacteria of the Mycoplasma mycoides cluster: Mycoplasma capricolum subspecies capripneumoniae and Mycoplasma mycoides subspecies mycoides small colony. These bacteria were identified under ECCN 1C360.b.2 and ECCN 1C352.b.1, prior to the publication of this rule, but are now controlled under ECCN 1C352.b.1, only. Both bacteria continue to be identified on the list of ''VS Select Agents and Toxins'' maintained by APHIS, as well as the AG ''List of Plant Pathogens for Export Control.'' Like all other items controlled under ECCN 1C352, these bacteria are subject to CB Column 1 controls, as well as AT Column 1 controls.

This rule also amends ECCN 1C351 by adding SARS-associated coronavirus (SARS-CoV) under 1C351.b.2 and tick-borne encephalitis virus (Siberian subtype) under 1C351.b.3. Both viruses were recently included in CDC's list of ''HHS select agents and toxins,'' but are not identified on any of the AG common control lists. However, like all other items controlled under ECCN 1C351, these viruses are subject to CB Column 1 controls, as well as AT Column 1 controls. Another tick-borne encephalitis virus (Far Eastern subtype, formerly known as Russian Spring-Summer encephalitis virus) is controlled under ECCN 1C351.a.35 and is currently included in both CDC's list of ''HHS select agents and toxins'' and the AG ''List of Biological Agents for Export Control.'' This rule amends ECCN 1C351.a.35 to reflect the current nomenclature (i.e., Far Eastern subtype) used by the International Committee on Taxonomy of Viruses.

In addition to the select agents changes described above, this rule makes conforming changes to Sections 740.20 and 742.2 of the EAR and to ECCNs 1C353, 1C991, 1E001 and 1E351 to reflect the removal of ECCN 1C360 from the CCL. Specifically, Section 740.20(b)(2)(v) is amended by removing two references to ECCN 1C360 from the description of biological items that are not eligible for License Exception Strategic Trade Authorization (STA). The items that were controlled under ECCN 1C360 and that remain on the CCL are now controlled under ECCN 1C351.a or .b, ECCN 1C352 or ECCN 1C354, all of which are identified in paragraph (b)(2)(v). Section 742.2(a)(1)(i) of the EAR is amended by removing the reference to ECCN 1C360 from the description of the license requirements that apply to items controlled for CB reasons to destinations indicated under CB Column 1 on the Commerce Country Chart. ECCN 1C353 is amended by removing references to ECCN 1C360 from the following: The Related Controls paragraph; paragraphs a.1. and b.1. in the Items paragraph under the List of Items Controlled; and Technical Note 3. ECCN 1C991 is amended by removing references to ECCN 1C360 from the fourth sentence of the Related Definitions paragraph and from paragraph a. in the Items paragraph under the List of Items Controlled. ECCN 1E001 is amended by removing the reference to ECCN 1C360 from the control language for ''Country Chart—CB Column 1'' in the License Requirements section. ECCN 1E351 is amended by removing references to ECCN 1C360 from the ECCN heading and from the controls language for ''Country Chart—CB Column 1'' in the License Requirements section.

Finally, this rule amends ECCNs 1C351, 1C352, 1C353, and 1C354 by revising the License Requirements Note(s) in the License Requirements section of each ECCN to add a note indicating that ECCNs 1C351, 1C352, 1C353, and 1C354 control all biological agents or ''toxins,'' regardless of quantity or attenuation, that are identified in the List of Items Controlled for each ECCN (or, in the case of ECCN 1C353, genetic elements or genetically modified organisms for such agents or ''toxins''), including small quantities or attenuated strains of select biological agents or ''toxins'' that are excluded from the lists of select biological agents or ''toxins'' by APHIS or CDC, in accordance with the APHIS regulations in 7 CFR part 331 or 9 CFR part 121 or the CDC regulations in 42 CFR part 73. These changes do not affect the scope of ECCNs 1C351, 1C352, 1C353, and 1C354 and conform with the controls described in the AG common control lists and in the AG ''Guidelines for Transfers of Sensitive Chemical or Biological Items,'' neither of which provide an exemption from control for attenuated strains of biological agents or toxins. In conjunction with these changes, this rule amends the Related Controls paragraph in each of these four ECCNs to add a sentence referencing 22 CFR part 121, Category XIV(b), for modified biological agents and biologically derived substances that are subject to the export licensing jurisdiction of the U.S. Department of State, Directorate of Defense Trade Controls.

Effect of This Rule on the Scope of the CB Controls in the EAR

The changes made by this rule only marginally affect the scope of the EAR controls on biological agents and toxins. With the removal of ECCN 1C360 from the CCL, ten select agents that were controlled under this ECCN prior to the publication of this rule are no longer identified on the CCL and are classified as EAR99, instead. All of these select agents were recently removed from the CDC/APHIS select agents lists. In addition, six other select agents that were controlled under ECCN 1C360 have been moved to ECCN 1C351 or ECCN 1C354 and continue to require a license for CB reasons to destinations indicated under CB Column 1 on the Commerce Country Chart and for AT reasons to destinations indicated under AT Column 1—all of these select agents continue to be identified on the CDC/APHIS select agents lists. Two additional select agents (Mycoplasma capricolum subspecies capripneumoniae and Mycoplasma mycoides subspecies mycoides small colony) also were controlled under ECCN 1C360 and continue to be identified on the CDC/APHIS select agents lists. As indicated above, this rule did not add these select agents to ECCN 1C352 because they were already described in ECCN 1C352.b.1 (i.e., the ECCN 1C360 controls on these select agents duplicated the controls in ECCN

1C352). This rule also adds two viruses that were recently included in CDC's list of ''HHS select agents and toxins'' (i.e., SARS-associated coronavirus and tick-borne encephalitis virus, Siberian subtype) to ECCN 1C351.b.

Based on the understandings reached at the June 2012 AG Plenary meeting, this rule also adds three bacteria to ECCN 1C351 and two fungi to ECCN 1C354, none of which were identified on the CCL prior to the publication of this rule. The AG Plenary also added three additional fungi to the ''List of Plant Pathogens for Export Control,'' but these fungi were already controlled under ECCN 1C360, based on their inclusion by APHIS on the list of PPQ select agents and toxins (7 CFR part 331), and are now controlled under ECCN 1C354 (i.e., these fungi are among the six select agents that have been moved by this rule from ECCN 1C360 to ECCN 1C351 or ECCN 1C354, as indicated above).

To summarize the biological agent and toxin changes described above, this rule removes ten CDC/APHIS select agents from the CCL, while adding three AG-listed bacteria and two fungi, as well as two viruses that were recently identified on CDC's list of ''HHS select agents and toxins.'' These changes are not expected to significantly affect the scope of the EAR controls on biological agents and toxins, because BIS estimates that there will be no increase in the number of license applications for these items.

Finally, this rule expands the scope of the EAR controls that apply to dual-use equipment capable of handling biological materials by amending ECCN 2B352 to add certain spray-drying equipment. This change is not expected to significantly affect the scope of the EAR controls on such equipment, because BIS anticipates only a small increase in the number of license applications.

Although the Export Administration Act expired on August 20, 2001, the President, through Executive Order 13222 of August 17, 2001, 3 CFR, 2001 Comp., p. 783 (2002), as amended by Executive Order 13637 of March 8, 2013, 78 FR 16129 (March 13, 2013), and as extended by the Notice of August 15, 2012, 77 FR 49699 (August 16, 2012), has continued the EAR in effect under the International Emergency Economic Powers Act.

Rulemaking Requirements

1. Executive Orders 13563 and 12866 direct agencies to assess all costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects, distributive impacts, and equity). Executive Order 13563 emphasizes the importance of quantifying both costs and benefits, of reducing costs, of harmonizing rules, and of promoting flexibility. This 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.

2. Notwithstanding any other provision of law, no person is required to respond to, nor shall any person be subject to a penalty for failure to comply with, a collection of information subject to the requirements of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 et seq.) (PRA), unless that collection of information displays a currently valid Office of Management and Budget (OMB) Control Number. This rule contains a collection of information subject to the requirements of the PRA. This collection has been approved by OMB under Control Number 0694–0088 (Multi-Purpose Application), which carries a burden hour estimate of 58 minutes to prepare and submit form BIS–748. Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing the burden, to Jasmeet Seehra, Office of Management and Budget (OMB), and to the Regulatory Policy Division, Bureau of Industry and Security, Department of Commerce, as indicated in the **ADDRESSES** section of this rule.

3. This rule does not contain policies with Federalism implications as that term is defined in Executive Order 13132.

4. The provisions of the Administrative Procedure Act (5 U.S.C. 553) requiring notice of proposed rulemaking, the opportunity for public participation, and a delay in effective date, are inapplicable because this regulation involves a military and foreign affairs function of the United States (See 5 U.S.C. 553(a)(1)). Immediate implementation of these amendments is non-discretionary and fulfills the United States' international obligation to the Australia Group (AG). The AG contributes to international security and regional stability through the harmonization of export controls and seeks to ensure that exports do not contribute to the development of chemical and biological weapons. The AG consists of 40 member countries that act on a consensus basis and the amendments set forth in this rule implement the understandings reached at the June 2012 AG plenary meeting, the 2012 AG intersessional changes, and other changes that are necessary to ensure consistency with the controls maintained by the AG. Since the United States is a significant exporter of the items in this rule, immediate implementation of this provision is necessary for the AG to achieve its purpose. Any delay in implementation will create a disruption in the movement of affected items globally because of disharmony between export control measures implemented by AG members, resulting in tension between member countries. Export controls work best when all countries implement the same export controls in a timely and coordinated manner.

Further, no other law requires that a notice of proposed rulemaking and an opportunity for public comment be given for this final rule. Because a notice of proposed rulemaking and an opportunity for public comment are not required to be given for this rule under the Administrative Procedure Act or by any other law, the analytical requirements of the Regulatory Flexibility Act (5 U.S.C. 601 et seq.) are not applicable. Therefore, this regulation is issued in final form.

List of Subjects

15 CFR Part 740

Administrative practice and procedure, Exports, Reporting and recordkeeping requirements.

15 CFR Part 742

Exports, Terrorism.

15 CFR Part 774

Exports, Reporting and recordkeeping requirements.

For the reasons stated in the preamble, parts 740, 742, and 774 of the Export Administration Regulations (15 CFR parts 730–774) are amended as follows:

PART 740—[AMENDED]

■ 1. The authority citation for 15 CFR Part 740 continues to read as follows:

Authority: 50 U.S.C. app. 2401 *et seq.;* 50 U.S.C. 1701 *et seq.;* 22 U.S.C. 7201 *et seq.;* E.O. 13026, 61 FR 58767, 3 CFR, 1996 Comp., p. 228; E.O. 13222, 66 FR 44025, 3 CFR, 2001 Comp., p. 783; Notice of August 15, 2012, 77 FR 49699 (August 16, 2012).

■ 2. Section 740.20 is amended by revising paragraph (b)(2)(v) to read as follows:

§ 740.20 License Exception Strategic Trade Authorization (STA).

* * * * *

(b) * * *

(2) * * *

(v) License Exception STA may not be used for any item controlled by ECCN 1C351.a, .b, .c, d.11, .d.12 or .e, ECCNs 1C352, 1C353, 1C354, 1E001 (i.e., for technology, as specified in ECCN 1E001, for items controlled by ECCN 1C351.a, .b, .c, .d.11, .d.12 or .e or ECCNs 1C352, 1C353, or 1C354) or ECCN 1E351.

* * * * *

PART 742—[AMENDED]

■ 3. The authority citation for 15 CFR Part 742 continues to read as follows:

Authority: 50 U.S.C. app. 2401 *et seq.;* 50 U.S.C. 1701 *et seq.;* 22 U.S.C. 3201 *et seq.;* 42 U.S.C. 2139a; 22 U.S.C. 7201 *et seq.;* 22 U.S.C. 7210; Sec 1503, Pub. L. 108–11, 117 Stat. 559; E.O. 12058, 43 FR 20947, 3 CFR, 1978 Comp., p. 179; E.O. 12851, 58 FR 33181, 3 CFR, 1993 Comp., p. 608; E.O. 12938, 59 FR 59099, 3 CFR, 1994 Comp., p. 950; E.O. 13026, 61 FR 58767, 3 CFR, 1996 Comp., p. 228; E.O. 13222, 66 FR 44025, 3 CFR, 2001 Comp., p. 783; Presidential Determination 2003–23 of May 7, 2003, 68 FR 26459, May 16, 2003; Notice of August 15, 2012, 77 FR 49699 (August 16, 2012); Notice of November 9, 2011, 76 FR 70319 (November 10, 2011).

§ 742.2 [Amended]

■ 4. Section 742.2 is amended by removing the phrase ''ECCNs 1C351, 1C352, 1C353, 1C354, and 1C360'' in paragraph (a)(1)(i) and adding in its place the phrase ''ECCNs 1C351, 1C352, 1C353, and 1C354''.

PART 774—[AMENDED]

■ 5. The authority citation for 15 CFR Part 774 continues to read as follows:

Authority: 50 U.S.C. app. 2401 *et seq.;* 50 U.S.C. 1701 *et seq.;* 10 U.S.C. 7420; 10 U.S.C. 7430(e); 22 U.S.C. 287c, 22 U.S.C. 3201 *et seq.,* 22 U.S.C. 6004; 30 U.S.C. 185(s), 185(u); 42 U.S.C. 2139a; 42 U.S.C. 6212; 43 U.S.C. 1354; 15 U.S.C. 1824a; 50 U.S.C. app. 5; 22 U.S.C. 7201 *et seq.;* 22 U.S.C. 7210; E.O. 13026, 61 FR 58767, 3 CFR, 1996 Comp., p. 228; E.O. 13222, 66 FR 44025, 3 CFR, 2001 Comp., p. 783; Notice of August 15, 2012, 77 FR 49699 (August 16, 2012).

Supplement No. 1 to Part 774—[Amended]

■ 6. In Supplement No. 1 to Part 774 (the Commerce Control List), Category 1—Special Materials and Related Equipment, Chemicals, ''Microorganisms'' and ''Toxins,'' ECCN 1C351 is amended by adding a new Note 4 in the ''License Requirements Notes'' under the License Requirements section, by revising the ''Related Controls'' paragraph under the List of Items Controlled section, and, in the ''Items'' paragraph under the List of Items Controlled section, by revising the heading of paragraph a., by revising paragraph a.35, by adding a new paragraph b., by revising paragraph c., by revising the heading of paragraph d., and by revising paragraph d.14 to read as follows:

1C351 Human and zoonotic pathogens and ''toxins'', as follows (see List of Items Controlled).

License Requirements

* * * * *

License Requirement Notes: * * *

4. Unless specified elsewhere in this ECCN 1C351 (e.g., in License Requirement Notes 1–3), this ECCN controls all biological agents and ''toxins,'' regardless of quantity or attenuation, that are identified in the List of Items Controlled for this ECCN, including small quantities or attenuated strains of select biological agents or ''toxins'' that are excluded from the lists of select biological agents or ''toxins'' by the Animal and Plant Health Inspection Service (APHIS), U.S. Department of Agriculture, or the Centers for Disease Control and Prevention (CDC), U.S. Department of Health and Human Services, in accordance with their regulations in 9 CFR part 121 and 42 CFR part 73, respectively.

* * * * *

List of Items Controlled

Unit: * * *

Related Controls: (1) Certain forms of ricin and saxitoxin in 1C351.d.11. and d.12 are CWC Schedule 1 chemicals (see § 742.18 of the EAR). The U.S. Government must provide advance notification and annual reports to the OPCW of all exports of Schedule 1 chemicals. See § 745.1 of the EAR for notification procedures. See 22 CFR part 121, Category XIV and § 121.7 for CWC Schedule 1 chemicals that are subject to the export licensing jurisdiction of the U.S. Department of State, Directorate of Defense Trade Controls. (2) The Animal and Plant Health Inspection Service (APHIS), U.S. Department of Agriculture, and the Centers for Disease Control and Prevention (CDC), U.S. Department of Health and Human Services, maintain controls on the possession, use, and transfer within the United States of certain items controlled by this ECCN (for APHIS, see 7 CFR 331.3(b), 9 CFR 121.3(b), and 9 CFR 121.4(b); for CDC, see 42 CFR 73.3(b) and 42 CFR 73.4(b)). (3) See 22 CFR part 121, Category XIV(b), for modified biological agents and biologically derived substances that are subject to the export licensing jurisdiction of the U.S. Department of State, Directorate of Defense Trade Controls.

Related Definitions: * * *

Items:

a. Viruses identified on the Australia Group (AG) ''List of Biological Agents for Export Control,'' as follows:

* * * * *

a.35. Tick-borne encephalitis virus (Far Eastern subtype, formerly known as Russian Spring-Summer encephalitis virus—see 1C351.b.3 for Siberian subtype);

* * * * *

b. Viruses identified on the APHIS/CDC ''select agents'' lists (see Related Controls paragraph #2 for this ECCN), but not identified on the Australia Group (AG) ''List of Biological Agents for Export Control,'' as follows:

b.1. Reconstructed replication competent forms of the 1918 pandemic influenza virus containing any portion of the coding regions of all eight gene segments;

b.2. SARS-associated coronavirus (SARS-CoV); or

b.3. Tick-borne encephalitis virus (Siberian subtype, formerly West Siberian virus—see 1C351.a.35 for Far Eastern subtype).

c. Bacteria identified on the Australia Group (AG) ''List of Biological Agents for Export Control,'' as follows:

c.1. Bacillus anthracis;

c.2. Brucella abortus;

c.3. Brucella melitensis;

c.4. Brucella suis;

c.5. Burkholderia mallei (Pseudomonas mallei);

c.6. Burkholderia pseudomallei (Pseudomonas pseudomallei);

c.7. Chlamydophila psittaci (formerly known as Chlamydia psittaci);

c.8. Clostriduim argentinense (formerly known as Clostridium botulinum Type G), botulinum neurotoxin producing strains;

c.9. Clostridium baratii, botulinum neurotoxin producing strains;

c.10. Clostridium botulinum;

c.11. Clostridium butyricum, botulinum neurotoxin producing strains;

c.12. Clostridium perfringens, epsilon toxin producing types;

c.13. Coxiella burnetii;

c.14. Francisella tularensis;

c.15. Rickettsia prowazekii;

c.16. Salmonella typhi;

c.17. Shiga toxin producing Escherichia coli (STEC) of serogroups O26, O45, O103, O104, O111, O121, O145, O157, and other shiga toxin producing serogroups;

Note: Shiga toxin producing Escherichia coli (STEC) is also known as enterohaemorrhagic E. coli (EHEC) or verocytotoxin producing E. coli (VTEC).

c.18. Shigella dysenteriae;

c.19. Vibrio cholerae; or

c.20. Yersinia pestis.

d. ''Toxins'' identified on the Australia Group (AG) ''List of Biological Agents for Export Control,'' as follows, and ''subunits'' thereof:

* * * * *

d.14. Staphylococcus aureus enterotoxins, hemolysin alpha toxin, and toxic shock syndrome toxin (formerly known as Staphylococcus enterotoxin F);

* * * * *

■ 7. In Supplement No. 1 to Part 774 (the Commerce Control List), Category 1— Special Materials and Related Equipment, Chemicals, ''Microorganisms'' and ''Toxins,'' ECCN 1C352 is amended by revising the ''License Requirement Note'' under the License Requirements section and by

revising the ''Related Controls'' paragraph under the List of Items Controlled section to read as follows:

1C352 Animal pathogens, as follows (see List of Items Controlled).

License Requirements

* * * * *

License Requirements Notes:

1. All vaccines are excluded from the scope of this ECCN. See ECCN 1C991 for vaccines.

2. Unless specified elsewhere in this ECCN 1C352 (e.g., in License Requirement Note 1), this ECCN controls all biological agents, regardless of quantity or attenuation, that are identified in the List of Items Controlled for this ECCN, including small quantities or attenuated strains of select biological agents that are excluded from the lists of select biological agents or ''toxins'' by the Animal and Plant Health Inspection Service (APHIS), U.S. Department of Agriculture, or the Centers for Disease Control and Prevention (CDC), U.S. Department of Health and Human Services, in accordance with their regulations in 9 CFR part 121 and 42 CFR part 73, respectively.

* * * * *

List of Items Controlled

Unit: * * *

Related Controls: (1) The Animal and Plant Health Inspection Service (APHIS), U.S. Department of Agriculture, and the Centers for Disease Control and Prevention (CDC), U.S. Department of Health and Human Services, maintain controls on the possession, use, and transfer within the United States of certain items controlled by this ECCN (for APHIS, see 7 CFR 331.3(b), 9 CFR 121.3(b), and 9 CFR 121.4(b); for CDC, see 42 CFR 73.3(b) and 42 CFR 73.4(b)). (2) See 22 CFR part 121, Category XIV(b), for modified biological agents and biologically derived substances that are subject to the export licensing jurisdiction of the U.S. Department of State, Directorate of Defense Trade Controls.

Related Definitions: * * *

Items:

* * * * *

■ 8. In Supplement No. 1 to Part 774 (the Commerce Control List), Category 1— Special Materials and Related Equipment, Chemicals, ''Microorganisms'' and ''Toxins,'' ECCN 1C353 is amended, under the License Requirements section, by revising the ''License Requirements Note'' and, under the List of Items Controlled section, by revising the ''Related Controls'' paragraph, by revising paragraphs a.1. and b.1. in the ''Items'' paragraph, and by revising Technical Note 3, to read as follows:

1C353 Genetic elements and genetically modified organisms, as follows (see List of Items Controlled).

License Requirements

* * * * *

License Requirements Notes:

1. Vaccines that contain genetic elements or genetically modified organisms identified in this ECCN are controlled by ECCN 1C991.

2. Unless specified elsewhere in this ECCN 1C353 (e.g., in License Requirement Note 1), this ECCN controls genetic elements or genetically modified organisms for all biological agents and ''toxins,'' regardless of quantity or attenuation, that are identified in the List of Items Controlled for this ECCN, including genetic elements or genetically modified organisms for attenuated strains of select biological agents or ''toxins'' that are excluded from the lists of select biological agents or ''toxins'' by the Animal and Plant Health Inspection Service (APHIS), U.S. Department of Agriculture, or the Centers for Disease Control and Prevention (CDC), U.S. Department of Health and Human Services, in accordance with the APHIS regulations in 7 CFR part 331 and 9 CFR part 121 and the CDC regulations in 42 CFR part 73.

* * * * *

List of Items Controlled

Unit: * * *

Related Controls: (1) The Animal and Plant Health Inspection Service (APHIS), U.S. Department of Agriculture, and the Centers for Disease Control and Prevention (CDC), U.S. Department of Health and Human Services, maintain controls on the possession, use, and transfer within the United States of certain items controlled by this ECCN, including (but not limited to) certain genetic elements, recombinant nucleic acids, and recombinant organisms associated with the agents or toxins in ECCN 1C351, 1C352, or 1C354 (for APHIS, see 7 CFR 331.3(c), 9 CFR 121.3(c), and 9 CFR 121.4(c); for CDC, see 42 CFR 73.3(c) and 42 CFR 73.4(c)). (2) See 22 CFR part 121, Category XIV(b), for modified biological agents and biologically derived substances that are subject to the export licensing jurisdiction of the U.S. Department of State, Directorate of Defense Trade Controls.

Related Definition: * * *

Items:

a. * * *

a.1. Genetic elements that contain nucleic acid sequences associated with the pathogenicity of microorganisms controlled by 1C351.a to .c, 1C352, or 1C354;

a.2. * * *

b. * * *

b.1. Genetically modified organisms that contain nucleic acid sequences associated with the pathogenicity of microorganisms controlled by 1C351.a to .c, 1C352, or 1C354;

b.2. * * *

Technical Notes:

* * * * *

3. ''Nucleic acid sequences associated with the pathogenicity of any of the microorganisms controlled by 1C351.a to .c, 1C352, or 1C354'' means any sequence specific to the relevant controlled microorganism that:

a. In itself or through its transcribed or translated products represents a significant hazard to human, animal or plant health; or

b. Is known to enhance the ability of a microorganism controlled by 1C351.a to .c, 1C352, or 1C354, or any other organism into which it may be inserted or otherwise integrated, to cause serious harm to human, animal or plant health.

* * * * *

■ 9. In Supplement No. 1 to Part 774 (the Commerce Control List), Category 1—Special Materials and Related Equipment, Chemicals, ''Microorganisms'' and ''Toxins,'' ECCN 1C354 is amended by revising the ''License Requirements Note'' under the License Requirements section and by revising the ''Related Controls'' paragraph and the ''Items'' paragraph under the List of Items Controlled section to read as follows:

1C354 Plant pathogens, as follows (see List of Items Controlled).

License Requirements

* * * * *

License Requirements Notes:

1. All vaccines are excluded from the scope of this ECCN. See ECCN 1C991 for vaccines.

2. Unless specified elsewhere in this ECCN 1C354 (e.g., in License Requirement Note 1), this ECCN controls all biological agents, regardless of quantity or attenuation, that are identified in the List of Items Controlled for this ECCN, including small quantities or attenuated strains of select biological agents that are excluded from the list of PPQ select agents and ''toxins'' by the Animal and Plant Health Inspection Service (APHIS), U.S. Department of Agriculture, in accordance with their regulations in 7 CFR part 331.

* * * * *

List of Items Controlled

Unit: * * *

Related Controls: (1) The Animal and Plant Health Inspection Service (APHIS), U.S. Department of Agriculture, maintains controls on the possession, use, and transfer within the United States of certain items controlled by this ECCN (see 7 CFR 331.3(c), 9 CFR 121.3(c), and 9 CFR 121.4(c)). (2) See 22 CFR part 121, Category XIV(b), for modified biological agents and biologically derived substances that are subject to the export licensing jurisdiction of the U.S. Department of State, Directorate of Defense Trade Controls.

Related Definition: * * *

Items:

a. Bacteria, as follows:

a.1. *Xanthomonas albilineans;*

a.2. *Xanthomonas axonopodis* pv. *citri* (*Xanthomonas campestris* pv. *citri* A) (*Xanthomonas campestris* pv. *citri*);

a.3. *Xanthomonas* oryzae [this species of proteobacteria is identified on the APHIS ''select agents'' list (see Related Controls paragraph for this ECCN), but only the pathovar *Xanthomonas oryzae pv. oryzae* (syn. *Pseudomonas campestris* pv. *oryzae*) is identified on the Australia Group (AG) ''List of Plant Pathogens for Export Control'']';

a.4. *Clavibacter michiganensis* subspecies *sepedonicus* (syn. *Corynebacterium michiganensis* subspecies *sepedonicum* or *Corynebacterium sepedonicum*);

a.5. *Ralstonia solanacearum,* race 3, biovar 2;

a.6. *Raythayibactor toxicus* [this bacterium is identified on the APHIS ''select agents'' list (see the Related Controls paragraph for this ECCN), but is not identified on the Australia Group (AG) ''List of Plant Pathogens for Export Control'']. b. Fungi, as follows:

b.1. *Colletotrichum kahawae* (*Colletotrichum coffeanum* var. *virulans*);

b.2. *Cochliobolus miyabeanus* (*Helminthosporium oryzae*);

b.3. *Microcyclus ulei* (syn. *Dothidella ulei*);

b.4. *Puccinnia graminis* ssp. *graminis* var. *graminis*/*Puccinia graminis* ssp. *graminis* var. *stakmanii* (*Puccinia graminis* [syn. *Puccinia graminis* f. sp. *tritici*]);

b.5. *Puccinia striiformis* (syn. *Puccinia glumarum*);

b.6. *Magnaporthe oryzae* (*Pyricularia oryzae*);

b.7. *Peronosclerospora philippinensis* (*Peronosclerospora sacchari*);

b.8. *Sclerophthora rayssiae* var. *zeae;*

b.9. *Synchytrium endobioticum;*

b.10. *Tilletia indica;*

b.11. *Thecaphora solani;*

b.12. *Phoma glycinicola* (formerly *Pyrenochaeta glycines*) [this fungus is identified on the APHIS ''select agents'' list (see the Related Controls paragraph for this ECCN), but is not identified on the Australia Group (AG) ''List of Plant Pathogens for Export Control'']. c. Viruses, as follows:

c.1. Andean potato latent virus (Potato Andean latent tymovirus);

c.2. Potato spindle tuber viroid.

■ 10. In Supplement No. 1 to Part 774 (the Commerce Control List), Category 1—Special Materials and Related Equipment, Chemicals, ''Microorganisms'' and ''Toxins,'' ECCN 1C360 is removed.

■ 11. In Supplement No. 1 to Part 774 (the Commerce Control List), Category 1—Special Materials and Related Equipment, Chemicals, ''Microorganisms'' and ''Toxins,'' ECCN 1C991 is amended under the List of Items Controlled section by revising the fourth sentence in the ''Related Definitions'' paragraph and by revising paragraph a. in the ''Items'' paragraph to read as follows:

1C991 Vaccines, immunotoxins, medical products, diagnostic and food testing kits, as follows (see List of Items Controlled).

* * * * *

List of Items Controlled

Unit: * * *

Related Controls: * * *

Related Definitions: * * * Biological toxins in any other configuration, including bulk shipments, or for any other end-uses are controlled by ECCN 1C351. * * *

Items:

a. Vaccines against items controlled by ECCN 1C351, 1C352, 1C353 or 1C354.

* * * * *

■ 12. In Supplement No. 1 to Part 774 (the Commerce Control List), Category 1—Special Materials and Related Equipment, Chemicals, ''Microorganisms'' and ''Toxins,'' ECCN 1E001 is amended by revising the ECCN heading and by revising the ''Control(s)'' language for ''Country Chart—CB Column 1'' in the License Requirements section to read as follows:

1E001 ''Technology'' according to the General Technology Note for the ''Development'' or ''Production'' of items controlled by 1A001.b, 1A001.c, 1A002, 1A003, 1A004, 1A005, 1A006.b, 1A007, 1A008, 1A101, 1B (except 1B999), or 1C (except 1C355, 1C980 to 1C984, 1C988, 1C990, 1C991, 1C995 to 1C999).

License Requirements

Reason for Control: NS, MT, NP, CB, RS, AT

Control(s)	*Country chart*
* * * * *	
CB applies to ''technology'' for items controlled by 1C351, 1C352, 1C353, or 1C354.	CB Column 1.
* * * * *	

License Requirements Note: * * *

* * * * *

■ 13. In Supplement No. 1 to Part 774 (the Commerce Control List), Category 1—Special Materials and Related Equipment, Chemicals, ''Microorganisms'' and ''Toxins,'' ECCN 1E351 is amended by revising the ECCN heading and by revising the ''Control(s)'' language for ''Country Chart—CB Column 1'' in the License Requirements section to read as follows:

1E351 ''Technology'' according to the ''General Technology Note'' for the disposal of chemicals or microbiological materials controlled by 1C350, 1C351, 1C352, 1C353, or 1C354.

License Requirements

Reason for Control: CB, AT

Control(s)	*Country chart*
CB applies to ''technology'' for the disposal of items controlled by 1C351, 1C352, 1C353, or 1C354.	CB Column 1.
* * * * *	

* * * * *

■ 14. In Supplement No. 1 to Part 774 (the Commerce Control List), Category 2—Materials Processing, ECCN 2B352 is amended under the ''*Items*'' paragraph in the List of Items Controlled section by redesignating paragraphs f. through h. as paragraphs g. through i., respectively, and adding a new paragraph f. to read as follows:

2B352 Equipment capable of use in handling biological materials, as follows (see List of Items Controlled).

* * * * *

List of Items Controlled

Unit: * * *

Related Controls: * * *

Related Definitions: * * *

Items:

* * * * *

f. Spray-drying equipment capable of drying toxins or pathogenic microorganisms having all of the flowing characteristics:

f.1. A water evaporation capacity of ≥ 0.4 kg/h and ≤ 400 kg/h;

f.2. The ability to generate a typical mean product particle size of ≤ 10 micrometers with existing fittings or by minimal modification of the spray-dryer with atomization nozzles enabling generation of the required particle size; and

f.3. Capable of being sterilized or disinfected in situ.

* * * * *

Dated: May 29, 2013.

Kevin J. Wolf,

Assistant Secretary for Export Administration.

[FR Doc. 2013–13270 Filed 6–4–13; 8:45 am]

BILLING CODE 3510–33–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 522

[Docket No. FDA–2013–N–0002]

New Animal Drugs; Dexmedetomidine; Lasalocid; Melengestrol; Monensin; and Tylosin; Correction

AGENCY: Food and Drug Administration, HHS.

ACTION: Correcting amendments.

SUMMARY: The Food and Drug Administration (FDA) is correcting a document amending the animal drug regulations to reflect approval actions for new animal drug applications and abbreviated new animal drug applications during March 2013 that appeared in the **Federal Register** of April 30, 2013. FDA is correcting the approved strengths of dexmedetomidine hydrochloride injectable solution. This correction is being made to improve the accuracy of the animal drug regulations.

DATES: This rule is effective June 5, 2013.

FOR FURTHER INFORMATION CONTACT: George K. Haibel, Center for Veterinary Medicine (HFV–6), Food and Drug

Administration, 7519 Standish Pl., Rockville, MD 20855, 240–276–9019, *ghaibel@fda.hhs.gov.*

SUPPLEMENTARY INFORMATION: The Food and Drug Administration (FDA) is correcting a document amending the animal drug regulations to reflect approval actions for new animal drug applications and abbreviated new animal drug applications during March 2013 that appeared in the **Federal Register** of April 30, 2013 (78 FR 25182). FDA is correcting the approved strengths of dexmedetomidine hydrochloride injectable solution. This correction is being made to improve the accuracy of the animal drug regulations.

List of Subjects in 21 CFR Part 522

Animal drugs.

Therefore, 21 CFR part 522 is corrected by making the following correcting amendment.

PART 522—IMPLANTATION OR INJECTABLE DOSAGE FORM NEW ANIMAL DRUGS

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

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

■ 2. In § 522.558, revise paragraph (a) to read as follows:

§ 522.558 Dexmedetomidine.

(a) *Specifications.* Each milliliter of solution contains 0.1 or 0.5 milligrams dexmedetomidine hydrochloride.

* * * * *

Dated: May 31, 2013.

Bernadette Dunham,

Director, Center for Veterinary Medicine.

[FR Doc. 2013–13331 Filed 6–4–13; 8:45 am]

BILLING CODE 4160–01–P

DEPARTMENT OF STATE

22 CFR Part 41

[Public Notice 8348]

RIN 1400–AD21

Visas: Classification of Immediate Family Members as G Nonimmigrants

AGENCY: State Department.

ACTION: Final rule.

SUMMARY: This rule permits qualified immediate family members of A–1 or A–2 nonimmigrants to be independently classified as G–1, G–2, G–3, or G–4 nonimmigrants. It also clarifies that immediate family members of G–1, G–2, G–3, and G–4 nonimmigrants who have employment authorization may remain in G classification upon gaining employment that would otherwise allow them to change status to A classification. This rule is being promulgated to allow family members of employees of bilateral missions to work at international organizations in a visa status that reflects their position with the international organization.

DATES: This rule is effective June 5, 2013.

FOR FURTHER INFORMATION CONTACT: Lauren A. Prosnik, Legislation and Regulations Division, Visa Services, Department of State, 2401 E Street NW., Room L–603D, Washington, DC 20520–0106, (202) 663–1260.

SUPPLEMENTARY INFORMATION:

Why is the Department promulgating this rule?

Currently, 22 CFR 41.22(b) requires that an alien entitled to classification as an A–1 or A–2 nonimmigrant must be classified as such, even those who are also eligible for another nonimmigrant classification. This rule will allow an A–1 or A–2 derivative applicant who works for an international organization to be classified as G–1, G–2, G–3, or G–4 nonimmigrant.

Additionally, this rule amends 22 CFR 41.24(b)(4) to clarify that an immediate family member of a principal alien classifiable G–1 or G–2, G–3 or G–4 who has employment authorization may maintain G classification, even if employment obtained after entry would allow them to be classified under INA 101(a)(15)(A).

With this change, family members of diplomats assigned to the United States will be able to accept employment with international organizations and obtain visas that reflect their status as employees of such organizations, rather than as diplomatic dependents. Inability to obtain G visas has posed an impediment to the employment of some individuals in this category.

Regulatory Findings

Administrative Procedure Act

This regulation involves a foreign affairs function of the United States and, therefore, in accordance with 5 U.S.C. 553(a)(1), is not subject to the rulemaking procedures set forth at 5 U.S.C. 553.

Regulatory Flexibility Act/Executive Order 13272: Small Business

Because this final rule is exempt from notice and comment rulemaking under 5 U.S.C. 553, it is exempt from the regulatory flexibility analysis requirements set forth by the Regulatory Flexibility Act (5 U.S.C. 603 and 604). Nonetheless, consistent with the Regulatory Flexibility Act (5 U.S.C. 605(b)), the Department certifies that this rule will not have a significant economic impact on a substantial number of small entities.

Unfunded Mandates Reform Act of 1995

Section 202 of the Unfunded Mandates Reform Act of 1995, 2 U.S.C. 1532, generally requires agencies to prepare a statement before proposing any rule that may result in an annual expenditure of $100 million or more by State, local, or tribal governments, or by the private sector. This rule will not result in any such expenditure, nor will it significantly or uniquely affect small governments.

Small Business Regulatory Enforcement Fairness Act of 1996

This rule is not a major rule as defined by 5 U.S.C. 804. This rule will not result in an annual effect on the economy of $100 million or more; a major increase in costs or prices; or adverse effects on competition, employment, investment, productivity, innovation, or the ability of United States-based companies to compete with foreign-based companies in domestic and import markets.

Executive Order 12866

The Department of State has reviewed this rule to ensure its consistency with the regulatory philosophy and principles set forth in Executive Order 12866 and has determined that the benefits of this regulation outweigh any cost. The Department does not consider this rule to be an economically significant action within the scope of section 3(f)(1) of the Executive Order since it is not likely to have an annual effect on the economy of $100 million or more or to adversely affect in a material way the economy, a sector of the economy, competition, jobs, the environment, public health or safety, or State, local or tribal governments or communities.

Executive Orders 12372 and 13132: Federalism

This regulation will not have substantial direct effects on the States, on the relationship between the national government and the States, or the distribution of power and responsibilities among the various levels of government. The rule will not have federalism implications warranting the application of Executive Orders 12372 and 13132.

Executive Order 12988: Civil Justice Reform

The Department has reviewed the regulation in light of sections 3(a) and 3(b)(2) of Executive Order 12988 to eliminate ambiguity, minimize litigation, establish clear legal standards, and reduce burden.

Executive Order 13563: Improving Regulation and Regulatory Review

The Department has considered this rule in light of Executive Order 13563, dated January 18, 2011, and affirms that this regulation is consistent with the guidance therein.

Paperwork Reduction Act

This rule does not impose information collection requirements under the provisions of the Paperwork Reduction Act, 44 U.S.C. Chapter 35.

List of Subjects in 22 CFR Part 41

Aliens, Documentation of nonimmigrants, Foreign officials, Immigration, Passports and Visas.

For the reasons stated in the preamble, the Department of State amends 22 CFR part 41 to read as follows:

PART 41—[AMENDED]

■ 1. The authority citation for Part 41 continues to read as follows:

Authority: 8 U.S.C. 1104; Pub. L. 105–277, 112 Stat. 2681–795 through 2681–801; 8 U.S.C. 1185 note (section 7209 of Pub. L. 108–458, as amended by section 546 of Pub. L. 109–295).

■ 2. Section 41.22 is amended by revising paragraphs (a) and (b) to read as follows:

§ 41.22 Officials of foreign governments.

(a) *Criteria for classification of foreign government officials.* (1) An alien is classifiable A–1 or A–2 under INA section 101(a)(15)(A) (i) or (ii) if the principal alien:

(i) Has been accredited by a foreign government recognized de jure by the United States;

(ii) Intends to engage solely in official activities for that foreign government while in the United States; and

(iii) Has been accepted by the President, the Secretary of State, or a consular officer acting on behalf of the Secretary of State.

(2) A member of the immediate family of a principal alien is classifiable A–1 or A–2 under INA section 101(a)(15)(A)(i) or (ii) if the principal alien is so classified.

(b) *Classification under INA section 101(a)(15)(A).* An alien entitled to classification under INA section 101(a)(15)(A) shall be classified under this section even if eligible for another nonimmigrant classification. An exception may be made where an immediate family member classifiable as A–1 or A–2 under paragraph (a)(2) of this section is also independently classifiable as a principal under INA section 101(a)(15)(G)(i), (ii), (iii), or (iv).

* * * * *

■ 3. Section 41.24 is amended by revising paragraph (b) to read as follows:

§ 41.24 International organization aliens.

* * * * *

(b) *Aliens coming to international organizations.* (1) An alien is classifiable under INA 101(a)(15)(G) if the consular officer is satisfied that the alien is within one of the classes described in that section and seeks to enter or transit the United States in pursuance of official duties. If the purpose of the entry or transit is other than pursuance of official duties, the alien is not classifiable under INA *section* 101(a)(15)(G).

(2) An alien applying for a visa under the provisions of INA *section* 101(a)(15)(G) may not be refused solely on the grounds that the applicant is not a national of the country whose government the applicant represents.

(3) An alien seeking to enter the United States as a foreign government representative to an international organization, who is also proceeding to the United States on official business as a foreign government official within the meaning of INA *section* 101(a)(15)(A), shall be issued a visa under that section, if otherwise qualified.

(4) An alien not classified under INA *section* 101(a)(15)(A) but entitled to classification under INA *section* 101(a)(15)(G) shall be classified under the latter section, even if also eligible for another nonimmigrant classification. An alien classified under INA *section* 101(a)(15)(G) as an immediate family member of a principal alien classifiable G–1 or G–2, G–3 or G–4, may continue to be so classified even if he or she obtains employment subsequent to his or her initial entry into the United States that would allow classification under INA *section* 101(a)(15)(A). Such alien shall not be classified in a category other than A or G, even if also eligible for another nonimmigrant classification.

* * * * *

Dated: May 2, 2013.

Janice L. Jacobs,

Assistant Secretary for Consular Affairs, Department of State.

[FR Doc. 2013–13315 Filed 6–4–13; 8:45 am]

BILLING CODE 4710–06–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 100

[Docket No. USCG–2013–0402]

RIN 1625–AA08

Special Local Regulations for Marine Events, Pleasantville Aquatics 15th Annual 5K Open Water Swim, Intracoastal Waterway; Atlantic City, NJ

AGENCY: Coast Guard, DHS.

ACTION: Temporary final rule.

SUMMARY: The Coast Guard is establishing a special local regulation on the Intracoastal Waterway in Atlantic City, NJ. This special local regulation will restrict vessel traffic on a portion of the Intracoastal Waterway from operating while a swim event is taking place. This special local regulation is necessary to protect the swimmers from the hazards associated with passing vessel traffic.

DATES: This rule will be effective from 9 a.m. until 12 noon on June 9, 2013.

ADDRESSES: Documents mentioned in this preamble are part of docket [USCG–2013–0402]. To view documents mentioned in this preamble as being available in the docket, go to *http://www.regulations.gov,* type the docket number in the ''SEARCH'' box and click ''SEARCH.'' Click on Open Docket Folder on the line associated with this rulemaking. You may also visit the Docket Management Facility in Room W12–140 on the ground floor of the Department of Transportation West Building, 1200 New Jersey Avenue SE., Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: If you have questions on this temporary rule, call or email Lieutenant Corrina Ott, Chief Waterways Management, Sector Delaware Bay, Coast Guard; telephone (215) 271–4902, email *corrina.ott@uscg.mil.* If you have questions on viewing or submitting material to the docket, call Barbara Hairston, Program Manager, Docket Operations, telephone (202) 366–9826.

SUPPLEMENTARY INFORMATION:

Table of Acronyms

DHS Department of Homeland Security
FR Federal Register
NPRM Notice of Proposed Rulemaking

A. Regulatory History and Information

The Coast Guard is issuing this temporary final rule without prior notice and opportunity to comment pursuant to authority under section 4(a) of the Administrative Procedure Act (APA) (5 U.S.C. 553(b)). This provision authorizes an agency to issue a rule without prior notice and opportunity to comment when the agency for good cause finds that those procedures are ''impracticable, unnecessary, or contrary to the public interest.'' Under 5 U.S.C. 553(b)(B), the Coast Guard finds that good cause exists for not publishing a notice of proposed rulemaking (NPRM) with respect to this rule because immediate action is necessary to provide for the safety of life and property in the navigable water. In addition, publishing an NPRM is impracticable given that the final details for this event were not received by the Coast Guard with sufficient time for a notice and comment period to run before the start of the event. Thus, delaying this rule to wait for a notice and comment period to run would be impracticable and would be contrary to the public interest by inhibiting the Coast Guard's ability to protect the swimmers from the hazards associated with maritime traffic.

Under 5 U.S.C. 553(d)(3), the Coast Guard finds that good cause exists for making this rule effective less than 30 days after publication in the **Federal Register**. For the same reasons discussed in the preceding paragraph, a 30 day notice period would be impracticable and contrary to the public interest.

B. Basis and Purpose

On June 9, 2013, swimmers will be in the waters of the Intracoastal Waterway for the Pleasantville Aquatics 15th Annual 5K Open Water Swim. The Captain of the Port, Sector Delaware Bay, has determined that this rule is necessary to ensure safety of life on the navigable waters of the United States during the open water swim.

C. Discussion of Rule

On June 9, 2013, Pleasantville Aquatics will host a 5K swimming race between Albany Avenue and Dorset Avenue bridges. The race will be conducted in two waves beginning at 9 a.m. A shorter 2K race will also be conducted in two waves beginning at 11 a.m.

To mitigate the risks associated with the swim race, the Captain of the Port, Sector Delaware Bay has established a special local regulation in the vicinity of the swim sites. The regulated area will encompass all waters shoreline to shoreline starting at 39° 20′ 31″ N, 74° 28′ 41″ W North to 39° 21′ 52″ N, 74° 26′ 48″ W East to 39° 21′ 51″ N, 74° 26′ 43″ W South to 39° 20′ 30″ N, 74° 28′ 40″ W West to 39° 20′ 31″ N, 74° 28′ 41″ W. The regulated area will be effective and enforced from 9 a.m. to 12 p.m. on June 9, 2013.

Entry into, transiting, or anchoring within the regulated area is prohibited unless authorized by the Captain of the Port, Sector Delaware Bay, or her representative. The Captain of the Port, Sector Delaware Bay, or her representative may be contacted via VHF channel 16.

D. Regulatory Analyses

We developed this rule after considering numerous statutes and executive orders related to rulemaking. Below we summarize our analyses based on 13 of these statutes or executive orders.

1. Regulatory Planning and Review

This rule is not a significant regulatory action under section 3(f) of Executive Order 12866, Regulatory Planning and Review, and does not require an assessment of potential costs and benefits under section 6(a)(3) of that Order. The Office of Management and Budget has not reviewed it under that Order. Although this regulation restricts vessel traffic from operating within the safety zone on the navigable waters of the Intracoastal Waterway, Atlantic City, NJ, the effect of this regulation will not be significant due to the limited duration that the safety zone will be in effect. The enforcement window will be for three hours. The race has been conducted in years past, as this is the 15th annual event, therefore, mariners should expect this event to occur.

2. Impact on Small Entities

Under the Regulatory Flexibility Act (5 U.S.C. 601–612), we have considered whether this rule would have a significant economic impact on a substantial number of small entities. The term ''small entities'' comprises small businesses, not-for-profit organizations that are independently owned and operated and are not dominant in their fields, and governmental jurisdictions with populations of less than 50,000.

The Coast Guard certifies under 5 U.S.C. 605(b) that this rule will not have a significant economic impact on a substantial number of small entities. This rule will affect the following entities, some of which might be small entities: The owners or operators of vessels intending to transit or anchor in a portion of the Intracoastal Waterway between 9 a.m. and 12 p.m. on June 9, 2013.

This regulation will not have a significant economic impact on a substantial number of small entities for the following reasons: this rule will only be enforced for a short period of time. In addition, this is an annual event that mariners who frequently navigate these waters are familiar with. In the event that this special local regulation affects shipping, commercial vessels may request permission from the Captain of the Port, Sector Delaware Bay, to transit through regulated area. The Coast Guard will give notice to the public via a Broadcast to Mariners that the regulation is in effect.

3. Assistance for Small Entities

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Pub. L. 104–121), we offer to assist small entities in understanding the rule so that they can better evaluate its effects on them and participate in the rulemaking process.

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 calls 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 State or local governments and would either preempt State law or impose a substantial direct cost of compliance on them. We have analyzed this rule under that Order and have determined that it does not have implications for federalism.

6. Protest Activities

The Coast Guard respects the First Amendment rights of protesters. Protesters are asked to contact the

person listed in the **FOR FURTHER INFORMATION CONTACT** section to coordinate protest activities so that your message can be received without jeopardizing the safety or security of people, places or vessels.

7. Unfunded Mandates Reform Act

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

8. Taking of Private Property

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

9. Civil Justice Reform

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

10. Protection of Children

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

11. Indian Tribal Governments

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

12. Energy Effects

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

13. Technical Standards

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

14. Environment

We have analyzed this rule under Department of Homeland Security Management Directive 023–01 and Commandant Instruction M16475.lD, which guide the Coast Guard in complying with the National Environmental Policy Act of 1969 (NEPA) (42 U.S.C. 4321–4370f), and have concluded 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 establishment of a safety zone for a duration of less than one week in order to ensure the safety of swimmers. This rule is categorically excluded, under figure 2–1, paragraph 34(h), of the Instruction because it involves the establishment of a special local regulation. An environmental analysis checklist and a categorical exclusion determination are not required. We seek any comments or information that may lead to the discovery of a significant environmental impact from this rule.

List of Subjects in 33 CFR Part 100

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

For the reasons discussed in the preamble, the Coast Guard amends 33 CFR part 100 as follows:

PART 100—SAFETY OF LIFE ON NAVIGABLE WATERS

■ 1. The authority citation for part 100 continues to read as follows:

Authority: 33 U.S.C. 1233.

■ 2. Add temporary § 100.35T05–0402, to read as follows:

§ 100.35T05–0402 Special Local Regulations for Marine Events, Pleasantville Aquatics 15th Annual 5K Open Water Swim, Intracoastal Waterway; Atlantic City, NJ.

(a) *Location.* The regulated area will encompass all waters shoreline to shoreline starting at 39°20′31″ N, 74°28′41″ W North to 39°21′52″ N, 74°26′48″ W East to 39°21′51″ N, 74°26′43″ W South to 39°20′30″ N, 74°28′40″ W West to 39°20′31″ N, 74°28′41″ W.

(b) *Enforcement period.* This rule will be enforced from 9 a.m. until 12 noon on June 9, 2013.

(c) *Regulations.* All persons are required to comply with the general regulations governing special local regulations in 33 CFR part 100.

(1) No person or vessel may approach or remain within 100 yards of any swimmer or safety craft within the regulated area during the enforcement period of this regulation unless they are officially participating in the 15th Annual 5K Open Water Swim event or are otherwise authorized by the Captain of the Port Sector Delaware Bay or her Designated on scene Patrol Commander.

(2) The Coast Guard Patrol Commander may forbid and control the movement of all vessels in the regulated area(s). When hailed or signaled by an official patrol vessel, a vessel in these areas shall immediately comply with the directions given. Failure to do so may result in expulsion from the area, citation for failure to comply, or both.

(3) The Coast Guard Patrol Commander may delay, modify, or terminate the event, at any time if it is deemed necessary for the protection of life or property.

(4) Only event sponsor designated participants and official patrol vessels are allowed to enter the regulated area.

(5) Spectators are allowed inside the regulated area only if they remain within a designated spectator area. Spectators may contact the Coast Guard Patrol Commander to request permission to pass through the regulated area. If permission is granted, spectators must pass directly through the regulated area at safe speed and without loitering.

(6) To seek permission to transit the regulated area, the Captain of the Port or her representative can be contacted via Sector Delaware Bay Command Center (215) 271–4940 or via VHF radio on channel 16.

(7) This section applies to all vessels wishing to transit through the regulated area except vessels that are engaged in the following operations:

(i) Enforcing laws;

(ii) Servicing aids to navigation, and

(iii) Emergency response vessels.

(8) Each person and vessel in the regulated area shall obey any direction or order of the Captain of the Port;

(9) The Captain of the Port may take possession and control of any vessel in the regulated area;

(10) The Captain of the Port may remove any person, vessel, article, or thing from the regulated area;

(11) No person may board, or take or place any article or thing on board, any vessel in the regulated area without the permission of the Captain of the Port; and

(12) No person may take or place any article or thing upon any waterfront facility in the regulated area without the permission of the Captain of the Port.

(d) *Definitions.* The Captain of the Port means the Commanding Officer of Sector Delaware Bay and the ''on-scene

representative'' of the Captain of the Port, Sector Delaware Bay is any Coast Guard commissioned warrant or petty officer who has been authorized by the Captain of the Port to act on her behalf.

(e) *Enforcement.* The U.S. Coast Guard may be assisted in the patrol and enforcement of the regulated by Federal, State, and local agencies.

Dated: May 20, 2013.

K. Moore,

Captain, U.S. Coast Guard, Captain of the Port Sector Delaware Bay.

[FR Doc. 2013–13282 Filed 6–4–13; 8:45 am]

BILLING CODE 9110–04–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 165

[Docket No. USCG–2013–0268]

RIN 1625–AA00

Safety Zone; Great Western Tube Float; Colorado River; Parker, AZ

AGENCY: Coast Guard, DHS.

ACTION: Temporary final rule.

SUMMARY: The Coast Guard is establishing a temporary safety zone on the navigable waters of the Colorado River in Parker, Arizona for the Great Western Tube Float on June 8, 2013. This temporary safety zone is necessary to provide for the safety of the participants, crew, spectators, participating vessels, and other vessels and users of the waterway. Persons and vessels are prohibited from entering into, transiting through or anchoring within this safety zone unless authorized by the Captain of the Port or his designated representative.

DATES: This rule is effective from 8:30 a.m. to 3 p.m. on June 8, 2013.

ADDRESSES: Documents mentioned in this preamble are part of docket [USCG–2013–0268]. To view documents mentioned in this preamble as being available in the docket, go to *http://www.regulations.gov,* type the docket number in the ''SEARCH'' box and click ''SEARCH.'' Click on Open Docket Folder on the line associated with this rulemaking. You may also visit the Docket Management Facility in Room W12–140 on the ground floor of the Department of Transportation West Building, 1200 New Jersey Avenue SE., Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: If you have questions on this rule, call or email Lieutenant John Bannon, Waterways Management, U.S. Coast Guard Sector San Diego; telephone (619) 278–7261, email *John.E.Bannon@uscg.mil.* If you have questions on viewing or submitting material to the docket, call Barbara Hairston, Program Manager, Docket Operations, telephone (202) 366–9826.

SUPPLEMENTARY INFORMATION:

Table of Acronyms

DHS Department of Homeland Security
FR Federal Register
NPRM Notice of Proposed Rulemaking

A. 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)(B), the Coast Guard finds that good cause exists for not publishing a notice of proposed rulemaking (NPRM) with respect to this rule because publishing an NPRM would have been impracticable. The permit application was not received with enough time available to publish an NPRM. The event is scheduled to take place, and as such, immediate action is necessary to ensure the safety of vessels, spectators, participants, and others in the vicinity of the marine event on the dates and times this rule will be in effect.

Under 5 U.S.C. 553(d)(3), for the same reasons mentioned above, the Coast Guard finds that good cause exists for making this rule effective less than 30 days after publication in the **Federal Register**. Delaying the effective date would be impracticable and contrary to the public interest, since immediate action is needed to ensure public safety.

B. Basis and Purpose

The legal basis for this temporary rule is the Ports and Waterways Safety Act, which authorizes the Coast Guard to establish safety zones (33 U.S.C. sections 1221 et seq.). The Parker Area Chamber of Commerce is sponsoring the Great Western Tube Float, which is held on the navigable waters of the Colorado River in Parker, AZ. This temporary safety zone is necessary to provide for the safety of the participants, crew, spectators, sponsor vessels, and other vessels and users of the waterway. This event involves people floating down the river on inflatable rafts, inner tubes and floating platforms. The size of vessels used will vary in length. Approximately 5,000 people are expected to participate in this event. The sponsor will provide 16 patrol and rescue boats to help facilitate the event and ensure public safety.

C. Discussion of the Final Rule

The Coast Guard is establishing a safety zone that will be enforced from 8:30 a.m. to 3 p.m. on June 8, 2013. The limits of the safety zone will include all navigable waters of the Colorado River from La Paz County Park to the Blue Water Resort & Casino. The safety zone is necessary to provide for the safety of participants, crew, rescue personnel, and other users of the waterway. Persons and vessels will be prohibited from entering into, transiting through, or anchoring within the safety zone unless authorized by the Captain of the Port, or his designated representative.

D. Regulatory Analyses

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

1. Regulatory Planning and Review

This rule is not a significant regulatory action under section 3(f) of Executive Order 12866, Regulatory Planning and Review, as supplemented by Executive Order 13563, Improving Regulation and Regulatory Review, and does not require an assessment of potential costs and benefits under section 6(a)(3) of Executive Order 12866 or under section 1 of Executive Order 13563. The Office of Management and Budget has not reviewed it under those Orders. This determination is based on the size and location of the safety zone. The safety zone will encompass the entire width of the river from La Paz County Park to the Blue Water Resort & Casino. However, vessels may transit through the safety zone if they request and receive permission from the Captain of the Port or his designated representative.

2. Impact on Small Entities

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

with populations of less than 50,000. The Coast Guard certifies under 5 U.S.C. 605(b) that this rule will not have a significant economic impact on a substantial number of small entities. This rule will affect the following entities, some of which might be small entities: The owners or operators of vessels intending to transit or anchor in the impacted portion of the Colorado River between 8:30 a.m. and 3 p.m. on June 8, 2013.

This safety zone will not have a significant economic impact on a substantial number of small entities for the following reasons. Although the safety zone would apply to the entire width of the river, traffic would be allowed to pass through the zone with the permission of the Coast Guard patrol commander. Before the effective period, the Coast Guard will publish a Local Notice to Mariners.

3. Assistance for Small Entities

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

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

4. Collection of Information

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

5. Federalism

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

6. Protest Activities

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

7. Unfunded Mandates Reform Act

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

8. Taking of Private Property

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

9. Civil Justice Reform

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

10. Protection of Children

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

11. Indian Tribal Governments

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

12. Energy Effects

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

13. Technical Standards

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

14. Environment

We have analyzed this rule under Department of Homeland Security Management Directive 023–01 and Commandant Instruction M16475.lD, which guide the Coast Guard in complying with the National Environmental Policy Act of 1969 (NEPA) (42 U.S.C. 4321–4370f), and have determined that this action is one of a category of actions that do not individually or cumulatively have a significant effect on the human environment. This rule involves establishing a temporary safety zone. This rule is categorically excluded from further review under paragraph 34(g) of Figure 2–1 of the Commandant Instruction. An environmental analysis checklist supporting this determination and a Categorical Exclusion Determination are available in the docket where indicated under **ADDRESSES**.

List of Subjects in 33 CFR Part 165

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

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

PART 165—REGULATED NAVIGATION AREAS AND LIMITED ACCESS AREAS

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

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

■ 2. Add § 165.T11–562 to read as follows:

§ 165.T11–562 Safety zone; Great Western Tube Float; Parker, AZ.

(a) *Location.* This temporary safety zone includes the waters of the Colorado River between La Paz County Park to the Blue Water Resort & Casino and the width of the river in Parker, AZ.

(b) *Enforcement Period.* This section will be enforced from 8:30 a.m. to 3 p.m.

on June 8, 2013. Before the effective period, the Coast Guard will publish a Local Notice to Mariners. If the event concludes prior to the scheduled termination time, the Captain of the Port will cease enforcement of this safety zone and his designated representative will announce that fact via Broadcast Notice to Mariners.

(c) *Definitions.* The following definition applies to this section: *Designated representative,* means any commissioned, warrant, or petty officer of the Coast Guard on board Coast Guard, Coast Guard Auxiliary, and local, state, and federal law enforcement vessels who have been authorized to act on the behalf of the Captain of the Port.

(d) *Regulations.* (1) Entry into, transit through or anchoring within this safety zone is prohibited unless authorized by the Captain of the Port of San Diego or his designated representative.

(2) Mariners can request permission to transit through the safety zone from the Patrol Commander. The Patrol Commander can be contacted on VHF–FM channels 16 and 23.

(3) All persons and vessels shall comply with the instructions of the Coast Guard Captain of the Port or his designated representative.

(4) Upon being hailed by U.S. Coast Guard patrol personnel by siren, radio, flashing light, or other means, the operator of a vessel shall proceed as directed.

(5) The Coast Guard may be assisted by other federal, state, or local agencies.

Dated: May 17, 2013.

S.M. Mahoney,

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

[FR Doc. 2013–13283 Filed 6–4–13; 8:45 am]

BILLING CODE 9110–04–P

DEPARTMENT OF AGRICULTURE

Forest Service

36 CFR Parts 212, 214, 215, 222, 228, 241, 251, 254, and 292

RIN 0596–AB45

Postdecisional Administrative Review Process for Occupancy or Use of National Forest System Lands and Resources

AGENCY: USDA, Forest Service.

ACTION: Final rule.

SUMMARY: The United States Department of Agriculture (Department) is issuing this final rule to update, rename, and relocate the administrative appeal regulations governing occupancy or use of National Forest System (NFS) lands and resources. The appeal process for decisions related to occupancy or use of NFS lands and resources has remained substantially unchanged since 1989. This final rule simplifies the appeal process, shortens the appeal period, and reduces the cost of appeal while still providing a fair and deliberate procedure by which eligible individuals and entities may obtain administrative review of certain types of Forest Service (Agency) decisions affecting their occupancy or use of NFS lands and resources. The final rule also moves the provision entitled ''Mediation of Term Grazing Permit Disputes'' to a more appropriate location in the range management regulations. Finally, conforming technical revisions to other parts of the Code of Federal Regulations (CFR) affected by this final rule are being made.

DATES: This rule is effective June 5, 2013.

FOR FURTHER INFORMATION CONTACT: Deb Beighley, Assistant Director, Appeals and Litigation, Ecosystem Management Coordination Staff, 202–205–1277, or Mike McGee, Appeals Specialist, Ecosystem Management Coordination Staff, 202–205–1323.

SUPPLEMENTARY INFORMATION:

Background and Need for the Final Rule

On January 23, 1989, the Department adopted an administrative appeal rule at 36 CFR part 251, subpart C (54 FR 3362) (251 Appeal Rule). The 251 Appeal Rule sets procedures for holders of or, in some cases, applicants for a written authorization to occupy and use NFS lands and resources to appeal certain Forest Service decisions with regard to the issuance, approval, or administration of the written instrument. The 251 Appeal Rule establishes who may appeal, the kinds of decisions that can and cannot be appealed, the responsibilities of parties to the appeal, and the various timeframes that govern the conduct of an appeal. The appeal procedures vary depending on whether the decision subject to appeal was made by a District Ranger, Forest or Grassland Supervisor, Regional Forester, or the Chief. Except for the addition of a section governing mediation of term grazing permit disputes in 1999, the 251 Appeal Rule has changed little since its adoption in 1989.

As a result of technological advances, communications improvements, and the Agency's experience administering the 251 Appeal Rule for more than 20 years, the Forest Service identified several modifications to simplify the appeal process, shorten the appeal time period, and achieve cost savings. This final rule relocates the 251 Appeal Rule to a new part 214 entitled, ''Postdecisional Administrative Review Process for Occupancy or Use of National Forest System Lands and Resources,'' and reserves 36 CFR part 251, subpart C. In addition, the final rule makes minor, nonsubstantive changes to 36 CFR part 251, subpart B, for clarity and to distinguish terms in that subpart from part 214. This final rule also moves the provision governing mediation of term grazing permit disputes to a new subpart B under the range management regulations found at 36 CFR part 222, since mediation is unique to the range management program and is not part of the administrative review process under the 251 Appeal Rule.

Public Involvement and Changes Made in Response to Public Comments

Proposed part 214 was published in the **Federal Register** on October 11, 2011 (76 FR 62694). The 60-day public comment period ended December 12, 2011. The Forest Service received comments from 43 respondents. The Agency analyzed the comments and considered them in developing the final rule.

Following is a summary of the comments and the Agency's response. The responses to the public comments are divided between general comments and those that involve specific sections of the proposed rule.

General Comments

Comment: One respondent expressed concern about the lack of public notice provided by the Forest Service regarding the change in the 251 Appeal Rule and noted that publication in the **Federal Register** is the bare minimum requirement to be met in public notification procedures and that the Agency should have sent letters to all interested parties and circulated notice broadly.

Response: The Administrative Procedure Act (5 U.S.C. 553(b)) specifies publication in the **Federal Register** as the required means of providing public notice of proposed rules. The exception is for rules that name particular persons, who must be personally served or provided actual notice of the proposed rule. This exception does not apply to proposed part 214, which does not name any particular persons. In addition to publishing the proposed rule in the **Federal Register**, the Agency sent a letter to 25 national organizations representing holders of all types of written authorizations covered by the

proposed rule. The letter asked the organizations to share information regarding publication of the proposed rule with their constituencies.

Comment: One respondent suggested the Forest Service change the 251 Appeal Rule to mirror the appeal procedures of the Department's National Appeals Division or the U.S. Department of the Interior (DOI), Office of Hearings and Appeals. A second respondent supported these alternatives and added the Interior Board of Land Appeals procedures as another example of a preferred approach. Another respondent suggested that the Forest Service eliminate the 251 Appeal Rule and replace it with review procedures similar to those used by other agencies in the Department.

Response: The Forest Service's intent is and always has been to have an informal administrative appeals process for occupancy or use of NFS lands and resources. The Agency's belief that a formal administrative appeals process is not appropriate in this context has remained unchanged since the process was established in 1988. At that time, the Agency stated that establishing an independent board to rule on administrative appeals might appear to be attractive from the standpoint of obtaining more objective decisions. However, these boards require highly structured, formalized rules of procedure which complicate, rather than simplify, the appeals process. Complex administrative procedures are not in the best interest of appellants who lack the resources to hire legal representation.

Comment: One respondent noted that the proposed rule simplifies the appeal process, shortens the appeal period, and reduces the cost of appeal only for the Forest Service, not appellants. Another respondent commented that under the proposed rule, appellants would bear most of the burden resulting from shorter timeframes, and that the proposed process would be more complicated and expensive. Another respondent noted that to justify the need for streamlined procedures, the Agency should review the appeals database, ascertain the number of administrative appeals filed under the 251 Appeal Rule, and reconsider whether and to what extent streamlined procedures are necessary. This respondent stated that the Agency should explain why the 251 Appeal Rule presents a significant administrative burden and should balance that burden against the interests of special use permit holders. One respondent commended the proposed rule, noting that in many instances it would provide cost savings, more clearly establish timelines, and clarify agency discretion.

Response: The administrative review process in part 214 is not more complicated and expensive than the administrative review process in the 251 Appeal Rule. One of the most common complaints regarding the 251 Appeal Rule is that it is confusing and that it takes too long to process an appeal. The Department believes part 214 improves significantly upon the 251 Appeal Rule by providing greater clarity and reducing timeframes.

Comment: One respondent organization noted that it attempts to work collaboratively where possible to resolve issues arising out of Federal land management decisions without filing an administrative appeal, but that at times an administrative appeal is the only option remaining to address decisions that adversely affect the respondent's members.

Response: This comment is beyond the scope of this rulemaking to the extent the comment addresses appeal of decisions by organizations on behalf of their members. Organizations do not have standing to appeal on behalf of their members under part 214.

The Forest Service first promulgated administrative appeal procedures in 1936 in recognition of the need to provide an administrative process for disputing Agency decisions. Part 214 encourages informal dispute resolution. Section 214.6(b) in the final rule requires the Responsible Official to notify the affected holder, operator, or solicited applicant of the opportunity to meet to discuss an appealable decision and, where applicable, inform term grazing permit holders of the opportunity to request mediation.

Comment: One respondent commented that annual grazing allotment meetings between the Forest Service and grazing permittees should be open to the public and that the proposed rule should be revised to reflect this move towards greater transparency and support for public involvement in agency decision-making.

Another respondent noted that American citizens have a vested interest in management decisions affecting Federal lands, expressed concern about livestock grazing decisions, and stated that the Forest Service delayed adopting a grazing mediation regulation until 7 years after enactment of the governing law. Another respondent noted that the Agricultural Credit Act (ACA) grants a right to mediation to all livestock producers and others adversely affected by a Forest Service grazing decision and that the ACA does not limit mediation to decisions involving cancellation of a grazing permit.

Response: These comments are beyond the scope of this rulemaking, as they address administration of grazing permits and mediation of grazing permit decisions, rather than administrative appeal of decisions pertaining to grazing permits. The proposed part 214 rule did not make changes to the provisions governing mediation of term grazing permit disputes. Rather, proposed part 214 moved the mediation provisions from the 251 Appeal Rule to part 222, governing livestock grazing, since the mediation provisions relate only to mediation of term grazing permit disputes, not to appeals of written authorizations.

The issue of whether decisions other than cancellation of term grazing permits should be subject to mediation was raised in comments on the proposed mediation regulations. The **Federal Register** notice for the final mediation regulations contains a thorough explanation of why certain grazing permit decisions were made subject to mediation and why others were not (64 FR 37843–37844 (July 14, 1999)).

Comment: Several respondents suggested abandoning a two-track appeals process, one for decisions implementing a land management plan and one for decisions affecting a written authorization. One of these respondents recommended consistency with the Bureau of Land Management's (BLM) administrative appeal process. Another respondent noted that all Americans have equal stakes in the management of Federal lands. Another respondent noted that the proposed changes to the 251 Appeal Rule develop a more streamlined private administrative appeal process, with the public unable to participate in any way other than to learn about the process and results through potential access to the appeal record via the Freedom of Information Act. Another respondent stated that the dual-track process was wasteful and unneccessary and the Forest Service should treat all parties that are interested in participating alike. Another respondent noted that under the 251 Appeal Rule, permit holders affected by a decision have an appeal process that is closed to participation by other interested parties. One respondent stated that the proposed part 214 appeal process should remain open and deliberate and should be used to address disputes that arise in the day-to-day management of NFS lands.

Two respondents commented that the Appeals Reform Act requires the Forest Service to provide for administrative

appeal of all decisions implementing a land management plan and that the proposed 214 rule will preclude appeal of many of these decisions. One of these respondents also contended that proposed part 214 is inconsistent with the ACA.

One respondent stated that proposed part 214 does not provide for independent review and noted that there is an implicit, if not explicit, conflict in the Agency acting as the arbiter of its own decisions. Another respondent stated that the 251 Appeal Rule has long perpetuated an unfair appeal process in which the Forest Service employees who helped develop a decision also review it. One respondent stated that many of the revisions in the proposed rule favor the Forest Service and do not provide a ''fair and deliberate process'' for appellants.

Response: Prior to adoption of the 251 Appeal Rule, the Agency had one appeals process for both decisions implementing a land management plan and decisions pertaining to written authorizations. In 1989, the Agency established separate appeal procedures for these two types of decisions, primarily because of the disparity in terms of their scope and the procedures that are appropriate for administrative review. Given these differences, it is more efficient and effective to have separate appeals procedures for these two types of decisions.

Forest Service decisions implementing a land management plan affect the public in general. Therefore, it is appropriate for the administrative appeal process for these decisions to be open to the public and for the appeal procedures to provide for public participation. Accordingly, notice of an appealable decision implementing a land management plan is given in a newspaper of record.

In contrast, once a decision has been made to authorize a particular land use, subsequent Forest Service decisions involving the associated written authorization uniquely affect the holder, operator, or solicited applicants. Consequently, it is appropriate for the administrative appeal process for these decisions to be available only to the holder, operator, or solicited applicants and for the appeal procedures to provide for that level of participation. Notice of an appealable decision involving a written authorization is therefore given to the affected holder, operator, or solicited applicants.

Part 214 does not preclude appeal of decisions implementing land management plans. Rather, part 214 does not provide for appeal of these decisions because appeal of these decisions is provided for under another part.

Part 214 is not inconsistent with the ACA with respect to mediation of term grazing permit disputes. Part 214 does not make any substantive changes to the mediation provisions in the 251 Appeal Rule. Part 214 merely moves these provisions to 36 CFR part 222, which governs livestock grazing.

The Department believes that part 214 provides a fair administrative appeals process for appellants. Part 214 remains an informal process. There is no trial under these procedures. For this kind of informal administrative process, the decisionmaker is not a judge, but rather a higher-level agency line officer. Like the 251 Appeal Rule, part 214 provides for review of appealable decisions by an Agency official who is one level above the decision-maker. This procedure prevents bias and conflicts of interest.

The Department believes that the streamlining in part 214 will benefit both the Forest Service and appellants, as the efficiencies will expedite the appeals process and make it less costly, both in terms of resources expended and the time it takes for both the Agency and appellants to know the outcome.

Comments Related to Specific Sections of the Proposed Rule

214.2—Definitions

Comment: Several respondents stated that Responsible Officials, Appeal Deciding Officers, and Discretionary Reviewing Officers should be line officers according to the corresponding definitions for ''Deciding Officer'' and ''Reviewing Officer'' in 36 CFR 251.81.

Response: The Department agrees and in the final rule has replaced the word ''employee'' with the phrase ''line officer'' in the definitions for ''Responsible Official'' and ''Appeal Deciding Officer.'' The Department has made corresponding changes to the definitions for ''Appeal Deciding Officer'' in 36 CFR 215.2. In the definition for ''Discretionary Reviewing Officer'' in the final rule, with respect to USDA, the Department has replaced the term ''employee'' with the term ''official,'' and with respect to the Forest Service, the Department has replaced the term ''employee'' with the term ''line officer.''

Comment: One respondent stated that the definition for ''revocation'' in the proposed rule applies to a written authorization, other than a term grazing permit or an instrument for the disposal of mineral materials; that ''suspension'' is defined as a temporary revocation of a written authorization, including term grazing permits, and therefore the two definitions appear to be in conflict.

Response: The definitions for ''revocation'' and ''suspension'' in part 214 are not contradictory. ''Revocation'' is defined as ''the cessation, in whole or in part, of a written authorization, other than a grazing permit or an instrument for the disposal of mineral materials, by a Responsible Official before the end of the specified period of occupancy or use.'' ''Cancellation'' is defined as ''the invalidation, in whole or in part, of a term grazing permit or an instrument for the disposal of mineral materials.'' The terms ''revocation'' and ''cancellation'' are defined separately because in existing regulations the term ''revocation'' applies to written authorizations other than a grazing permit or an instrument for the disposal of mineral materials, whereas the term ''cancellation'' applies to term grazing permits and instruments for the disposal of mineral materials. ''Suspension'' is defined as ''a temporary revocation or cancellation of a written authorization.'' Thus, the term ''suspension'' applies to written authorizations other than a grazing permit or an instrument for the disposal of mineral materials, which are subject to revocation, and term grazing permits and instruments for the disposal of mineral materials, which are subject to cancellation.

214.3—Parties to an Appeal

Comment: Several respondents commented that this provision is discriminatory because it excludes those who are not holders, operators, or solicited applicants from the administrative appeal process. In particular, one respondent noted that this limitation allows those who are not holders, operators, or solicited applicants to ignore the administrative appeal process and file suit directly in Federal district court. Another respondent indicated that there was no basis for treating holders, operators, and solicited applicants differently from other parties. Another respondent wanted the Agency to ensure that the administrative appeal process was open to other members of the public who have different, but still significant interests, and who should have standing to appeal decisions that would harm these interests. This respondent noted that these parties might have recourse under 36 CFR part 215, but that the regulations were not clear in this regard. Another respondent stated that limiting appeal under part 214 to the private entity that holds a grazing permit and the Forest Service official who makes decisions regarding that permit is legally and socially indefensible.

One respondent noted that this proposed section is especially commendable and noted that on several occasions, interest groups were allowed to appeal under the 251 Appeal Rule based on the unclear language of § 251.86.

One respondent asked whether a decision may be appealed only by the holder whose permit is the subject of that decision, or whether another permit holder could appeal the decision if it impairs that holder's interests, even if the holder whose permit is the subject of the decision does not appeal.

Response: Like § 251.86 in the 251 Appeal Rule, § 214.3 in part 214 limits parties to an appeal to holders, operators, solicited applicants, intervenors, and the Responsible Official. These comments are therefore beyond the scope of this rulemaking.

In 1989, the Agency established separate appeal procedures for decisions implementing a land management plan and decisions pertaining to written authorizations, primarily because of the disparity in terms of their scope and the procedures that are appropriate for administrative review. Given these differences, it is more efficient and effective to have separate appeals procedures for these two types of decisions.

Forest Service decisions implementing a land management plan affect the public generally. Therefore, it is appropriate for the administrative appeal process for these decisions to be open to the public and for the appeal procedures to provide for public participation.

In contrast, Forest Service decisions involving a written authorization concern the holder's, operator's, or solicited applicants' use, rather than the land management decision to authorize the use. Consequently, it is appropriate for the administrative appeal process for these decisions to be available only to the holder, operator, or solicited applicants and for the appeal procedures to provide for that level of participation.

Part 214 does not preclude appeal of decisions implementing land management plans. Rather, part 214 does not provide for appeal of these decisions because appeal of these decisions is provided under another part.

A permit holder who claims an interest relating to a decision regarding another holder's permit may not appeal that decision under part 214, even if the other holder does not appeal. However, the permit holder who claims an interest relating to the decision may request to intervene per § 214.11 in the final rule in an appeal filed by the other permit holder. To clarify this intent, the Department has revised § 214.3, Parties to an Appeal, in the final rule to read: ''Parties to an appeal under this part are limited to the holder, operator, or solicited applicants who are directly affected by an appealable decision, intervenors, and the Responsible Official.''

214.4—Decisions That Are Appealable

Comment: Several respondents objected to the list of decisions that are appealable. In particular, one respondent noted that the narrow and self-serving restriction on the type of decisions that are appealable is not in the best interests of the American people who use and enjoy NFS lands. Another respondent stated that the limited list makes it appear as if the Forest Service wants to avoid dealing with disputes involving day-to-day management of grazing on NFS lands. One respondent stated that the approach taken on appealable decisions in the proposed rule would ensure more, not less, litigation. One respondent stated that the very restrictive list of decisions that are appealable under the proposed rule would make the appeal process under part 214 almost meaningless. Another respondent noted that the simplest approach would be to provide that all Forest Service decisions are appealable unless Federal law precludes it. Three respondents commented that the proposed rule should state which decisions are not appealable and allow appeal of all other decisions. One respondent commented that the Forest Service needs to return to the approach in the 251 Appeal Rule, which enumerates 15 types of decisions that are not appealable and allows appeal of the remainder, or expand the list of decisions that are appealable in the proposed rule.

One respondent commented that like the 251 Appeal Rule, part 214 should allow appeal of permit administration decisions generally, including decisions about ski area master development plans and project proposals.

Several respondents commented that part 214 should include acceptance of an operating plan as an appealable decision so that holders of a special use authorization can challenge any operating plan requirements that may be unreasonable or impracticable. One of these respondents noted in proposed § 214.4(c)(1) that the use of the word ''acceptance'' in the phrase, ''modification, suspension, or revocation of a special use authorization, other than acceptance of an operating plan,'' was unclear and if the word ''acceptance'' was removed from this phrase, an operating plan could never be appealed.

Response: Based on technological advances, communications improvements, and the Agency's experience administering the 251 Appeal Rule for more than 20 years, the Forest Service identified several modifications that would simplify the appeal process and achieve cost savings, including clarifying the types of decisions that are appealable. When § 214.4 is read together with § 214.5, part 214 provides that a decision is not appealable unless it is expressly set forth in § 214.4. As a result, the list of appealable decisions in § 214.4 is considerably more extensive than the list of appealable decisions in § 251.82. Enumerating all types of appealable decisions will minimize potential confusion regarding whether a decision is appealable.

Section 214.4 is subdivided by the type of written authorization. Paragraph (a) lists four types of appealable decisions involving the administration of livestock grazing; paragraph (b) lists nine types of appealable decisions involving the administration of mineral exploration and development activities; paragraph (c) lists five types of appealable decisions involving the administration of special uses; and paragraph (d) lists one additional type of appealable decisions associated with other land uses. The contents of these lists reflect the types of decisions that are typically appealed by existing holders, operators, and solicited applicants and the Agency's intent regarding the types of decisions for which an appeal right should be granted.

Acceptance of a ski area master development plan should not be appealable because it does not constitute approval to construct new facilities. Rather, proposals for specific projects, including those implementing a ski area master development plan, are analyzed pursuant to applicable environmental law and, if appropriate, approved by the Forest Service. A decision regarding a proposed project would be subject to administrative review under another part rather than under part 214.

Acceptance of an operating plan is not included in the list of appealable decisions because an operating plan is not a decision document and does not permanently modify a special use authorization. Rather, an operating plan merely implements a prior management decision that is subject to administrative review under another part and provides direction for the upcoming operating

season. To the extent feasible, operating plans should be developed in consultation with the Responsible Official. The phrase, ''other than acceptance of an operating plan,'' follows the phrase, ''modification, suspension, or revocation of a special use authorization'' in § 214.4(c)(1) because the Agency wants to make clear that acceptance of an operating plan, which is not appealable, does not constitute modification of a special use authorization, which is appealable.

Comment: One respondent stated that it is unclear whether land use fee determinations based on the Cabin User Fee Fairness Act (CUFFA) or S. 1906, introduced on November 18, 2011, in the 112th Congress, 1st session, would be appealable under part 214. Another respondent commented that CUFFA-based land use fee determinations and land use fee determinations under any future fee system for recreation residence permits should be appealable under part 214.

Response: It is not appropriate for the Department to address appealability of land use fee determinations under S. 1906 because that bill has not become law.

Land use fee determinations based on CUFFA are appealable under § 214.4(c)(3) of the final rule, which includes in the list of appealable decisions:

> Implementation of new land use fees for a special use authorization, other than:
> (i) Revision or replacement of a land use fee system or schedule that is implemented through public notice and comment; and
> (ii) Annual land use fee adjustments based on an inflation factor that are calculated under an established fee system or schedule in accordance with the terms and conditions of a written authorization; . . .

Land use fee determinations based on CUFFA involve case-specific appraisals and, as a result, do not constitute revision or replacement of a land use fee system or schedule or annual land use fee adjustments based on an inflation factor. The appealability of land use fee determinations under future fee systems for recreation residence permits would depend on whether the land use fee determinations meet either of the exceptions in § 214.4(c)(3).

Comment: One respondent noted that the Forest Service uses annual operating instructions (AOIs) as a second permitting system to supplement or replace the allotment management plan (AMP) in adjusting livestock grazing rates, numbers of livestock, and seasons of use, and that AOIs therefore constitute an appealable permit modification. This respondent also commented that the Forest Service has acquiesced with this position by treating noncompliance with AOIs as a permit violation. Another respondent commented that issuance of AOIs is a permit modification, that any reference to AOIs in the proposed rule should be removed, and that the proposed rule should not preclude appeal of a decision just because it is contained in a document that is specifically named in the regulation. Another respondent commented that AOIs modify the grazing permit and denial of a right to appeal AOIs leaves permittees vulnerable to abusive and punitive measures without any avenue of relief and establishes a dictatorial process for management of livestock grazing on NFS lands.

A respondent commented that the proposed rule should allow appeal of denial, modification, and maintenance of range improvements and determinations of unauthorized grazing use.

One respondent recommended moving the provisions pertaining to AOIs to § 214.5. Another respondent stated that the Forest Service should make absolutely clear that AOIs are not appealable decisions by moving all references to AOIs from § 214.4, which specifies the decisions that are appealable, to § 214.5, which enumerates the decisions that are not appealable.

Response: Annual operating instructions (AOIs) are not an appealable decision because they are not decision documents and do not permanently modify a grazing permit. Rather, AOIs merely implement prior management decisions that are subject to administrative review under another regulation and provide instructions for the upcoming grazing season. To the extent feasible, AOIs should be developed in cooperation with the permittee.

Activities identified in AOIs must be within the scope of the AMP and the grazing permit. The annual bill for collection identifies the number, kind, and class of livestock authorized to graze on an allotment and any adjustments to season of use for that allotment. Failure to comply with provisions of the AMP or instructions issued by the Responsible Official, including the AOI, is a violation of the terms and conditions of a term grazing permit.

New decisions concerning denial, modification, and maintenance of range improvements are not made in AOIs. Changes in allocation of maintenance responsibilities for range improvements are modifications of term grazing permits and are appealable decisions under 36 CFR 214.4(a). Decisions to suspend or cancel part or all of a term grazing permit for unauthorized use are also appealable under 36 CFR 214.4(a).

The statement, ''Issuance of annual operating instructions does not constitute a permit modification and is not an appealable decision;'' is placed in § 214.4(a)(1), which provides for appeal of modification of a term grazing permit, rather than § 214.5, which enumerates the decisions that are not appealable, to clarify that issuance of AOIs does not constitute a permit modification.

Comment: One respondent commented that reductions in the number of authorized livestock and the authorized season of use should be added to cancellation and suspension as an appealable decision in § 214.4(a)(2) relating to term grazing permits.

Response: ''Cancel'' and ''suspend,'' as applied to grazing permits, are defined in 36 CFR 222.1(b). Both terms encompass reductions in the number of authorized livestock and the authorized season of use. ''Cancel'' means action taken to permanently invalidate a term grazing permit in whole or in part (36 CFR 222.1(b)(4)). ''Suspend'' means temporary withholding of a term grazing permit privilege, in whole or in part (36 CFR 222.1(b)(22)). Permanent changes in the number of authorized livestock or the authorized season of use are permit modifications that are appealable under 36 CFR 214.4(a). Annual adjustments in response to resource conditions, as provided for in Part 2, Section 8(c), of the term grazing permit, are not permit modifications and are not appealable under 36 CFR 214.4(a).

Comment: One respondent noted that if the Forest Service were really interested in a collaborative relationship with the public and permit holders, the Agency would embrace mediation and recognize that all of its decisions should be appealable.

Response: Regulations governing implementation of changes to the ACA regarding mediation were developed through a public rulemaking process, like the one being used to develop part 214. No changes were proposed to the mediation provisions. Rather, the Agency proposed moving the provisions from the 251 Appeal Rule to the livestock grazing regulations in 36 CFR part 222, since the mediation provisions do not relate to other types of written authorizations.

Comment: One respondent stated that the proposed rule violates the Administrative Procedure Act, 5 U.S.C. 558(c), by denying any right of appeal by a special use permit holder if the permit terminates before the Agency has

acted on a request for renewal. Two respondents commented that successful solicited applicants should remain eligible to appeal the terms and conditions in their special use authorization. Another respondent stated that any type of applicant for a special use authorization should be able to appeal the terms and conditions of the authorization and noted that under the proposed rule a landowner applicant would not be able to appeal denial or the terms and conditions of a special use authorization granting access to the landowner's property, despite the landowner's statutory right of access.

Response: With respect to renewal, an appeal right is available only when an authorization provides for renewal and the holder requests renewal before the authorization expires. Whether the Agency has acted on a request for renewal is irrelevant to a right of appeal.

The Forest Service has broad authority to impose terms and conditions in special use authorizations that are necessary to protect NFS lands and other interests (36 CFR 251.56). With respect to access to private property, Section 1323(a) of the Alaska National Interest Lands Conservation Act provides owners of non-Federal property within the boundaries of the NFS certain rights of access across NFS lands. The Responsible Official may prescribe such terms and conditions as the official deems adequate to secure to non-Federal property owners the reasonable use and enjoyment of their property (16 U.S.C. 3210(a); 36 CFR 212.6(b) and 251.110(c)). Terms and conditions in special use authorizations implement the Forest Service's statutory and regulatory authority and directives. The Department does not believe it is appropriate to allow any holders, including holders of an authorization issued in connection with exercise of a right of access to non-Federal property, to appeal the terms and conditions in their authorization.

Comment: One respondent stated that decisions and direction communicated to permit holders should be in writing, either hard copy or electronically.

Response: Appealable decisions must be in writing, per § 214.4. Decisions issued by the Appeal Deciding Officer or Discretionary Reviewing Officer must be in writing, per §§ 214.2 and 214.19(d). In addition, § 214.14(g)(2) has been revised to clarify that decisions and orders issued by the Appeal Deciding Officer must be in writing.

214.5—Decisions That Are Not Appealable

Comment: One respondent commented that the proposed rule was confusing because it intermingles a long list of decisions that cannot be appealed with decisions that can be appealed. Another respondent noted that this section should state, ''Holders, operators, and solicited applicants may appeal any decision that is not expressively [sic] not appealable.''

Response: Section 214.4 states that to be appealable under part 214, a decision must be issued by a Responsible Official in writing and must fall into one of the enumerated categories in that section. The list of types of decisions that are appealable in limited cases includes exceptions to clarify the Agency's intent, such as in § 214.4(a)(1) regarding issuance of AOIs and § 214.4(c)(1) regarding acceptance of an operating plan. Section 214.5 states that decisions issued by a Responsible Official that are not expressly set forth in § 214.4 are not appealable. The Department believes that these two sections are unambiguous and need no clarification.

214.6—Election of Appeal Process

Comment. One respondent stated that decisions that are appealable under part 214 should be appealable under part 215.

Response. This provision in the proposed rule would allow the holder of a written authorization who had standing under both parts 214 and 215 to elect between the two, but not both. On December 23, 2011, President Obama signed into law the Consolidated Appropriations Act, 2012, Public Law 112–74, for the U.S. Department of the Interior and related agencies, including the Forest Service. Section 428 of Public Law 112–74 (Section 428) requires a predecisional objection process for proposed actions of the Forest Service concerning projects and activities implementing land management plans and documented with a record of decision or decision notice, in place of a postdecisional appeal process in this context. The Forest Service is in the process of drafting regulations to implement Section 428.

Since Section 428 requires a predecisional administrative review process, and part 214 provides for a postdecisional administrative review process, the two review procedures will not run in tandem. Therefore, there is no longer a need to provide for election between appeal procedures for proposed actions of the Forest Service concerning projects and activities implementing land management plans and documented with a record of decision or decision notice. Accordingly, the Department has removed the election provision from the final rule. The Department has made a corresponding change to part 215 by removing § 215.11(d).

214.7—Notice of an Appealable Decision

Comment: One respondent stated that publication in 2-point type in one State newspaper, especially when this newspaper is not online, is not adequate notice of an appealable decision.

Response: This comment is beyond the scope of this rulemaking, as the comment pertains to notice of an appealable decision provided under part 215, not part 214. Part 215 provides for notice of an appealable decision to be published in the applicable newspaper of record (36 CFR 215.5(b)(2) and 215.7(b)), since appealable decisions under part 215 pertain to projects implementing a land management plan and affect the public generally. Part 214 provides for notice of an appealable decision to be given to the affected holder, operator, or solicited applicants in the appealable decision (36 CFR 214.6(a)), as appealable decisions under part 214 uniquely affect the holder, operator, or solicited applicants.

Comment: Several respondents commented that parties other than those who are directly affected by an appealable decision should receive notice. One respondent stated that the Forest Service should not limit the Responsible Official's notice obligation to the parties who are directly affected by the decision and make it ''the responsibility of individuals or entities who are not directly affected by the appealable decision to obtain a copy of the decision and to evaluate whether to request participation as an intervenor.'' Five respondents stated that holders of similar instruments who have made a written request to be notified of a specific decision should continue to receive notice as provided under the 251 Appeal Rule. One of these respondents noted that individuals and small organizations do not monitor the **Federal Register** or stay connected to entities that have the mechanisms in place to monitor these developments regularly. Another respondent commented that anyone who requests notification when the Forest Service makes an appealable decision should receive notice.

One respondent noted that each written appealable decision will notify affected parties of their right to appeal, but the Forest Service does not need to

inform the public of affected parties' right to appeal.

Response: The Department recognizes the need to be open and transparent in applying the appeals process. The Department agrees with respondents' concerns that it is reasonable for the Responsible Official to notify any holder of a similar written authorization who has made a written request to be notified of a specific decision and has reinstated this requirement from the 251 Appeal Rule in § 214.6 of the final rule.

Comment: One respondent suggested that instead of just stating the Responsible Official's willingness to meet with the affected holder, operator, or solicited applicant to discuss the decision, the proposed rule should use the wording from § 214.15(a) to express the willingness of the Responsible Official to ''discuss an appeal with a party or parties to narrow issues, agree on facts, and explore opportunities to resolve one or more of the issues in dispute by means other than the issuance of an appeal decision.'' Another respondent commented that Responsible Officials rarely include the right to seek informal resolution and appeal rights in an appealable decision. This respondent believed that Responsible Officials do not offer an opportunity for informal resolution because they do not believe they are wrong.

Response: Section 214.7 addresses the opportunity to discuss an appealable decision with the Responsible Official. Notices of an appealable decision must include a statement indicating the Responsible Official's willingness to meet with the affected holder, operator, or solicited applicants to discuss the decision. In contrast, § 214.15(a) addresses the opportunity to discuss informal resolution of issues in a pending appeal with the Responsible Official. The wording differs in the two sections in accordance with the context of the discussions.

214.8—Levels of Review

Comment: One respondent noted the proposed rule does not provide for independent review, since the Appeal Deciding Officer comes from the same agency as the Responsible Official. Another respondent suggested adding a provision that prohibits any ex parte contact—direct or indirect—between the Appeal Deciding Officer and the Responsible Official concerning an appeal to enhance objectivity and transparency in the appeal process and to meet the stated objective of a ''fair and deliberate process.''

Several respondents urged the Forest Service to retain two levels of appeal for appealable decisions made by District Rangers, as provided in the 251 Appeal Rule. One of these respondents noted that although the proposed change may simplify and expedite the appeal process, the proposed change also injects a significant and unwarranted inconsistency into the process. Another respondent commented that the second level of review is extremely important and should be provided for all decisions below the regional level. Another respondent suggested that District Ranger and Forest Supervisor decisions both be appealable to the Regional Forester. One respondent stated the final rule should retain opportunities for mandatory review of Forest Supervisor decisions by regional offices.

Response: Limiting appeal to one level responds to concerns about the appeal process taking too long. The Department believes the nature of decisions relating to written authorizations are of such specificity and detail that two levels of review are excessive. In addition, part 214 provides for discretionary review by the next higher line officer. The Department believes by limiting appeal to one level and providing for discretionary review for all appeal decisions, the appeal process is simplified and expedited. Providing for one level of appeal for all decisions, rather than two levels for some and one level for others, enhances consistency in the appeal process. Appealable decisions of Forest Supervisors are appealed to the Regional Forester per § 214.7. The review of all appeals at the level of the Regional Forester does not necessarily enhance expertise and efficiency in processing 214 appeals. Therefore, at this time, the Department is not making this change.

214.9—Appeal Content

Comment: One respondent stated that other than a copy of the decision being appealed, appellants should not have to include Forest Service documents, such as an appraisal. This same respondent noted that appellants should not have to submit documents in their possession and that referencing them should be sufficient.

Another respondent stated that it was a waste of paper to require submission of the appealable decision when the Forest Service already has it.

Response: The Department believes that it is essential for appellants to include any documents or other information upon which they rely in their appeal so that the Appeal Deciding Officer can make a fully informed appeal decision. This provision does not exclude documents in the Agency's possession, as both appellants and the Agency cannot be sure that the Agency possesses documents upon which appellants rely.

The Department agrees that requiring submission of a copy of the decision being appealed is unnecessary. Section 214.8(a)(2) has been revised to require ''a brief description of the decision being appealed, including the name and title of the Responsible Official and the date of the decision.'' In addition, § 214.8(a)(3) has been revised to require the identification number for the written authorization, if applicable.

Comment: Several respondents objected to the 30-day timeframe for filing an appeal and requested that the 45-day timeframe in the 251 Appeal Rule be reinstated. Several respondents stated that the timeframe should be at least 45 days. One respondent noted that since more information must be submitted in an appeal under the proposed rule than under the 251 Appeal Rule, the timeframe should be lengthened to perhaps 60 days. One respondent stated that if the 30-day timeframe is retained, the Agency must allow prospective appellants to request an extension of the deadline. One respondent stated that since the Forest Service generally still mails appealable decisions, receipt takes several days after the date of the decision. This respondent further stated that while the proposed rule shortens the timeframe for filing an appeal based on the assumption that electronic media makes it feasible, the proposed rule does not impose an obligation on the Forest Service to transmit appealable decisions electronically. This respondent believed this discrepancy is not only unfair but also unworkable and is calculated to disqualify or discourage appellants. Another respondent stated that the shorter appeal period in the proposed rule is calculated to impede appellants' exercise of appeal rights. Another respondent expressed appreciation for the goal of expediting the appeal process, but stated that the proposed timeframe for filing an appeal would be very problematic for complex appeals, particularly given the additional information the Agency requires appellants to submit under the proposed rule. Another respondent commented that the proposed changes to filing deadlines and discretionary review does not sufficiently accommodate the procedural rights of special use permit holders.

Response: One of the common frustrations of appellants and the Agency in connection with the 251 Appeal Rule for over 20 years is the amount of time required to issue an

appeal decision. To address this concern, numerous changes intended to shorten timeframes were included in the proposed rule. One reduced the timeframe for filing an appeal from 45 to 30 days. However, the Agency recognizes the respondents' concerns that shortening the timeframe for filing an appeal to 30 days may be burdensome, therefore, the 45-day timeframe is reinstated. Changes to discretionary review do not affect appeal rights, since discretionary review is not an appeal right, but rather an additional review that is conducted at the discretion of the Forest Service.

Comment: One respondent proposed posting a notice of all appeal periods on the Forest Service's Web site. Another respondent noted that the Forest Service does not regularly post environmental assessments and findings of no significant impact on the internet.

Response: The Department believes that the Forest Service's administrative appeal regulations give sufficient notice of applicable appeal periods. The comment regarding posting of environmental decision documents on the internet is beyond the scope of this rulemaking, which does not govern appeal of these decisions.

Comment: One respondent strongly recommended that the Forest Service follow the example of the Interior Board of Land Appeals (IBLA) and the Federal court system and set a reasonable page limit on appeals.

Response: The Department is considering the merits of a page limit, including the need to seek further public input on the issue and has decided not to establish a page limit in part 214. at this time.

214.11—Intervention

Comment: One respondent suggested that interested parties be able to request notification of all livestock grazing or mining appeals as soon as they are filed. Another respondent stated that the proposed rule should provide for notifying all interested parties that an appeal has been filed and should base the intervention deadline upon the date of notification, rather than within 15 days after an appeal has been filed, as provided in § 214.11(a)(2) of the proposed rule. This respondent noted that Bureau of Land Management's (BLM's) appeals process provides better notice of appeals, as the process requires appellants to serve notice of their appeal on all parties named in the grazing decision, including those identified in the copies circulated list in the decision document. This respondent further noted that posting appeals online is insufficient and the Agency should notify parties of the filing of appeals and appeal decisions.

Several respondents expressed concern about the 15-day timeframe for intervention in part 214 and they requested the Agency retain the timeframe in the 251 Appeal Rule. One of these respondents noted that 15 days may not be enough time to review relevant materials and file an intervention request, particularly if there is a slight delay in the notification of the appeal.

One respondent noted that limiting the intervention process to 10 days—5 days for the appellant and Responsible Official to file a response and 5 days for the Appeal Deciding Officer to make a decision on the intervention request problematic, given that the Forest Service makes no effort to notify the public in a timely fashion of appeals that have been filed.

Another respondent proposed that interested parties be able to intervene by claiming ''an interest relating to the subject matter of the decision being appealed'' and providing direct or indirect evidence that their interest could be impaired by the disposition of the appeal.

Another respondent suggested revising the proposed rule to state that intervenors must have an interest relating to the subject matter of the decision being appealed, which may be impaired by the disposition of the appeal.

One respondent requested examples of when intervention would be appropriate outside of a competitive offering asked if a special use permit holder could intervene in an appeal where issuance of a new permit implicates recreational carrying capacity.

Response: Appeals under part 214 are limited to the holder, operator, or solicited applicants who are directly affected by an appealable decision, intervenors, and the Responsible Official. Intervenors are accordingly limited to a holder, an operator, or solicited applicants who claim an interest relating to the subject matter of the decision being appealed and are so situated that disposition of the appeal may impair that interest. Because of the limits on who can be a party to an appeal and intervention under part 214, the Department believes it is unnecessary to notify the public of appeals that have been filed, or to allow intervention by all those who claim an interest relating to the subject matter of the decision being appealed that could be impaired by disposition of an appeal. Per § 214.14(i), the Agency will notify the public of final appeal decisions by posting the decisions on the Web site of the national forest, national grassland, or region that issued the appealable decision, or for Chief's decisions, on the Web site of the Washington Office.

The 251 Appeal Rule allows an intervention request to be filed at any time before the closing of the appeal record. It is inefficient for an intervention request to be filed after the appeal process is underway. The Department believes the 15-day timeframe for requesting intervention is sufficient, especially now that the Department has reinstated the requirement to notify any holder who has made a written request to be notified of a specific decision. The opportunity to participate as an intervenor applies to a limited few, and those potential intervenors are usually familiar with the issues associated with a decision being appealed. Limiting the time for filing, responding to, and ruling on an intervention request facilitates the orderly and expeditious handling of appeals.

A holder who claims an interest relating to the subject matter of the decision being appealed and is so situated that disposition of the appeal may impair that interest may request to intervene. For example, if the holder of a term grazing permit appeals a decision arising from administration of the holder's permit, a holder of a term grazing permit on a neighboring allotment might also be affected by the appeal decision and could request to intervene in the appeal. Additionally, the holder of an outfitting and guiding permit may have an interest that could be affected by administration of another outfitting and guiding permit. However, a decision regarding issuance of a new special use permit that implicates recreational carrying capacity generally would not be appealable under part 214, which generally does not provide for appeal of issuance of special use permits, and therefore generally would not afford an opportunity to intervene. A decision regarding issuance of a new special use permit that implicates recreational carrying capacity would be appealable only if the decision involves denial of renewal of a special use permit that specifically provides for renewal and if the holder requests renewal before the permit expires, per § 214.4(c)(5). Intervention in such an appeal might be appropriate if the effect on carrying capacity of the decision being appealed were such that disposition of the appeal may impair the interest of a holder of a similar special use permit.

214.12—Responsive Statement and Reply

Comment: Several respondents objected to the 10-day timeframe for appellants and intervenors to reply to a responsive statement. One respondent commented that appellants and intervenors should be given at least 15 days to file a reply to a responsive statement. Another respondent requested reinstatement of the 20-day period for filing a reply to a responsive statement and noted that the appeal process should not be shortened at the expense of appellants. One respondent stated that the Forest Service has failed to meet its deadline for a responsive statement and the notion that appeals should not take more than 60 days makes a mockery of the stated objective to provide a fair and deliberative process.

Response: Replying to the responsive statement is optional for appellants and intervenors. Reducing the timeframe for a reply to 10 days provides enough time for appellants and intervenors to address contentions in the responsive statement succinctly, without restating the entire appeal. The Responsible Official's time period for filing a responsive statement has also been shortened by 10 days, and the Agency takes appeal timeframes very seriously. The Department is retaining the timeframes for intervention in the proposed rule to provide for more orderly and expeditious handling of appeals.

214.13—Stays

Comment: One respondent stated that the final rule should clarify whether an intervenor can request a stay. Another respondent recommended removing the provision in the proposed rule allowing a non-party to an appeal to request that a stay be modified or lifted.

Response: The proposed and final rules are clear that only the appellant may request a stay of the decision being appealed. Section 214.13(b)(1) of the proposed and final rules limits a request for a stay to the appellant. Per § 214.13(b)(2), intervenors may support, oppose, or take no position in their intervention request regarding the appellant's stay request.

The Department agrees that § 214.13(e) could be interpreted to allow a non-party to request that a stay be modified or lifted because this provision states that ''a party,'' rather than ''a party to the appeal,'' may submit the request. Accordingly, § 214.13(e) in the final rule has been revised to allow only a party to an appeal to request that a stay be modified or lifted.

214.14—Conduct of an Appeal

Comment: One respondent did not understand the intent of the phrase, ''the date of the U.S. Postal Service postmark for an appeal received before the close of the fifth business day after the appeal filing date,'' in paragraph (b)(1) of the proposed rule.

Response: This phrase is also included in paragraph (b)(3) with respect to timely filing of an appeal that is delivered by private carrier. Adding 5 business days after the appeal filing date allows sufficient time for an appeal filed through the U.S. Postal Service or a private carrier to be received by the Appeal Deciding Officer.

Comment: One respondent stated that appeals should be consolidated only when the issues in the appeals are identical.

Response: The Department believes it is appropriate to allow consolidation of multiple appeals of the same decision or of similar decisions involving common issues of fact and law, even if not all of the issues in the appeals are identical, as provided in the 251 Appeal Rule.

Comment: One respondent supported the new provision in the proposed rule requiring all parties to an appeal to send a copy of all documents filed in an appeal to all other parties to the appeal at the same time the original is filed with the Appeal Deciding Officer. This respondent believed that this provision could be improved by stating that prospective intervenors—who are not yet parties—also need to send a copy of all documents filed in an appeal to all parties to the appeal.

Response: The Department agrees and has added a provision to § 214.14 in the final rule stating that prospective intervenors must send a copy of their request to intervene to all parties to the appeal. The provision in the proposed and final rules requiring all parties to an appeal to send a copy of all documents filed in an appeal to all other parties to the appeal includes intervenors, as they are parties to an appeal under § 214.3.

Comment: Two respondents commented that the Forest Service should notify interested parties of appeal decisions. One of these respondents noted that permit holders have a legal right to be notified of appeal decisions that may impair their interests.

Response: Part 214 provides for the public, including permit holders, to receive notice of appeal decisions. Part 214 requires the availability of final appeal decisions and discretionary review decisions to be posted on the Web site of the national forest, national grassland, or region that issued the appealable decision or for Chief's decisions, on the Web site of the Washington Office. The Department does not believe that permit holders have a legal right to be notified of appeal decisions that may impair their interests.

Comment: A respondent supported the provision requiring posting of final appeal decisions on the internet, but stated that the provision could be enhanced by requiring the decisions to be searchable.

Response: Final appeal decisions that are posted on the internet must include the signature of the Appeal Deciding Officer and are scanned and posted in a portable document format (PDF). A *.pdf is searchable, depending on the software that is used to view the document.

214.15—Resolution of Issues Prior to an Appeal Decision

Comment: A respondent commented that the statement in the corresponding provision in the 251 Appeal Rule, ''The purpose of such meetings is to discuss any issues or concerns related to the authorized use and to reach a common understanding and agreement where possible prior to issuance of a written decision,'' was omitted from the the proposed rule and should be reinstated.

Response: The quoted statement is referencing issues or concerns that may arise before an appealable decision is made, which is addressed in § 214.7(b) of the proposed and in § 214.6(b) of the final rule. Accordingly, the phrase, ''to discuss any issues related to the decision,'' from the quote has been inserted in § 214.6(b). Resolution of issues prior to issuance of an appeal decision is addressed in § 214.15(a).

214.16—Oral Presentation

Comment: A respondent recommended retaining the wording in the corresponding provision in the 251 Appeal Rule. Another respondent stated that it was unfair of the Forest Service to schedule the oral presentation early in the appeal process, since appellants usually want to wait until the end of the appeal process to make a final presentation of their appeal.

Response: Oral presentations are limited to clarifying or elaborating upon information that has already been filed with the Appeal Deciding Officer. New information may be presented only if it could not have been raised earlier in the appeal and if it would be unfair and prejudicial to exclude it. Oral presentations are scheduled within 10 days of the date a reply to the responsive statement is due. At this point in the appeal process, the parties

to the appeal have submitted all their substantive filings, allowing appellants to clarify or elaborate upon the information they have provided based on the filings of other parties.

Comment: One respondent recommended that this section be amended to address whether oral presentations may be conducted electronically and to state that they are not evidentiary proceedings. Another respondent objected to the lack of an opportunity to test the evidence in the record and commented on the need for the Appeal Deciding Officer and appellants to question Forest Service employees.

Response: The Department believes that the Appeal Deciding Officer should have the option to conduct oral presentations in person, telephonically, or via videoconferencing. Conducting oral presentations telephoncially or via videoconferencing facilitates more meeting options. The Department does not believe it is appropriate to address specific operating procedures in the final rule, as §§ 214.14(d) and 214.16(f) already authorize the Appeal Deciding Officer to establish procedures for oral presentations.

Oral presentations are not evidentiary proceedings involving examination and cross-examination of witnesses and are not subject to formal rules of procedure. To clarify this intent, the Department has added the following statement to the final rule at § 214.16(b): ''Oral presentations are not evidentiary proceedings involving examination and cross-examination of witnesses and are not subject to formal rules of procedure.''

Comment: One respondent stated that the Forest Service should create a transcript of oral presentations at the Agency's expense, include the transcript in the appeal record, and provide a copy without cost to all parties to the appeal.

Response: Per § 214.17(b), all information filed with the Appeal Deciding Officer, including a transcript of an oral presentation, becomes part of the appeal record. Oral presentations are limited to clarifying or elaborating upon information that has already been filed with the Appeal Deciding Officer. New information may be presented only if it could not have been raised earlier in the appeal and if it would be unfair and prejudicial to exclude it. In addition, § 214.14(i) of the final rule requires parties to an appeal to bear their own expenses, including costs associated with participating in an oral presentation. Under these circumstances, the Department believes that it is appropriate for the parties requesting a transcript to pay for it.

214.17—Appeal Record

Comment: A respondent stated there is no opportunity to confirm the contents of the appeal record and that it is critical that the appeal record and the administrative record be the same. Another respondent commented that the proposed rule would preclude appellants from responding to evidence in the appeal record.

Response: The appeal record includes all of the documents filed with the Appeal Deciding Officer, including the appealable decision, appeal, intervention requests, responsive statement, reply, oral presentation summary or transcript, procedural orders and other rulings, and any correspondence or other documentation related to the appeal as determined by the Appeal Deciding Officer. Since Part 214 provides an informal appeal process, the appeal record does not have to adhere to the requirements for lodging an administrative record in a formal proceeding. Part 214 affords appellants the opportunity to respond to intervention requests and to reply to the responsive statement.

Comment: One respondent commented that the proposed rule would allow the Forest Service to deny appellants access to the file for a proposed action concerning projects and activities implementing land management plans and documented with a record of decision or decision notice. This respondent noted that this is a significant problem because the Forest Service often adds information to its file in light of an appeal.

Another respondent recommended amending this section to identify how and when the appeal record can be supplemented by the parties to an appeal and by Forest Service officials.

Response: The first comment is beyond the scope of this rulemaking, which does not address appeals of proposed actions concerning projects and activities implementing land management plans and documented with a record of decision or decision notice. At the time an appellant prepares an appeal of one of these proposed actions, the project file is available from the Forest Service office that issued the decision.

The appeal record does not close until the day after the date the reply to the responsive statement is due, if no oral presentation is conducted; the day after the oral presentation is conducted, if no transcript of the oral presentation is prepared; or the day after the date a transcript of the oral presentation is due, if one is being prepared. In addition to the appealable decision, appeal, intervention requests, responsive statement, reply, and oral presentation summary or transcript, the appeal record includes any correspondence or other documentation related to the appeal as determined by the Appeal Deciding Officer. Moreover, the Appeal Deciding Officer may ask a party for additional information to clarify appeal issues and may extend appeal time periods to allow for submission of additional information and to give the other parties an opportunity to review and comment. Therefore, the Department does not believe it is necessary to provide clarification on supplementation of the appeal record in the final rule.

214.18—Appeal Decision

Comment: One respondent stated that if an appealable decision is modified as a result of an appeal, the revised decision should also be available for appeal by all interested members of the public.

Response: Decisions that are appealable are listed in § 214.4. Appealable decisions that are revised as a result of an appeal are not included in the list of appealable decisions. The Department does not believe it would be productive to allow appeal of decisions that are revised as a result of an appeal.

Comment: One respondent was concerned about potential ambiguity in the finality provision. This respondent believed that the provision suggests that an appeal filed by a permittee or other special-status stakeholder could be resolved by the Appeal Deciding Officer and become the final administrative decision of the Department, without any further appeal by any parties. This respondent stated that if this interpretation is not what the Agency intended, the provision should be revised to add the phrase, ''shall constitute USDA's final administrative decision on the appeal.'' This respondent further stated that if the Agency did intend the finality implied in the original statement, the finality is wholly unacceptable and encourages secret deals between the Agency and livestock operators with no recourse other than litigation available to the public.

Response: Section 214.18(e) states that the appeal decision constitutes USDA's final administrative decision, except where a decision to conduct discretionary review has been made and a discretionary review decision has been issued. The Department believes that this provision clearly reflects the intent for the appeal decision to be USDA's final administrative decision, unless discretionary review is conducted and a

discretionary review decision is issued. It is important for part 214 to state when an administrative decision becomes final under the rule, so that appellants know when they have exhausted their administrative remedies. Part 214 limits parties to an appeal to holders, operators, solicited applicants, intervenors, and the Responsible Official. Other members of the public cannot be parties to an appeal under part 214.

214.19—Procedures for Discretionary Review

Comment: One respondent recommended reinstating the provision in the 251 Appeal Rule providing for petitions or requests for discretionary review to be considered by the Reviewing Officer.

Response: The determination to conduct discretionary review is not triggered by a request from an appellant. Rather, the time period for deciding whether to conduct discretionary review starts to run upon receipt of the appeal decision, appeal, and appealable decision or Chief's decision by the Discretionary Reviewing Officer.

Part 214 helps appellants by clarifying that they do not have to request discretionary review to initiate the process.

214.20—Exhaustion of Administrative Remedies

Comment: One respondent suggested that this provision specifically reference that it is subject to the exhaustion requirements of 7 U.S.C. 6912(e).

Response: The Department agrees with this suggestion and has added a citation to 7 U.S.C. 6912(e) to this section in the final rule.

Other Parts of the CFR

222.60—Decisions Subject to Mediation

Comment: Several respondents objected to limiting mediation to cancellation or suspension of term grazing permits. One respondent commented that any decisions pertaining to grazing permits, not just suspensions and cancellations, should be subject to mediation. Another respondent objected to limiting mediation to cancellation or supension of term grazing permits on the grounds that the stated rationale for the limitation, that the state process must be confidential, contradicts the language of the governing statute and makes no sense. One respondent stated that all issues arising in connection with management of NFS lands should be subject to mediation. Another respondent stated that the Forest Service generally ignores requests for mediation.

Response: These comments are outside the scope of the proposed rule. No changes were proposed to the provisions governing mediation of term grazing permit disputes. Rather, these provisions were merely moved from one part of the CFR to another.

Summary of Changes to the Proposed Rule

Unless otherwise noted, the sections listed below are from the final rule.

Section 214.2 Definitions

Appeal Deciding Officer. The term ''employee'' was replaced with the term ''line officer.'' In addition, the phrase, ''and who is authorized to issue an appeal decision under this part,'' was replaced with the phrase, ''or the respective Deputy Forest Supervisor, Deputy Regional Forester, or Associate Deputy Chief with the delegation of authority relevant to the provisions of this part.'' The same changes were made to the definition of ''Appeal Deciding Officer'' in 36 CFR 215.2.

Discretionary Reviewing Officer. With respect to USDA, the term ''employee'' was replaced with the term ''official,'' and with respect to the Forest Service, the term ''employee'' was replaced with the term ''line officer.''

Responsible Official. The term ''employee'' was replaced with the term ''line officer,'' and the phrase, ''has the delegated authority to make and implement,'' was added to make the definition for this term consistent with its use in other parts of Title 36 of the CFR.

214.3 Parties to an Appeal

To clarify that holders, operators, and solicited applicants who are not directly affected by an appealable decision may not appeal that decision, the Department has revised this section to read: ''Parties to an appeal under this part are limited to the holder, operator, or solicited applicants who are directly affected by an appealable decision, intervenors, and the Responsible Official.''

214.4 Decisions That Are Appealable

Paragraph (c)(1)(ii) was revised for clarity.

214.6 Election of Appeal Process

This provision in the proposed rule would allow the holder of a written authorization who had standing under both parts 214 and 215 to elect between the two, but not both. On December 23, 2011, President Obama signed into law the Consolidated Appropriations Act, 2012, Public Law 112–74, for the United States Department of the Interior and Related Agencies, including the Forest Service. Section 428 of Public Law 112–74 (Section 428) requires a predecisional objection process for proposed actions of the Forest Service concerning projects and activities implementing land management plans and documented with a record of decision or decision notice, in place of a postdecisional appeal process in this context. The Forest Service is in the process of drafting regulations to implement Section 428.

Since Section 428 requires a predecisional administrative review process and part 214 provides for a postdecisional administrative review process, the two review procedures will not run in tandem. Therefore, there is no longer a need to provide for election between appeal procedures for proposed actions of the Forest Service concerning projects and activities implementing land management plans and documented with a record of decision or decision notice. Accordingly, the Department has removed the election provision from the final rule. The Department has made a corresponding change to part 215 by removing § 215.11(d).

Section 214.6 Notice of an Appealable Decision

Paragraph (a) has been changed to track its counterpart in the 251 Appeal Rule. Paragraph (a) now reads: ''The Responsible Official shall promptly give written notice of decisions subject to appeal under this part to the affected holder, operator, or solicited applicants and to any holder of a similar written authorization who has made a written request to be notified of a specific decision.''

Section 214.8 Appeal Content

Paragraph (a)(2) has been revised to require a brief description of the decision being appealed, including the name and title of the Responsible Official and the date of the decision, rather than a copy of the decision being appealed. The requirement to include the name of the project has been removed, as part 214 does not involve project appeals. Paragraph (a)(3) has been revised to require the identification number for the written authorization, if applicable.

Consistent with removal of the provision governing election of appeal procedures, the Department has removed paragraph (b)(4) in the proposed rule, which would have required appellants to cite the appeal regulation under which they are filing if

they could file under more than one. A corresponding change has been made to part 215 by removing § 215.14(b)(5).

New Section 214.9 Filing of an Appeal

A new § 214.9 has been added governing filing of an appeal. This section addresses the timeframe for filing an appeal, which formerly was addressed in the section on content of an appeal, and the method for filing and responsibility for timely filing of an appeal, both of which were addressed in the section of the proposed rule governing conduct of an appeal.

The timeframe for filing an appeal has been changed from 30 to 45 days. In addition, the Department has removed the exception providing for a 60-day timeframe for appeal of a decision revoking an easement for abandonment pursuant to the Act of October 13, 1964 (16 U.S.C. 534), since revocation of an easement is not subject to appeal under part 214. Rather, revocation of an easement is subject to appeal under 7 CFR part 1, subpart H.

Section 214.11 Intervention

Consistent with § 214.8 governing appeal content, this section has been revised to add to the submission requirements the requester's name, mailing address, daytime telephone number, and email address, if any; a brief description of the decision being appealed, including the name and title of the Responsible Official and the date of the decision; and the title or type and, if applicable, identification number for the written authorization, and the date of application for or issuance of the written authorization, if applicable.

Section 214.13 Stays

Paragraph (e) of this section has been revised to allow only a party to the appeal to request that a stay be modified or lifted.

Section 214.14 Conduct of an Appeal

The introductory clause in the second sentence of paragraph (b), relettered as paragraph (a) in the final rule, has been changed from, ''Questions regarding whether an appeal document has been timely filed shall be resolved by the Appeal Deciding Officer based on the following indicators,'' to ''The Appeal Deciding Officer shall determine timeliness by the following indicators.''

Paragraphs (c)(1) and (c)(3) have been revised to refer to ''parties to an appeal,'' rather than ''parties.''

The Department has removed paragraph (e)(2), which provided for consolidation of appeals filed under part 214 and other parts of the CFR that involve common issues of fact and law, since the Section 428 predecisional administrative review process and art 214 postdecisional administrative review process will not run in tandem. The remaining paragraph has been renumbered.

Paragraph (g)(1) has been revised to provide for documentation of service of filings in an appeal by stating that they must be accompanied by a signed and dated certificate of service attesting that all other parties have been served. In addition, paragraph (g)(1) has been revised to state that filings in an appeal will not be considered by the Appeal Deciding Officer unless they are accompanied by a certificate of service.

Paragraph (h)(1), relettered as paragraph (g)(1) in the final rule, has been modified to require prospective intervenors to send a copy of their request to intervene to all parties to the appeal.

Section 214.16 Oral Presentation

A new paragraph (b), entitled ''Procedure,'' has been added, which states that ''oral presentations are not evidentiary proceedings involving examination and cross-examination of witnesses and are not subject to formal rules of procedure.'' The remaining paragraphs have been renumbered as appropriate.

Paragraph (c) has been modified to state that oral presentations shall be conducted in an informal manner.

Paragraph (h) has been revised to refer to ''parties to an appeal,'' rather than ''parties.''

Section 214.20 Exhaustion of Administration Remedies

A reference to 7 U.S.C. 6912(e), the statute governing exhaustion of administrative remedies provided by USDA, has been added.

Part 222—Range Management

The sequence of the subparts in part 222 has been changed in the final rule. Subpart D, Mediation of Term Grazing Permit Disputes, in the proposed rule has been relettered as subpart B in the final rule, since mediation involves decisions to cancel or suspend a term grazing permit, and subpart A governs cancellation and suspension of grazing permits. Subpart B, Management of Wild Free-Roaming Horses and Burros, in the current rule has been moved to subpart D, after subpart C, Grazing Fees, since the subpart governing wild free-roaming horses and burros does not relate to grazing permits.

Regulatory Certifications

Regulatory Impact

This final rule has been reviewed under USDA procedures and Executive Order 12866, Regulatory Planning and Review. It has been determined that this is not a significant rule. This final rule will not have an annual effect of $100 million or more on the economy, nor will the final rule adversely affect productivity, competition, jobs, the environment, public health or safety, or State and local governments. This final rule will not interfere with any action taken or planned by another agency or raise new legal or policy issues. Finally, this final rule will not alter the budgetary impact of entitlements, grants, user fees, or loan programs or the rights and obligations of beneficiaries of those programs.

Moreover, the Department has considered this final rule in light of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). The Department has determined that the final rule will not have a significant economic impact on a substantial number of small entities as defined by that Act. Therefore, a regulatory flexibility analysis is not required for this final rule.

Environmental Impact

This final rule revises the procedures and requirements for the administrative appeal of certain decisions related to written authorizations for the occupancy or use of NFS lands and resources. Forest Service regulations at 36 CFR 220.6(d)(2) exclude from documentation in an environmental assessment or environmental impact statement ''rules, regulations, or policies to establish servicewide administrative procedures, program processes, or instruction.'' The Department has determined that this final rule falls within this category of actions and that no extraordinary circumstances exist which require preparation of an environmental assessment or environmental impact statement.

Energy Effects

The Department has reviewed this final rule under Executive Order 13211, Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use. The Department has determined that this final rule does not constitute a significant energy action as defined in the Executive Order.

Controlling Paperwork Burdens on the Public

In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520), the Forest Service requested and

received approval of a new information collection requirement for part 214: *OMB Number:* 0596–0231. During the public comment period for proposed part 214, comments were sought on the information collection requirement associated with the administrative appeal process in part 214; no comments on the information collection requirement were received.

Federalism

The Department has considered this final rule under Executive Order 13132 on federalism. The Department has determined that this final rule conforms with the federalism principles set out in this executive order; will not impose any compliance costs on the States; and will not have substantial direct effects on the States, on the relationship between the Federal government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, the Department concludes that this final rule does not have federalism implications.

Consultation and Coordination With Indian Tribal Governments

In accordance with Executive Order 13175, Consultation and Coordination with Indian Tribal Governments, the Forest Service is committed to government-to-government consultation on Agency policy that could have an impact on tribes. In that spirit, information about the proposed rule was sent to the Regional Offices, with guidance to distribute the information to tribes in their region and to follow up with visits to tribes if requests for consultation were received. A total of 120 days was provided for this process.

Two comments from tribes were received, and no requests for government-to-government consultation were made. One respondent asked for early notification and consultation on actions affecting tribal treaty or other legal rights, and another respondent inquired whether part 214 would affect administration of a Preservation Trust Area. No changes were made to the proposed rule in response to these comments.

The Department has determined that this final rule does not have substantial direct or unique effects on Indian tribes. This final rule is revising administrative appeal regulations for decisions relating to occupancy or use of NFS lands and resources. In accordance with part 214, tribal governments may participate in the administrative appeal process either as appellants or intervenors.

No Takings Implications

The Department has analyzed this final rule in accordance with the principles and criteria contained in Executive Order 12630, Governmental Actions and Interference with Constitutionally Protected Property Rights. The Department has determined that this final rule will not pose the risk of a taking of private property.

Civil Justice Reform

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

Unfunded Mandates

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

List of Subjects

36 CFR Part 212

Highways and roads, National forests, Public lands—rights-of-way, and Transportation.

36 CFR Part 214

Administrative practice and procedure, National forests.

36 CFR Part 215

Administrative practice and procedure, National forests, National grassland.

36 CFR Part 222

Range management, National forests, National grassland.

36 CFR Part 228

Environmental protection, Mines, National forests, Oil and gas exploration, Public lands—mineral resources, Public lands—rights-of-way, Reporting and recordkeeping requirements, Surety bonds, Wilderness areas.

36 CFR Part 241

Fish, Intergovernmental relations, National forests, Wildlife, Wildlife refuges.

36 CFR Part 251

Administrative practice and procedure, Electric power, National forests, Public lands—rights-of-way, Reporting and recordkeeping requirements, Water resources.

36 CFR Part 254

Community facilities, National forests.

36 CFR Part 292

Mineral resources, Recreation and recreation areas.

Therefore, for the reasons set forth in the preamble, the Forest Service is amending Chapter II of Title 36 of the CFR as follows:

PART 212—ADMINISTRATION OF THE FOREST TRANSPORTATION SYSTEM

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

Authority: 16 U.S.C. 551, 23 U.S.C. 205.

■ 2. In § 212.8, revise paragraph (d)(5) to read as follows:

§ 212.8 Permission to cross lands and easements owned by the United States and administered by the Forest Service.

* * * * *

(d) * * *

(5)(i) The Chief may revoke any easement granted under the provisions of the Act of October 13, 1964 (78 Stat. 1089, 16 U.S.C. 534):

(A) By consent of the owner of the easement;

(B) By condemnation; or

(C) Upon abandonment after a 5-year period of nonuse by the owner of the easement.

(ii) Before any easement is revoked upon abandonment, the owner of the easement shall be given notice and, upon the owner's request made within 60 days after receipt of the notice, shall be given an appeal in accordance with the provisions of 36 CFR part 214.

■ 3. Add part 214 to read as follows:

PART 214—POSTDECISIONAL ADMINISTRATIVE REVIEW PROCESS FOR OCCUPANCY OR USE OF NATIONAL FOREST SYSTEM LANDS AND RESOURCES

Sec.

214.1 Purpose and scope.
214.2 Definitions.
214.3 Parties to an appeal.
214.4 Decisions that are appealable.

214.5 Decisions that are not appealable.
214.6 Notice of an appealable decision.
214.7 Levels of review.
214.8 Appeal content.
214.9 Filing of an appeal.
214.10 Dismissal of an appeal.
214.11 Intervention.
214.12 Responsive statement and reply.
214.13 Stays.
214.14 Conduct of an appeal.
214.15 Resolution of issues prior to an appeal decision.
214.16 Oral presentation.
214.17 Appeal record.
214.18 Appeal decision.
214.19 Procedures for discretionary review.
214.20 Exhaustion of administrative remedies.
214.21 Information collection requirements.
214.22 Applicability and effective date.

Authority: 7 U.S.C. 1011(f); 16 U.S.C. 472, 551.

§ 214.1 Purpose and scope.

(a) *Purpose.* This part provides a fair and deliberate process by which holders, operators, and solicited applicants may appeal certain written decisions issued by Responsible Officials involving written instruments authorizing the occupancy or use of National Forest System lands and resources.

(b) *Scope.* This part specifies who may appeal, decisions that are appealable and not appealable, the responsibilities of parties to an appeal, and the time periods and procedures that govern the conduct of appeals under this part.

§ 214.2 Definitions.

Appeal. A document filed with an Appeal Deciding Officer in which an individual or entity seeks review of a Forest Service decision under this part.

Appeal Deciding Officer. The Forest Service line officer who is one organizational level above the Responsible Official or the respective Deputy Forest Supervisor, Deputy Regional Forester, or Associate Deputy Chief with the delegation of authority relevant to the provisions of this part.

Appeal decision. The final written decision issued by an Appeal Deciding Officer on an appeal filed under this part which affirms or reverses a Responsible Official's appealable decision in whole or in part, explains the basis for the decision, and provides additional instructions to the parties as necessary.

Appeal record. Documentation and other information filed with the Appeal Deciding Officer within the relevant time period by parties to the appeal and upon which review of an appeal is conducted.

Appellant. An individual or entity that has filed an appeal under this part.

Cancellation. The invalidation, in whole or in part, of a term grazing permit or an instrument for the disposal of mineral materials.

Discretionary Reviewing Officer. The U.S. Department of Agriculture (USDA) or Forest Service official authorized to review an appeal decision by an Appeal Deciding Officer or a decision by the Chief under this part.

Holder. An individual or entity that holds a valid written authorization.

Intervenor. An individual or entity whose request to intervene has been granted by the Appeal Deciding Officer.

Modification. A Responsible Official's written revision of the terms and conditions of a written authorization.

Operator. An individual or entity conducting or proposing to conduct mineral operations.

Oral presentation. An informal meeting conducted by the Appeal Deciding Officer during which parties to an appeal may present information in support of their position.

Prospectus. An announcement published by the Forest Service soliciting competitive applications for a written authorization.

Responsible Official. The Forest Service line officer who has the delegated authority to make and implement a decision that may be appealed under this part.

Responsive statement. The document filed by the Responsible Official with the Appeal Deciding Officer that addresses the issues raised and relief requested in an appeal.

Revocation. The cessation, in whole or in part, of a written authorization, other than a grazing permit or an instrument for the disposal of mineral materials, by action of Responsible Official before the end of the specified period of occupancy or use.

Solicited applicant. An individual or entity that has submitted a competitive application in response to a prospectus.

Suspension. A temporary revocation or cancellation of a written authorization.

Termination. The cessation of a written authorization by operation of law or by operation of a fixed or agreed-upon condition, event, or time as specified in the authorization, which does not require a decision by a Responsible Official to take effect.

Written authorization. A term grazing permit, plan of operations, special use authorization, mineral material contract or permit, or other type of written instrument issued by the Forest Service or a lease or permit for leasable minerals issued by the U.S. Department of the Interior that authorizes the occupancy or use of National Forest System lands or resources and specifies the terms and conditions under which the occupancy or use may occur.

§ 214.3 Parties to an appeal.

Parties to an appeal under this part are limited to the holder, operator, or solicited applicants who are directly affected by an appealable decision, intervenors, and the Responsible Official.

§ 214.4 Decisions that are appealable.

To be appealable under this part, a decision must be issued by a Responsible Official in writing and must fall into one of the following categories:

(a) *Livestock grazing.* (1) Modification of a term grazing permit issued under 36 CFR part 222, subpart A. Issuance of annual operating instructions does not constitute a permit modification and is not an appealable decision;

(2) Suspension or cancellation, other than cancellation resulting from the permittee's waiver to the United States, of a term grazing permit issued under 36 CFR part 222, subpart A;

(3) Denial of reauthorization of livestock grazing under a term grazing permit if the holder files an application for a new permit before the existing permit expires; or

(4) Denial of a term grazing permit to a solicited applicant under 36 CFR part 222, subpart C.

(b) *Minerals.* (1) Approval or denial of an initial, modified, or supplemental plan of operations or operating plan; requirement of an increase in bond coverage; requirement of measures to avoid irreparable injury, loss, or damage to surface resources pending modification of a plan of operations or operating plan; or issuance of a notice of noncompliance pursuant to 36 CFR part 228, subpart A or D, or part 292, subpart D, F, or G;

(2) Approval or denial of an operating plan, issuance of a notice of noncompliance, or extension, suspension, or cancellation, other than cancellation by mutual agreement, for or of contracts, permits, or prospecting permits for mineral materials issued under 36 CFR part 228, subpart C;

(3) Approval or denial of a surface use plan of operations, request to supplement a surface use plan of operations, suspension of oil and gas operations, or issuance of a notice of noncompliance pursuant to 36 CFR part 228, subpart E;

(4) Consent or denial of consent to the U.S. Department of the Interior's administration of previously issued leases or permits for leasable minerals other than oil and gas resources;

(5) Suspension or revocation of an operating plan for Federal lands within

the Sawtooth National Recreation Area pursuant to 36 CFR part 292, subpart D;

(6) Suspension of locatable mineral operations on National Forest System lands within the Hells Canyon National Recreation Area pursuant to 36 CFR part 292, subpart F;

(7) Suspension of locatable mineral operations on National Forest System lands within the Smith River National Recreation Area or approval of an initial or amended operating plan for exercise of outstanding mineral rights on National Forest System lands within the Smith River National Recreation Area pursuant to 36 CFR part 292, subpart G;

(8) Except as provided in paragraph (7), determinations of the acceptability of an initial or amended operating plan for exercise of outstanding mineral rights on National Forest System lands; or

(9) Determinations of the acceptability of an initial or amended operating plan for exercise of reserved mineral rights located on National Forest System lands.

(c) *Special uses.* (1) Modification, suspension, or revocation of a special use authorization, other than acceptance of an operating plan, including:

(i) A special use authorization issued under 36 CFR part 251, subpart B or D, other than modification, suspension or revocation of a noncommercial group use permit, suspension or revocation of an easement issued pursuant to 36 CFR 251.53(e) or 251.53(l), or revocation with the consent of the holder;

(ii) A special use authorization issued under 36 CFR part 212, subpart A, for ingress and egress to private lands that are intermingled with or adjacent to National Forest System lands;

(iii) A special use authorization issued under 36 CFR part 251, subpart A, that authorizes the exercise of rights reserved in conveyances to the United States;

(iv) A permit and occupancy agreement issued under 36 CFR 213.3 for national grasslands and other lands administered under Title III of the Bankhead-Jones Farm Tenant Act;

(v) A permit issued under 36 CFR 293.13 for access to valid occupancies entirely within a wilderness in the National Forest System.

(vi) A permit issued under the Archaeological Resources Protection Act of 1979 and 36 CFR part 296 for excavation or removal of archaeological resources; and

(vii) A special use authorization governing surface use associated with the exercise of outstanding mineral rights;

(2) Denial of a special use authorization to a solicited applicant based on the process used to select a successful applicant;

(3) Implementation of new land use fees for a special use authorization, other than:

(i) Revision or replacement of a land use fee system or schedule that is implemented through public notice and comment; and

(ii) Annual land use fee adjustments based on an inflation factor that are calculated under an established fee system or schedule in accordance with the terms and conditions of a written authorization;

(4) Assignment of a performance rating that affects reissuance or extension of a special use authorization; or

(5) Denial of renewal of a special use authorization if it specifically provides for renewal and if the holder requests renewal of the authorization before it expires.

(d) *Other land uses.* Denial or revocation of a certification of compliance issued under 36 CFR part 292, subpart C, related to the use, subdivision, and development of privately owned property within the boundaries of the Sawtooth National Recreation Area.

§ 214.5 Decisions that are not appealable.

Holders, operators, and solicited applicants may not appeal under this part any decisions issued by a Responsible Official that are not expressly set forth in § 214.4.

§ 214.6 Notice of an appealable decision.

(a) The Responsible Official shall promptly give written notice of decisions subject to appeal under this part to the affected holder, operator, or solicited applicants and to any holder of a similar written authorization who has made a written request to be notified of a specific decision.

(b) If the decision is appealable, the notice must specify the contents of an appeal, the name and mailing address of the Appeal Deciding Officer, and the filing deadline. The notice shall also include a statement indicating the Responsible Official's willingness to meet with the affected holder, operator, or solicited applicants to discuss any issues related to the decision and, where applicable, informing term grazing permit holders of the opportunity to request mediation in accordance with 36 CFR 222.20 through 222.26.

(c) If the decision is not appealable, the Responsible Official must include a statement in the written decision informing the affected holder, operator, or solicited applicants that further administrative review of the decision is not available.

§ 214.7 Levels of review.

(a) *Appeal.* (1) One level of appeal is available for appealable decisions made by District Rangers, Forest or Grassland Supervisors, and Regional Foresters. If a District Ranger is the Responsible Official, the appeal is filed with the Forest or Grassland Supervisor. If a Forest or Grassland Supervisor is the Responsible Official, the appeal is filed with the Regional Forester. If a Regional Forester is the Responsible Official, the appeal is filed with the Chief of the Forest Service.

(2) No appeal is available for decisions made by the Chief.

(b) *Discretionary review.* (1) Appeal decisions issued by Forest or Grassland Supervisors, Regional Foresters, or the Chief are eligible for discretionary review. If a Forest or Grassland Supervisor is the Appeal Deciding Officer, discretionary review is conducted by the Regional Forester. If a Regional Forester is the Appeal Deciding Officer, discretionary review is conducted by the Chief. If the Chief is the Appeal Deciding Officer, discretionary review is conducted by the Under Secretary for Natural Resources and Environment.

(2) Decisions made by the Chief that fall into one of the categories enumerated in 36 CFR 214.4 are eligible for discretionary review by the Under Secretary for Natural Resources and Environment.

§ 214.8 Appeal content.

(a) *General requirements for the contents of an appeal.* All appeals must include:

(1) The appellant's name, mailing address, daytime telephone number, and email address, if any;

(2) A brief description of the decision being appealed, including the name and title of the Responsible Official and the date of the decision;

(3) The title or type and, if applicable, identification number for the written authorization and the date of application for or issuance of the written authorization, if applicable;

(4) A statement of how the appellant is adversely affected by the decision being appealed;

(5) A statement of the relevant facts underlying the decision being appealed;

(6) A discussion of issues raised by the decision being appealed, including identification of any laws, regulations, or policies that were allegedly violated in reaching the decision being appealed;

(7) A statement as to whether and how the appellant has attempted to

resolve the issues under appeal with the Responsible Official and the date and outcome of those efforts;

(8) A statement of the relief sought;

(9) Any documents and other information upon which the appellant relies; and

(10) The appellant's signature and the date.

(b) *Specific requirements for the contents of an appeal.* In addition to the general requirements in § 214.8(a), the following specific requirements must be included in an appeal, where applicable:

(1) A request for an oral presentation under § 214.16;

(2) A request for a stay under § 214.13; and

(3) A request to participate in a state mediation program regarding certain term grazing permit disputes under 36 CFR part 222, subpart B.

§ 214.9 Filing of an appeal.

(a) *Timeframe for filing an appeal.* An appeal must be filed with the Appeal Deciding Officer within 45 days of the date of the decision.

(b) *Method of filing.* Appeal documents may be filed in person or by courier, by mail or private delivery service, by facsimile, or by electronic mail. Parties to an appeal are responsible for ensuring timely filing of appeal documents.

§ 214.10 Dismissal of an appeal.

(a) The Appeal Deciding Officer shall dismiss an appeal without review when one or more of the following applies:

(1) The appeal is not filed within the required time period.

(2) The person or entity that filed the appeal is not a holder, an operator, or a solicited applicant of a written authorization that is the subject of the appealable decision.

(3) The decision is not appealable under this part.

(4) The appeal does not meet the content requirements specified in § 214.8(a), provided that an appeal may not be dismissed for failure to include an appraisal report which has not been completed by the filing deadline.

(5) The appellant withdraws the appeal.

(6) The Responsible Official withdraws the written decision that was appealed.

(7) An informal resolution of the dispute is reached pursuant to § 214.15 or a mediated agreement of a term grazing dispute is achieved pursuant to 36 CFR part 222, subpart B.

(8) The requested relief cannot be granted under applicable facts, laws, regulations, or policies.

(b) The Appeal Deciding Officer shall give written notice of the dismissal of an appeal and shall set forth the reasons for dismissal.

§ 214.11 Intervention.

(a) *Eligibility to intervene.* To participate as an intervenor in appeals under this part, a party must:

(1) Be a holder, an operator, or a solicited applicant who claims an interest relating to the subject matter of the decision being appealed and is so situated that disposition of the appeal may impair that interest; and

(2) File a written request to intervene with the Appeal Deciding Officer within 15 days after an appeal has been filed.

(b) *Request to intervene.* A request to intervene must include:

(1) The requester's name, mailing address, daytime telephone number, and email address, if any;

(2) A brief description of the decision being appealed, including the name and title of the Responsible Official and the date of the decision;

(3) The title or type and, if applicable, identification number for the written authorization and the date of application for or issuance of the written authorization, if applicable;

(4) A description of the requester's interest in the appeal and how disposition of the appeal may impair that interest;

(5) A discussion of the factual and legal allegations in the appeal with which the requester agrees or disagrees;

(6) A description of additional facts and issues that are not raised in the appeal that the requester believes are relevant and should be considered;

(7) A description of the relief sought, particularly as it differs from the relief sought by the appellant;

(8) Where applicable, a response to the appellant's request for a stay of the decision being appealed;

(9) Where applicable, a response to the appellant's request for an oral presentation;

(10) Where applicable, a response to the appellant's request for mediation of a term grazing permit dispute under 36 CFR part 222, subpart B; and

(11) The requester's signature and the date.

(c) *Response to a request to intervene.* The appellant and Responsible Official shall have 5 days from receipt of a request to intervene to file a written response with the Appeal Deciding Officer.

(d) *Intervention decision.* The Appeal Deciding Officer shall have 5 days after the date a response to a request to intervene is due to issue a decision granting or denying the request. The Appeal Deciding Officer's decision shall be in writing and shall briefly explain the basis for granting or denying the request. The Appeal Deciding Officer shall deny a request to intervene or shall withdraw a decision granting intervenor status as moot if the corresponding appeal is dismissed under § 214.10.

§ 214.12 Responsive statement and reply.

(a) *Responsive statement.* The Responsible Official shall prepare a responsive statement addressing the factual and legal allegations in the appeal. The responsive statement and any supporting documentation shall be filed with the Appeal Deciding Officer within 20 days of receipt of the appeal or the unsuccessful conclusion of mediation conducted pursuant to 36 CFR part 222, subpart B, whichever is later.

(b) *Reply.* Within 10 days of receipt of the responsive statement, the appellant and intervenors, if any, may file a reply with the Appeal Deciding Officer addressing the contentions in the responsive statement.

§ 214.13 Stays.

(a) *Implementation.* An appealable decision shall be implemented unless an authorized stay is granted under § 214.13(b) or an automatic stay goes into effect under § 214.13(c).

(b) *Authorized stays.* Except where a stay automatically goes into effect under § 214.13(c), the Appeal Deciding Officer may grant a written request to stay the decision that is the subject of an appeal under this part.

(1) *Stay request.* To obtain a stay, an appellant must include a request for a stay in the appeal pursuant to § 214.8(b)(2) and a statement explaining the need for a stay. The statement must include, at a minimum:

(i) A description of the adverse impact on the appellant if a stay is not granted;

(ii) A description of the adverse impact on National Forest System lands and resources if a stay is not granted; or

(iii) An explanation as to how a meaningful decision on the merits of the appeal could not be achieved if a stay is not granted.

(2) *Stay response.* The Responsible Official may support, oppose, or take no position in the responsive statement regarding the appellant's stay request. Intervenors may support, oppose, or take no position in the intervention request regarding the appellant's stay request.

(3) *Stay decision.* The Appeal Deciding Officer shall issue a decision granting or denying a stay request within 10 days after a responsive statement or an intervention request is

filed, whichever is later. The stay decision shall be in writing and shall briefly explain the basis for granting or denying the stay request.

(c) *Automatic stays.* The following decisions are automatically stayed once an appeal is filed by a holder, operator, or solicited applicant:

(1) Decisions to issue a written authorization pursuant to a prospectus;

(2) Decisions to recalculate revenue-based land use fees for a special use authorization pursuant to an audit issued after June 5, 2013; and

(3) Decisions to cancel or suspend a term grazing permit subject to mediation under 36 CFR 222.20 and for which mediation is requested in accordance with that provision.

(d) *Stay duration.* Authorized stays and automatic stays under § 214.13(c)(1) and (c)(2) shall remain in effect until a final administrative decision is issued in the appeal, unless they are modified or lifted in accordance with § 214.13(e). Automatic stays under § 214.13(c)(3) shall remain in effect for the duration of the mediation period as provided in 36 CFR 222.22.

(e) *Modification or lifting of a stay.* The Appeal Deciding Officer or a Discretionary Reviewing Officer may modify or lift an authorized stay based upon a written request by a party to the appeal who demonstrates that the circumstances have changed since the stay was granted and that it is unduly burdensome or unfair to maintain the stay.

§ 214.14 Conduct of an appeal.

(a) *Evidence of timely filing.* The Appeal Deciding Officer shall determine the timeliness of an appeal by the following indicators:

(1) The date of the U.S. Postal Service postmark for an appeal received before the close of the fifth business day after the appeal filing date;

(2) The electronically generated posted date and time for email and facsimiles;

(3) The shipping date for delivery by private carrier for an appeal received before the close of the fifth business day after the appeal filing date; or

(4) The official agency date stamp showing receipt of hand delivery.

(b) *Computation of time.* (1) A time period in this part begins on the first day following the event or action triggering the time period.

(2) All time periods shall be computed using calendar days, including Saturdays, Sundays, and Federal holidays. However, if a time period ends on a Saturday, Sunday, or Federal holiday, the time period is extended to the end of the next Federal business day.

(c) *Extensions of time*—(1) *In general.* Parties to an appeal, Appeal Deciding Officers, and Discretionary Reviewing Officers shall meet the time periods specified in this part, unless an extension of time has been granted under paragraph (c)(3) of this section. Extension requests from parties to an appeal shall be made in writing, shall explain the need for the extension, and shall be transmitted to the Appeal Deciding Officer.

(2) *Time periods that may not be extended.* The following time periods may not be extended:

(i) The time period for filing an appeal;

(ii) The time period to decide whether to conduct discretionary review of an appeal decision or a Chief's decision; and

(iii) The time period to issue a discretionary review decision.

(3) *Time periods that may be extended.* Except as provided in paragraph (c)(2) of this section, all time periods in this part may be extended upon written request by a party to an appeal and a finding of good cause for the extension by the Appeal Deciding Officer. Written requests for extensions of time will be automatically granted by the Appeal Deciding Officer where the parties to an appeal represent that they are working in good faith to resolve the dispute and that additional time would facilitate negotiation of a mutually agreeable resolution.

(4) *Decision.* The Appeal Deciding Officer shall have 10 days to issue a decision granting or denying the extension request. The decision shall be in writing and shall briefly explain the basis for granting or denying the request.

(5) *Duration.* Ordinarily, extensions that add more than 60 days to the appeal period should not be granted.

(d) *Procedural orders.* The Appeal Deciding Officer may issue procedural orders as necessary for the orderly, expeditious, and fair conduct of an appeal under this part.

(e) *Consolidation of appeals.* (1) The Appeal Deciding Officer may consolidate multiple appeals of the same decision or of similar decisions involving common issues of fact and law and issue one appeal decision.

(2) The Responsible Official may prepare one responsive statement for consolidated appeals.

(f) *Requests for additional information.* The Appeal Deciding Officer may ask parties to an appeal for additional information to clarify appeal issues. If necessary, the Appeal Deciding Officer may extend appeal time periods per paragraph (c)(3) of this section to allow for submission of the additional information and to give the other parties an opportunity to review and comment on it.

(g) *Service of documents.* (1) Parties to an appeal shall send a copy of all documents filed in the appeal to all other parties, including the appellant's sending a copy of the appeal to the Responsible Official, at the same time the original is filed with the Appeal Deciding Officer. All filings in an appeal must be accompanied by a signed and dated certificate of service attesting that all other parties have been served. Prospective intervenors shall send a copy of their request to intervene to all parties to the appeal at the same time the original is filed with the Appeal Deciding Officer. Each party and prospective intervenor is responsible for identifying the parties to the appeal and may contact the Appeal Deciding Officer for assistance regarding their names and addresses. Filings in an appeal shall not be considered by the Appeal Deciding Officer unless they are accompanied by a certificate of service.

(2) All decisions and orders issued by the Appeal Deciding Officer and the Discretionary Reviewing Officer related to the appeal shall be in writing and shall be sent to all parties to the appeal.

(h) *Posting of final decisions.* Once a final appeal decision or discretionary review decision has been issued, its availability shall be posted on the Web site of the national forest or national grassland or region that issued the appealable decision or on the Web site of the Washington Office for Chief's decisions.

(i) *Expenses.* Each party to an appeal shall bear its own expenses, including costs associated with preparing the appeal, participating in an oral presentation, obtaining information regarding the appeal, and retaining professional consultants or counsel.

§ 214.15 Resolution of issues prior to an appeal decision.

(a) The Responsible Official may discuss an appeal with a party or parties to narrow issues, agree on facts, and explore opportunities to resolve one or more of the issues in dispute by means other than issuance of an appeal decision.

(b) The Responsible Official who issued a decision under appeal may withdraw the decision, in whole or in part, during an appeal to resolve one or more issues in dispute. The Responsible Official shall notify the parties to the appeal and the Appeal Deciding Officer of the withdrawal. If the withdrawal of the decision eliminates all the issues in dispute in the appeal, the Appeal

Deciding Officer shall dismiss the appeal under § 214.10.

§ 214.16 Oral presentation.

(a) *Purpose.* The purpose of an oral presentation is to provide parties to an appeal with an opportunity to discuss their concerns regarding the appealable decision with the Appeal Deciding Officer.

(b) *Procedure.* Oral presentations are not evidentiary proceedings involving examination and cross-examination of witnesses and are not subject to formal rules of procedure.

(c) *Scope.* Oral presentations shall be conducted in an informal manner and shall be limited to clarifying or elaborating upon information that has already been filed with the Appeal Deciding Officer. New information may be presented only if it could not have been raised earlier in the appeal and if it would be unfair and prejudicial to exclude it.

(d) *Requests.* A request for an oral presentation included in an appeal shall be granted by the Appeal Deciding Officer unless the appeal has been dismissed under § 214.10.

(e) *Availability.* Oral presentations may be conducted during appeal of a decision, but not during discretionary review.

(f) *Scheduling and rules.* The Appeal Deciding Officer shall conduct the oral presentation within 10 days of the date a reply to the responsive statement is due. The Appeal Deciding Officer shall notify the parties of the date, time, and location of the oral presentation and the procedures to be followed.

(g) *Participation.* All parties to an appeal are eligible to participate in the oral presentation. At the discretion of the Appeal Deciding Officer, non-parties may observe the oral presentation, but are not eligible to participate.

(h) *Summaries and transcripts.* A summary of an oral presentation may be included in the appeal record only if it is submitted to the Appeal Deciding Officer by a party to the appeal at the end of the oral presentation. A transcript of an oral presentation prepared by a certified court reporter may be included in the appeal record if the transcript is filed with the Appeal Deciding Officer within 10 days of the date of the oral presentation and if the transcript is paid for by those who requested it.

§ 214.17 Appeal record.

(a) *Location.* The Appeal Deciding Officer shall maintain the appeal record in one location.

(b) *Contents.* The appeal record shall consist of information filed with the Appeal Deciding Officer, including the appealable decision, appeal, intervention request, responsive statement, reply, oral presentation summary or transcript, procedural orders and other rulings, and any correspondence or other documentation related to the appeal as determined by the Appeal Deciding Officer.

(c) *Closing of the record.* (1) The Appeal Deciding Officer shall close the appeal record on:

(i) The day after the date the reply to the responsive statement is due if no oral presentation is conducted;

(ii) The day after the oral presentation is conducted if no transcript of the oral presentation is being prepared; or

(iii) The day after the date a transcript of the oral presentation is due if one is being prepared.

(2) The Appeal Deciding Officer shall notify all parties to the appeal of closing of the record.

(d) *Inspection by the public.* The appeal record is open for public inspection in accordance with the Freedom of Information Act, the Privacy Act, and 7 CFR part 1.

§ 214.18 Appeal decision.

(a) Appeal decisions made by the Appeal Deciding Officer shall be issued within 30 days of the date the appeal record is closed.

(b) The appeal decision shall be based solely on the appeal record and oral presentation, if one is conducted.

(c) The appeal decision shall conform to all applicable laws, regulations, policies, and procedures.

(d) The appeal decision may affirm or reverse the appealable decision, in whole or in part. The appeal decision must specify the basis for affirmation or reversal and may include instructions for further action by the Responsible Official.

(e) Except where a decision to conduct discretionary review has been made and a discretionary review decision has been issued, the appeal decision shall constitute USDA's final administrative decision.

§ 214.19 Procedures for discretionary review.

(a) *Initiation.* (1) One day after issuance of an appeal decision, the Appeal Deciding Officer shall send a copy of the appeal decision, appeal, and appealable decision to the Discretionary Reviewing Officer to determine whether discretionary review of the appeal decision should be conducted.

(2) One day after issuance of a Chief's decision that is eligible for discretionary review under § 214.7(b)(2), the Chief shall send the decision to the Discretionary Reviewing Officer to determine whether discretionary review should be conducted.

(b) *Criteria for determining whether to conduct discretionary review.* In deciding whether to conduct discretionary review, the Discretionary Reviewing Officer should, at a minimum, consider the degree of controversy surrounding the decision, the potential for litigation, and the extent to which the decision establishes precedent or new policy.

(c) *Time period.* Upon receipt of the appeal decision, appeal, and appealable decision or Chief's decision, the Discretionary Reviewing Officer shall have 30 days to determine whether to conduct discretionary review and may request the appeal record or the record related to the Chief's decision during that time to assist in making that determination. If a request for the record is made, it must be transmitted to the Discretionary Reviewing Officer within 5 days.

(d) *Notification.* The Discretionary Reviewing Officer shall notify the parties and the Appeal Deciding Officer in writing of a decision to conduct discretionary review. The Discretionary Reviewing Officer may notify the parties and the Appeal Deciding Officer of a decision not to conduct discretionary review within 30 days. If the Discretionary Reviewing Officer takes no action within 30 days of receipt of the appeal decision, appeal, and appealable decision or Chief's decision, the appeal decision or Chief's decision shall constitute USDA's final administrative decision.

(e) *Scope of discretionary review and issuance of a discretionary review decision.* Discretionary review shall be limited to the record. No additional information shall be considered by the Discretionary Reviewing Officer. The Discretionary Reviewing Officer shall have 30 days to issue a discretionary review decision after notification of the parties and Appeal Deciding Officer has occurred pursuant to § 214.19(d). The Discretionary Reviewing Officer's decision shall constitute USDA's final administrative decision. If a discretionary review decision is not issued within 30 days following the notification of the decision to conduct discretionary review, the appeal decision or Chief's decision shall constitute USDA's final administrative decision.

§ 214.20 Exhaustion of administrative remedies.

Per 7 U.S.C. 6912(e), judicial review of a decision that is appealable under this part is premature unless the

plaintiff has exhausted the administrative remedies under this part.

§ 214.21 Information collection requirements.

The rules of this part governing appeal of decisions relating to occupancy or use of National Forest System lands and resources specify the information that an appellant must provide in an appeal. Therefore, these rules contain information collection requirements as defined in 5 CFR part 1320. These information collection requirements are assigned Office of Management and Budget Control Number 0596–0231.

§ 214.22 Applicability and effective date.

This part prescribes the procedure for administrative review of appealable decisions and Chief's decisions set forth in § 214.4 issued on or after June 5, 2013.

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

■ 4. The authority citation for part 215 continues to read as follows:

Authority: 16 U.S.C. 472, 551; sec. 322, Pub. L. 102–381 (Appeals Reform Act), 106 Stat. 1419 (16 U.S.C. 1612 note).

■ 5. In § 215.1, revise paragraph (b) to read as follows:

§ 215.1 Purpose and scope.

* * * * *

(b) *Scope.* Notice of proposed actions and opportunity to comment provide an opportunity for the public to provide meaningful input prior to the decision on projects and activities implementing land management plans. The rules of this part complement other opportunities to participate in the Forest Service's project and activity planning, such as those provided by the National Environmental Policy Act of 1969 (NEPA) and its implementing regulations at 40 CFR parts 1500–1508 and 36 CFR part 220; the National Forest Management Act (NFMA) and its implementing regulations at 36 CFR part 219; and the regulations at 36 CFR part 216 governing public notice and comment for certain Forest Service directives.

■ 6. In § 215.2, revise the definitions for ''Appeal,'' ''Appeal Deciding Officer,'' ''Appeal record,'' ''Appellant,'' and ''Responsible Official'' to read as follows:

§ 215.2 Definitions.

* * * * *

Appeal—A document filed with an Appeal Deciding Officer in which an individual or entity seeks review of a Forest Service decision under this part.

Appeal Deciding Officer—The U.S. Department of Agriculture (USDA) official or Forest Service line officer who is one organizational level above the Responsible Official or the respective Deputy Forest Supervisor, Deputy Regional Forester, or Associate Deputy Chief with the delegation of authority relevant to the provisions of this part.

* * * * *

Appeal record – Documentation and other information filed with the Appeal Deciding Officer within the relevant time period by parties to an appeal and upon which review of an appeal is conducted.

* * * * *

Appellant—An individual or entity that has filed an appeal of a decision under this part.

* * * * *

Responsible Official—The Forest Service line officer who has the delegated authority to make and implement a decision that may be appealed under this part.

* * * * *

§ 215.11 [Amended]

■ 7. In § 215.11, remove paragraph (d).

§ 215.14 [Amended]

■ 8. In § 215.14, remove paragraph (b)(5), and redesignate paragraphs (b)(6) through (9) as paragraphs (b)(5) through (8).

■ 9. In § 215.15, revise paragraph (c) to read as follows:

§ 215.15 Appeal time periods and process.

* * * * *

(c) *Evidence of timely filing.* Parties to an appeal are responsible for ensuring timely filing of appeal documents. Questions regarding whether an appeal document has been timely filed shall be resolved by the Appeal Deciding Officer based on the following indicators:

(1) The date of the U.S. Postal Service postmark for an appeal received before the close of the fifth business day after the appeal filing date;

(2) The electronically generated posted date and time for email and facsimiles;

(3) The shipping date for delivery by private carrier for an appeal received before the close of the fifth business day after the appeal filing date; or

(4) The official agency date stamp showing receipt of hand delivery.

* * * * *

PART 222—RANGE MANAGEMENT

■ 10. The authority citation for part 222 is revised to read as follows:

Authority: 7 U.S.C. 1010–1012, 5101–5106; 16 U.S.C. 551, 572, 5801; 31 U.S.C. 9701; 43 U.S.C. 1751, 1752, 1901; E.O. 12548 (51 FR 5985).

Subpart B—[Redesignated as Subpart D]

■ 11. Redsignate subpart B, consisting of §§ 222.20 through 222.36, as subpart D, consisting of §§ 222.60 through 222.76, and revise the newly redesignated subpart D authority citation to read as follows:

Subpart D—Management of Wild Free-Roaming Horses and Burros

Authority: 7 U.S.C. 1011; 16 U.S.C. 551, 1331–1340; 43 U.S.C. 1901 note.

■ 12. Add a new subpart B to read as follows:

Subpart B—Mediation of Term Grazing Permit Disputes

Sec.
222.20 Decisions subject to mediation.
222.21 Parties.
222.22 Stay of appeal.
222.23 Confidentiality.
222.24 Records.
222.25 Costs.
222.26 Ex parte communications.

Authority: 7 U.S.C. 5101–5106; 16 U.S.C. 472, 551.

Subpart B—Mediation of Term Grazing Permit Disputes

§ 222.20 Decisions subject to mediation.

The holder of a term grazing permit issued in a State with a mediation program certified by the U.S. Department of Agriculture may request mediation of a dispute relating to a decision to suspend or cancel the permit as authorized by 36 CFR 222.4(a)(2)(i), (ii), (iv), and (v) and (a)(3) through (6). Any request for mediation must be included in an appeal of the decision to suspend or cancel the permit filed in accordance with 36 CFR part 214.

§ 222.21 Parties.

Only the following may be parties to mediation of a term grazing permit dispute:

(a) A mediator authorized to mediate under a State mediation program certified by the U.S. Department of Agriculture;

(b) The Chief, Forest Service, or other Forest Service employee who made the decision being mediated or his or her designee;

(c) The holder whose term grazing permit is the subject of the decision and who has requested mediation in an appeal filed in accordance with the procedures at 36 CFR part 214;

(d) That holder's creditors, if applicable; and

(e) Legal counsel, if retained. The Forest Service will have legal representation in the mediation only if the holder has legal representation in the mediation.

§ 222.22 Stay of appeal.

If an appellant requests mediation of a decision subject to mediation under § 222.20 in an appeal filed under 36 CFR part 214, the Appeal Deciding Officer shall immediately notify all parties to the appeal that all appeal deadlines are automatically stayed for 45 days to allow for mediation. If a mediated agreement is not reached in 45 days, the Appeal Deciding Officer may extend the automatic stay for another 15 days if there is a reasonable possibility that a mediated agreement can be achieved within that timeframe. If an agreement is not achieved at the end of the 45- or 60-day mediation process, the Appeal Deciding Officer shall immediately notify all parties to the appeal that mediation was unsuccessful, that the stay has expired, and that the time periods and procedures applicable to an appeal under 36 CFR part 214 are reinstated.

§ 222.23 Confidentiality.

Mediation sessions and dispute resolution communications as defined in 5 U.S.C. 571(5) shall be confidential. Any mediation agreement signed by a Forest Service official and the holder of a term grazing permit is subject to public disclosure.

§ 222.24 Records.

Notes taken or factual material shared during mediation sessions shall not be included in the appeal record prepared in accordance with the procedures at 36 CFR part 214.

§ 222.25 Costs.

The Forest Service shall cover only those costs incurred by its own employees in mediation sessions.

§ 222.26 Ex parte communications.

The Chief of the Forest Service or other Forest Service employee who made the decision being mediated, or his or her designee, shall not discuss mediation with the Appeal Deciding Officer, except to request an extension of time or to communicate the results of mediation.

Subpart C—[Amended]

■ 13. The authority citation for subpart C of part 222 is revised to read as follows:

Authority: 16 U.S.C. 551; 31 U.S.C. 9701; 43 U.S.C. 1751, 1752, 1901; E.O. 12548 (51 FR 5985).

PART 228—MINERALS

■ 14. The authority citation for part 228 is revised to read as follows:

Authority: 16 U.S.C. 478, 551; 30 U.S.C. 226, 352, 601, 611; 94 Stat. 2400.

Subpart A—Locatable Minerals

■ 15. Revise § 228.14 to read as follows:

§ 228.14 Appeals.

Appeal of decisions of an authorized officer made pursuant to this subpart is governed by 36 CFR part 214 or 215.

Subpart C—Disposal of Mineral Materials

■ 16. In § 228.65, revise paragraph (b)(4) to read as follows:

§ 228.65 Payment for sales.

* * * * *

(b) * * *

(4) If the purchaser fails to make payments when due, the contract will be considered breached, the authorized officer will cancel the contract, and all previous payments will be forfeited without prejudice to any other rights and remedies of the United States.

* * * * *

■ 17. In § 228.66 revise paragraph (c) to read as follows:

§ 228.66 Refunds.

* * * * *

(c) *Cancellation.* (1) If the contract is cancelled by the authorized officer for reasons which are beyond the purchaser's control; or

(2) If the contract is cancelled by mutual agreement. This refund provision is not a warranty that a specific quantity of material exists in the sale area.

Subpart E—Oil and Gas Resources

■ 18. In § 228.107, revise paragraph (c) to read as follows:

§ 228.107 Review of surface use plan of operations.

* * * * *

(c) *Notice of decision.* The authorized Forest officer shall give public notice of the decision on a surface use plan of operations and include in the notice that the decision is subject to appeal under 36 CFR part 214 or 215.

* * * * *

PART 241—FISH AND WILDLIFE

■ 19. The authority citation for part 241 continues to read as follows:

Authority: 16 U.S.C. 472, 539, 551, 683.

Subpart B—Conservation of Fish, Wildlife, and Their Habitat, Chugach National Forest, Alaska

■ 20. In § 241.22, revise paragraphs (e) and (f) to read as follows:

§ 241.22 Consistency determinations.

* * * * *

(e) Subject to valid existing rights, the responsible Forest Officer may revoke, suspend, restrict, or require modification of any activity if it is determined that such measures are required to conserve wildlife, fish, or their habitat within areas of the Chugach National Forest subject to this subpart. Prior to taking action to revoke, suspend, restrict, or require modification of an activity under this section, the responsible Forest Officer shall give affected parties reasonable prior notice and an opportunity to comment, unless it is determined that doing so would likely result in irreparable harm to conservation of fish, wildlife, and their habitat.

(f) Decisions made pursuant to this section are subject to appeal only as provided in 36 CFR part 214.

* * * * *

PART 251—LAND USES

■ 21. The authority citation for part 251 continues to read as follows:

Authority: 16 U.S.C. 472, 479b, 551, 1134, 3210, 6201–13; 30 U.S.C. 1740, 1761–1771.

Subpart A—Miscellaneous Land Uses

■ 22. The authority citation for part 251, subpart A, continues to read as follows:

Authority: 7 U.S.C. 1011; 16 U.S.C. 518, 551, 678a; Pub. L. 76–867, 54 Stat. 1197.

■ 23. Amend § 251.15 by revising paragraphs (a)(2)(iv) and (a)(3) to read as follows:

§ 251.15 Conditions, rules, and regulations to govern exercise of mineral rights reserved in conveyances to the United States.

(a) * * *

(2) * * *

(iv) Failure to comply with the terms and conditions of the permit shall be cause for revocation of all rights to use, occupy, or disturb the surface of the

lands covered by the permit, but in the event of revocation, a new permit shall be issued upon application when the causes for revocation of the preceding permit have been satisfactorily remedied and the United States has been reimbursed for any damages it has incurred from the noncompliance.

(3) All structures, other improvements, and materials shall be removed from the lands within one year after the date of revocation of the permit.

* * * * *

Subpart B—Special Uses

■ 24. The authority citation for part 251, subpart B, continues to read as follows:

Authority: 16 U.S.C. 460l–6a, 460l–6d, 472, 497b, 497c, 551, 580d, 1134, 3210; 30 U.S.C. 185; 43 U.S.C. 1740, 1761–1771.24.

■ 25. In § 251.51 revise the definitions for ''Holder,'' ''Revocation,'' ''Special use authorization,'' and ''Termination'' to read as follows:

§ 251.51 Definitions.

* * * * *

Holder—an individual or entity that holds a valid special use authorization.

* * * * *

Revocation—the cessation, in whole or in part, of a special use authorization by action of an authorized officer before the end of the specified period of use or occupancy for reasons set forth in § 251.60(a)(1)(i), (a)(2)(i), (g), and (h) of this subpart.

* * * * *

Special use authorization—a written permit, term permit, lease, or easement that authorizes use or occupancy of National Forest System lands and specifies the terms and conditions under which the use or occupancy may occur.

* * * * *

Termination—the cessation of a special use authorization by operation of law or by operation of a fixed or agreed-upon condition, event, or time as specified in the authorization, which does not require a decision by an authorized officer to take effect, such as expiration of the authorized term; change in ownership or control of the authorized improvements; or change in ownership or control of the holder of the authorization.

* * * * *

■ 26. In § 251.54, revise the last sentence of paragraph (g)(3)(iii) to read as follows:

§ 251.54 Proposal and application requirements and procedures.

* * * * *

(g) * * *

(3) * * *

(iii) * * * A denial of an application in paragraphs (g)(3)(ii)(A) through (g)(3)(ii)(H) of this section constitutes final agency action, is not subject to administrative appeal, and is immediately subject to judicial review.

* * * * *

■ 27. In § 251.60, revise paragraphs (a)(1)(ii), (a)(2)(ii), and (h)(2) to read as follows:

§ 251.60 Termination, revocation, and suspension.

(a) * * *

(1) * * *

(ii) *Judicial review.* Revocation or suspension of a special use authorization under this paragraph constitutes final agency action, is not subject to administrative appeal, and is immediately subject to judicial review.

* * * * *

(2) * * *

(ii) *Administrative review.* Except for revocation or suspension of an easement issued pursuant to § 251.53(e) or § 251.53(l) of this subpart, revocation or suspension of a special use authorization under this paragraph is subject to appeal pursuant to 36 CFR part 214.

* * * * *

(h) * * *

(2) Before any such easement is revoked upon abandonment, the owner of the easement shall be given notice and, upon the owner's request made within 60 days after receipt of the notice, shall be given an appeal in accordance with the provisions of 36 CFR part 214.

* * * * *

■ 28. Revise § 251.61 to read as follows:

§ 251.61 Applications for new, changed, or additional uses or area.

(a) Holders shall file a new or amended application for authorization of any new, changed, or additional uses or area, including any changes that involve any activity that has an impact on the environment, other uses, or the public. In approving or denying new, changed, or additional uses or area, the authorized officer shall consider, at a minimum, the findings or recommendations of other affected agencies and whether to revise the terms and conditions of the existing authorization or issue a new authorization. Once approved, any new, changed, or additional uses or area must be reflected in the existing or a new authorization.

(b) A holder may be required to furnish as-built plans, maps, or surveys upon completion of construction.

Subpart C—[Removed and Reserved]

■ 29. Remove and reserve subpart C, consisting of §§ 251.80 through 251.103.

Subpart E—Revenue-Producing Visitor Services in Alaska

■ 30. The authority citation for part 251, subpart E, continues to read as follows:

Authority: 16 U.S.C. 3197.

■ 31. Revise § 251.126 to read as follows:

§ 251.126 Appeals.

Decisions related to the issuance of special use authorizations in response to written solicitations by the Forest Service under this subpart or related to the modification of special use authorizations to reflect historical use are subject to administrative appeal under 36 CFR part 214.

PART 254—LANDOWNERSHIP ADJUSTMENTS

Subpart A—Land Exchanges

■ 32. The authority citation for part 254, subpart A, is revised to read as follows:

Authority: 7 U.S.C. 428a(a) and 1011; 16 U.S.C. 484a, 485, 486, 516, 551, 555a; 43 U.S.C. 1701, 1715, 1716, 1740.

■ 33. In § 254.4, revise paragraph (g) to read as follows:

§ 254.4 Agreement to initiate an exchange.

* * * * *

(g) The withdrawal from an exchange proposal by the authorized officer at any time prior to the notice of decision pursuant to § 254.13 of this subpart is not appealable under 36 CFR part 214 or 215.

■ 34. In § 254.13, revise paragraph (b) to read as follows:

§ 254.13 Approval of exchanges; notice of decision.

* * * * *

(b) The decision to approve or disapprove an exchange proposal shall be subject to appeal as provided under 36 CFR part 214 or 215 for 45 days after the date of publication of a notice of availability of the decision.

■ 35. In § 254.14, revise paragraph (b)(6) to read as follows:

§ 254.14 Exchange agreement.

* * * * *

(b) * * *

(6) In the event of an appeal under 36 CFR part 214 or 215, a decision to approve an exchange proposal pursuant to § 254.13 of this subpart is upheld; and

* * * * *

■ 36. In § 254.15, revise the last sentence of paragraph (c)(2) to read as follows:

§ 254.15 Title standards.

* * * * *

(c) * * *

(2) * * * If an agreement cannot be reached, the authorized officer shall consider other alternatives to accommodate the authorized use or shall determine whether there are specific and compelling reasons in the public interest for revoking the authorization for that use pursuant to 36 CFR 251.60.

PART 292—NATIONAL RECREATION AREAS

Subpart C—Sawtooth National Recreation Area—Private Lands

■ 37. The authority citation for part 292, subpart C, continues to read as follows:

Authority: Sec. 4(a), Act of Aug. 22, 1972 (86 Stat. 613).

■ 38. In § 292.15, revise paragraph (l) to read as follows:

§ 292.15 General provisions—procedures.

* * * * *

(l) *Appeals.* Denial or revocation of a certification of compliance under this subpart is subject to appeal under 36 CFR part 214.

Subpart D—Sawtooth National Recreation Area—Federal Lands

■ 39. The authority citation for part 292, subpart D, is revised to read as follows:

Authority: 16 U.S.C. 460aa–10, 478, 551.

■ 40. In § 292.18, revise paragraph (f) to read as follows:

§ 292.18 Mineral resources.

* * * * *

(f) *Operating plans—suspension, revocation, or modification.* The authorized officer may suspend or revoke authorization to operate in whole or in part where such operations are causing substantial impairment which cannot be mitigated. At any time during operations under an approved operating plan, the operator may be required to modify the operating plan to minimize or avoid substantial impairment of the values of the SNRA.

* * * * *

Dated: March 25, 2013.

Authur L. Blazer,

Deputy, Under Secretary, U.S. Forest Service.

[FR Doc. 2013–13260 Filed 6–4–13; 8:45 am]

BILLING CODE 3410–11–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R04–OAR–2013–0062; FRL–9820–1]

Approval and Promulgation of Implementation Plans; Kentucky: Kentucky Portion of Cincinnati-Hamilton, Revision to the Motor Vehicle Emissions Budgets

AGENCY: Environmental Protection Agency (EPA).

ACTION: Direct final rule.

SUMMARY: EPA is taking direct final action to approve a revision to the Kentucky State Implementation Plan (SIP), submitted to EPA on August 9, 2012, by the Commonwealth of Kentucky, through the Kentucky Energy and Environment Cabinet, Division for Air Quality (DAQ). Kentucky's August 9, 2012, SIP revision includes changes to the maintenance plan for the Kentucky portion of the Cincinnati-Hamilton, OH–KY–IN, maintenance area for the 1997 8-hour ozone national ambient air quality standards (NAAQS). The Cincinnati-Hamilton, OH–KY–IN, maintenance area for the 1997 8-hour ozone NAAQS includes the counties of Boone, Campbell and Kenton in Kentucky (hereafter also referred to as Northern Kentucky); a portion of Dearborn County, Indiana; and the entire counties of Butler, Clermont, Clinton, Hamilton and Warren in Ohio. Kentucky's August 9, 2012, SIP revision proposes to update the motor vehicle emissions budget using an updated mobile emissions model, the Motor Vehicle Emissions Simulator (also known as MOVES2010a), and to increase the safety margin allocated to motor vehicle emissions budgets (MVEBs or budgets) for nitrogen oxides (NO_X) and volatile organic compounds (VOC) for Northern Kentucky to account for changes in the emissions model and vehicle miles traveled (VMT) projection model. EPA is approving this SIP revision and deeming the MVEB adequate for transportation conformity purposes, because the Commonwealth has demonstrated that it is consistent with the Clean Air Act (CAA or Act).

DATES: This rule is effective on August 5, 2013 without further notice, unless EPA receives relevant adverse comment by July 5, 2013. If EPA receives such comment, EPA will publish a timely withdrawal in the **Federal Register** informing the public that this rule will not take effect.

ADDRESSES: Submit your comments, identified by Docket ID No. EPA–R04–OAR–2013–0062 by one of the following methods:

1. *www.regulations.gov:* Follow the on-line instructions for submitting comments.
2. *Email: R4–RDS@epa.gov.*
3. *Fax:* (404) 562–9019.
4. *Mail:* EPA–R04–OAR–2013–0062, Regulatory Development Section, Air Planning Branch, Air, Pesticides and Toxics Management Division, U.S. Environmental Protection Agency, Region 4, 61 Forsyth Street, SW., Atlanta, Georgia 30303–8960.
5. *Hand Delivery or Courier:* Lynorae Benjamin, Chief, Regulatory Development Section, Air Planning Branch, Air, Pesticides and Toxics Management Division, U.S. Environmental Protection Agency, Region 4, 61 Forsyth Street, SW., Atlanta, Georgia 30303–8960. Such deliveries are only accepted during the Regional Office's normal hours of operation. The Regional Office's official hours of business are Monday through Friday, 8:30 to 4:30, excluding federal holidays.

Instructions: Direct your comments to Docket ID No. EPA–R04–OAR–2013–0062. 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. For additional information

about EPA's public docket visit the EPA Docket Center homepage at *http://www.epa.gov/epahome/dockets.htm.*

Docket: All documents in the electronic docket are listed in the *www.regulations.gov* index. Although listed in the index, some information is not publicly available, i.e., CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy form. Publicly available docket materials are available either electronically in *www.regulations.gov* or in hard copy at the Regulatory Development Section, Air Planning Branch, Air, Pesticides and Toxics Management Division, U.S. Environmental Protection Agency, Region 4, 61 Forsyth Street, SW., Atlanta, Georgia 30303–8960. EPA requests that if at all possible, you contact the person listed in the **FOR FURTHER INFORMATION CONTACT** section to schedule your inspection. The Regional Office's official hours of business are Monday through Friday, 8:30 to 4:30, excluding federal holidays.

FOR FURTHER INFORMATION CONTACT: Kelly Sheckler, Air Quality and Transportation Modeling Section, Air Planning Branch, Air, Pesticides and Toxics Management Division, U.S. Environmental Protection Agency, Region 4, 61 Forsyth Street, SW., Atlanta, Georgia 30303–8960. Kelly Sheckler may be reached by phone at (404) 562–9222 or by electronic mail address *sheckler.kelly@epa.gov.*

SUPPLEMENTARY INFORMATION:

Table of Contents

I. What is the background for this action?
a. SIP Budgets and Transportation Conformity
b. Prior Approval of Budgets
c. The MOVES Emissions Model and Regional Transportation Conformity Grace Period
d. Submissions of New Budgets Based on MOVES2010a
II. What are the criteria for approval?
III. What is EPA's analysis of the Commonwealth's SIP revision?
a. Approvability of the MOVES2010a-Based Budgets
b. Applicability of MOVES2010a-Based Budgets
IV. Final Action
V. Statutory and Executive Order Reviews

I. What Is the background for this action?

a. SIP Budgets and Transportation Conformity

Under the CAA, states are required to submit, at various times, control strategy SIP revisions and maintenance plans for nonattainment and maintenance areas for a given NAAQS. These emission control strategy SIP revisions (e.g., reasonable further progress and attainment demonstration SIP revisions) and maintenance plans include budgets of on-road mobile source emissions for criteria pollutants and/or their precursors to address pollution from cars, trucks, and other on-road vehicles. SIP budgets are the portions of the total allowable emissions that are allocated to on-road vehicle use that, together with emissions from other sources in the area, will provide for attainment or maintenance. The budget serves as a ceiling on emissions from an area's planned transportation system. For more information about budgets, see the preamble to the November 24, 1993, transportation conformity rule (58 FR 62188).

Under section 176(c) of the CAA, transportation plans, transportation improvement programs (TIPs), and transportation projects must ''conform'' to (i.e., be consistent with) the SIP before they can be adopted or approved. Conformity to the SIP means that transportation activities will not cause new air quality violations, worsen existing air quality violations, or delay timely attainment of the NAAQS or an interim milestone. The transportation conformity regulations can be found at 40 CFR Parts 51 and 93.

Before budgets can be used in conformity determinations, EPA must affirmatively find the budgets adequate. However, adequate budgets do not supersede approved budgets for the same CAA purpose. If the submitted SIP budgets are meant to replace budgets for the same CAA purpose and year(s) addressed by a previously approved SIP, as in the case of Kentucky's MOVES2010a VOC and NO_X budgets for the 1997 8-hour ozone NAAQS (the subject of this action), EPA must approve the revised SIP and budgets, and can affirm the budgets are adequate at the same time. Once EPA approves the SIP revision and determines the budgets adequate, the revised budgets must be used by the state and federal agencies in determining whether transportation activities conform to the SIP as required by section 176(c) of the CAA. EPA's substantive criteria for determining the adequacy of budgets are set out in 40 CFR 93.118(e)(4).

b. Prior Approval of Budgets

Northern Kentucky, as part of the Cincinnati-Hamilton, OH–KY–IN area, was designated as nonattainment for the 1997 8-hour ozone NAAQS effective June 15, 2004 (69 FR 23858).[1] Subsequently, Northern Kentucky, as part of the Cincinnati-Hamilton, OH–KY–IN area, was redesignated as attainment for the 1997 8-hour ozone NAAQS on August 5, 2010, (75 FR 47218). As part of this redesignation, EPA approved a 10-year air quality maintenance plan covering the years 2010 through 2020. The 10-year air quality maintenance plan for Northern Kentucky established MVEBs for 2015 and 2020 for transportation conformity purposes using the MOBILE 6.2 model which was the latest approved emissions model at that time. That plan satisfied the CAA requirement for a 1997 8-hour ozone maintenance plan.

The same counties in Northern Kentucky were designated nonattainment for the 1997 annual fine particulate matter ($PM_{2.5}$) NAAQS. *See* 70 FR 944 (January 5, 2005). Subsequently, on December 15, 2011, EPA approved a redesignation request for this same area for the 1997 annual $PM_{2.5}$ from nonattainment to attainment. *See* 76 FR 77903. Kentucky's 1997 annual $PM_{2.5}$ maintenance plan included MVEBs that were derived with the MOVES model—the latest approved emissions model at that time.

Kentucky is taking the opportunity through the Commonwealth's August 9, 2012, SIP revision to align and update the mobile model used to derive the MVEBs for ozone for the ease of implementing transportation conformity requirements in the Northern Kentucky Area. Specifically, Kentucky has opted to update the 1997 8-hour ozone MVEBs with the MOVES model. This update would align the 1997 8-hour ozone MVEBs with the most current mobile model and would align these MVEBs with the mobile model (i.e., MOVES) that has to be used for both the ozone and $PM_{2.5}$ transportation conformity analysis.

c. The MOVES Emissions Model and Regional Transportation Conformity Grace Period

The MOVES model is EPA's state-of-the-art tool for estimating highway emissions. The model is based on analyses of millions of emission test results and considerable advances in the Agency's understanding of vehicle emissions. MOVES incorporates the latest emissions data, more sophisticated calculation algorithms, increased user flexibility, new software design, and significant new capabilities relative to those reflected in MOBILE 6.2.

EPA announced the release of MOVES2010 in March 2010 (75 FR 9411). EPA subsequently released two minor model revisions: MOVES2010a in September 2010 and MOVES2010b in

April 2012. Both of these minor revisions enhance model performance and do not significantly affect the criteria pollutant emissions results from MOVES2010.

MOVES will be required for new regional emissions analyses for transportation conformity determinations (''regional conformity analyses'') outside of California that begin after March 2, 2013 (or when EPA approves MOVES-based budgets, whichever comes first).[2] The MOVES grace period for regional conformity analyses applies to both the use of MOVES2010 and approved minor revisions (e.g., MOVES2010a and MOVES2010b). For more information, see EPA's ''Policy Guidance on the Use of MOVES2010 and Subsequent Minor Model Revisions for State Implementation Plan Development, Transportation Conformity, and Other Purposes'' (April 2012), available online at: *www.epa.gov/otaq/stateresources/transconf/policy.htm#models.*

EPA encouraged areas to examine how MOVES would affect future transportation plan and TIP conformity determinations so, if necessary, SIPs and budgets could be revised with MOVES or transportation plans and TIPs could be revised (as appropriate) prior to the end of the regional transportation conformity grace period. EPA also encouraged state and local air agencies to consider how the release of MOVES would affect analyses supporting SIP submissions under development (77 FR 9411 and 77 FR 11394).

For consistency purposes with future Transportation conformity determinations, the interagency consultation partners for transportation conformity decided to update the 1997 8-hour ozone MOBILE6.2-based MVEBs with MOVES

d. Submission of New Budgets Based on MOVES2010a

On August 9, 2012, the Commonwealth submitted a SIP revision to revise the 1997 8-hour ozone MVEBs using the MOVES2010a emissions model for the Kentucky portion of the Ohio, Kentucky and Indiana MSA. The revision reflects changes in emission estimates due to new emissions model, VMT projection models, and other emission model input data. The Indiana and Ohio portion of this Area have separate MVEBs. In its August 9, 2012, SIP revision, Kentucky also provides for a safety margin to the 1997 8-hour ozone MVEBs for the years 2015 and 2020 for both NO_X and VOC. The 1997 8-hour ozone MVEBs (expressed in tons per day (tpd)) that are being updated through today's action were originally approved by EPA on August 5, 2010 (75 FR 47218). These MVEBs were established for NO_X and VOC for the years, 2015 and 2020.

II. What are the criteria for approval?

EPA has always required under the CAA that revisions to existing SIPs continue to meet applicable requirements (i.e., reasonable further progress (RFP), attainment, or maintenance). States that revise their existing SIPs to include MOVES budgets must therefore show that the SIP continues to meet applicable requirements with the new level of motor vehicle emissions contained in the budgets. The SIP must also meet any applicable SIP requirements under CAA section 110.

In addition, the transportation conformity rule (40 CFR 93.118(e)(4)(iv)) requires that ''the motor vehicle emissions budget(s), when considered together with all other emissions sources, is consistent with applicable requirements for [RFP], attainment, or maintenance (whichever is relevant to the given implementation plan submission).'' This and the other adequacy criteria found at 40 CFR 93.118(e)(4) must be satisfied before EPA can find submitted budgets adequate or approve them for conformity purposes.

In addition, areas can revise their budgets and inventories using MOVES without revising their entire SIP if: (1) The SIP continues to meet applicable requirements when the previous motor vehicle emissions inventories are replaced with MOVES base year and milestone, attainment, or maintenance year inventories; and (2) the state can document that growth and control strategy assumptions for non-motor vehicle sources continue to be valid and any minor updates do not change the overall conclusions of the SIP. For example, the first criterion could be satisfied by demonstrating that the emissions reductions between the base year and attainment or maintenance year are the same or greater using MOVES than they were previously.

For more information, see EPA's ''Policy Guidance on the Use of MOVES2010 and Subsequent Minor Model Revisions for State Implementation Plan Development, Transportation Conformity, and Other Purposes'' (April 2012).

III. What is EPA's analysis of the Commonwealth's SIP revision?

As discussed above, EPA issued an updated motor vehicle emissions model known as MOVES. In its announcement of this model, EPA established a two-year grace period for continued use of MOBILE6.2 in regional emissions analyses for transportation plan and TIPs conformity determinations (extending to March 2, 2013), after which states (other than California) must use MOVES in conformity determinations for TIPs. MOBILE6.2 was the applicable mobile source emissions model that was available when the Commonwealth submitted the original maintenance plan for the 1997 8-hour ozone NAAQS. The Commonwealth has opted to update its 1997 8-hour ozone MVEBs with the MOVES model for ease of implementing transportation conformity requirements.

TABLE 1—ORIGINAL MVEBS FOR NORTHERN KENTUCKY

[Boone, Campbell and Kenton Counties]

	2015 (tpd)	2020 (tpd)
NO_X	14.40	13.27
VOC	9.76	10.07

The following tables show the difference between the MOBILE6.2 MVEBs and the MOVES MVEB.

TABLE 2—VOC EMISSIONS INVENTORY: MOBILE6.2 VERSUS MOVES MVEB

VOC	MOBILE6.2				MOVES			
Sector	2005	2008	2015	2020	2005	2008	2015	2020
Point	4.02	4.26	4.65	4.93	4.02	4.26	4.65	4.93
Area	21.43	20.63	20.36	20.36	21.43	20.63	20.36	20.36

[2] Upon the release of MOVES2010, EPA established a two-year grace period before MOVES is required to be used for regional conformity analyses (75 FR 9411). EPA subsequently promulgated a final rule on February 27, 2012, to provide an additional year before MOVES is required for these analyses (77 FR 11394).

TABLE 2—VOC EMISSIONS INVENTORY: MOBILE6.2 VERSUS MOVES MVEB—Continued

VOC	MOBILE6.2				MOVES			
Sector	2005	2008	2015	2020	2005	2008	2015	2020
Non-Road	9.52	8.53	7.60	7.31	9.52	8.53	7.60	7.31
Mobile	11.17	10.14	7.76	7.07	25.20	16.53	9.09	5.89
Total	46.14	43.56	40.37	39.67	60.17	49.95	41.70	38.49

TABLE 3—NO_X EMISSIONS INVENTORY: MOBILE6.2 VERSUS MOVES MVEBS

NO_X	MOBILE6.2				MOVES			
Sector	2005	2008	2015	2020	2005	2008	2015	2020
Point	23.98	23.32	25.13	26.53	23.98	23.32	25.13	26.53
Area	10.57	10.40	10.35	10.35	10.57	10.40	10.35	10.35
Non-Road	27.72	23.69	20.49	19.57	27.72	23.69	20.49	19.57
Mobile	26.64	21.78	11.40	8.27	80.15	55.34	31.56	18.74
Total	88.91	79.19	67.37	64.72	142.42	112.75	87.53	75.19

Although the on-road mobile source emissions increased from the original MOBILE 6.2 MVEBs for a number of projection years, the revised data does not change the ozone attainment status for the Cincinnati-Hamilton, OH–KY–IN area. The point, area, and non-road sectors of the SIP emissions inventory are not affected. The only affected portions are the on-road mobile source emissions and the overall totals. EPA notes that the change in the projected emissions for on-road mobile sources is due solely to the transitions from reliance on MOBILE 6.2 MVEBs to reliance on MOVES MVEBs.

The Commonwealth is currently allocating portions of the available safety margin [3] to the MVEBs to account for new emissions models, VMT projections models, as well as changes to future vehicle mix assumptions, that influence the emission estimations. A portion of the safety margin for both VOC and NO_X will be allocated for budget years 2015 and 2020 to address the additional projected emissions increases associated with the use of the MOVES model. The MVEB years will remain the same with the MOVES updated numbers. Specifically, 2.06 tpd of the available VOC safety margin is allocated to the 2015 MVEBs and 2.87 tpd for the 2020 MVEBs.[4] Additionally, 6.31 tpd of the available NO_X safety margin are allocated to the 2015 MVEBs and 9.39 tpd for the 2020 MVEBs. The remaining safety margin for VOC for 2015 is 6.19 tpd and for 2020 is 8.59 tpd. The remaining safety margin for NO_X for 2015 is 18.91 tpd and for 2020 is 28.17 tpd.

TABLE 4—NORTHERN KENTUCKY NO_X MVEBS

[tpd]

	2015	2020
NO_X Emissions		
On-Road Mobile Emissions	31.56	18.74
Safety Margin Allocated to MVEBs	6.31	9.39
NO_X Conformity MVEBs	37.87	28.13

TABLE 5—NORTHERN KENTUCKY VOC MVEBS

[tpd]

	2015	2020
VOC Emissions		
On-Road Mobile Emissions	9.09	5.89
Safety Margin Allocated to MVEBs	2.06	2.87
VOC Conformity MVEBs	11.15	8.76

Taking into consideration the portion of the safety margin applied to the MVEBs, the resulting difference between the attainment level of emissions from all sources and the projected level of emissions from all sources in the maintenance area, the Area still attains the NAAQS and meets the maintenance requirements. The new safety margins are listed below in Table 6.

TABLE 6—NEW SAFETY MARGINS FOR THE NORTHERN KENTUCKY

Year	VOC tpd	NO_X tpd
2015	6.19	18.91
2020	8.59	28.17

As shown in Tables 2 and 3 above, VOC and NO_X total emissions in Northern Kentucky are projected to steadily decrease from 2008 to the maintenance year of 2020. This VOC and NO_X emission decrease demonstrates continued maintenance of the 8-hour ozone NAAQS for ten years from 2010 (the year the Area was effectively designated attainment for the 1997 8-hour ozone NAAQS) as required by the CAA.

a. Approvability of the MOVES2010a-Based Budgets

EPA is approving the MOVES2010a-based budgets submitted by the Commonwealth for use in determining transportation conformity in Northern Kentucky for the 1997 8-hour ozone NAAQS. EPA is making this approval based on our evaluation of these budgets using the adequacy criteria found in 40 CFR 93.118(e)(4) and our evaluation of the Commonwealth's submittal and SIP requirements. EPA has determined, based on its evaluation, that the Area's SIP would continue to serve its

[3] A safety margin is the difference between the attainment level of emissions from all source categories (i.e., point, area, and mobile) and the projected level of emissions from all source categories. The State may choose to allocate some of the safety margin to the MVEB, for transportation conformity purposes, so long as the total level of emissions from all source categories remains equal to or less than the attainment level of emissions.

[4] EPA notes that projected mobile emissions for 2020 decrease from 7.07 tpd under the MOBILE 6.2 model projection to 5.89 tpd under the MOVES model projection. Nonetheless, KDAQ has proposed to allocate 2.87 tpd of its VOC safety margin to the 2020 MVEBs to account for potential changes in methodology that may occur in the future such as updated socioeconomic data, new models, and other factors.

intended purpose with the submitted MOVES2010a-based budgets at 40 CFR 93.118(e)(4). Specifically:

- The submitted SIP was endorsed by Kentucky Energy and Environment Cabinet Secretary, Leonard K. Peters, and was subject to a state public hearing ((e)(4)(i));
- Before the submitted SIP was submitted to EPA, consultation among federal, state, and local agencies occurred, full documentation was provided to EPA [and EPA's stated concerns were addressed, if applicable] ((e)(4)(ii));
- The budgets are clearly identified and precisely quantified ((e)(4)(iii));
- The budgets, when considered together with all other emissions sources, are consistent with applicable requirements for reasonable further progress, attainment, or maintenance ((e)(4)(iv));
- The budgets are consistent with and clearly related to the emissions inventory and control measures in the submitted SIP ((e)(4)(v); and,
- The revisions explain and document changes to the previous budgets, impacts on point and area source emissions, and changes to established safety margins, and reasons for the changes (including the basis for any changes related to emission factors or vehicle miles traveled) ((e)(4)(vi)).

EPA has always required under the CAA that revisions to existing SIPs and budgets continue to meet applicable requirements (e.g., RFP or attainment). Therefore, states that revise existing SIPs with MOVES must show that the SIP continues to meet applicable requirements with the new level of motor vehicle emissions calculated by the new model.

To that end, Kentucky DAQ's submitted SIP meets EPA's two criteria for revising budgets without revising the entire SIP if:

(1) The SIP continues to meet applicable requirements when the previous motor vehicle emissions inventories are replaced with [MOVES model used] base year and milestone, attainment, or maintenance year inventories, and

(2) The state can document that growth and control strategy assumptions for non-motor vehicle sources continue to be valid and any minor updates do not change the overall conclusions of the SIP.

As described above in section above, the Area meets both of the above criteria based on information provided to EPA or if there are more significant changes in other inventory categories. Based on review of the SIP and the new budgets provided, EPA is determining that the SIP will continue to meet applicable requirements if the revised motor vehicle emissions inventories are replaced with MOVES2010a.

b. Applicability of MOVES2010a-Based Budgets

Pursuant to the Commonwealth's request, EPA is approving the revised budgets. The Commonwealth's existing MOBILE6.2 budgets will no longer be applicable for transportation conformity purposes upon the effective date of this final approval.

In addition, once EPA approves the MOVES2010a-based budgets, the regional transportation conformity grace period for using MOVES2010 (and subsequent minor revisions) for the pollutants included in these budgets will end for Northern Kentucky for the 1997 8-hour ozone NAAQS on the effective date of this final approval.[5]

IV. Final Action

EPA is taking direct final action to approve Commonwealth's August 9, 2012, SIP revision to replace the existing MOBILE 6.2 MVEBs for VOC and NO_X with new budgets based on MOVES2010a. In addition, EPA is taking direct final action to allocate a portion of the available safety margin to the MOVES2010a MVEBs for Northern Kentucky for the 1997 8-hour ozone NAAQS. EPA is approving this action because it is consistent with the CAA and the transportation conformity requirements at 40 CFR 93.

EPA is publishing this rule without prior proposal because the Agency views this as a non-controversial amendment and anticipates no adverse comments. However, in the proposed rules section of this **Federal Register** publication, EPA is publishing a separate document that will serve as the proposal to approve the SIP revision should an adverse comment be filed. This rule will be effective on August 5, 2013 without further notice unless the Agency receives adverse comment by July 5, 2013. If EPA receives such comments, then EPA will publish a document withdrawing the final rule and informing the public that the rule will not take effect. All public comments received will then be addressed in a subsequent final rule based on the proposed rule. EPA will not institute a second comment period on this action. Any parties interested in commenting must do so at this time. If no such comments are received, the public is advised this rule will be effective on August 5, 2013 and no further action will be taken on the proposed rule.

V. Statutory and Executive Order Reviews

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

[5] For more information, see EPA's ''Policy Guidance on the Use of MOVES2010 and Subsequent Minor Revisions for State Implementation Plan Development, Transportation Conformity, and Other Purposes,'' (April 2012).

country, and EPA notes that it will not impose substantial direct costs on tribal governments or preempt tribal law.

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 CAA, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by August 5, 2013. 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. 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 proposed rulemaking. 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, Ozone, Intergovernmental relations, Incorporation by reference, Nitrogen dioxides, Reporting and recordkeeping requirements, and Volatile organic compounds.

Dated: May 22, 2013.

A. Stanley Meiburg,

Acting Regional Administrator, Region 4.

40 CFR part 52 is amended as follows:

PART 52—[AMENDED]

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

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

Subpart S—Kentucky

■ 2. Section 52.920 (e) is amended by adding a new entry at the end of the table for the ''MVEB Update for the 1997 8-hour Ozone Maintenance Plan for Northern Kentucky'' to read as follows:

§ 52.920 Identification of plan.

* * * * *

(e) * * *

EPA APPROVED KENTUCKY NON–REGULATORY PROVISIONS

Name of non-regulatory SIP provision	Applicable geographic or nonattainment area	State submittal date/effective date	EPA approval date	Explanation
*	*	*	*	*
MVEB Update for the 1997 8-hour Ozone Maintenance Plan for Northern Kentucky.	Boone, Campbell, and Kenton Counties, KY.	8/9/12	6/5/13 [Insert citation of publication].	

[FR Doc. 2013–13186 Filed 6–4–13; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 180

[EPA–HQ–OPP–2008–0887; FRL–9388–1]

Propamocarb; Pesticide Tolerances

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: This regulation establishes a tolerance for residues of propamocarb in or on succulent lima bean. Interregional Research Project Number 4 (IR–4) requested this tolerance under the Federal Food, Drug, and Cosmetic Act (FFDCA).

DATES: This regulation is effective June 5, 2013. Objections and requests for hearings must be received on or before August 5, 2013, 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–2008–0887, is available at *http://www.regulations.gov* or at the Office of Pesticide Programs Regulatory Public Docket (OPP Docket) in the Environmental Protection Agency Docket Center (EPA/DC), EPA West Bldg., Rm. 3334, 1301 Constitution Ave. NW., Washington, DC 20460–0001. The Public Reading Room is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Public Reading Room is (202) 566–1744, and the telephone number for the OPP Docket is (703) 305–5805. Please review the visitor instructions and additional information about the docket available at *http://www.epa.gov/dockets.*

FOR FURTHER INFORMATION CONTACT: Laura Nollen, Registration Division (7505P), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave. NW., Washington, DC 20460–0001; telephone number: (703) 305–7390; email address: *nollen.laura@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 Printing 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–2008–0887 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 August 5, 2013. 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–2008–0887, 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 April 13, 2009 (74 FR 16866) (FRL–8396–6), 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 8E7473) by IR–4, Rutgers University, 500 College Rd. East, Suite 201W, Princeton, NJ 08540. The petition requested that 40 CFR 180.499 be amended by establishing a tolerance for residues of the fungicide propamocarb hydrochloride (propamocarb HCl), propyl[3-(dimethylamino)propyl]carbamate monohydrochloride, in or on succulent lima bean at 2.0 parts per million (ppm). That document referenced a summary of the petition prepared on behalf of IR–4 by Bayer CropScience, the registrant, which is available in the docket, *http://www.regulations.gov.* There were no comments received in response to the notice of filing.

Based upon review of the data supporting the petition, EPA has revised the tolerance expression for all established commodities to be consistent with current Agency policy. The reason for this change is explained in Unit IV.C.

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 propamocarb including exposure resulting from the tolerances established by this action. EPA's assessment of exposures and risks associated with propamocarb 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.

In all species tested for toxicity to propamocarb, decreased body weights, body-weight gains, and food consumption were observed following subchronic and chronic durations of exposure. Effects indicative of toxicity were noted in the digestive and gastrointestinal (GI) tracts in dogs, including chronic erosive gastritis and vacuolization of the salivary glands, stomach, and duodenum. Ocular effects were noted in rats (opacity of the eye and yellow colored eyes in females) and in dogs (vacuolization of the lacrimal gland, retinal degeneration, and hyporeflectivity of the inner eye tissue below the lens). Respiratory tract effects were also noted in dogs, including vacuolization of the cells of the trachea and lung. In rats, there were signs of neurotoxicity including decreased motor activities in females following acute exposure and vacuolization of the ventricles of the brain that produce cerebral spinal fluid noted for subchronic and chronic durations. There were no signs of immunotoxicity in the guideline immunotoxicity study for propamocarb.

Fetal effects due to propamocarb treatment were noted at doses which also caused maternal toxicity. Effects in the rat included increased fetal death and post-implantation loss, increases in minor skeletal anomalies, and increased incidences of small fetuses. There were also inter-atrial septal defects, and hemorrhage in the ears, upper GI tract, and nasopharynx/sinuses. Maternal effects consisted of decreased absolute body weights, body-weight gains and food consumption, and mortality. In rabbits, the only developmental effect was an increase in post-implantation loss. Maternal effects consisted of increased abortions, and body-weight decrements.

Additionally, in the rat 2-generation reproduction studies, parental and offspring effects occurred at the same

dose. Parental effects were similar to the effects observed in the rat subchronic and chronic studies in addition to clinical signs including salivation, reddish material around the mouth, and urine staining. Offspring effects consisted of pup deaths, decreased viability and lactation indices and litter size, and decreased pup body weights and body weight gains. Reproductive effects consisted of increased vacuolization and decreased weight of the epididymides, decreased sperm counts and motility, and abnormal sperm morphology.

Propamocarb has been classified as ''not likely to be carcinogenic to humans'' by all routes of exposure, based upon lack of evidence of carcinogenicity in rats and mice.

Specific information on the studies received and the nature of the adverse effects caused by propamocarb 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 the document entitled ''Propamocarb Hydrochloride (Propamocarb-HCl). Section 3 Request for use on Lima Beans (Succulent). Human-Health Risk Assessment'' at pp. 32–37 in docket ID number EPA–HQ–OPP–2008–0887.

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 propamocarb used for human-health risk assessment is shown in Table 1 of this unit.

TABLE 1—SUMMARY OF TOXICOLOGICAL DOSES AND ENDPOINTS FOR PROPAMOCARB FOR USE IN HUMAN HEALTH RISK ASSESSMENT

Exposure/scenario	POD and UFs/SFs	RfD, PAD, LOC for risk assessment	Study and toxicological effects
Acute dietary (Females 13–49 years of age).	NOAEL = 150 mg/kg/day. UF_A = 10X UF_H = 10X FQPA SF = 1X	Acute RfD = 1.5 mg/kg/day. ..... aPAD = 1.5 mg/kg/day.	Developmental Toxicity Study—Rabbit. LOAEL = 300 mg/kg/day based on decreased body weight gain and decreased motor activity.
Acute dietary (General population including infants and children).	NOAEL = 200 mg/kg/day. UF_A = 10X UF_H = 10X FQPA SF = 1X	Acute RfD = 2 mg/kg/day. ..... aPAD = 2 mg/kg/day.	Acute Neurotoxicity Screening Battery—Rat. LOAEL = 2,000 mg/kg/day based on decreased body weight gain and decreased motor activity.
Chronic dietary (All populations)	NOAEL = 12 mg/kg/day. UF_A = 10X UF_H = 10X FQPA SF = 1X	Chronic RfD = 0.12 mg/kg/day. .... cPAD = 0.12 mg/kg/day.	Carcinogenicity Study—Mouse. LOAEL = 95 mg/kg/day based on decreased body weight and body weight gain in females.
Dermal short-term (1 to 30 days) ..	Dermal (or oral) study NOAEL = 150 mg/kg/day. UF_A = 10X UF_H = 10X FQPA SF = 1X	LOC for MOE = 100	2-Generation Reproduction Toxicity Study—Rat. LOAEL = 406.69 mg/kg/day for males and 467.13 mg/kg/day for females based on decreased body weights.
Cancer (Oral, dermal, inhalation) ..	Classification: ''Not likely to be carcinogenic to humans.''		

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). POD = points of departure. 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 propamocarb, EPA considered exposure under the petitioned-for tolerances as well as all existing propamocarb tolerances in 40 CFR 180.499. EPA assessed dietary exposures from propamocarb 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 propamocarb. In estimating acute dietary exposure, EPA used Dietary Exposure Evaluation Model software with the Food Commodity Intake Database (DEEM–FCID) Version 3.16, which uses food consumption data from the U.S. Department of Agriculture's

National Health and Nutrition Examination Survey, What We Eat in America, (NHANES/WWEIA), conducted from 2003–2008. As to residue levels in food, EPA assumed 100 percent crop treated (PCT) and tolerance-level residues for all commodities. In addition, DEEM version 7.81 default processing factors were used, when appropriate.

ii. *Chronic exposure.* In conducting the chronic dietary exposure assessment EPA used DEEM–FCID Version 3.16. As to residue levels in food, EPA assumed 100 PCT and tolerance-level residues for all commodities. In addition, DEEM version 7.81 default processing factors were used, when appropriate.

iii. *Cancer.* Based on the data summarized in Unit III.A., EPA has concluded that propamocarb does not pose a cancer risk to humans. Therefore, a dietary exposure assessment for the purpose of assessing cancer risk is unnecessary.

iv. *Anticipated residue and percent crop treated (PCT) information.* EPA did not use anticipated residue and/or PCT information in the dietary assessment for propamocarb. 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 propamocarb in drinking water. These simulation models take into account data on the physical, chemical, and fate/transport characteristics of propamocarb. 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 Screening Concentration in Ground Water (SCI–GROW) models, the estimated drinking water concentrations (EDWCs) of propamocarb for surface water are estimated to be 8,762 parts per billion (ppb) for acute exposures and 1,067 ppb for chronic exposures for non-cancer assessments. For ground water, the EDWC is estimated to be 15.6 ppb for acute and chronic exposures for non-cancer assessments.

Modeled estimates of drinking water concentrations were directly entered into the dietary exposure model. For acute dietary risk assessment, the water concentration value of 8,762 ppb was used to assess the contribution to drinking water. For chronic dietary risk assessment, the water concentration of value 1,067 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). Propamocarb is currently registered for use on golf course turf, which may result in residential exposure. EPA assessed residential exposure using the following assumptions: Chemical-specific turf transferable residue (TTR) data for propamocarb were used to assess potential short-term dermal post-application exposures to adult and youth golfers. Post-application oral and inhalation exposures, as well as residential handler exposures, are not expected based on the current use patterns for propamocarb. Intermediate-term residential exposures are not expected based on the current use patterns; however, the short-term aggregate assessment would be protective of any potential intermediate-term exposures, as the short- and intermediate-term PODs are the same. Further information regarding EPA standard assumptions and generic inputs for residential exposures may be found at *http://www.epa.gov/pesticides/trac/science/trac6a05.pdf.*

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.'' Although a carbamate, propamocarb is not an *N*-methyl carbamate and does not cause cholinesterase inhibition. Therefore, it was not included in the *N*-methyl carbamate cumulative risk assessment. EPA has not found propamocarb to share a common mechanism of toxicity with any other substances, and propamocarb does not appear to produce a toxic metabolite produced by other substances. For the purposes of this tolerance action, therefore, EPA has assumed that propamocarb 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 Food Quality Protection Act Safety Factor (FQPA SF). In applying this provision, EPA either retains the default value of 10X, or uses a different additional SF when reliable data available to EPA support the choice of a different factor.

2. *Prenatal and postnatal sensitivity.* There was no increased quantitative prenatal sensitivity due to propamocarb treatment. Effects in developing rats occurred at the same dose as maternal effects and included increased fetal death and post-implantation loss, increases in minor skeletal anomalies, and an increased incidence of small fetus. Effects in maternal rats at that dose consisted of decreased absolute body weights, body weight gains, food consumption, and mortality. In rabbits, the only developmental effect was an increase in post-implantation loss in the presence of maternal effects (increased abortions, and body weight decrements). In the rat 2-generation reproduction studies, parental effects were similar to the effects observed in the rat subchronic and chronic studies, in addition to clinical signs including salivation, reddish material around the mouth, and urine staining. Offspring effects consisted of pup deaths, decreased viability and lactation indices and litter size, and decreased pup body weights and body weight gains. Reproductive effects at the same dose as parental effects consisted of increased vacuolization and decreased weight of the epididymides, decreased sperm counts and motility, and abnormal sperm morphology.

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 propamocarb is complete.

ii. There are two guideline acute neurotoxicity studies and two subchronic neurotoxicity studies for propamocarb HCl. The effects of these studies are well characterized, and

include decreased motor activities in females following acute exposure. However, the endpoints selected are protective of these effects, as the rat acute oral neurotoxicity study was used to select the endpoint for the aRfD of 2.0 mg/kg/day for the general U.S. population, including infants and children. The lack of quantitative increased fetal sensitivity should remove concern for a developmental neurotoxicity study (DNT).

iii. There is no evidence that propamocarb results in increased quantitative susceptibility in *in utero* rats or rabbits in the prenatal developmental studies or in young rats in the 2-generation reproduction study. Although there are qualitative effects observed in both developmental studies, as well as in one of the 2-generation reproduction studies, EPA has determined that no additional UF is necessary to account for these effects because:

a. The effects are well characterized.

b. Clear NOAELs were established.

c. The developmental rabbit and rat 2-generation reproduction studies are being used in endpoint selection.

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 propamocarb in drinking water. EPA used similarly conservative assumptions to assess postapplication exposure of children. Incidental oral exposure is not expected for children. These assessments will not underestimate the exposure and risks posed by propamocarb.

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 exposures, the acute dietary exposure from food and water to propamocarb will occupy 34% of the aPAD selected for females 13–49 years old; and 75% of the aPAD for infants less than 1 year old, the population group receiving the greatest exposure for the general U.S. population, including infants and children.

2. *Chronic risk.* Using the exposure assumptions described in this unit for chronic exposure, EPA has concluded that chronic exposure to propamocarb from food and water will utilize 50% of the cPAD for infants less than 1 year old, the population group receiving the greatest exposure. Based on the explanation in Unit III.C.3., regarding residential use patterns, chronic residential exposure to residues of propamocarb 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). Propamocarb 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 propamocarb.

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 310 for adult male golfers, 280 for golfers aged 11 to less than 16 years old, and 240 for golfers aged 6 to less than 11 years old. Because EPA's level of concern for propamocarb 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). An intermediate-term adverse effect was identified; however, propamocarb is not registered for any use patterns that would result in intermediate-term residential exposure. Intermediate-term risk is assessed based on intermediate-term residential exposure plus chronic dietary exposure. Because there is no intermediate-term residential exposure and chronic dietary exposure has already been assessed under the appropriately protective cPAD (which is at least as protective as the POD used to assess intermediate-term risk), no further assessment of intermediate-term risk is necessary, and EPA relies on the chronic dietary risk assessment for evaluating intermediate-term risk for propamocarb.

5. *Aggregate cancer risk for U.S. population.* Based on the lack of evidence of carcinogenicity in two adequate rodent carcinogenicity studies, propamocarb is 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 propamocarb residues.

IV. Other Considerations

A. Analytical Enforcement Methodology

An adequate gas chromatography with nitrogen-phosphorus detection (GC/NPD) method (Analytical Method No. XAM–34) is available to enforce tolerance expression on plant commodities. The method may be found in the Pesticide Analytical Method (PAM) Vol. II.

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 propamocarb.

C. Revisions to Petitioned-For Tolerances

The Agency has revised the tolerance expression to clarify that:

1. As provided in FFDCA section 408(a)(3), the tolerance covers metabolites and degradates of propamocarb not specifically mentioned.

2. Compliance with the specified tolerance levels is to be determined by measuring only the specific compounds mentioned in the tolerance expression.

V. Conclusion

Therefore, tolerances are established for residues of propamocarb (propyl *N*-[3-(dimethylamino)propyl]carbamate) in or on bean, lima, succulent at 2.0 ppm.

VI. Statutory and Executive Order Reviews

This final rule 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 final rule has been exempted from review under Executive Order 12866, this final rule is not subject to Executive Order 13211, entitled ''Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use'' (66 FR 28355, May 22, 2001) or Executive Order 13045, entitled ''Protection of Children from Environmental Health Risks and Safety Risks'' (62 FR 19885, April 23, 1997). This final rule does not contain any information collections subject to OMB approval under the Paperwork Reduction Act (PRA) (44 U.S.C. 3501 *et seq.*), nor does it require any special considerations under Executive Order 12898, entitled ''Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations'' (59 FR 7629, February 16, 1994).

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

This final rule directly regulates growers, food processors, food handlers, and food retailers, not States or tribes, nor does this action alter the relationships or distribution of power and responsibilities established by Congress in the preemption provisions of FFDCA section 408(n)(4). As such, the Agency has determined that this action will not have a substantial direct effect on States or tribal governments, on the relationship between the national government and the States or tribal governments, or on the distribution of power and responsibilities among the various levels of government or between the Federal Government and Indian tribes. Thus, the Agency has determined that Executive Order 13132, entitled ''Federalism'' (64 FR 43255, August 10, 1999) and Executive Order 13175, entitled ''Consultation and Coordination with Indian Tribal Governments'' (65 FR 67249, November 9, 2000) do not apply to this final rule. In addition, this final rule does not impose any enforceable duty or contain any unfunded mandate as described under Title II of the Unfunded Mandates Reform Act of 1995 (UMRA) (2 U.S.C. 1501 *et seq.*).

This action does not involve any technical standards that would require Agency consideration of voluntary consensus standards pursuant to section 12(d) of the National Technology Transfer and Advancement Act of 1995 (NTTAA) (15 U.S.C. 272 note).

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: May 28, 2013.

Daniel J. Rosenblatt,

Acting 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 § 180.499, revise the section heading, paragraph (a) introductory text, and paragraph (c) to read as follows:

§ 180.499 Propamocarb; tolerances for residues.

(a) *General.* Tolerances are established for the residues of propamocarb, including its metabolites and degradates, in or on the commodities specified in the following table resulting from the application of the hydrochloride salt of propamocarb. Compliance with the following tolerance levels is to be determined by measuring only propamocarb (propyl *N*-[3-(dimethylamino)propyl]carbamate):

* * * * *

(c) *Tolerance with regional registrations.* Tolerances with regional registrations are established for the residues of propamocarb, including its metabolites and degradates, in or on the commodities specified in the following table resulting from the application of the hydrochloride salt of propamocarb. Compliance with the following tolerance levels is to be determined by measuring only propamocarb (propyl *N*-[3-(dimethylamino)propyl]carbamate):

Commodity	Parts per million
Bean, lima, succulent	2.0

* * * * *

[FR Doc. 2013–13190 Filed 6–4–13; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 180

[EPA–HQ–OPP–2012–0204; FRL–9387–9]

Imidacloprid; Pesticide Tolerances

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: This regulation establishes a tolerance for residues of imidacloprid in or on fish and fish-shellfish, mollusc requested by the Interregional Research Project Number 4 (IR–4) under the Federal Food, Drug, and Cosmetic Act (FFDCA). In addition, this regulation establishes time-limited tolerances for residues of imidacloprid in or on sugarcane, cane and sugarcane, molasses. This action is associated with the use of the pesticide on sugarcane under a crisis exemption granted by EPA under section 18 of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA). The time-limited tolerances expire on December 31, 2015.

DATES: This regulation is effective June 5, 2013. Objections and requests for hearings must be received on or before August 5, 2013, 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–2012–0204, is available at *http://www.regulations.gov* or at the Office of Pesticide Programs Regulatory Public Docket (OPP Docket) in the Environmental Protection Agency Docket Center (EPA/DC), EPA West Bldg., Rm. 3334, 1301 Constitution Ave. NW., Washington, DC 20460–0001. The Public Reading Room is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Public Reading Room is (202) 566–1744, and the telephone number for the OPP Docket is (703) 305–5805. Please review the visitor instructions and additional

information about the docket available at *http://www.epa.gov/dockets.*

FOR FURTHER INFORMATION CONTACT: Sidney Jackson, Registration Division (7505P), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave. NW., Washington, DC 20460–0001; telephone number: (703) 305–7610; email address: *jackson.sidney@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 Printing Office's e-CFR site at *http://www.ecfr.gov/cgi-bin/text-idx?&c=ecfr&tpl=/ecfrbrowse/Title40/40tab_02.tpl.*

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

Under FFDCA section 408(g), 21 U.S.C. 346a, any person may file an objection to any aspect of this regulation and may also request a hearing on those objections. You must file your objection or request a hearing on this regulation in accordance with the instructions provided in 40 CFR part 178. To ensure proper receipt by EPA, you must identify docket ID number EPA–HQ–OPP–2012–0204 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 August 5, 2013. 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–2012–0204, by one of the following methods:

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

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

II. Summary of Petitioned-For Tolerance

In the **Federal Register** of May 23, 2012 (77 FR 30481) (FRL–9347–8), 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 2E7988) by IR–4, IR–4 Headquarters, 500 College Road East, Suite 201W, Princeton, NJ 08540. The petition requested that 40 CFR 180.472 be amended by establishing tolerances for residues of the insecticide imidacloprid, (1-[6-chloro-3-pyridinyl) methyl]-N-nitro-2-imidazolidinimine) and its metabolites containing the 6-chloropyridinyl moiety, in or on fish at 0.05 parts per million (ppm), and fish-shellfish, mollusc at 0.05 ppm. That document referenced a summary of the petition prepared by the Willapa-Grays Harbor Oyster Growers Association, the registrant, which is available in the docket, *http://www.regulations.gov.*

There were no comments received in response to the notice of filing.

III. Time-Limited Tolerance for Sugarcane

Also in this action, EPA, on its own initiative, in accordance with FFDCA sections 408(e) and 408(l)(6) of, 21 U.S.C. 346a(e) and 346a(l)(6), is establishing time-limited tolerances for residues of imidacloprid in or on sugarcane, cane at 6.0 ppm and sugarcane, molasses at 50 ppm. These time-limited tolerances expire on December 31, 2015.

Section 408(l)(6) of FFDCA requires EPA to establish a time-limited tolerance or exemption from the requirement for a tolerance for pesticide chemical residues in food that will result from the use of a pesticide under an emergency exemption granted by EPA under FIFRA section 18. Such tolerances can be established without providing notice or period for public comment. EPA does not intend for its actions on FIFRA section 18 related time-limited tolerances to set binding precedents for the application of FFDCA section 408 and the safety standard to other tolerances and exemptions. Section 408(e) of FFDCA allows EPA to establish a tolerance or an exemption from the requirement of a tolerance on its own initiative, i.e., without having received any petition from an outside party. Section 18 of FIFRA authorizes EPA to exempt any Federal or State agency from any provision of FIFRA, if EPA determines that ''emergency conditions exist which require such exemption.'' EPA has established regulations governing such emergency exemptions in 40 CFR part 166.

The Agency is establishing these time-limited tolerances in response to a crisis exemption request under FIFRA section 18 on behalf of the Louisiana Department of Agriculture and Forestry, for the emergency use of imidacloprid on sugarcane to control West Indian cane fly (*Saccharosydne saccharivora*). This was the first emergency exemption request for the use of imidacloprid on sugarcane.

As part of its assessment of the emergency exemption request, EPA assessed the potential risks presented by the residues of imidacloprid in or on sugarcane, cane and sugarcane, molasses. In doing so, EPA considered the safety standard in section 408(b)(2) of the FFDCA, and EPA decided that the necessary time-limited tolerances under section 408(l)(6) of the FFDCA would be consistent with the safety standard. Consistent with the need to move quickly on the emergency exemption in order to address the urgent non-routine situation and to ensure that the resulting food is safe and lawful, EPA is issuing these time-limited tolerances without notice and opportunity for public comment, as provided for in section 408(l)(6). Although, these time-limited tolerances expire and are revoked on December 31, 2015, under section 408(l)(5) of the FFDCA, residues of the pesticide not in excess of the amount specified in the tolerance remaining in or on sugarcane, cane and sugarcane, molasses after that date will not be

unlawful, provided the pesticide is applied in a manner that was lawful under FIFRA, and the residues do not exceed a level that was authorized by these time-limited tolerances at the time of application. EPA will take action to revoke these time-limited tolerances earlier if any experience with, scientific data, or other relevant information on this pesticide indicates that the residues are not safe.

Because these time-limited tolerances are being approved under emergency conditions, EPA has not made any decisions about whether imidacloprid meets EPA's registration requirements for use on sugarcane or whether permanent tolerances for this use would be appropriate. Under this circumstance, EPA does not believe that the time-limited tolerances provide a basis for registration of sugarcane by a State for special local needs under FIFRA section 24(c). Nor do the time-limited tolerances serve as the basis for any State other than Louisiana to use this pesticide on this crop under section 18 of FIFRA without following all provisions of EPA's regulations implementing FIFRA section 18 as identified in 40 CFR part 166. For additional information regarding the emergency exemption for imidacloprid, contact the Agency's Registration Division at the address provided under **FOR FURTHER INFORMATION CONTACT**.

IV. 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 imidacloprid including exposure resulting from the tolerances established by this action. EPA's assessment of exposures and risks associated with imidacloprid 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.

The main targets of toxicity following oral administration of imidacloprid in mammalian systems were the nervous system and the thyroid. The most sensitive species tested was the rat. Evidence of neurotoxicity was reported in the rat acute neurotoxicity (ACN) study as changes in clinical signs and functional-observation battery (FOB) measurements, including decreased motor and locomotor activities, tremors, gait abnormalities, increased righting reflex impairments and body temperature, decreased number of rears and response to stimuli, and decreases in forelimb and hindlimb grip strength. Also, in a rat developmental neurotoxicity (DNT) study where imidacloprid was administered to pregnant/lactating dams in the diet, there were decreases in offspring motor activity measurements and a small but statistically significant decrease in the caudate/putamen width in the brain of female pups. No neurotoxic effects were reported in any other toxicity study including the rat subchronic neurotoxicity study. Long-term dietary exposure to imidacloprid in chronic toxicity studies resulted in an increased incidence of mineralized particles in the thyroid colloid in rats, decreased body weights in mice, and no toxic effects in dogs. No toxic effects were reported via the dermal route in rabbits or via the inhalation route in rats at the highest dose or concentration tested. No evidence of increased qualitative or quantitative susceptibility was found in either rats or rabbits in prenatal developmental toxicity studies or in rats in a two-generation reproductive toxicity study. Increased qualitative susceptibility was indicated in the rat DNT study, however; the neurotoxic offspring effects noted above occurred in the presence of maternal decreased food consumption and body weight gain, and a clear maternal no-observed-adverse-effect level (NOAEL) was established. There was no evidence of carcinogenic potential in either the rat chronic toxicity/carcinogenicity or mouse carcinogenicity studies, and imidacloprid was not genotoxic in a variety of assays.

The toxicology database for imidacloprid does not show any evidence of treatment-related effects on the immune system. Results of an acceptable immunotoxicity study in rats showed no immunotoxic effects at the highest dose level tested.

Specific information on the studies received and the nature of the adverse effects caused by imidacloprid as well as the NOAEL and the lowest-observed-adverse-effect-level (LOAEL) from the toxicity studies can be found at http://*www.regulations.gov* in document: ''Imidacloprid—Section 3 Request for use on Oyster Beds in Washington (WA), and Section 18 Emergency Exemption Request for use on Sugarcane in Louisiana (LA). Human-Health Risk Assessment,'' dated March 7, 2013 at pp. 41–44 in docket ID number EPA–HQ–OPP–2012–0204–0008.

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 the NOAEL and the LOAEL are identified. 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 imidacloprid used for

human risk assessment is shown in Table 1 of this unit.

TABLE 1—SUMMARY OF TOXICOLOGICAL DOSES AND ENDPOINTS FOR IMIDACLOPRID FOR USE IN HUMAN HEALTH RISK ASSESSMENT

Exposure/scenario	Point of departure and uncertainty/safety factors	RfD, PAD, LOC for risk assessment	Study and toxicological effects
Acute dietary (All populations)	LOAEL = 42 mg/kg/day UF_A = 10x UF_H = 10x FQPA SF = 3x	Acute RfD = 0.14 mg/kg/day aPAD = 0.14 mg/kg/day	Acute neurotoxicity—rat LOAEL = 42 mg/kg/day based upon the decrease in motor and locomotor activities observed in females.
Chronic dietary (All populations)	NOAEL= 5.7 mg/kg/day UF_A = 10x UF_H = 10x FQPA SF = 1x	Chronic RfD = 0.057 mg/kg/day cPAD = 0.057 mg/kg/day	Combined chronic toxicity/carcinogenicity—rat. LOAEL = 16.9 mg/kg/day, based upon increased incidence of mineralized particles in thyroid colloid in males.
Incidental Oral Short-term (1–30 days) Intermediate-term (1 to 6 months).	NOAEL= 10 mg/kg/day UF_A = 10x UF_H = 10x FQPA SF = 1x	LOC for MOE = 100.	Prenatal developmental toxicity—rat. LOAEL = 30 mg/kg/day based on decreased maternal body weight gain.
Incidental Oral Long Term (> 6 months)	NOAEL= 5.7 mg/kg/day UF_A= 10x UF_H= 10x FQPA SF =1x	LOC for MOE = 100.	Combined chronic toxicity/carcinogenicity—rat. LOAEL = 16.9 mg/kg/day, based upon increased incidence of mineralized particles in thyroid colloid in males.
Dermal Short-term (1 to 30 days) Intermediate-term (1 to 6 months).	Oral study NOAEL = 10 mg/kg/day (dermal absorption = 7.2%) NOAEL = 10 mg/kg/day UF_A = 10x UF_H = 10x FQPA SF = 1x	LOC for MOE = 100.	Prenatal developmental toxicity—rat. LOAEL = 30 mg/kg/day based on decreased maternal body weight gain.
Dermal Long-term (> 6 months)	Oral study NOAEL= 5.7 mg/kg/day (dermal absorption = 7.2%) NOAEL= 5.7 mg/kg/day UF_A = 10x UF_H = 10x FQPA SF = 1x	LOC for MOE = 100.	Combined chronic toxicity/carcinogenicity—rat. LOAEL = 16.9 mg/kg/day, based upon increased incidence of mineralized particles in thyroid colloid in males.
Inhalation Short- (1–30 days) & Intermediate- (1–6 months) terms.	Oral study NOAEL= 10 mg/kg/day (inhalation absorption = 100%) UF_A = 10x UF_H = 10x FQPA SF = 1x	LOC for MOE = 100.	Prenatal developmental toxicity—rat. LOAEL = 30 mg/kg/day based on decreased maternal body weight gain.
Long-Term Inhalation (> 6 months)	Oral study NOAEL = 5.7 mg/kg/day (inhalation absorption = 100%) UF_A = 10x UF_H = 10x FQPA SF = 1x	LOC for MOE = 100.	Combined chronic toxicity/carcinogenicity—rat. LOAEL = 16.9 mg/kg/day, based upon increased incidence of mineralized particles in thyroid colloid in males.

TABLE 1—SUMMARY OF TOXICOLOGICAL DOSES AND ENDPOINTS FOR IMIDACLOPRID FOR USE IN HUMAN HEALTH RISK ASSESSMENT—Continued

Exposure/scenario	Point of departure and uncertainty/ safety factors	RfD, PAD, LOC for risk assessment	Study and toxicological effects
Cancer (Oral, dermal, inhalation)	Classification: "Not likely to be carcinogenic to humans" based on no evidence of carcinogenic potential in either the rat chronic toxicity/carcinogenicity or mouse carcinogenicity studies.		

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 imidacloprid, EPA considered exposure under the petitioned-for tolerances, the use on sugarcane under the FIFRA section 18 emergency exemption authorized by EPA, as well as all existing imidacloprid tolerances in 40 CFR 180.472. EPA assessed dietary exposures from imidacloprid 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 imidacloprid. In estimating acute dietary exposure, EPA used food consumption information from the United States Department of Agriculture (USDA) 2003–2008 National Health and Nutrition Examination Survey, What We Eat in America, (NHANES/WWEIA). As to residue levels in food, EPA conducted an unrefined, acute dietary exposure assessment using tolerance-level residues and assumed 100 percent crop treated (PCT) for all commodities.

ii. *Chronic exposure.* In conducting the chronic dietary exposure assessment EPA used the food consumption data from the 2003–2008 NHANES/WWEIA. As to residue levels in food, EPA conducted a partially refined chronic dietary exposure assessment using tolerance-level residues for all commodities and PCT information for some registered commodities.

iii. *Cancer.* Based on the data summarized in Unit III.A., EPA has concluded that imadicloprid does not pose a cancer risk to humans. Therefore, a dietary exposure assessment for the purpose of assessing cancer risk is unnecessary.

iv. *Percent crop treated (PCT) information.* Section 408(b)(2)(F) of FFDCA states that the Agency may use data on the actual percent of food treated for assessing chronic dietary risk only if:

- Condition A: The data used are reliable and provide a valid basis to show what percentage of the food derived from such crop is likely to contain the pesticide residue.
- Condition B: The exposure estimate does not underestimate exposure for any significant subpopulation group.
- Condition C: Data are available on pesticide use and food consumption in a particular area, the exposure estimate does not understate exposure for the population in such area.

In addition, the Agency must provide for periodic evaluation of any estimates used. To provide for the periodic evaluation of the estimate of PCT as required by FFDCA section 408(b)(2)(F), EPA may require registrants to submit data on PCT.

The Agency estimated the PCT for existing uses as follows: For the chronic assessment, the following average weighted PCT information was used: Almonds 1%; apples: 30%; artichokes: 5%; avocados: 1%; beans, green: 5%; blueberries: 10%; broccoli: 55%; cabbage: 25%; caneberries: 10%; cantaloupe: 40%; carrots: 1%; cauliflower: 50%; celery: 10%; cherries: 15%; corn (seed treatment): 2.5%; cotton: 5%; cotton: 5%; cucumbers: 5%; dry beans/peas: 1%; eggplant: 60%; filberts (hazelnuts): 2.5%; grapefruit: 25%; grapes: 30%; honeydew: 30%; lemons: 5%; lettuce: 65%; onions: 1%; oranges: 20%; peaches: 5%; peanuts: 1%; pears: 5%; peas, green: 2.5%; pecans: 15%; peppers: 15%; pistachios: 1%; potatoes: 35%; prunes: 1%; pumpkin: 10%; sorghum: 15%; soybeans: 5%; spinach: 20%; squash: 15%; strawberries: 10%; sugar beets: 2.5%; sweet corn: 1%; tangerines: 10%; tobacco: 25%; tomatoes: 25%; walnuts: 5%; watermelon: 20%; wheat: 10%.

In most cases, EPA uses available data from the United States Department of Agriculture/National Agricultural Statistics Service (USDA/NASS), proprietary market surveys, and the National Pesticide Use Database for the chemical/crop combination for the most recent 6–7 years. EPA uses an average PCT for chronic dietary risk analysis. The average PCT figure for each existing use is derived by combining available public and private market survey data for that use, averaging across all observations, and rounding to the nearest 5%, except for those situations in which the average PCT is less than one. In those cases, 1% is used as the average PCT and 2.5% is used as the maximum PCT. EPA uses a maximum PCT for acute dietary risk analysis. The maximum PCT figure is the highest observed maximum value reported within the recent 6 years of available public and private market survey data for the existing use and rounded up to the nearest multiple of 5%.

The Agency believes that the three conditions discussed in Unit IV.C.1.iv. have been met. With respect to Condition A, PCT estimates are derived from Federal and private market survey data, which are reliable and have a valid basis. The Agency is reasonably certain that the percentage of the food treated is not likely to be an underestimation. As to Conditions B and C, regional consumption information and consumption information for significant subpopulations is taken into account through EPA's computer-based model for evaluating the exposure of significant subpopulations including several regional groups. Use of this consumption information in EPA's risk assessment process ensures that EPA's exposure estimate does not understate exposure for any significant subpopulation group and allows the Agency to be reasonably certain that no regional population is exposed to residue levels higher than those estimated by the Agency. Other than the data available through national food consumption surveys, EPA does not have available reliable information on the regional consumption of food to which imidacloprid may be applied in a particular area.

2. *Dietary exposure from drinking water.* The Agency used screening level water exposure models in the dietary

exposure analysis and risk assessment for imidacloprid in drinking water. These simulation models take into account data on the physical, chemical, and fate/transport characteristics of imidacloprid. 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 First Index Reservoir Screening Tool (FIRST), and Screening Concentration in Ground Water (SCI–GROW) models, the estimated drinking water concentrations (EDWCs) of imidacloprid for acute exposures are estimated to be 36.0 parts per billion (ppb) for surface water and 2.09 ppb for ground water.

For chronic exposures, assessments are estimated to be 17.2 ppb for surface water and 2.09 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 36.0 ppb was used to assess the contribution to drinking water. For chronic dietary risk assessment, the water concentration of value 17.2 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). The proposed use of imidacloprid on oyster beds is professionally applied and not expected to result in residential handler exposure, but can result in residential post-application exposures via potential contact with residues in the oyster bed water or sediment during recreational swimming, or in the case of subsistence fishermen or local Native American tribes, collecting oysters. There are no residential uses associated with the proposed Section 18 Emergency Exemption use on sugarcane. Imidacloprid is currently registered for the following uses that could result in residential exposures: Residential lawns and gardens, indoor uses for bed bugs and crack-and-crevice treatments, pet uses in spot-on treatments and collars, and pre- and post-construction termiticide and wood preservative uses. EPA assessed residential exposure using the assumption that residential pesticide handlers (i.e., persons who might mix, load and, or apply a pesticide material) could be exposed to several formulations that contain imidacloprid as well as the pest spectra, sites of application, methods of application, formulations and the retreatment intervals.

For the registered imidacloprid residential uses, in general, short-term dermal, inhalation, and incidental oral post-application exposures are expected. Intermediate- and long-term dermal, incidental oral and inhalation exposures are expected from the pet collar use, as it presents the potential for prolonged exposure via a continuous source and frequent contact (i.e., playing with pets). Short-term dermal and inhalation handler exposures are expected. The Agency also assessed potential for post-application exposure for adults and children as a result of both the proposed use on oyster beds and from existing residential uses. Based on the proposed oyster bed use pattern, only short-term post-application dermal, incidental oral, and inhalation exposures to imidacloprid residues in affected water and sediment are expected. The exposure assessment used equations and inputs that are generally derived from SWIMODEL 3.0, developed by EPA as a screening tool to conduct exposure assessments of pesticides found in swimming pools and spas and EPA's Risk Assessment Guidance for Superfund—Part E, Supplemental Guidance for Dermal Risk Assessment (''RAGS–E'').

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 imidacloprid to share a common mechanism of toxicity with any other substances, and imidacloprid does not appear to produce a toxic metabolite produced by other substances. For the purposes of this tolerance action, therefore, EPA has assumed that imidacloprid 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.* No evidence of increased quantitative or qualitative susceptibility was found in rats and rabbits in the prenatal developmental toxicity studies or in rats in the two-generation reproductive toxicity study, where developmental effects were observed at the same or higher doses than those causing maternal effects. Increased qualitative susceptibility was found in the rat DNT study, but the concern is low based on the following observations:

i. The pup effects (body-weight deficits, decreased motor activity, and small decrease in female caudate/putamen width) which occurred only in the presence of maternal toxicity (decreased body weight gain and food consumption) are well-characterized with a clear maternal NOAEL that is protective of both maternal and pup effects.

ii. The doses selected for regulatory purposes are lower and thus protective of the pup effects noted in the DNT study, which occurred at higher doses of imidacloprid.

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 for all exposure scenarios, except for the acute dietary assessment. For the acute dietary assessment, EPA has determined that reliable data show the safety of infants and children would be adequately protected if the FQPA SF were reduced to 3X. Those decisions are based on the following findings:

i. The toxicity database for imidacloprid contains all the required studies, although the acute neurotoxicity study, which was selected for determining the acute dietary endpoint, lacks a NOAEL. An FQPA SF of 3X is retained for the acute dietary

endpoint in the form of a database uncertainty factor (UF) for lack of a NOAEL. EPA has determined that an FQPA safety factor of 3X is adequate to protect infants and children because the effect (decreased motor and locomotor activity), which occurred at the LOAEL is minimal and not statistically different from the control group. Furthermore, the LOAEL of 42 mg/kg/day is comparable to the LOAEL of 55 mg/kg/day for offspring effects (which includes decreased motor activity) in the rat DNT study, and the extrapolated NOAEL from the acute neurotoxicity study of 14 mg/kg/day (42/3 = 14) is comparable to and more protective than the NOAEL of 20 mg/kg/day established in the DNT for offspring effects.

ii. There was evidence of neurotoxicity in the rat neurotoxicity studies. Evidence of neurotoxicity was reported in the rat acute neurotoxicity study as discussed above in Unit IV.A. Also, in a rat DNT study where imidacloprid was administered to pregnant/lactating dams in the diet, there were decreases in offspring motor activity measurements and a small but statistically significant decrease in the caudate/putamen width in the brain of female pups. Well-defined NOAELs were achieved in the study, therefore the concern is low. No adverse neurotoxic effects were reported in any other toxicity study including the rat subchronic neurotoxicity study.

iii. Although the prenatal developmental studies in rats and rabbits and the 2-generation reproduction study in rats did not show evidence that imidacloprid results in increased susceptibility *in utero* or in offspring, respectively, the rat DNT study showed evidence of increased qualitative susceptibility in pups. For the reasons discussed in Unit IV.D.2, however, the concern for this susceptibility is low. Therefore, there are no residual uncertainties for prenatal/postnatal toxicity in this study.

iv. There are no residual uncertainties identified in the exposure databases. The acute dietary food exposure assessment utilizes tolerance-level residues and 100 PCT information for all commodities. The chronic food exposure assessment utilizes tolerance-level residues for all commodities and PCT data for some existing uses and 100 PCT for all proposed uses. EPA made conservative (protective) assumptions in the dietary drinking water assessment utilizing water concentration values generated by models and associated modeling parameters, which are designed to provide conservative, health-protective, high-end estimates of water concentrations which will not likely be exceeded. 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 imidacloprid.

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 imidacloprid will occupy 74% of the aPAD for children 1–2 years old, the population group receiving the greatest exposure.

2. *Chronic risk.* Using the exposure assumptions described in this unit for chronic dietary exposure, EPA has concluded that chronic exposure to imidacloprid from food and water will utilize 28% of the cPAD for children 1–2 years old the population group receiving the greatest exposure. The chronic aggregate risk assessment takes into account average exposure estimates from dietary consumption of imidacloprid (food and drinking water) and long-term residential uses. High-end estimates of residential exposure are used, and average values are used for food and drinking water exposures. Based on the proposed and existing use patterns, there is potential for long-term residential exposure from the pet-collar use, as it presents the potential for prolonged exposure via a continuous source and frequent contact (i.e., playing with pets). Using the exposure assumptions described in this unit for long-term exposures, EPA has concluded the combined average food and water and long-term residential exposures result in aggregate MOEs of 760 for adults and 230 for children 1–2 years old, the population subgroup receiving the greatest exposure. Because EPA's level of concern for imidacloprid is a MOE of 100 or below, these MOEs are not of concern.

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). Imidacloprid 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 imidacloprid.

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 an aggregate MOE of 240 for adults from the combined dermal post-application exposures from contacting treated lawns and gardens which resulted in the highest short-term exposure and an aggregate MOE of 120 for children from the combined dermal and hand-to-mouth exposure from contacting treated wood surfaces which resulted in the highest short-term exposure. Because EPA's level of concern for imidacloprid 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). Although there is potential for intermediate-term residential exposure from the registered pet collar use, an intermediate-term aggregate assessment was not conducted. The short- and intermediate-term toxicological endpoints are the same; therefore, the exposures assessed in the short-term aggregate (adults—combined dermal post-application exposures from contacting treated lawns and gardens; and children—combined dermal and hand-to-mouth from contacting treated wood surfaces) are protective of those for intermediate-term duration exposures.

5. *Aggregate cancer risk for U.S. population.* Based on the lack of evidence of carcinogenicity in two adequate rodent carcinogenicity studies, imidacloprid is not expected to pose a cancer risk to humans. Therefore, a quantitative cancer risk assessment is not needed.

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 imidacloprid residues.

V. Other Considerations

A. Analytical Enforcement Methodology

Adequate enforcement methods are available for determination of imidacloprid residues of concern in plant Bayer gas chromatography/mass spectrometry (GC/MS) Method 00200 and livestock commodities (Bayer GC/MS Method 00191). These methods have undergone successful EPA petition method validations (PMVs), and the registrant has fulfilled the remaining requirements for additional raw data, method validation, independent laboratory validation (ILV), and an acceptable confirmatory method high-performance liquid chromatography/ultraviolet (HPLC/UV) Method 00357.

The method may be requested from: Chief, Analytical Chemistry Branch, Environmental Science Center, 701 Mapes Rd., Ft. Meade, MD 20755–5350; telephone number: (410) 305–2905; email address: *residuemethods@epa.gov.*

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.

There are currently no established Codex, MRLs for imidacloprid on fish; fish-shellfish, mollusc; or sugarcane.

VI. Conclusion

Therefore, tolerances are established for residues of imidacloprid (1-[6-chloro-3-pyridinyl)methyl]-N-nitro-2-imidazolidinimine) and its metabolites containing the 6-chloropyridinyl moiety, in or on fish at 0.05 ppm, and fish-shellfish, mollusc at 0.05 ppm.

In addition, this regulation establishes time-limited tolerances for residues of imidacloprid in or on sugarcane, cane at 6.0 ppm and sugarcane, molasses at 50 ppm.

VII. Statutory and Executive Order Reviews

This final rule 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 final rule has been exempted from review under Executive Order 12866, this final rule is not subject to Executive Order 13211, entitled ''Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use'' (66 FR 28355, May 22, 2001) or Executive Order 13045, entitled ''Protection of Children from Environmental Health Risks and Safety Risks'' (62 FR 19885, April 23, 1997). This final rule does not contain any information collections subject to OMB approval under the Paperwork Reduction Act (PRA) (44 U.S.C. 3501 *et seq.*), nor does it require any special considerations under Executive Order 12898, entitled ''Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations'' (59 FR 7629, February 16, 1994).

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

This final rule directly regulates growers, food processors, food handlers, and food retailers, not States or tribes, nor does this action alter the relationships or distribution of power and responsibilities established by Congress in the preemption provisions of FFDCA section 408(n)(4). As such, the Agency has determined that this action will not have a substantial direct effect on States or tribal governments, on the relationship between the national government and the States or tribal governments, or on the distribution of power and responsibilities among the various levels of government or between the Federal Government and Indian tribes. Thus, the Agency has determined that Executive Order 13132, entitled ''Federalism'' (64 FR 43255, August 10, 1999) and Executive Order 13175, entitled ''Consultation and Coordination with Indian Tribal Governments'' (65 FR 67249, November 9, 2000) do not apply to this final rule. In addition, this final rule does not impose any enforceable duty or contain any unfunded mandate as described under Title II of the Unfunded Mandates Reform Act of 1995 (UMRA) (2 U.S.C. 1501 *et seq.*).

This action does not involve any technical standards that would require Agency consideration of voluntary consensus standards pursuant to section 12(d) of the National Technology Transfer and Advancement Act of 1995 (NTTAA) (15 U.S.C. 272 note).

VIII. Congressional Review Act

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

List of Subjects in 40 CFR Part 180

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

Dated: May 23, 2013.

G. Jeffrey Herndon,

Acting 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. Section 180.472 is amended by adding alphabetically the following commodities to the table in paragraph (a) and adding paragraph (b) to read as follows:

§ 180.472 Imidacloprid; tolerances for residues.

(a) * * *

Commodity	Parts per million
* * * * *	
Fish	0.05
Fish-shellfish, mollusc	0.05
* * * * *	

(b) *Section 18 emergency exemptions.* Time-limited tolerances are established for residues of the insecticide imidacloprid, including its metabolites and degradates in connection with use of the pesticide under a Section 18 emergency exemption granted by EPA. Compliance with the tolerance levels

specified below is to be determined by measuring only the sum of imidacloprid (1-[6-chloro-3-pyridinyl)methyl]-N-nitro-2-imidazolidinimine) and its metabolites containing the 6-chloropyridinyl moiety, calculated as the stoichiometric equivalent of imidacloprid. These tolerances will expire and are revoked on the dates specified in the following table:

Commodity	Parts per million	Expiration/revocation date
Sugarcane, cane	6.0	12/31/15
Sugarcane, molasses	50	12/31/15

* * * * *

[FR Doc. 2013–13203 Filed 6–4–13; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 180

[EPA–HQ–OPP–2012–0704; FRL–9386–9]

Sedaxane; Pesticide Tolerances

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: This regulation establishes tolerances for residues of sedaxane in or on multiple commodities which are identified and discussed later in this document. Syngenta Crop Protection, LLC requested these tolerances under the Federal Food, Drug, and Cosmetic Act (FFDCA).

DATES: This regulation is effective June 5, 2013. Objections and requests for hearings must be received on or before August 5, 2013, 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–2012–0704, is available at *http://www.regulations.gov* or at the Office of Pesticide Programs Regulatory Public Docket (OPP Docket) in the Environmental Protection Agency Docket Center (EPA/DC), EPA West Bldg., Rm. 3334, 1301 Constitution Ave. NW., Washington, DC 20460–0001. The Public Reading Room is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Public Reading Room is (202) 566–1744, and the telephone number for the OPP Docket is (703) 305–5805. Please review the visitor instructions and additional information about the docket available at *http://www.epa.gov/dockets.*

FOR FURTHER INFORMATION CONTACT: Heather Garvie, Registration Division (7505P), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave. NW., Washington, DC 20460–0001; telephone number: (703) 308–0034; email address*: garvie.heather@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 Printing Office's e-CFR site at *http://www.ecfr.gov/cgi-bin/text-idx?&c=ecfr&tpl=/ecfrbrowse/Title40/40tab_02.tpl.*

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

Under FFDCA section 408(g), 21 U.S.C. 346a, any person may file an objection to any aspect of this regulation and may also request a hearing on those objections. You must file your objection or request a hearing on this regulation in accordance with the instructions provided in 40 CFR part 178. To ensure proper receipt by EPA, you must identify docket ID number EPA–HQ–OPP–2012–0704 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 August 5, 2013. 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–2012–0704, by one of the following methods:

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

II. Summary of Petitioned-For Tolerance

In the **Federal Register** of September 28, 2012 (77 FR 59578) (FRL–9364–6), 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 2F8071) by Syngenta Crop Protection, Inc., Regulatory Affairs, P.O. Box 18300, Greensboro, NC 27419–8300. The petition requested that 40 CFR 180.665 be amended by establishing tolerances for residues of the fungicide sedaxane, in or on corn (grain, forage, stover), popcorn (grain, stover), and corn ears at 0.01 parts per million (ppm); sorghum (grain, forage, stover) at 0.01 ppm; pea and bean, dried, shelled, subgroup 6C (grain, forage, hay) at 0.01 ppm; and rapeseed, subgroup 20A (grain) at 0.01 ppm. That document referenced a

summary of the petition prepared by Syngenta Crop Protection, Inc., the registrant, which is available in the docket, *http://www.regulations.gov.* There were no comments received in response to the notice of filing.

Based upon review of the data supporting the petition, EPA has corrected commodity definitions and recommended additional tolerances. The reasons for these changes are explained in Unit IV.C.

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 sedaxane including exposure resulting from the tolerances established by this action. EPA's assessment of exposures and risks associated with sedaxane 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 toxicological effects reported in the submitted animal studies such as mitochondrial disintegration and glycogen depletion in the liver are consistent with the pesticidal mode of action also being the mode of toxic action in mammals. The rat is the most sensitive species tested, and the main target tissue for sedaxane is the liver. Sedaxane also caused thyroid hypertrophy/hyperplasia. In the acute neurotoxicity (ACN) and sub-chronic neurotoxicity (SCN) studies, sedaxane caused decreased activity, decreased muscle tone, decreased rearing and decreased grip strength.

There are indications of reproductive toxicity in rats at the high dose, but these effects did not result in reduced fertility. In the rat, no adverse effects in fetuses were seen in developmental toxicity studies at maternally toxic doses. However, in the rabbit, fetal toxicity was observed at the same doses as the dams. Offspring effects in the reproduction study occurred at the same doses causing parental effects, thus there was no quantitative increase in sensitivity in rat pups. Sedaxane is tumorigenic in the liver in the rat and mouse, and led to tumors in the thyroid and uterus in the rat and was classified as ''likely to be carcinogenic to humans.'' Sedaxane was negative in the mutagenicity studies. The 28-day dermal study did not show systemic toxicity at the limit dose of 1,000 milligrams/kilogram/day (mg/kg/day). Sedaxane has low acute toxicity by the oral, dermal, and inhalation routes. It is not a dermal sensitizer, causes no skin irritation and only slight eye irritation.

Specific information on the studies received and the nature of the adverse effects caused by sedaxane as well as the no-observed-adverse-effect-level (NOAEL) and the lowest-observed-adverse-effect-level (LOAEL) from the toxicity studies are discussed in the final rule published in the **Federal Register** of June 20, 2012 (77 FR 36919) (FRL–9345–8).

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 sedaxane used for human risk assessment is discussed in Unit III.B. of the final rule published in the **Federal Register** of June 20, 2012.

C. Exposure Assessment

1. *Dietary exposure from food and feed uses.* In evaluating dietary exposure to sedaxane, EPA considered exposure under the petitioned-for tolerances as well as all existing sedaxane tolerances in 40 CFR 180.665. EPA assessed dietary exposures from sedaxane 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 sedaxane. In estimating acute dietary exposure, EPA used food consumption information from the U.S. Department of Agriculture (USDA) 1994–1996 and 1998 Nationwide Continuing Surveys of Food Intake by Individuals (CSFII). As to residue levels in food, EPA conducted a highly conservative acute dietary risk assessment which used tolerance level residues and assumed 100 percent crop treated (PCT) for all commodities.

ii. *Chronic exposure.* In conducting the chronic dietary exposure assessment, EPA used the food consumption data from the USDA 1994–1996 and 1998 CSFII. As to residue levels in food, EPA conducted a highly conservative chronic dietary risk assessment which used tolerance level residues and assumed 100 PCT for all commodities.

iii. *Cancer.* EPA determines whether quantitative cancer exposure and risk assessments are appropriate for a food-use pesticide based on the weight of the evidence from cancer studies and other relevant data. If a quantitative cancer risk assessment is appropriate, cancer risk may be quantified using a linear or nonlinear approach. If sufficient

information on the carcinogenic mode of action is available, a threshold or nonlinear approach is used and a cancer RfD is calculated based on an earlier non-cancer key event. If carcinogenic mode of action data are not available, or if the mode of action data determines a mutagenic mode of action, a default linear cancer slope factor approach is utilized. Based on significant tumor increases in two adequate rodent carcinogenicity studies and as noted in Unit III.A., EPA has concluded that sedaxane should be classified as ''Likely To Be Carcinogenic to Humans.'' EPA used a linear approach to quantify cancer risk because mode of action data are not available for sedaxane. EPA assessed exposure for the purpose of estimating cancer risk assuming tolerance-level residues and 100 PCT for all commodities and included modeled drinking water estimates.

iv. *Anticipated residue PCT information.* EPA did not use anticipated residue and/or PCT information in the dietary assessment for sedaxane. One-hundred PCT was 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 sedaxane in drinking water. These simulation models take into account data on the physical, chemical, and fate/transport characteristics of sedaxane. 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 FQPA First Index Reservoir Screening Tool (FIRST) and Tier II Pesticide Root Zone Model/Groundwater (PRZM–GW Version 1.0, 12/11/2012), the estimated drinking water concentrations (EDWCs) of sedaxane for acute exposures are estimated to be 4.1 parts per billion (ppb) for surface water and 9.9 ppb for ground water. The water exposures for the chronic dietary and cancer assessments are estimated to be 1.2 ppb for surface water and 8.4 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 9.9 ppb was used to assess the contribution to drinking water. For chronic and cancer dietary risk assessment, the water concentration value of 8.4 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). Sedaxane is not registered for any specific use patterns that would result in residential exposure.

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 sedaxane to share a common mechanism of toxicity with any other substances. For the purposes of this tolerance action, therefore, EPA has assumed that sedaxane 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 Food Quality Protection Act (FQPA) Safety Factor (SF). In applying this provision, EPA either retains the default value of 10X, or uses a different additional safety factor when reliable data available to EPA support the choice of a different factor.

2. *Prenatal and postnatal sensitivity.* There is no evidence for increased susceptibility following prenatal and/or postnatal exposures to sedaxane based on effects seen in developmental toxicity studies in rabbits or rats. There was no evidence of increased susceptibility in a 2-generation reproduction study in rats following prenatal or postnatal exposure to sedaxane. Clear NOAELs/LOAELs were established for the developmental effects seen in rats and rabbits as well as for the offspring effects seen in the 2-generation reproduction study. The dose-response relationship for the effects of concern is well characterized. The NOAEL used for the acute dietary risk assessment (30 mg/kg/day), based on effects observed in the ACN study, is protective of the developmental and offspring effects seen in rabbits and rats (NOAELs of 100–200 mg/kg/day).

In addition, there is no evidence of neuropathology or abnormalities in the development of the fetal nervous system from the available toxicity studies conducted with sedaxane.

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 sedaxane is complete.

ii. The sedaxane toxicology database did not demonstrate evidence of neurotoxicity. Although sedaxane caused changes in endpoints such as decreased activity, decreased muscle tone, decreased rearing and decreased grip strength in the ACN study and reduced locomotor activity in the SCN study, EPA believes these effects do not support a finding that sedaxane is a neurotoxicant. The observed effects in the ACN and SCN studies were likely secondary to inhibition of mitochondrial energy production, which is the pesticidal mode of action for sedaxane. Furthermore, there was no corroborative neuro-histopathology demonstrated in any study, even at the highest doses tested (i.e., 2,000 mg/kg/day). Therefore, based on its chemical structure, its pesticidal mode of action, and lack of evidence of neuro-histopathology in any acute and repeated-dose toxicity study, sedaxane does not demonstrate potential for neurotoxicity. Since sedaxane did not demonstrate increased susceptibility to the young or specific neurotoxicity, a developmental neurotoxicity (DNT) study is not required.

iii. There is no evidence that sedaxane 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 sedaxane in drinking water. These assessments will not underestimate the exposure and risks posed by sedaxane.

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.

Sedaxane is a member of the pyrazole carboxamide fungicides. Metabolic processes involving cleavage of the linkage between the pyrazole and phenyl rings of these compounds have the potential to produce common pyrazole-metabolites. Indeed, confined rotational crops studies for sedaxane and isopyrazam demonstrate that low levels of three common metabolites form. However, due to the low levels of these compounds in rotational crops (<=0.01 ppm), and low concerns about their potential toxicity relative to parent molecules, any risks from aggregation of exposures to common metabolites across chemicals will be insignificant.

1. *Acute risk.* Using the exposure assumptions discussed in this unit for acute exposure, the acute dietary exposure from food and water to sedaxane will occupy <1% of the aPAD for all populations.

2. *Chronic risk.* Using the exposure assumptions described in this unit for chronic exposure, EPA has concluded that chronic exposure to sedaxane from food and water will utilize <1% of the cPAD for all populations. There are no residential uses for sedaxane.

3. *Short- and intermediate-term risk.* Short- and intermediate-term aggregate exposure takes into account short- and intermediate-term residential exposure plus chronic exposure to food and water (considered to be a background exposure level). Short- and intermediate-term adverse effects were identified; however, sedaxane is not registered for any use patterns that would result in short- or intermediate-term residential exposures. Because there is no short- or intermediate-term residential exposure and chronic dietary exposure has already been assessed under the appropriately protective cPAD (which is at least as protective as the POD used to assess short-term risk), no further assessment of short- or intermediate-term risk is necessary, and EPA relies on the chronic dietary risk assessment for evaluating short- and intermediate-term risk for sedaxane.

4. *Aggregate cancer risk for U.S. population.* The Agency has classified sedaxane as ''Likely to be Carcinogenic to Humans'' based on significant tumor increases in two adequate rodent carcinogenicity studies. Accordingly, a cancer dietary risk assessment was conducted, indicating a risk estimate of 1×10^{-6} for the U.S. population.

5. *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 sedaxane residues.

IV. Other Considerations

A. Analytical Enforcement Methodology

Adequate enforcement methodology is available to enforce the tolerance expression. A modification of the Quick, Easy, Cheap, Effective, Rugged, and Safe (QuEChERS) method was developed for the determination of residues of sedaxane (as its isomers SYN508210 and SYN508211) in/on various crops. A successful independent laboratory validation (ILV) study was also conducted on the modified QuEChERS method using samples of wheat green forage and wheat straw fortified with SYN508210 and SYN508211 at 0.005 and 0.05 ppm. The analytical standard for sedaxane, with an expiration date of June 30, 2014, is currently available in the EPA National Pesticide Standards Repository. The method may be requested from: Chief, Analytical Chemistry Branch, Environmental Science Center, 701 Mapes Rd., Ft. Meade, MD 20755–5350; telephone number: (410) 305–2905; email address: *residuemethods@epa.gov*.

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 MRLs for sedaxane.

C. Revisions to Petitioned-For Tolerances

The Agency determined that the application of sedaxane to sweet corn (resulting in residues on corn, sweet, kernel plus cob with husks removed) would result in residues to the livestock feedstuffs corn, sweet, forage and corn, sweet, stover; therefore, EPA is establishing tolerances of 0.01 ppm for those commodities. EPA is also correcting commodity definitions for the tolerances.

V. Conclusion

Therefore, tolerances are established for residues of sedaxane, including its metabolites and degradates in or on corn, field, forage; corn, field, grain; corn, field, stover; corn, pop, grain; corn, pop, stover; corn, sweet, forage; corn, sweet, kernel plus cob with husks removed; corn, sweet, stover; pea and bean, dried shelled, except soybean, subgroup 6C; rapeseed, subgroup 20A; sorghum, grain, forage; sorghum, grain, grain; sorghum, grain, stover; and vegetable, foliage of legume, except soybean, subgroup 7A, all at a tolerance level of 0.01 ppm.

VI. Statutory and Executive Order Reviews

This final rule 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 final rule has been exempted from review under Executive Order 12866, this final rule is not subject to Executive Order 13211, entitled ''Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use'' (66 FR 28355, May 22, 2001) or Executive Order 13045, entitled ''Protection of Children From Environmental Health Risks and Safety Risks'' (62 FR 19885, April 23, 1997). This final rule does not contain any information collections subject to OMB approval under the Paperwork Reduction Act (PRA) (44 U.S.C. 3501 *et seq.*), nor does it require any special considerations under Executive Order 12898, entitled ''Federal Actions To Address Environmental Justice in Minority Populations and Low-Income Populations'' (59 FR 7629, February 16, 1994). Since tolerances and exemptions

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

This final rule directly regulates growers, food processors, food handlers, and food retailers, not States or tribes, nor does this action alter the relationships or distribution of power and responsibilities established by Congress in the preemption provisions of FFDCA section 408(n)(4). As such, the Agency has determined that this action will not have a substantial direct effect on States or tribal governments, on the relationship between the national government and the States or tribal governments, or on the distribution of power and responsibilities among the various levels of government or between the Federal Government and Indian tribes. Thus, the Agency has determined that Executive Order 13132, entitled ''Federalism'' (64 FR 43255, August 10, 1999) and Executive Order 13175, entitled ''Consultation and Coordination with Indian Tribal Governments'' (65 FR 67249, November 9, 2000) do not apply to this final rule. In addition, this final rule does not impose any enforceable duty or contain any unfunded mandate as described under Title II of the Unfunded Mandates Reform Act of 1995 (UMRA) (2 U.S.C. 1501 *et seq.*).

This action does not involve any technical standards that would require Agency consideration of voluntary consensus standards pursuant to section 12(d) of the National Technology Transfer and Advancement Act of 1995 (NTTAA) (15 U.S.C. 272 note).

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: May 29, 2013.

Lois Rossi,

Director, Registration Division, Office of Pesticide Programs.

Therefore, 40 CFR chapter I is amended as follows:

PART 180—[AMENDED]

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

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

■ 2. In § 180.665, add alphabetically the following commodities to the table in paragraph (a) to read as follows:

§ 180.665 Sedaxane; tolerances for residues.

(a) * * *

Commodity	Parts per million
* * * * *	
Corn, field, forage	0.01
Corn, field, grain	0.01
Corn, field, stover	0.01
Corn, pop, grain	0.01
Corn, pop, stover	0.01
Corn, sweet, forage	0.01
Corn, sweet, kernel plus cob with husks removed	0.01
Corn, sweet, stover	0.01
* * * * *	
Pea and bean, dried shelled, except soybean, subgroup 6C	0.01
Rapeseed, subgroup 20A	0.01
* * * * *	
Sorghum, grain, forage	0.01
Sorghum, grain, grain	0.01
Sorghum, grain, stover	0.01
* * * * *	
Vegetable, foliage of legume, except soybean, subgroup 7A	0.01
* * * * *	

* * * * *

[FR Doc. 2013–13267 Filed 6–4–13; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 180

[EPA–HQ–OPP–2012–0469; FRL–9387–8]

Diisopropyl Adipate; 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 diisopropyl adipate when used as an inert ingredient (solvent) in pesticide formulations applied to pre- and post-harvest crops under EPA regulations at no more than 40% in formulated products intended for mosquito control. Wellmark International submitted a petition prepared by Technology Sciences Group Inc. 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 diisopropyl adipate.

DATES: This regulation is effective June 5, 2013. Objections and requests for hearings must be received on or before August 5, 2013, 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–2012–0469, is available at *http://www.regulations.gov* or at the Office of Pesticide Programs Regulatory Public Docket (OPP Docket) in the Environmental Protection Agency Docket Center (EPA/DC), EPA West Bldg., Rm. 3334, 1301 Constitution Ave. NW., Washington, DC 20460–0001. The Public Reading Room is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Public Reading Room is (202) 566–1744, and the telephone number for the OPP Docket is (703) 305–5805. Please review the visitor instructions and additional information about the docket available at *http://www.epa.gov/dockets.*

FOR FURTHER INFORMATION CONTACT: David Lieu, Registration Division (7505P), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave. NW., Washington, DC 20460–0001; telephone number: 703–305–0079; email address: *Lieu.David@epa.gov.*

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this action apply to me?

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

determine whether this document applies to them. Potentially affected entities may include:

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

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

You may access a frequently updated electronic version of 40 CFR part 180 through the Government Printing Office's e-CFR site at *http://www.ecfr.gov/cgi-bin/text-idx?&c=ecfr&tpl=/ecfrbrowse/Title40/40tab_02.tpl.* 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–2012–0469 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 August 5, 2013. 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–2012–0469, 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 August 22, 2012 (77 FR 50661) (FRL–9358–9), EPA issued a notice pursuant to FFDCA section 408, 21 U.S.C. 346a, announcing the filing of a pesticide petition (PP 2E8031) by Wellmark International, Central Life Sciences, 1501 East Woodfield Road, Suite 200 West, Schaumburg, IL 60173. The petition requested that 40 CFR 180.920 be amended by establishing an exemption from the requirement of a tolerance for residues of diisopropyl adipate (CAS Reg. No. 6938–94–9) when used as an inert ingredient (solvent) in pesticide formulations applied to growing crops only at no more than 40% in formulated products intended for mosquito control. That document referenced a summary of the petition prepared by Technology Sciences Group 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. Based upon review of the data supporting the petition, EPA has modified the exemption requested to include an exemption from the requirement of a tolerance for residues of diisopropyl adipate (CAS Reg. No. 6938–94–9) under 40 CFR 180.910 when used as an inert ingredient in pesticide formulations applied to growing crops or to raw agricultural commodities after harvest at no more than 40% in formulated products intended for mosquito control. The reason for these changes is explained in Unit V.

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 diisopropyl adipate including exposure resulting from the exemption established by this action. EPA's assessment of exposures and risks associated with diisopropyl adipate 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 diisopropyl adipate as well as the no-observed-adverse-effect-level (NOAEL) and the lowest-observed-adverse-effect-level (LOAEL) from the toxicity studies are discussed in this unit.

The acute oral toxicity of diisopropyl adipate in rodents, as expressed as an LD_{50}, ranges from 1,500 mg/kg to 8,800 mg/kg. In the guinea pig, the acute oral toxicity of diisopropyl adipate is about 6,600 mg/kg and in the rabbit, 5,000 mg/kg. In the dog, the acute oral LD_{50} of diisopropyl adipate is greater than 8,000 mg/kg. Diisopropyl adipate is minimally irritating to the eyes and skin of rabbits.

The potential for toxicity following repeat dose exposure to diisopropyl adipate was evaluated based on toxicity studies with diisopropyl adipate as well as toxicity data on the two primary metabolites of diisopropyl adipate, adipic acid (CAS Reg. No. 124–04–9) and isopropyl alcohol (CAS Reg. No. 67–63–0). Isopropyl alcohol was previously assessed in the U.S. EPA inert reassessment document titled, Inert Reassessment—n-Propanol; CAS Reg. No. 71–23–8, dated August 24, 2005 and no end points of concern were identified. In addition, toxicity data from two structural analogues of diisopropyl adipate, dipropyl adipate and diisobutyl adipate, were also considered. These substances would be expected to have toxicological properties similar to diisopropyl adipate and can be used to supplement the available toxicity data on diisopropyl adipate. The studies summarized below were either performed with diisopropyl adipate, adipic acid, dipropyl adipate or diisobutyl adipate.

In a 5 week study, guinea pigs that were administered adipic acid orally showed no adverse effects up to doses of 1000 mg/kg/day. In a 90 day oral toxicity study, male rats were given 0, 0.1, 1 or 5% adipic acid and female rats were given 0 or 1% adipic acid. The NOAEL was 1% (1000 mg/kg/day) and a LOAEL of 5% (5000 mg/kg/day) based on growth retardation in males. In a 19 week oral toxicity study in rats, each rat was given 0, 50, 100, 200 or 400 mg adipic acid/rat/day. The NOAEL was 200 mg adipic acid/rat/day (equivalent to 1700 mg/kg/day) and the LOAEL was 400 mg adipic acid/rat/day (equivalent to 3,400 mg/kg/day) was based on slight effects on liver and irritation of the intestine. In a 33 week subchronic oral toxicity study on groups of 13–15 male and female rats at doses of 0, 400, 800 mg/rat/day or approximately 0, 1600 and 3200 mg/kg bw/day adipic acid produced a LOAEL of 400 mg/rat/day (equivalent to 1600 mg/kg bw/day) based on slight liver effects and inflammation of the intestine and no NOAEL was observed. In a 3 week inhalation toxicity study, rats were exposed to 0.126 mg/L adipic acid for 6 hr periods daily for five days a week for a total of 15 exposures. No signs of toxicity were seen, blood tests gave normal values and autopsy results revealed all organs to be normal.

The mutagenic potential of adipic acid was evaluated in a Host-Mediated Assay, in an *in vivo* cytogenetics test, and a dominant lethal assay. These tests were negative.

An OECD SIDS Initial Assessment Report on Adipic Acid (2004) concluded that adipic acid was not carcinogenic in a limited two-year feeding study where groups of twenty male rats were dosed with food containing 0, 0.1, 1, 3 and 5% (equivalent to 0, 75, 750, 2250 or 3750 mg/kg/day) adipic acid, and female rats were dosed with 0% (n=10) and 1% (n=19) adipic acid, respectively. The incidences of tumors observed in the adipic acid treated groups were observed at the same levels as in the control groups.

Developmental studies (FDRL 1972) via oral gavage using adipic acid on mice, rats, hamsters and rabbits showed no maternal or developmental toxicity. The NOAELs for mice, rats and hamsters were 263, 288 and 205 mg/kg/day, respectively. These studies were not conducted at the limit dose. However, the concern for developmental toxicity of diisopropyl adipate is low because no systemic toxicity was seen in chronic studies at doses near the limit dose. In addition, the developmental toxicity studies conducted with two analogue substances (dipropyl adipate and diisobutyl adipate) via intraperitoneal route showed no developmental toxicity at doses around 700 mg/kg/day.

An immunotoxicity study from the OECD SIDS 2004 IUCLID Data Set stated that the lymphocyte mitogenesis test was used to test for immunotoxicity in vitro. In this test lymphocytes were stimulated by a polyclonal mitogen specific for either B or T cells. Neither B nor T lymphocyte mitogenesis was inhibited by adipic acid at concentrations up to 0.3%.

There were no neurotoxicity studies available in the database. However, there were no clinical signs of neurotoxicity observed in the available studies.

There are no published metabolism studies on diisopropyl adipate specifically, but the metabolic pathways of diisopropyl adipate are proposed based on the characteristic molecular structure of diisopropyl adipate and the known metabolic pathways for structurally similar compounds. Diisopropyl adipate is a linear fatty acid diester that has an isopropyl group bound to the oxygen atom on each end of the molecule. Given these structural groups, diisopropyl adipate metabolism is almost certainly catalyzed by carboxylesterase enzymes that are ubiquitous throughout the body to produce adipic acid plus two molecules of isopropyl alcohol.

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.*

The rational of the toxicological endpoints for diisopropyl adipate used for human risk assessment is as follows.

The chronic toxicity/carcinogenicity study in rats was selected for all exposure scenarios and durations for this risk assessment. The NOAEL in this study was 750 mg/kg/day. The LOAEL was 2,250 mg/kg/day based on body weight retardation. The rationale for selecting this study is as follows. The lowest NOAEL (205 mg/kg/day) in the database was observed in a developmental study in hamsters. In this study 205 mg/kg/day was the highest dose tested. This study was not selected because maternal and developmental toxicity were not observed at doses as high as 263 and 288 mg/kg/day in mice and rats, respectively. Also, in a developmental toxicity study where rats were treated via intraperitoneal injection of adipic acid esters, maternal and developmental toxicity were not observed at doses as high as 727 mg/kg/day. The developmental LOAEL was 1,211 mg/kg/day based on increased resorptions and a slight but significant increase in gross abnormalities. However, these studies are not useful for endpoint selection because they were conducted via intraperitoneal route which is not relevant for the dietary, dermal or inhalation risk assessment. Also, the 19 and 33 weeks and 2 years oral toxicity studies showed no evidence of toxicity at doses as high as 750 mg/kg/day. Therefore, the chronic toxicity study in rats with the NOAEL of 750 mg/kg/day provided a good basis for establishing the chronic reference dose (cRfD). The NOAEL is considered extremely conservative because the extrapolation from adipic acid to diisopropyl adipate was not performed in order to keep the toxicity endpoint selection more conservative. Diisopropyl adipate is a large molecular weight compound compared to adipic acid. Converting adipic acid to diisopropyl adipate in a 1 to 1 molar ratio (one molecule of diisopropyl adipate contains 1 molecule of adipic acid) would mean the NOAEL and LOAEL values would be increased proportionately to the molecular weight ratios, 230 g/mol for diisopropyl adipate and 146 g/mol for adipic acid (e.g. The NOAEL of 750 mg/kg/day for adipic acid would become 1,181 mg/kg/day if converted to diisopropyl adipate). The uncertainty factor of 100x was used for 10x intraspecies variability and 10x for interspecies extrapolation.

C. Exposure Assessment

1. *Dietary exposure from food and feed uses.* In evaluating dietary exposure to diisopropyl adipate, EPA considered exposure under the proposed exemption from the requirement of a tolerance. EPA assessed dietary exposures from diisopropyl adipate in food as follows:

Because no acute endpoint of concern was identified, a quantitative acute dietary exposure assessment is unnecessary.

In conducting the chronic dietary exposure assessment using the Dietary Exposure Evaluation Model DEEM–FCID™, Version 3.16, EPA used food consumption information from the U.S. Department of Agriculture's National Health and Nutrition Examination Survey, What we eat in America, (NHANES/WWEIA). This dietary survey was conducted from 2003 to 2008. The Dietary Exposure Evaluation Model (DEEM) is a highly conservative model with the assumption that the residue level of the inert ingredient would be no higher than the highest tolerance for a given commodity. Implicit in this assumption is that there would be similar rates of degradation between the active and inert ingredient (if any) and that the concentration of inert ingredient in the scenarios leading to these highest of tolerances would be no higher than the concentration of the active ingredient. The model assumes 100 percent crop treated (PCT) for all crops and that every food eaten by a person each day has tolerance-level residues. A complete description of the general approach taken to assess inert ingredient risks in the absence of residue data is contained in the memorandum entitled ''Alkyl Amines Polyalkoxylates (Cluster 4): Acute and Chronic Aggregate (Food and Drinking Water) Dietary Exposure and Risk Assessments for the Inerts.'' (D361707, S. Piper, 2/25/09) and can be found at *http://www.regulations.gov* in docket ID number EPA–HQ–OPP–2008–0738.

2. *Dietary exposure from drinking water.* For the purpose of the screening level dietary risk assessment to support this request for an exemption from the requirement of a tolerance for diisopropyl adipate, a conservative drinking water concentration value of 100 ppb based on screening level modeling was used to assess the contribution to drinking water for the chronic dietary risk assessments for parent compound. These values were directly entered into the dietary exposure model.

3. *From non-dietary exposure.* The term ''residential exposure'' is used in this document to refer to non-occupational, non-dietary exposure (e.g., textiles (clothing and diapers), carpets, swimming pools, and hard surface disinfection on walls, floors, tables).

Diisopropyl adipate may be used in inert ingredients in pesticide products that are registered for specific uses that may result in outdoor residential exposures. A screening level post-application residential exposure and risk assessment was performed using high-end exposure scenarios for outdoor residential uses based on end-use product application methods and highest labeled application rates submitted for two sample product labels containing diisopropyl adipate as inert ingredients submitted by the registrant.

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 diisopropyl adipate to share a common mechanism of toxicity with any other substances, and it does not produce a toxic metabolite produced by other substances. For the purposes of this tolerance action, therefore, EPA has assumed that diisopropyl adipate 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.* Fetal susceptibility was not observed in rats, mice, rabbits or hamsters in any of the developmental studies with adipic acid, a metabolite of diisopropyl

adipate. Maternal and developmental toxicity was not observed at doses as high as 288 mg/kg/day. Also, in a developmental toxicity study in rats treated with dipropyl adipate or diisobutyl adipate, analogues of diisopropyl adipate, maternal and developmental toxicity was not observed at ≥ 1,130 mg/kg/day. A 2-generation reproduction toxicity study in rodents is not available in the database. However, the concern for the lack of this study is low because maternal and offspring toxicity was not observed at or above the limit dose (at levels up to 1,211 mg/kg/day) in rats and the lack of any effects on reproductive indices in mice, rats and rabbits. In addition, there was no evidence of histopathological changes in reproductive organs in chronic toxicity studies.

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 SF. That decision is based on the following findings:

i. The toxicity database for diisopropyl adipate includes several subchronic and chronic studies, several developmental toxicity studies, a chronic/carcinogenicity study, a mutagenicity study, and an immunotoxicity study. In addition, the metabolism of structurally similar compounds has been characterized, and that data supports the proposed metabolic pathways of diisopropyl adipate. No two-generation reproduction study is available for diisopropyl adipate; however, the degree of concern for the lack of this study is low for the reasons provided in Unit III.D.2.

ii. There is no indication that diisopropyl adipate is a neurotoxic chemical. Although no neurotoxicity studies are available in the database, no clinical signs of neurotoxicity were observed in the available subchronic and chronic studies. Therefore, there is no need for a developmental neurotoxicity study or additional UFs to account for neurotoxicity.

iii. There was no evidence that diisopropyl adipate results in increased susceptibility in rats, mice or hamsters in the prenatal developmental studies

iv. There are no residual uncertainties identified in the exposure databases. EPA made conservative (protective) assumptions in the ground and surface water modeling used to assess exposure to diisopropyl adipate 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 diisopropyl adipate.

E. Aggregate Risks and Determination of Safety

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, diisopropyl adipate is 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 diisopropyl adipate from food and water will utilize 1.9% of the cPAD for children 1–2 years old, the population group receiving the greatest exposure.

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). Diisopropyl adipate is currently used as an inert ingredient in pesticide products that are 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 diisopropyl adipate.

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 14,400 for both adult males and females and 4,400 for children. Because EPA's level of concern for diisopropyl adipate 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). Diisopropyl adipate is currently used as an inert ingredient in pesticide products that are 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 diisopropyl adipate.

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 aggregate MOEs of 16,600 for both adult males and females and 4,800 for children. Because EPA's level of concern for diisopropyl adipate is a MOE of 100 or below, these MOEs are not of concern.

5. *Aggregate cancer risk for U.S. population.* Based on the lack of evidence of carcinogenicity in a 2 year rodent carcinogenicity study, diisopropyl adipate is 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 diisopropyl adipate 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 diisopropyl adipate in or on any food commodities.

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 diisopropyl adipate.

C. Revisions to Petitioned-For Tolerances

Based upon review of the data supporting the petition, the proposed use patterns may results in applications of pesticides post-harvest. Therefore EPA believes a more appropriate exemption would be under 40 CFR 180.910. EPA has modified the exemption requested to include an exemption from the requirement of a tolerance for residues of diisopropyl adipate (CAS Reg. No. 6938–94–9) under 40 CFR 180.910 when used as an

inert ingredient in pesticide formulations applied to growing crops or to raw agricultural commodities after harvest.

VI. Conclusions

Therefore, an exemption from the requirement of a tolerance is established under 40 CFR 180.910 for diisopropyl adipate (CAS Reg. No. 6938–94–9) when used as an inert ingredient (solvent) in pesticide formulations applied to growing crops or to raw agricultural commodities after harvest.

VII. Statutory and Executive Order Reviews

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

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

This final rule directly regulates growers, food processors, food handlers, and food retailers, not States or tribes, nor does this action alter the relationships or distribution of power and responsibilities established by Congress in the preemption provisions of FFDCA section 408(n)(4). As such, the Agency has determined that this action will not have a substantial direct effect on States or tribal governments, on the relationship between the national government and the States or tribal governments, or on the distribution of power and responsibilities among the various levels of government or between the Federal Government and Indian tribes. Thus, the Agency has determined that Executive Order 13132, entitled ''Federalism'' (64 FR 43255, August 10, 1999) and Executive Order 13175, entitled ''Consultation and Coordination with Indian Tribal Governments'' (65 FR 67249, November 9, 2000) do not apply to this final rule. In addition, this final rule does not impose any enforceable duty or contain any unfunded mandate as described under Title II of the Unfunded Mandates Reform Act of 1995 (UMRA) (2 U.S.C. 1501 *et seq.*).

This action does not involve any technical standards that would require Agency consideration of voluntary consensus standards pursuant to section 12(d) of the National Technology Transfer and Advancement Act of 1995 (NTTAA) (15 U.S.C. 272 note).

VIII. Congressional Review Act

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

List of Subjects in 40 CFR Part 180

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

Dated: May 29, 2013.

Lois Rossi,

Director, Registration Division, Office of Pesticide Programs.

Therefore, 40 CFR chapter I is amended as follows:

PART 180—[AMENDED]

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

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

■ 2. Section 180.910 is amended by alphabetically adding the inert ingredient ''Diisopropyl adipate'' to the table to read as follows:

§ 180.910 Inert ingredients used pre- and post-harvest; exemptions from the requirement of a tolerance.

* * * * *

Inert ingredients	Limits	Uses
* * *	* * *	*
Diisopropyl adipate (CAS Reg. No. 6938–94–9)	40% in mosquito control formulations	Solvent, co-solvent.
* * *	* * *	*

[FR Doc. 2013–13189 Filed 6–4–13; 8:45 am]

BILLING CODE 6560–50–P

DEPARTMENT OF TRANSPORTATION

Federal Railroad Administration

49 CFR Part 214

[Docket No. FRA–2008–0059, Notice No. 7]

RIN 2130–AC37

Railroad Workplace Safety; Adjacent-Track On-Track Safety for Roadway Workers

AGENCY: Federal Railroad Administration (FRA), Department of Transportation (DOT).

ACTION: Final rule; delay of effective date.

SUMMARY: This document delays the effective date of the final rule published November 30, 2011, and scheduled to take effect on July 1, 2013. The final rule mandates that roadway workers comply with specified on-track safety procedures that railroads must adopt to protect those workers from the movement of trains or other on-track equipment on ''adjacent controlled track.'' FRA received two petitions for reconsideration of the final rule, and five comments in response to the March 8, 2012, final rule that requested comments on the petitions for reconsideration. The petitions and comments raised a number of substantive issues requiring a detailed response. As FRA's response to those petitions and comments is still being reviewed, this document delays the effective date of the final rule until July 1, 2014.

DATES: The effective date for the final rule published November 30, 2011, at 76 FR 74586, and delayed on March 8, 2012, at 77 FR 13978, is further delayed until July 1, 2014.

FOR FURTHER INFORMATION CONTACT: Kenneth Rusk, Staff Director, Track Division, Office of Safety Assurance and Compliance, FRA, 1200 New Jersey Avenue SE., RRS–15, Mail Stop 25, Washington, DC 20590 (telephone 202–493–6236); or Joseph St. Peter, Trial Attorney, Office of Chief Counsel, FRA, 1200 New Jersey Avenue SE., RCC–12, Mail Stop 10, Washington, DC 20590 (telephone 202–493–6052).

SUPPLEMENTARY INFORMATION: On November 30, 2011, FRA published a final rule amending its regulations on railroad workplace safety to further reduce the risk of serious injury or death to roadway workers performing work with potentially distracting equipment near certain adjacent tracks. *See* 76 FR 74586. In particular, the rule requires that roadway workers comply with specified on-track safety procedures that railroads must adopt to protect those workers from the movement of trains or other on-track equipment on ''adjacent controlled track.'' In response to the final rule, FRA received two petitions for reconsideration that raised substantive issues, requiring a detailed response from FRA. The effective date of the 2011 final rule was to be May 1, 2012; however, due to the complexity of the issues raised in the petitions, as well as in consideration of the railroads' safety training schedules, FRA published a final rule delaying the effective date of the 2011 final rule until July 1, 2013, and establishing a 60-day comment period in order to permit interested parties an opportunity to respond to the petitions for reconsideration. *See* 77 FR 13978 (March 8, 2012). FRA received five comments on the petitions for reconsideration, a number of which raise additional substantive issues or provide further detailed information on the issues already raised. FRA's response to the petitions and comments is still being reviewed, and may not be published before the 2011 final rule's current effective date of July 1, 2013. Accordingly, in order to accommodate railroads' normal training schedules and to allow railroads to incorporate any amendments that FRA's response to the petitions and comments on the petitions may make to the final rule, this document delays the effective date of the November 30, 2011, final rule until July 1, 2014. Therefore, railroads and roadway workers need not comply with any requirements imposed by the 2011 final rule until July 1, 2014.

List of Subjects in 49 CFR Part 214

Occupational safety and health, Penalties, Railroad safety.

The Final Rule

In consideration of the foregoing, FRA delays the effective date of the November 30, 2011, final rule until July 1, 2014.

Issued in Washington, DC, on May 30, 2013.

Joseph C. Szabo,

Administrator.

[FR Doc. 2013–13291 Filed 6–4–13; 8:45 am]

BILLING CODE 4910–06–P

Proposed Rules

Federal Register
Vol. 78, No. 108
Wednesday, June 5, 2013

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

Rural Utilities Service

7 CFR Part 1710

[0572–AC21]

Project Financing Loans

AGENCY: Rural Utilities Service, USDA.

ACTION: Advanced notice of proposed rulemaking and notice of public meeting.

SUMMARY: The Rural Utilities Service (RUS or Agency) is considering regulatory reforms to codify statutory changes related to ''project financing'' requirements to advance the agency's rural development mission and improve its ability to finance electric infrastructure projects, including those that use renewable sources of energy. RUS is also considering regulations to clarify the agency's procedures for single asset/project financing arrangements for all RUS eligible projects. This advance notice of proposed rulemaking seeks comments on the parameters necessary to more effectively and prudently use project financing in the RUS electric loan program and will serve several purposes.

It will assist the agency to gather information and comments about its ability to make loans for renewable electric generation even where the consumers may be non-rural residents.

It will help develop a record on industry standards and public recommendations related to financing arrangements and collateral requirements which could be used to implement a focused Project Financing Program (PFP) for investments in electric generation, transmission, and distribution facilities, including plant necessary for generating electricity from renewable energy sources.

It will also help the agency better understand the potential demand for financing utilizing either or both of the aforementioned authorities, collect comments from potential applicants and co-lenders on PFP, terms, and renewable energy financing as well as help inform the public about federal financing options available through the RUS Electric Loan Program.

The RUS is also announcing a public meeting for interested parties to express their views on the opportunities and challenges related to the use of the agency's authority for electric generation from renewable energy sources and project financing within the electric utility sector.

DATES: *Written comments:* Comments must be received by RUS, or bear a postmark or equivalent, no later than July 30, 2013.

Public meeting: Two public meetings will be held on July 9, 2013. The first meeting will begin at 9:00 a.m. eastern time, and the second meeting will begin at 1:15 p.m. Registration will begin at 8:00 a.m. and 12:15 p.m., respectively. The public meetings will last no more than 4 hours, with 20 minutes of introductory remarks from the RUS Administrator, followed by a PowerPoint presentation explaining the ANPR. RUS will then open the floor to discussion.

ADDRESSES: *Comments:* Submit comments by either of the following methods:

- Federal eRulemaking Portal at *http://www.regulations.gov*. Follow instructions for submitting comments.
- *Postal Mail/Commercial Delivery:* Please send your comment addressed to Michele Brooks, Director, Program Development and Regulatory Analysis, USDA Rural Development, 1400 Independence Avenue, STOP 1522, Room 5159, Washington, DC 20250–1522.

Public meeting: The public meeting will be held in the Jefferson Auditorium, South Building, U.S. Department of Agriculture, 1400 Independence Avenue SW., Washington, DC. Persons interested in making a presentation at the meeting should send a written request to Nivin A. Elgohary, Assistant Administrator, Electric Program, Rural Utilities Service, room 5165–S, Stop 1560, 1400 Independence Avenue SW., Washington, DC 20250–1565.

FOR FURTHER INFORMATION CONTACT: Kristi Kubista-Hovis, USDA-Rural Utilities Service, 1400 Independence Avenue SW., Stop 1560, Washington, DC 20250–1560, telephone (202)720–0424 or email to *kristi.kubista-hovis@wdc.usda.gov*.

SUPPLEMENTARY INFORMATION:

Executive Order 12866

This rule has been determined to be not significant for purposes of Executive Order 12866 and, therefore, has not been reviewed by the Office of Management and Budget.

Background: The RUS provides long term financing to electric utility systems providing services to eligible rural communities. Loan funds are typically available for construction on a reimbursement basis once the project is completed. Private sector lenders or utility assets are used as bridge financing. The Electric program of RUS manages a portfolio of well-established loan programs that continue to meet the needs of eligible applicants. It represents the largest federal direct investment in the electric sector. RUS' Electric loan programs provide loans for rural electrification to persons, corporations, States, Territories, and subdivisions, tribal entities and agencies for the purpose of financing the construction and operation of generating plants, electric transmission and distribution lines or systems for furnishing and improving electric service to people living in rural areas. Current RUS borrowers are well established utilities, most frequently rural electric cooperatives that have a history of participation in the program. RUS loans are secured by a system-wide mortgage or indenture on the tangible assets of the utility as well as a contractual claim on system revenues. Security and feasibility of RUS financing for power supply has historically been based on all requirements wholesale power contracts; an after acquired property clause within the mortgage; a loan contract which identifies performance criteria during the term of the loan. Primary support documents are used to determine financial and engineering feasibility for all loans. In recent years, electric infrastructure, including generation systems using renewable energy, peaking units and transmission lines have been increasingly financed on a ''project basis.''

Section 317 Authority—The Rural Electrification Act of 1936, as amended ((7 U.S.C. 940 et seq.) RE Act) provides authority for the financing of assets used

in furnishing or improving electric service to rural areas. Section 13 of the RE Act defines a rural area as a community of 20,000 or less or an area within the service territory of a borrower that had an outstanding loan on the date of enactment of the Food, Conservation, and Energy Act of 2008, more commonly known as the 2008 Farm Bill (June 18, 2008). That definition expanded the number of communities eligible to be served by an RUS financed entity.

In the 2008 Farm Bill, Congress added a new section 317 to the RE Act. The provision gave the agency the authority to make electric loans under Title III of the RE Act for ''electric generation from renewable energy resources for resale to rural and nonrural residents.'' The statute defined a ''renewable energy source'' as ''an energy conversion system fueled from a solar, wind, hydropower, biomass or geothermal source of energy.'' Section 317 authorities could be used to provide financing to construct renewable energy generation facilities to serve both rural and non-rural residents.

The RUS is committed to utilizing section 317 in a manner that spurs rural economic development, expands renewable energy options for consumers and protects taxpayers from undue risks. Rural areas hold the potential of producing significant amounts of renewable energy. Rural development can be enhanced by facilitating the rural production and use of renewable electric resources. The RUS Electric Program can add value to rural markets by using its program to increase physical assets, set policies and regulations that encourage success, foster job creation and enhance energy independence. The RUS seeks comments on several issues related to the effective use of section 317.

1. Under what conditions should section 317 authorities be used? Are there any legislative impediments to utilizing the authority on an ad hoc or programmatic manner?

2. What is the level of interest among current and past RUS program participants in providing financing for renewable energy projects where consumers of the power may be non-rural? What is the level of interest among potential non-traditional applicants?

3. Do renewable energy generation projects serving non-rural consumers require the agency to take into consideration factors not addressed in the existing RUS electric loan program requirements?

Project Financing—Prudence has been a core value of the RE Act's Electric Loan Program. The electric program has a current default rate of less than 1 percent. This has enabled the agency in recent years to generate billions of dollars of rural infrastructure investment with little or no budget authority other than the salaries and expenses of the staff necessary to run the loan program. RUS loans are generally secured by a mortgage or indenture on the tangible assets of the borrower's electric system. The collateral includes the borrowers' real property, revenue streams through contractual arrangements, and any future acquisitions. This ''system'' approach has served the program and rural America well. The RUS electric loan portfolio exceeds $43 billion. While RUS has authority to finance electric infrastructure on a ''project'' basis and has occasionally used that authority, the ''system'' approach has been the predominant financing method for the agency.

As the regulatory and business environments evolve for electric utilities, the agency notes that there is a growing use of and interest in investing in electric infrastructure on a ''project'' basis, especially for power generation from natural gas and renewable sources of energy and transmission line investments. In a ''project'' finance model, the assets and revenues from a particular investment form the security for the loan rather than the assets of the entire electric system. Often additional credit support is needed, such as equity investment or third party commitments to minimize risk to the lender. For example, the assets and revenues from a specific generating facility might be financed and secured by that investment rather than by placing a lien on the assets of the whole utility. In a renewable energy illustration, a lender might finance only the wind turbine assets and not take or be able to take a security interest beyond those assets. This Advance Notice of Proposed Rule Making seeks comments on the project structure for infrastructure developments when an entire utility system is not pledged as collateral. While the existing RUS project financing authority has been used on an ad hoc basis, the agency is considering new regulations to create a more focused PFP to potentially provide financing for eligible applicants for electric utility projects, enabling utilities, tribal entities and corporations to access the lowest cost capital. The agency advises entities interested in pursuing PFP loans, that all RUS projects must take into account a number of factors not typically involved in private sector project financing arrangements, including (1) beneficiary determinations; (2) government social clauses; (3) executive orders; (4) a statutory preference for not-for-profit entities; (5) appropriations/allocation schedules; (6) application processing time; (7) loan advance and interest rate lock-ins at time of advance; (8) construction and procurement standards; and (9) reporting requirements. See 7 CFR Part 1710, subpart B.

The RUS is seeking public comment on the following questions and potential requirements:

1. The RUS program relies on borrowers financing commercially proven technologies suitable for rural deployment. If the RUS were to expand its project financing authority, especially for renewable energy investments, what infrastructure should be eligible for PFP loans? What entities should qualify for PFP loans?

2. Based on the information provided in this Advance Notice of Proposed Rulemaking is there interest in seeking a PFP loan from the RUS under that authority or Section 317 authority referenced above?

3. All RUS investments must comply with the National Environmental Policy Act (NEPA). As it relates to project construction, will potential PFP applicants be able to meet the timing requirements of the NEPA, as codified at 7 CFR Part 1794?

4. The ability to repay must be established prior to loan approval for RUS financing. In considering a PFP loan, risk mitigation and revenue assurance are key issues. What type of credit support, in addition to power purchase agreements and corporate guarantees, are available to secure the government's interest and ensure a long term revenue stream to repay PFP loans?

5. RUS is considering limiting lending under a new PFP to a maximum of 75 percent of the RUS eligible project costs. The government's interest rate on an RUS Electric Program loan is tied to Treasury rates of interest. The most popular option in recent times has been a loan with an interest rate equal to the Treasury rate, at the time of the loan fund advance, plus one eighth of one percent. The loan term is based on the shorter of the useful life of the asset, term of power purchase agreements, term of fuel supply, or term of license that ensure a revenue stream or as deemed appropriate to ensure the repayment of the debt. What other criteria can be built into the credit structure to ensure the repayment of PFP loans?

6. RUS is considering a requirement that PFP borrowers contribute equity in an amount equal to at least 25 percent of the eligible project costs at the time of the RUS loan obligation. What other equity levels are acceptable for this type of credit and what types of credit enhancements can be provided by the applicant?

7. Other credit enhancements have been suggested to ensure repayment including the establishment of a debt service reserve fund required at the time of the RUS obligation for an amount up to one year of debt service. This amount will be maintained while the loan is outstanding with funds deposited in an escrow account to be withdrawn only by RUS or with RUS approval. Will private financing institutions consider this RUS requirement in their interim financing arrangement? Should an operation and maintenance reserve account be required at the time of the RUS obligation for an amount agreed to by RUS and the applicant and maintained while the loan is outstanding? What are typical costs or percentages for Operations and Maintenance expenses for the RUS eligible facilities? Please consider the effects of unplanned as well as planned maintenance.

8. RUS does not presently intend to provide construction loans for project financing. What entities would be interested in partnering with the federal government on these types of projects by providing construction financing? What are the details of the financing arrangements available from the private lending institutions?

9. RUS frequently lends in concurrence with private sector lenders. Will private lending institutions participate in financing facilities on a term financing basis?

10. Outside consultants and legal counsel are often used by RUS loan applicants. Under current regulations project applicants will fund the costs of outside legal, engineering and environmental consultants working for RUS. What should the appropriate cost range be for such expenses incurred by private lenders for a potential PFP loan?

11. Would borrowers accommodate a take or pay Power Purchase agreement equivalent with a component where RUS will always be paid?

12. Federally Recognized Tribes in rural areas have access to a large share of rural renewable energy resources on lands that they own, that are held in Trust by the Federal Government. What additional financing and regulatory considerations should RUS take into consideration to ensure that Electric Program policy changes are structured to help meet the renewable energy development needs of Federally Recognized Tribes?

13. What additional intergovernmental cooperation and collaboration between Federal agencies and Federally Recognized Tribes might better position RUS to meet the renewable energy development needs of Federally Recognized Tribes?

14. Would Federally Recognized Tribes like to consult with RUS on proposed Electric Program policy changes to help meet their renewable energy development needs? If so, what recommendations do Tribes have for conducting such consultation?

Dated: May 30, 2013.

John Charles Padalino,

Acting Administrator, Rural Utilities Service.

[FR Doc. 2013–13313 Filed 6–4–13; 8:45 am]

BILLING CODE 3410–15–P

DEPARTMENT OF AGRICULTURE

Rural Utilities Service

7 CFR PART 1710

RIN 0572–AC32

Rural Determination and Financing Percentage

AGENCY: Rural Utilities Service, USDA.

ACTION: Proposed rule.

SUMMARY: The Rural Utilities Service (RUS or Agency) is proposing policies and procedures for determining rural eligibility for all loans and loan guarantee financial assistance. In addition, policies and procedures are proposed for determining the percentage of total project costs the Agency will finance where the project supplies electricity to an electric utility serving an area that is less than 100 percent rural. By codifying these policies and procedures the agency will provide needed flexibility in the methods utilized to determine eligibility and percentage of financing.

DATES: Written comments must be received by RUS no later than August 5, 2013.

ADDRESSES: Submit comments by either of the following methods:

Federal eRulemaking Portal: Go to *http://www.regulations.gov.* Follow the instructions for submitting comments.

Postal Mail/Commercial Delivery: Please send your comments addressed to Michele Brooks, Director, Program Development and Regulatory Analysis, USDA Rural Development, 1400 Independence Avenue SW., STOP 1522, Room 5162, Washington, DC 20250–1522.

Other Information: Additional information about Rural Development and its programs is available on the Internet at *http://www.rurdev.usda.gov/index.html.*

FOR FURTHER INFORMATION CONTACT: Lou Riggs, USDA—Rural Utilities Service, 1400 Independence Avenue SW., Stop 1569, Washington, DC 20250–1569, telephone (202) 690–0551 or email to *lou.riggs@wdc.usda.gov.*

SUPPLEMENTARY INFORMATION:

Executive Order 12866

This rule has been determined to be not significant for purposes of Executive Order 12866 and, therefore, has not been formally reviewed by the Office of Management and Budget. This regulation expands the scope of RUS's lending authority to promote renewable energy and support smaller projects that do not qualify under current regulations. Due to the expanded scope of the program, RUS is working with the Office of Management and Budget on a program review to better understand the implications of these changes.

Catalog of Federal Domestic Assistance

The program described by this proposed rule is listed in the Catalog of Federal Domestic Assistance Programs under number 10.850, Rural Electrification Loans and Loan Guarantees. The Catalog is available on the Internet and the General Services Administration's (GSA) free CFDA Web site at *http://www.cfda.gov.*

Executive Order 12372

This proposed rule is excluded from the scope of Executive Order 12372, Intergovernmental Consultation, which may require consultation with State and local officials. See the final rule related notice entitled, ''Department Programs and Activities Excluded from Executive Order 12372'' (50 FR 47034) advising that RUS loans and loan guarantees were not covered by Executive Order 12372.

Information Collection and Recordkeeping Requirements

In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. chapter 35), RUS invites comments on this information collection for which RUS intends to request approval from the Office of Management and Budget (OMB).

Comments on this notice must be received by August 5, 2013.

Comments are invited on (a) whether the collection of information is necessary for the proper performance of the functions of the Agency, including

whether the information will have practical utility; (b) the accuracy of the Agency's estimate of burden including the validity of the methods and assumption used; (c) ways to enhance the quality, utility and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques on other forms or information technology.

Comments may be sent to Michele Brooks, Director, Program Development and Regulatory Analysis, Rural Development, U.S. Department of Agriculture, 1400 Independence Avenue SW., Stop 1522, Room 5162 South Building, Washington, DC 20250.

Title: Rural Determination and Financing Percentage.

Type of Request: New information collection.

Abstract: The Agency manages loan and loan guarantee programs in accordance with the Rural Electrification Act of 1936, 7 U.S.C. 901 *et seq.,* as amended (RE Act), which authorizes RUS to make loans to entities that furnish and improve electric service to persons in rural areas. The proposed rulemaking sets forth approaches to be used by the Agency in determining a Rural Percentage for areas served by electric utilities. That percentage could range from 0 to 100 percent. The proposed rulemaking will also set forth approaches by the Agency for determining what percentage of a project is eligible for RUS financing if the Rural Percentage of an electric utility's entire service area is less than 100 percent. These approaches will apply to all loan and loan guarantee funding requests.

The information collected will consist of information necessary to document the basis for estimating the Rural Percentage and the required loan application materials.

Estimate of Burden: Public reporting burden for this collection of information is estimated to average 14.3 hours per response.

Respondents: Nonprofit organizations, business or other for profit.

Estimated Number of Respondents: 10.

Estimated Number of Responses per Respondent: 21.6.

Estimated Annual Responses: 216.

Estimated Total Annual Burden on Respondents: 3,088 hours.

Copies of this information collection can be obtained from Michele Brooks, Program Development and Regulatory Analysis, USDA Rural Development, 1400 Independence Avenue SW, STOP 1522, Room 5162, Washington, DC 20250–1522. Telephone: 202 690–1078.

All responses to this information collection and recordkeeping notice will be summarized and included in the request for OMB approval. All comments will also become a matter of public record.

National Environmental Policy Act Certification

The Agency has determined that this proposed rule will not significantly affect the quality of the human environment as defined by the National Environmental Policy Act of 1969 (42 U.S.C. 4321 et seq.). Therefore, this action does not require an environmental impact statement or assessment.

Regulatory Flexibility Act Certification

The Regulatory Flexibility Act is not applicable to this rule since the RUS is not required by 5 U.S.C. 551 et seq. or any other provision of law to publish a notice of proposed rulemaking with respect to the subject matter of this rule.

Unfunded Mandates

This rule contains no Federal mandates (under the regulatory provisions of title II of the Unfunded Mandates Reform Act of 1995) for State, local, and tribal governments or for the private sector. Therefore, this rule is not subject to the requirements of section 202 and 205 of the Unfunded Mandates Reform Act of 1995.

Executive Order 12988

This proposed rule has been reviewed under Executive Order 12988, Civil Justice Reform. The Agency has determined that this proposed rule meets the applicable standards in § 3 of the Executive Order. In addition, all state and local laws and regulations that are in conflict with this rule will be preempted, no retroactive effort will be given to this rule, and, in accordance with § 212(e) of the Department of Agriculture Reorganization Act of 1994 (7 U.S.C. 6912(e)), administrative appeals procedures, if any, must be exhausted before any action against the Department or its agencies may be initiated.

Executive Order 13132, Federalism

The policies contained in this rule do not have any substantial direct effect on states, on the relationship between the national government and the states, or on the distribution of power and responsibilities among the various levels of government. Nor does this rule impose substantial direct compliance costs on state and local governments. Therefore, consultation with the states is not required.

Executive Order 13175, Consultation and Coordination With Indian Tribal Governments

Executive Order 13175 imposes requirements on Rural Development in the development of regulatory policies that have tribal implications or preempt tribal laws. Rural Development has determined that this final rule does not have a substantial direct effect on one or more Indian tribe(s) or on either the relationship or the distribution of powers and responsibilities between the Federal Government and Indian tribes. Thus, this proposed rule is not subject to the requirements of Executive Order 13175. If a tribe determines that this rule has implications of which Rural Development is not aware and would like to engage in consultation with Rural Development on this rule, please contact Rural Development's Native American Coordinator at (720) 544–2911 or *AIAN@wdc.usda.gov.*

E-Government Act Compliance

The Agency is committed to the E-Government Act, which requires Government agencies in general to provide the public the option of submitting information or transacting business electronically to the maximum extent possible.

Background

RUS proposes to amend 7 CFR part 1710 by adding two new sections 1710.116 and 1710.117 respectively entitled ''Rural Determination'' and ''Financing Percentage.'' The Rural Electrification Act of 1936, as amended (''RE Act'') authorizes the Agency to make loans to entities that furnish and improve electric service to persons in rural areas. Traditional borrowers have been non-profit rural electric cooperatives that have used federal funds to finance the construction and improvement of electric projects in rural areas, including generation, transmission and distribution projects.

For purposes of this discussion, ''June 2008 rural area'' refers to the geographic area served by borrowers that had an outstanding RUS loan as of June 18, 2008 (such borrowers hereinafter referred to as ''existing borrowers''). Rural electric cooperatives, public utility districts, tribal utility authorities, municipalities and other eligible organizations that were existing borrowers as of June 18, 2008, and which have not since experienced any growth in their service areas via acquisition or merger are 100 percent

rural per the definition of rural area referenced in the RE Act as amended by the 2008 Farm Bill (Pub. L. 110–246). It is the borrower's June 2008 rural area that is grandfathered and not a borrower that had an outstanding RUS loan as of June 18, 2008 (defined in the proposed rule as ''June 2008 Borrower.''). To the extent these borrowers have acquired additional territory by acquisition or merger since June 18, 2008, the additional area will be separately reviewed to determine whether it is rural. The current definition of rural area for purposes of the RE Act provides that an area other than a city, town, or unincorporated area that has a population greater than 20,000 is defined as rural.

As the Agency investigates financing options for projects owned by entities other than the existing borrowers it has become clear that there is a need for flexibility in the methods utilized by the Agency to accommodate projects selling to or owned by electric systems that serve areas that are partially rural and partially urban in character. The Agency proposes to codify the methods by which the agency makes a determination of whether a proposed investment can be financed, and if so, what percentage of the asset(s) can be financed, by amending 7 CFR part 1710.

The properties of electricity are such that once a project is interconnected to a grid that serves both rural and urban areas, there is no practical way to direct a given project's output to only rural persons. Many persons who live in rural America are served by ''hybrid'' electric utilities that serve both rural and urban area consumers. The Agency proposes a balanced approach that respects the constraints within our existing authority under the RE Act and makes RUS financing available to borrowers that furnish and improve electric service to persons in rural areas that are consumers of a hybrid utility.

In all cases where a service territory is to be supplied with electricity by a RUS-financed project, the Agency proposes that the applicable utility estimate the percentage of its load that is consumed by persons or entities in a rural area (''Rural Percentage''). The options for how this Rural Percentage is to be arrived at require that the data need to be readily obtainable by the utility and sufficiently detailed to allow for verification by an independent third party. In all cases the options utilize actual population or a proxy for population (described in the next section) in order to be consistent with the definition of rural area used in the RE Act. RUS proposes to retain the ultimate authority for determining the applicable Rural Percentage.

It has been the Agency's practice to finance only that percentage of a project cost that equates to the Rural Percentage. This practice has been a workable approach when large projects have been shared by RUS borrowers who were considered 100 percent rural and other utilities where the balance of costs can be readily financed by another utility that is a non-RUS borrower. This approach is neither feasible for smaller projects nor responsive to the needs of the market in other situations. The Agency's inability to fund 100 percent of the financing needs of a given project has undermined the Agency's effort to be responsive to the renewable energy project market in particular, but is also relevant where applications are submitted by entities for other purposes. When the typical outside applicant must find a lender to fill the gap that results if the Agency does not fund 100 percent of the debt, applicants often cannot readily justify the extra time and expense associated with bringing in additional lenders into the project. Negotiating case-by-case security documentation and participation agreements is overly expensive and time consuming for the applicant and the Agency does not have the staff or resources to meet a need for this activity in any great volume. This is particularly true for smaller projects.

Promulgating the policies set forth in this proposed regulation has the potential of creating jobs and stimulating the economy, primarily from entities outside the traditional borrower community.

The proposed rule provides that it will be the applicant's responsibility to work with the utility to develop a report that estimates the utility's Rural Percentage. The information needed to make this estimate is often proprietary or sensitive, but RUS or a third party acceptable to RUS must be able to verify it. RUS retains the ultimate responsibility for making the determination.

Rural Percentage

As stated earlier, the area served by borrowers with an outstanding loan as of June 18, 2008, is considered to be 100 percent rural. If previous borrowers reapply to the program, borrowers with June 2008 rural area territory apply after acquiring new service territory or new applicants apply for financing, it is proposed that they have the option to use any one of four methods to estimate the Rural Percentage for the applicable service area. The first three methods look at the overall area or service territory served by the utility. The fourth method involves looking at the load flows in rural areas (a) immediately surrounding a proposed plant site in a rural area or (b) adjacent to or nearby a proposed plant site not in a rural area. It is proposed that the Rural Percentage will be reassessed with each loan request.

Method R1 This method may be used when the meter locations are known, and, in most cases, the utility will have the data available in shape files utilized by geographic information software (''GIS data''). GIS data are used to overlay meter locations onto population maps available from the United States Census Bureau (Census Bureau) to determine how many meters are located in rural areas and how many are located in urban areas. The Rural Percentage under this method is calculated as rural meters divided by total meters.

Method R2 This method is similar to Method R1 but it also takes load into account as a proxy for population. Load can be either energy sold measured in megawatt hours (MWh) or coincident peak demand as measured in megawatts (MW), as measured within the service area during the most recently completed calendar year. As with Method R1, GIS data allow the utility to determine which meters are rural and which are urban, but the Rural Percentage under this method is calculated as rural load divided by total load.

Method R3 This method is to be used only when the service area is known, but the exact locations of meters are not known. The area is identified on a map with landmarks such as highways, rivers, cities, etc. The Web site for the Census Bureau is used to identify areas within the service area with a population of greater than 20,000 as well as the total population for the service area. The Rural Percentage is calculated using an estimated total population and known urban population using population and housing data from the Census Bureau as well as information from other sources acceptable to RUS and may incorporate reasonable assumptions when all facts are not available. The Rural Percentage using this method shall be equal to the fraction that results from dividing the rural population by the total population.

Method R4 This method looks at load flows in and around the actual location of a proposed generating plant. A boundary, or polygon, is determined which coincides with the area beyond which power from the proposed plant does not flow during low consumer demand conditions. Low consumer demand in this case is when power from

the outside must be imported to meet the total demand in this geographic area. This boundary is consistent with the presumption that all of the power generated from the plant is consumed within this area during low consumer demand conditions. This method should only be used for projects serving loads that are approximately 50 MW or less located in rural areas.

Under the fourth method above, once the polygon area is established, any one of the first three methods may be used to determine the Rural Percentage for the polygon. This fourth method would be typically used for generation projects that are located in a rural area; it would be allowed for projects located in an urban area only where a benefit can be clearly demonstrated for a rural area. For example, a project located in the southern end of the Delmarva Peninsula might be located in a census place greater than 20,000, but it would benefit the greater rural area of the peninsula to the north of it by reducing congestion at constrained delivery points. It is proposed that projects not meeting this exception for an urban location must be located at least 10 miles from an urban center.

Financing Percentage

As discussed above, RUS has historically determined the Rural Percentage for a new borrower or an applicant seeking to return for financing after buying out of the program, and then only financed eligible project costs up to that percentage. It is important that RUS be able to finance up to 100 percent of an applicant's request in order to be responsive to the needs of the market, but the Agency also needs to respect the rural constraint imposed by the RE Act.

Under the proposed rulemaking, the financing percentage is the percentage of total project costs RUS may finance (''Financing Percentage''). The rulemaking proposes that the Agency can finance up to 100 percent of the debt requirements for projects in a hybrid rural/urban service territory up to but not exceeding a cap on total RUS financing available for the service area (the ''Rural Cap''). The Rural Cap is cumulative in nature and once established may be periodically reassessed to account for load growth and population shifts within the territory. Once the Rural Cap has been reached, a hybrid utility would not be eligible for additional financing from the Agency.

The Rural Cap calculation applies only to a hybrid rural/urban service territory served by a for-profit entity or nonprofit entity that had no outstanding RUS loan as of June 18, 2008. As proposed, the Rural Cap applies to any eligible generation facility, including but not limited to renewable and gas-fired generation where the gas generation is specifically intended to firm up an identified renewable resource. Section 4 of the RE Act provides for a preference to cooperatives and nonprofit entities, but does not prohibit RUS from making loans to for-profit entities. The proposed rulemaking represents a balance of three primary factors: (1) The constraint that Agency financing apply to persons in rural areas, (2) the preference for nonprofit entities and (3) the recognition that the demand for renewable energy financing is greatest where utilities are subject to a renewable energy portfolio and for-profit developers are in a position to use the tax incentives legislated for renewable energy. Accordingly, it is proposed that RUS may provide up to 100 percent of the debt for a given energy asset or fleet of assets until the cumulative capacity financed by RUS that serves a for-profit utility service area reaches the lesser of the Rural Percentage, the state's renewable portfolio standard (RPS) or a default percentage (20 percent) established by RUS for this purpose for states that do not have an RPS. This more restrictive formulation of the Rural Cap as applied to for-profit utility service areas is in recognition of the preference found in the RE Act for nonprofit entities. Agency lending to for-profit entities is not prohibited under the RE Act, but nonprofit entities enjoy a preference in this authorizing legislation.

The following methods recognize the differing practicalities presented by whether the applicant is seeking to finance generation, transmission, distribution or energy efficiency projects:

Financing Percentage for Generation

The following three options are proposed for determining the Financing Percentage for generation projects and related transmission where the applicant was not an existing borrower on June 18, 2008. These options facilitate the ability of RUS to finance up to 100 percent of a given project, but recognize that in mixed rural/urban service territories a cap on the cumulative level of lending by RUS is necessary to be consistent with the rural eligibility limitation imposed by the RE Act.

Method G1 Multiply the Rural Percentage by the coincident peak demand recorded for the utility system during the most recently completed calendar year. The result of this calculation is a Rural Cap measured in MW. In the case of a nonprofit utility it is proposed that RUS may provide 100 percent of the debt for a given energy asset or fleet of assets until the cumulative nameplate capacity financed by RUS reaches this Rural Cap. In the case of a for-profit utility it is proposed that RUS may provide 100 percent of the debt for a given energy asset or fleet of assets until the cumulative capacity financed by RUS reaches the lesser of this Rural Cap, the state's RPS target, or 20 percent of the utility's coincident peak, as measured in MW.

Method G2 Multiply the Rural Percentage times the total energy sold in the system as measured during the most recently completed calendar year. This calculation would result in a Rural Cap measured in energy hours. In the case of a nonprofit utility it is proposed that RUS may provide up to 100 percent of the debt for a given energy asset or fleet of assets until the cumulative energy financed by RUS reaches this Rural Cap. In the case of a for-profit utility it is proposed that RUS may provide up to 100 percent of the debt for a given energy asset or fleet of assets until the cumulative energy financed by RUS reaches the lesser of this Rural Cap, the state's RPS target or 20 percent, as measured in MWh.

Method G3 Multiply the Rural Percentage times the total project cost for a specific asset. This would result in a maximum financing cap measured in dollars for each asset. It is proposed that RUS provide financing for no more than this amount of debt; the balance of the costs would come from either equity or additional lenders or a combination of both. (This method is the approach currently used by the Agency in determining the Financing Percentage.)

Financing Percentage for Distribution

The following two options for determining the Financing Percentage are proposed to be available for distribution projects where the applicant is not an existing borrower as of June 18, 2008. No differentiation between nonprofit and for-profit utilities is proposed for determining the Financing Percentage for distribution projects.

Method D1 The Financing Percentage is proposed to be equal to the Rural Percentage as determined by Methods R1, R2, or R3 above. All projects in the system may be financed up to this percentage regardless of physical location.

Method D2 The Financing Percentage is proposed to be 100 percent of the costs of the projects located in rural areas; the Financing

Percentage would be zero for projects located in urban areas.

Financing Percentage for Energy Efficiency Projects

The following single financing option is being proposed for energy efficiency projects since the location of each project will be known and the rural/urban determination can be easily determined:

Method EE1 The Financing Percentage is proposed to be 100 percent of the costs of the projects located in rural areas; the Financing Percentage would be zero for projects located in urban areas.

Financing Percentage for Transmission

''Stand-alone'' transmission investment is more complicated than generation or distribution projects in any assessment of the extent to which a transmission facility serves persons in rural areas, particularly regional transmission and inter-regional transmission. As noted above, the properties of electricity are such that once a project is interconnected to a grid that serves both urban and rural areas, there is no practical way to direct a given project's output to only persons in rural areas. The proposed rule provides that the Financing Percentage for transmission projects will be determined by considering only the Rural Percentage of the electric utility systems that have assumed responsibility for the repayment of the loan(s) provided by RUS for the transmission project (''Sponsoring Utilities''). A Sponsoring Utility may be either an owner or an offtaker or both. If the Sponsoring Utility is an owner but not obligated under an offtake agreement, the owner system must demonstrate physical benefit to their system, not merely financial gain associated with their ownership of the line.

In multi sponsor transmission cases, RUS expects that the Financing Percentage that is arrived at will be less than 100 percent. The size of a multi sponsored transmission project is typically large and would typically involve multiple lenders and investors; as such, the cost and time constraints associated with involving participating lenders are relatively less burdensome and the need for 100 percent RUS financing is not a prerequisite for the Agency to be responsive to this large scale transmission market.

The following two options for determining the Financing Percentage for transmission projects recognize that there may be significant complications in trying to assess load flows or simple GIS data to arrive at the Rural Percentage using the actual location or load flow impact of the transmission asset:

Method T1 The rulemaking proposes a Financing Percentage of 100 percent for a transmission investment only in the following cases: a transmission project wholly owned by an existing utility system borrower(s), 100 percent of a fractional interest owned by an existing borrower, or 100 percent of the lines needed to meet the investment requirements imposed on an existing borrower as a member of an integrated transmission system.

Method T2 For other than existing borrowers, it is proposed that RUS will finance a percentage of the applicant(s) financial commitment to a transmission investment equal to the Rural Percentage using methods R1, R2 or R3 above. The applicant must be a Sponsoring Utility for determining the Rural Percentage.

As presently proposed, there is no overall cap on the amount of RUS financing that can be borrowed by a hybrid system rural/urban utility for multiple transmission investments. Comments are specifically requested on this issue.

The permutations and combinations for possible ownership and capital structures for all projects are potentially infinite. The proposed rulemaking reserves to RUS the ultimate discretion in how the proposed parameters are to be applied.

Finally, this proposed rulemaking also includes other minor changes intended to modernize the loan application process and accommodate generation projects that use renewable fuel that are proposed to meet an RPS imposed by the applicable jurisdictional authority. RUS proposes that RPS related generation projects using renewable fuel need not be demonstrated to be a least cost option and the requirement that the applicants solicit proposals from alternative providers for such projects is deemed to be met for such projects. Also, RUS proposes that smart grid facilities be expressly identified in the construction work plans submitted to the Agency for approval.

List of Subjects in 7 CFR Part 1710

Electric power, Loan programs-energy, Reporting and recordkeeping requirements, Rural areas.

For reasons set forth in the preamble, the Rural Utilities Service proposes to amend 7 CFR part 1710, as follows:

PART 1710—GENERAL AND PRE-LOAN POLICIES AND PROCEDURES COMMON TO ELECTRIC LOANS AND GUARANTEES

■ 1. The authority citation for part 1710 continues to read as follows:

Authority: 7 U.S.C. 901 et seq., 1921 et seq., 6941 et seq.

Subpart A—General

■ 2. Amend § 1710.2 by adding definitions for ''June 2008 Borrower,'' '' Sponsoring Utility,'' and ''Utility'' in alphabetical order to read as follows:

§ 1710.2 Definitions and rules of construction.

(a) * * *

* * * * *

June 2008 Borrower means a borrower that had an outstanding loan as of June 18, 2008 made under titles I through V of the RE Act.

* * * * *

Sponsoring Utility means a Utility that assumes responsibility for the repayment of the loan(s) provided by RUS for a transmission project. The Sponsoring Utility may be either an owner or an offtaker or both. If the Sponsoring Utility is an owner but not obligated under an offtake agreement, the owner system must demonstrate physical benefit to their system, not merely financial gain associated with their ownership of the line.

* * * * *

Utility means an entity in the business of providing retail electric service to Consumers (distribution entity) or an entity in the business of providing wholesale electric supply to distribution entities (generation entity) or an entity in the business of providing transmission service to distribution or generation entities (transmission entity), where, in each case, the entities provide the applicable service using self-owned or controlled assets under a published tariff that the entity and any associated regulatory agency may adjust.

* * * * *

Subpart C—Loan Purposes and Basic Policies

■ 3. Amend § 1710.101 by revising paragraph (f) to read as follows:

§ 1710.101 Types of eligible borrowers.

* * * * *

(f) Except as provided in paragraph (g) of this section, former borrowers that have paid off all outstanding loans may reapply for a loan to serve RE Act beneficiary loads accruing from the time

the former borrower's complete loan application is received by RUS.

* * * * *

■ 4. Amend § 1710.104 by revising paragraph (b) to read as follows:

§ 1710.104 Service to non-RE Act beneficiaries.

* * * * *

(b) Loan funds may be approved for facilities that serve non-RE Act beneficiaries only if:

(1) The primary purpose of the loan is to furnish or improve service for RE Act beneficiaries; and

(2) The use of loan funds to serve non-RE Act beneficiaries is necessary and incidental to the primary purpose of the loan; or

(3) The requirements of §§ 1710.116 and 1710.117 of this subpart are satisfied.

■ 5. Add § 1710.116 to read as follows:

§ 1710.116 Rural Determination.

(a) *General.* This section shall be used to determine the rural eligibility for all applicants. Borrowers serving, directly or indirectly, any person located within a rural area, shall be considered eligible for financing as provided in this section and § 1710.117.

(b) *Rural Cap.* Rural Cap means the aggregate amount of generation in megawatt hours (MWh) that RUS will finance for a given Utility. The amount may be measured in terms of either installed capacity or annual energy sales.

(c) *Rural Percentage.* Except as provided in paragraph (d) of this section, the percentage of rural persons served relative to the total population in the service territory of a Utility shall be considered to be the Rural Percentage. RUS retains the ultimate authority for determining the Rural Percentage and the Rural Percentage shall be re-evaluated with each loan request.

(d) *June 2008 Borrowers.* The Rural Percentage for June 2008 Borrowers that have not acquired any new service territory since June 18, 2008 shall be 100 percent.

(e) *Report and supporting documentation.* It is the Borrower's responsibility to work with the applicable Utility to estimate the Rural Percentage and provide RUS with a report acceptable to RUS estimating the Rural Percentage. The report and supporting documentation must be verifiable by RUS or a third party acceptable to RUS.

(f) *Methods for calculating the Rural Percentage.* The borrower may use any one of the following four methods to estimate the Rural Percentage, except as otherwise noted.

(1) *Method R1* Identify all meters currently located within the service territory for the applicable Utility excluding sale for resale meters. Determine the rural meters and total meters using data on meter locations in the format utilized by geographic information software (GIS) and using data available from the Census Bureau. The Rural Percentage shall be equal to the fraction that results from dividing the number of rural meters by the number of total meters.

(2) *Method R2* Identify all meters located within the service territory for the applicable Utility excluding sale for resale meters. Determine the rural meters and total meters for the area using data available from the Census Bureau. Determine the rural, and total MWh sold during the previous calendar year. The Rural Percentage shall be equal to the fraction that results from dividing the number of rural MWh by the total MWh sold. Borrowers may use peak demand (megawatts) in place of MWh sales to calculate the rural fraction.

(3) *Method R3* Identify the geographic area of the service territory for the applicable Utility using landmarks such as highways, rivers or boundaries of political jurisdictions. Determine the urban and total population for the area using data available from the U.S. Bureau of the Census (Census Bureau). Additional data from other sources acceptable from RUS may also be used to refine the result arrived at using Census Bureau data. The Rural Percentage shall be equal to the fraction that results from dividing the rural population by the total population. This method is only to be used if GIS data on meter locations is not available.

(4) *Method R4* (i) This method may only be used for small generation projects that serve loads approximately 50 megawatts (MW) or less and are located in a rural area, at least 10 miles from an urban center, or for small generation projects that are located in an urban area where a benefit can be clearly demonstrated for a rural area such as a project that results in relief of congestion at a constrained delivery point that feeds a rural area.

(ii) Perform a load flow study in and around a proposed generation plant site. Identify a boundary which coincides with the geographic area beyond which power from the proposed plant does not flow during low consumer demand conditions. Use either Methods R1, R2 or R3 to determine the Rural Percentage for the identified area.

■ 6. Redesignate § 1710.117 as § 1710.118, and add a new § 1710.117 to read as follows:

§ 1710.117 Financing Percentage.

(a) *General.* This section shall be used to determine the eligible percentage of financing for projects included in loan applications submitted to RUS.

(b) *Financing Percentage.* Projects serving persons in rural areas shall be eligible for financing from RUS for up to 100 percent of eligible costs or such other lower percentage as provided in this section unless otherwise reduced pursuant to either an equity or other underwriting requirement determined by RUS, including but not limited to a requirement that other lenders participate in the financing. The percentage of total project costs determined to be eligible for RUS financing shall be the Financing Percentage.

(c) *June 2008 Borrowers.* The Financing Percentage for June 2008 Borrowers shall be 100 percent limited only by an underwriting requirement as may be determined by RUS pursuant to paragraph (b) of this section.

(d) *Generation.* The following three options may be used for determining the maximum Financing Percentage for generation projects. Applicants must provide RUS with estimates and support documentation for the option selected by the applicant. The percentage of generation capacity or energy financed in all or part by RUS for utility systems other than June 2008 Borrowers may not exceed the applicable Rural Cap.

(1) *Method G1.* Multiply the Rural Percentage times the coincident peak demand recorded for the applicable Utility service area as measured during the most recently completed calendar year. RUS may provide up to 100 percent of the debt for a given generation asset or fleet of assets until the cumulative nameplate capacity financed by RUS reaches the Rural Cap for a nonprofit utility system. RUS may provide up to 100 percent of the debt for a given generation asset or fleet of assets until the cumulative nameplate capacity financed by RUS reaches the lesser of the Rural Cap, the applicable state renewable portfolio standard or 20 percent of the coincident peak as measured in megawatts for a for-profit utility system.

(2) *Method G2.* Multiply the Rural Percentage times the total energy sold within the system for the most recently completed calendar year. The result is a Rural Cap measured in energy hours. RUS may provide up to 100 percent of the debt for a given generation asset or fleet of assets until the cumulative

capacity financed by RUS reaches the Rural Cap for a nonprofit utility system. RUS may provide 100 percent of the debt for a given generation asset or fleet of assets until the cumulative capacity financed by RUS reaches the lesser of the Rural Cap, the applicable state renewable portfolio standard or 20 percent as measured in energy hours for a for-profit utility system.

(3) *Method G3.* Multiply the Rural Percentage times the total project cost for a specific asset. This establishes the maximum financing cap measured in dollars for each asset. RUS may provide financing for no more than this amount of the debt.

(e) *Transmission.* Transmission that is dedicated to interconnecting a specific generation facility shall be considered incidental to and part of that project for purposes of determining the related Financing Percentage and as such be calculated pursuant to paragraph (d) of this section. The following two options may be used for determining the maximum Financing Percentage for stand-alone bulk or other interconnecting transmission lines. Applicants must provide RUS with estimates and support documentation for the option selected by the applicant.

(1) *Method T1* June 2008 Borrowers may seek financing for 100 percent for a transmission investment only in the following cases: a transmission project wholly owned by existing borrower(s), 100 percent of a fractional interest owned by an existing borrower, or 100 percent of the lines needed to meet the investment requirements imposed on an existing borrower as a member of an integrated transmission system.

(2) *Method T2* In cases where the applicant is not a June 2008 Borrower, RUS will finance a percentage of the applicant(s) financial commitment to a transmission investment equal to the Rural Percentage using methods R1, R2 or R3 of paragraph (f) in § 1710.116. The applicant must be a Sponsoring Utility for determining the Rural Percentage.

(f) *Distribution.* Applicant must provide RUS with estimates and support documentation for one of the following two options for determining the maximum Financing Percentage for distribution projects.

(1) *Method D1* The Financing Percentage is equal to the Rural Percentage as determined by Methods R1, R2, or R3 described in paragraph (f) of § 1710.116. All projects in the system may be financed up to this percentage regardless of physical location.

(2) *Method D2* The Financing Percentage may be up to 100 percent of the costs of the projects located in rural areas; the Financing Percentage would be zero for projects located in urban areas.

(g) Financing Percentage for Energy Efficiency Projects. Applicants must provide RUS with estimates and support documentation for determining the maximum Financing Percentage using the following method for energy efficiency projects:

Method EE1 The Financing Percentage may be up to 100 percent of the costs of the projects located in rural areas; the Financing Percentage shall be zero for projects located in urban areas.

■ 7. Amed § 1710.119 by revising paragraph (b) to read as follows:

§ 1710.119 Loan processing priorities.

* * * * *

(b) The Administrator may give priority to processing loans that are required to meet the following criteria:

(1) To restore electric service following a major storm or other catastrophe;

(2) To bring existing electric facilities into compliance with any environmental requirements imposed by Federal or state law that were not in effect at the time the facilities were originally constructed;

(3) To finance the capital needs of borrowers that are the result of a merger, consolidation, or a transfer of a system substantially in its entirety, provided that the merger, consolidation, or transfer has either been approved by RUS or does not need RUS approval pursuant to the borrower's loan documents (See 7 CFR 1717.154);

(4) To correct serious safety problems, other than those resulting from borrower mismanagement or negligence;

(5) To finance generation facilities that use renewable fuel; or

(6) To build transmission facilities in order to deliver the energy produced by generating facilities that use renewable fuel.

* * * * *

Subpart D—Basic Requirements for Loan Approval

■ 8. Amend § 1710.151 by revising paragraph (e) to read as follows:

§ 1710. 151 Required finding for all loans.

* * * * *

(e) *Facilities for nonrural areas.* Whenever a borrower proposes to use loan funds for the improvement, expansion, construction, or acquisition of electric projects for non-RE Act beneficiaries, there is satisfactory evidence that such funds are necessary and incidental to furnishing or improving electric service for RE Act beneficiaries (see § 1710.104) or the requirements of §§ 1710.116 and 1710.117 are satisfied.

* * * * *

Subpart F—Construction Work Plans and Related Studies

■ 9. Amend § 1710.251 by revising paragraphs (c)(8) through (c)(10) to read as follows:

§ 1710.251 Construction work plans—distribution borrowers.

* * * * *

(c) * * *

(8) Headquarters facilities;

(9) Improvements, replacements, and retirements of generation facilities;

(10) Smart grid facilities including communications equipment, smart meters, load management equipment, automatic sectionalizing facilities, and centralized System Control and Data Acquisition equipment. Load management equipment and other smart devices eligible for financing, including the related costs of installation, is limited to capital equipment designed to influence the time and manner of consumer use of electricity, which includes peak clipping and load shifting. To be eligible for financing, such equipment must be owned by the borrower, although it may be located inside or outside a consumer's premises; and

* * * * *

■ 10. Amend § 1710.252 by revising paragraphs (c) (2) and (c)(4) to read as follows:

§ 1710.252 Construction work plans—power supply borrowers.

* * * * *

(c) * * *

(2) Transmission facilities required to deliver the power needed to serve the existing and planned new loads of the borrower and its members, and to improve service reliability, including tie lines for improved reliability of service, line conversions, improvements and replacements, new substations and substation improvements and replacements, and smart grid facilities such as Systems Control and Data Acquisition equipment, including automated dispatching, communications and sectionalizing equipment, and load management equipment;

* * * * *

(4) Improvements and replacements of generation facilities, including generation facilities that use renewable fuel; and

* * * * *

Subpart F—Construction Work Plan and Related Studies

§ 1710.253 [Amended]

■ 11. Amend § 1710.253 as follows:

■ a. Revise paragraph (c)(1) and redesignate pargraphs (c)(2) through (c)(9) as (c)(3) through (c)(10), respectively, and add a new paragraph (c)(2); and

■ b. Redesignate paragraph (d) as paragraph (e) and add a new pargraph (d);

§ 1710.253 Engineering and cost studies—addition of generation capacity.

* * * * *

(c) * * *

(1) Capital;

(2) Operation and maintenance costs;

* * * * *

(d) The requirements of paragraphs (c)(4), (c)(5), and (c)(6) of this section shall not apply in the case of generation projects using renewable fuel that are proposed to meet a renewable portfolio standard imposed by the applicable jurisdictional authority.

■ 12. Amend § 1710.254 by adding paragraph (a)(1)(iii) and revising paragraphs (g) and (h) to read as follows:

§ 1710.254 Alternative sources of power.

(a) * * *

(1) * * *

(iii) Where a generation project using renewable fuel is proposed to meet a renewable portfolio standard imposed by the applicable jurisdictional authority.

* * * * *

(g) The requirements of this section supplement the RUS requirements for financing of generation and bulk transmission facilities as set forth elsewhere in this part.

(h) At the request of a borrower, RUS, in its sole discretion may waive specific requirements of paragraphs (b) through (e) of this section if such waiver is required to prevent unreasonable delays in obtaining generation capacity that could result in system reliability problems, or, in the case of renewable projects proposed to meet a renewable portfolio standard imposed by the applicable jurisdictional authority, the requirements of this section shall be deemed to be met.

Dated: May 30, 2013.

John Padalino,

Acting Administrator, Rural Utilities Service.

[FR Doc. 2013–13309 Filed 6–4–13; 8:45 am]

BILLING CODE 3410–15–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2013–0479; Directorate Identifier 2011–SW–070–AD]

RIN 2120–AA64

Airworthiness Directives; Eurocopter France Helicopters

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: We propose to adopt a new airworthiness directive (AD) for Eurocopter France (Eurocopter) Model AS332C, AS332L, AS332L1, AS332L2, and EC225LP helicopters. This proposed AD would require inspecting the intermediate gearbox (IGB) fairing for a crack and inspecting the IGB fairing gutter (gutter), if installed, for a crack, separation, or interference. This proposed AD is prompted by reports of cracks, separation of the IGB fairing from the gutter and attachment supports, and subsequent interference with the tail rotor (TR) inclined drive shaft. The proposed actions are intended to detect a crack and prevent separation of the IGB fairing, which could result in interference with the TR inclined drive shaft and subsequent loss of control of the helicopter.

DATES: We must receive comments on this proposed AD by August 5, 2013.

ADDRESSES: You may send comments by any of the following methods:

- *Federal eRulemaking Docket:* Go to *http://www.regulations.gov.* Follow the online instructions for sending your comments electronically.
- *Fax:* 202–493–2251.
- *Mail:* Send comments to the U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE., Washington, DC 20590–0001.
- *Hand Delivery:* Deliver to the ''Mail'' address between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

Examining the AD Docket

You may examine the AD docket on the Internet at *http://www.regulations.gov* or in person at the Docket Operations Office between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The AD docket contains this proposed AD, the economic evaluation, any comments received, and other information. The street address for the Docket Operations Office (telephone 800–647–5527) is in the **ADDRESSES** section. Comments will be available in the AD docket shortly after receipt.

For service information identified in this proposed AD, contact American Eurocopter Corporation, 2701 N. Forum Drive, Grand Prairie, TX 75052; telephone (972) 641–0000 or (800) 232–0323; fax (972) 641–3775; or at *http://www.eurocopter.com/techpub.* You may review the referenced service information at the FAA, Office of the Regional Counsel, Southwest Region, 2601 Meacham Blvd., Room 663, Fort Worth, Texas 76137.

FOR FURTHER INFORMATION CONTACT: Gary Roach, Aviation Safety Engineer, Regulations and Policy Group, Rotorcraft Directorate, FAA, 2601 Meacham Blvd., Fort Worth, Texas 76137; telephone (817) 222–5110; email *gary.b.roach@faa.gov.*

SUPPLEMENTARY INFORMATION:

Comments Invited

We invite you to participate in this rulemaking by submitting written comments, data, or views. We also invite comments relating to the economic, environmental, energy, or federalism impacts that might result from adopting the proposals in this document. The most helpful comments reference a specific portion of the proposal, explain the reason for any recommended change, and include supporting data. To ensure the docket does not contain duplicate comments, commenters should send only one copy of written comments, or if comments are filed electronically, commenters should submit only one time.

We will file in the docket all comments that we receive, as well as a report summarizing each substantive public contact with FAA personnel concerning this proposed rulemaking. Before acting on this proposal, we will consider all comments we receive on or before the closing date for comments. We will consider comments filed after the comment period has closed if it is possible to do so without incurring expense or delay. We may change this proposal in light of the comments we receive.

Discussion

The European Aviation Safety Agency (EASA), which is the Technical Agent for the Member States of the European Union, has issued EASA AD No. 2011–0189–E, dated September 29, 2011 (AD 2011–0189–E), to correct an unsafe condition for the Eurocopter Model AS332C, AS332C1, AS332L, AS332L1,

AS332L2, and EC225LP helicopters with certain IGB fairings installed. EASA advises that cracks are being found on the IGB fairing and the gutters, which have caused some fairings to separate and interfere with the T/R inclined drive shaft. According to EASA, these cracks are occurring along the rivet line joining the IGB fairing to the gutter and also in the associated attachment points. Previous corrective actions mandated by EASA required repetitive inspections of the IGB fairings, reinforcement of the gutter riveting, and removal of the gutter. After receiving additional reports of cracks despite those actions, EASA issued AD 2011–0189–E to continue to require inspecting the IGB fairing gutter and also require inspecting the IGB fairing and attachment supports for cracks every 15 flight hours.

FAA's Determination

These helicopters have been approved by the aviation authority of France and are approved for operation in the United States. Pursuant to our bilateral agreement with France, EASA, its technical representative, has notified us of the unsafe condition described in its AD. We are proposing this AD because we evaluated all known relevant information and determined that an unsafe condition is likely to exist or develop on other products of the same type design.

Related Service Information

Eurocopter has issued one emergency alert service bulletin (ASB) with three numbers, revision 4, dated September 27, 2011: ASB No. 53.01.47 for Model AS 332 series helicopters, ASB No. 53.00.48 for Model AS532 series helicopters, and ASB No. 53A001 for Model EC225 and EC725 helicopters. That ASB requires inspecting the IGB fairings and their attachment supports and replacing any cracked or damaged parts every 15 flight hours.

Proposed AD Requirements

This proposed AD would require:

- For helicopters with an IGB fairing, part number (P/N) 332A24–0303–0501 or 332A24–0303–0601 (with a gutter), installed, within 15 hours time-in-service (TIS) and thereafter at intervals not to exceed 15 hours TIS, inspecting the gutter, IGB fairing, and attachment supports for a crack, separation, or interference between the gutter and the T/R inclined drive shaft, hydraulic pipes, or flight controls.
- For helicopters with an IGB fairing, P/N 332A081391.00 or 332A081391.01 (without a gutter), installed, within 15 hours TIS and thereafter at intervals not to exceed 15 hours TIS, inspecting the IGB fairing and attachment supports for a crack.
- If during any inspection required by this proposed AD there is a crack, interference, or separation, replacing the cracked or damaged part with an airworthy part.

Costs of Compliance

We estimate that this proposed AD would affect 10 helicopters of U.S. Registry. We estimate that operators may incur the following costs in order to comply with this AD. Inspecting the IGB fairing and attachment supports would require about 0.5 work hours at an average labor rate of $85 per work hour, for a total cost per helicopter of $43 per inspection cycle. The total cost to the U.S. operator fleet would be $430 per inspection cycle. Replacing a cracked IGB fairing would require about 2 work hours at an average labor rate of $85 per work hour, and required parts would cost $1,905, for a total cost per helicopter of $2,075. Replacing a damaged T/R inclined drive shaft tube would require about 2 work hours, and required parts would cost $16,726, for a total cost per helicopter of $16,896. Replacing a damaged hydraulic pipe would require about 2 work hours and required parts would cost $1,202, for a total cost per helicopter of $1,372. Replacing a damaged flight control component would require about 2 work hours, and required parts would cost $440, for a total cost per helicopter of $610.

Authority for This Rulemaking

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

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

Regulatory Findings

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

For the reasons discussed, I certify this proposed regulation:

1. Is not a ''significant regulatory action'' under Executive Order 12866;
2. Is not a ''significant rule'' under the DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979);
3. Will not affect intrastate aviation in Alaska 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.

We prepared an economic evaluation of the estimated costs to comply with this proposed AD and placed it in the AD docket.

List of Subjects in 14 CFR Part 39

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

The Proposed Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

Eurocopter France: Docket No. FAA–2013–0479; Directorate Identifier 2011–SW–070–AD.

(a) Applicability

This AD applies to Eurocopter France (Eurocopter) Model AS332C, AS332L, AS332L1, AS332L2, and EC225LP helicopters with an intermediate gearbox (IGB) fairing, part number (P/N) 332A24–0303–0501, P/N 332A24–0303–0601, P/N 332A081391.00, or P/N 332A081391.01 installed, certificated in any category.

(b) Unsafe Condition

This AD defines the unsafe condition as a crack in the IGB fairing, which could result in separation of the IGB fairing from its attachment supports, resulting in interference with the tail rotor (T/R) inclined driveshaft, failure of the T/R inclined driveshaft, and subsequent loss of control of the helicopter.

(c) Comments Due Date

We must receive comments by August 5, 2013.

(d) Compliance

You are responsible for performing each action required by this AD within the specified compliance time unless it has already been accomplished prior to that time.

(e) Required Actions

Within 15 hours time-in-service (TIS), and thereafter at intervals not to exceed 15 hours TIS:

(1) For all helicopters, inspect the IGB fairing and both attachment supports for a crack. If there is a crack, replace the cracked part with an airworthy part.

(2) For helicopters with an IGB fairing, part number (P/N) 332A24–0303–0501 or P/N 332A24–0303–0601, installed, inspect the IGB fairing gutter (gutter) for a crack. If there is a crack, replace the gutter with an airworthy gutter, and inspect the IGB fairing for separation, or interference between the gutter and the tail rotor (T/R) inclined drive shaft, hydraulic pipes, or flight controls.

(i) If there is interference between the gutter and the T/R inclined drive shaft tube, replace the T/R inclined drive shaft tube and the IGB fairing/gutter assembly with an airworthy T/R inclined drive shaft tube and IGB fairing/gutter assembly.

(ii) If there is interference between the gutter and the hydraulic pipes, replace the IGB fairing/gutter assembly with an airworthy IGB fairing/gutter assembly. Inspect the hydraulic pipes for a dent, score, distortion, or chafing. If there is a dent, score, distortion, or chafing, replace the affected hydraulic pipe with an airworthy hydraulic pipe.

(iii) If there is interference between the gutter and the flight controls, replace the IGB fairing/gutter assembly with an airworthy IGB fairing/gutter assembly. Inspect the cables on the left hand side of the pylon, the quadrant on which the cables are coiled, the flight control lever, the rod, and the T/R servo-control operating mechanism for friction, chafing, broken strands, buckling, distortion, or scoring. If there is any friction, chafing, broken strands, buckling, distortion, or scoring, replace the affected flight control component with an airworthy flight control component.

(iv) If there is any separation of the gutter, replace the IBG fairing/gutter assembly with an airworthy fairing/gutter assembly.

(f) Alternative Methods of Compliance (AMOCs)

(1) The Manager, Safety Management Group, FAA, may approve AMOCs for this AD. Send your proposal to: Gary Roach, Aviation Safety Engineer, Regulations and Policy Group, Rotorcraft Directorate, FAA, 2601 Meacham Blvd., Fort Worth, Texas 76137; telephone (817) 222–5110; email *gary.b.roach@faa.gov.*

(2) For operations conducted under a 14 CFR part 119 operating certificate or under 14 CFR part 91, subpart K, we suggest that you notify your principal inspector, or lacking a principal inspector, the manager of the local flight standards district office or certificate holding district office before operating any aircraft complying with this AD through an AMOC.

(g) Additional Information

(1) Eurocopter Emergency Alert Service Bulletin (EASB) No. 53.01.47 for Model AS 332 helicopters, EASB No. 53.00.48 for Model AS532 helicopters, and EASB No. 53A001 for Model EC225 and EC725 helicopters, all revision 4, dated September 27, 2011, which are not incorporated by reference, contain additional information about the subject of this AD. For service information identified in this AD, contact American Eurocopter Corporation, 2701 N. Forum Drive, Grand Prairie, TX 75052; telephone (972) 641–0000 or (800) 232–0323; fax (972) 641–3775; or at *http://www.eurocopter.com/techpub.* You may review a copy of the service information at the FAA, Office of the Regional Counsel, Southwest Region, 2601 Meacham Blvd., Room 663, Fort Worth, Texas 76137.

(2) The subject of this AD is addressed in European Aviation Safety Agency Emergency AD No. 2011–0189–E, dated September 29, 2011.

(h) Subject

Joint Aircraft Service Component (JASC) Code: 5350: Aerodynamic Fairings.

Issued in Fort Worth, Texas, on May 28, 2013.

Kim Smith,

Directorate Manager, Rotorcraft Directorate, Aircraft Certification Service.

[FR Doc. 2013–13297 Filed 6–4–13; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2013–0480; Directorate Identifier 2012–SW–090–AD]

RIN 2120–AA64

Airworthiness Directives; Eurocopter France (Eurocopter) Helicopters

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: We propose to adopt a new airworthiness directive (AD) for Eurocopter Model SA–365N, SA–365N1, AS–365N2, AS 365 N3, EC 155B, EC155B1, AS332C, AS332L, AS332L1, AS332L2, and EC225LP helicopters with certain EADS Sogerma pilot and co-pilot seats installed. This proposed AD would require inspecting the rear beam of each seat to determine if all of the weld beads are present and replacing the seat if any weld bead is missing. This proposed AD is prompted by a maintenance inspection that discovered a missing weld bead on the rear beam of a pilot seat. The proposed actions are intended to prevent failure of the pilot and co-pilot seats and subsequent injury to the pilot or co-pilot.

DATES: We must receive comments on this proposed AD by August 5, 2013.

ADDRESSES: You may send comments by any of the following methods:

- *Federal eRulemaking Docket:* Go to *http://www.regulations.gov.* Follow the online instructions for sending your comments electronically.
- *Fax:* 202–493–2251.
- *Mail:* Send comments to the U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE., Washington, DC 20590–0001.
- *Hand Delivery:* Deliver to the ''Mail'' address between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

Examining the AD Docket

You may examine the AD docket on the Internet at *http://www.regulations.gov* or in person at the Docket Operations Office between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The AD docket contains this proposed AD, the economic evaluation, any comments received, and other information. The street address for the Docket Operations Office (telephone 800–647–5527) is in the **ADDRESSES** section. Comments will be available in the AD docket shortly after receipt.

For service information identified in this proposed AD, contact American Eurocopter Corporation, 2701 N. Forum Drive, Grand Prairie, TX 75052; telephone (972) 641–0000 or (800) 232–0323; fax (972) 641–3775; or at *http://www.eurocopter.com/techpub.* You may review the referenced service information at the FAA, Office of the Regional Counsel, Southwest Region, 2601 Meacham Blvd., Room 663, Fort Worth, Texas 76137.

FOR FURTHER INFORMATION CONTACT: Robert Grant, Aviation Safety Engineer, Safety Management Group, FAA, 2601 Meacham Blvd., Fort Worth, Texas 76137; telephone 817–222–5110; email *robert.grant@faa.gov.*

SUPPLEMENTARY INFORMATION:

Comments Invited

We invite you to participate in this rulemaking by submitting written comments, data, or views. We also invite comments relating to the economic, environmental, energy, or

federalism impacts that might result from adopting the proposals in this document. The most helpful comments reference a specific portion of the proposal, explain the reason for any recommended change, and include supporting data. To ensure the docket does not contain duplicate comments, commenters should send only one copy of written comments, or if comments are filed electronically, commenters should submit only one time.

We will file in the docket all comments that we receive, as well as a report summarizing each substantive public contact with FAA personnel concerning this proposed rulemaking. Before acting on this proposal, we will consider all comments we receive on or before the closing date for comments. We will consider comments filed after the comment period has closed if it is possible to do so without incurring expense or delay. We may change this proposal in light of the comments we receive.

Discussion

The European Aviation Safety Agency (EASA), which is the Technical Agent for the Member States of the European Union, has issued EASA AD No. 2012–0206, dated October 2, 2012 (AD 2012–0206), to correct an unsafe condition for Eurocopter Model SA–365N, SA–365N1, AS–365N2, AS 365 N3, EC 155B, EC155B1, AS332C, AS332C1, AS332L, AS332L1, AS332L2, and EC225LP helicopters with certain EADS Sogerma pilot seats, part number (P/N) 2510106–03–00 or P/N 2510106–06–00. EASA advises that during a maintenance inspection, a weld bead was found missing on the rear beam of an EADS Sogerma pilot seat. According to EASA, this non-conformity impairs the seat anti-crash function and may be present on a limited number of seats installed on Eurocopter helicopters. EASA states that this condition, if not corrected, could lead to pilot injury following a hard landing following an emergency.

To address this unsafe condition, EASA issued AD No. 2012–0084, dated May 16, 2012 (AD 2012–0084), to require inspecting the flight crew seats, replacing any improperly welded seat, and marking all correctly welded seats. After issuing AD 2012–0084, a missing weld bead was discovered on another part of the seat rear beam that was not required to be inspected. As a result, EASA issued AD 2012–0206, which superseded AD 2012–0084, to revise the inspection procedure and add new areas of the rear beam of the seat to be inspected.

FAA's Determination

These helicopters have been approved by the aviation authority of France and are approved for operation in the United States. Pursuant to our bilateral agreement with France, EASA, its technical representative, has notified us of the unsafe condition described in its AD. We are proposing this AD because we evaluated all known relevant information and determined that an unsafe condition is likely to exist or develop on other helicopters of the same type design.

Related Service Information

Eurocopter has issued Alert Service Bulletin (ASB) No. AS365–25.01.18 for Model SA–365N, SA–365 N1, AS–365N2, and AS 365 N3 helicopters; ASB No. EC155–25A114 for Model EC155 B and EC155B1 helicopters; ASB No. AS332–25.02.49 for model AS332C, AS332L, AS332L1, and AS332L2 helicopters; and ASB No. EC225–25A110 for Model EC225LP helicopters; all Revision 1, dated August 9, 2012. The ASBs incorporate the procedures in EADS Sogerma Inspection Service Bulletin No. 2510106–25–888, Revision 1, dated July 16, 2012, for inspecting the rear beam of the pilot and co-pilot seats to verify all of the weld beads are present. The complete EADS Sogerma bulletin is contained in the Appendix of the ASBs. EASA classified these ASBs as mandatory and issued AD 2012–0206 to ensure the continued airworthiness of these helicopters.

Proposed AD Requirements

This proposed AD would require, within 50 hours time-in-service (TIS), inspecting the rear beam of each pilot and co-pilot seat to determine if any weld beads are missing. If any weld beads are missing, before further flight, this proposed AD would require removing the seat from the helicopter and replacing it with an airworthy seat.

Differences Between This Proposed AD and the EASA AD

The EASA AD allows compliance within 3 months or 50 flight hours, whichever occurs earlier; the proposed AD requires compliance within 50 hours TIS. The EASA AD applies to Model AS332C1 helicopters. This proposed AD does not because this model is not FAA type-certificated.

Costs of Compliance

We estimate that this proposed AD would affect 65 helicopters of U.S. Registry.

We estimate that operators may incur the following costs in order to comply with this AD. At an average labor rate of $85 per hour, inspecting the seats would require about .2 work-hour, for a cost per helicopter of $17 and a total cost to U.S. operators of $1,105. Replacing a seat with a missing weld bead would require about 1 work-hour, and required parts would cost about $30,251, for a cost per helicopter of $30,336.

According to Eurocopter's service information some of the costs of this proposed AD may be covered under warranty, thereby reducing the cost impact on affected individuals. We do not control warranty coverage by Eurocopter. Accordingly, we have included all costs in our cost estimate.

Authority for This Rulemaking

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

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

Regulatory Findings

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

For the reasons discussed, I certify this proposed regulation:

1. Is not a ''significant regulatory action'' under Executive Order 12866;

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

3. Will not affect intrastate aviation in Alaska 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.

We prepared an economic evaluation of the estimated costs to comply with this proposed AD and placed it in the AD docket.

List of Subjects in 14 CFR Part 39

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

The Proposed Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

Eurocopter France (Eurocopter): Docket No. FAA–2013–0480; Directorate Identifier 2012–SW–090–AD.

(a) Applicability

This AD applies to Eurocopter Model SA–365N, SA–365N1, AS–365N2, AS 365 N3, EC 155B, EC155B1, AS332C, AS332L, AS332L1, AS332L2, and EC225LP helicopters with an EADS Sogerma pilot or co-pilot seat, part number (P/N) 2510106–03–00 or P/N 2510106–06–00, with a serial number 720 through 1451, installed, certificated in any category.

(b) Unsafe Condition

This AD defines the unsafe condition as a missing weld on a seat rear beam, which could result in failure of the seat and injury to the pilot during a hard landing.

(c) Comments Due Date

We must receive comments by August 5, 2013.

(d) Compliance

You are responsible for performing each action required by this AD within the specified compliance time unless it has already been accomplished prior to that time.

(e) Required Actions

(1) Within 50 hours time-in-service, using a mirror, inspect the rear beam of each seat for weld beads in the areas depicted in the Appendix, Figure 1, of Eurocopter Alert Service Bulletin (ASB) No. AS365–25.01.18 for model SA–365N, SA–365N1, AS–365N2, and AS 365 N3 helicopters; ASB No. EC155–25A114 for model EC155 B and EC155B1 helicopters; ASB No. AS332–25.02.49 for model AS332C, AS332L, AS332L1, and AS332 L2 helicopters; and ASB No. EC225–25A110 for model EC225LP helicopters. All ASBs are Revision 1 and dated August 9, 2012.

(2) If any weld bead is missing from the rear beam, before further flight, remove the seat and replace it with an airworthy seat.

(3) Do not install a seat listed in paragraph (a) of this AD on any helicopter unless it has been inspected as required by this AD.

(f) Alternative Methods of Compliance (AMOCs)

(1) The Manager, Safety Management Group, FAA, may approve AMOCs for this AD. Send your proposal to: Robert Grant, Aviation Safety Engineer, Safety Management Group, FAA, 2601 Meacham Blvd., Fort Worth, Texas 76137; telephone 817–222–5110; email *robert.grant@faa.gov.*

(2) For operations conducted under a 14 CFR part 119 operating certificate or under 14 CFR part 91, subpart K, we suggest that you notify your principal inspector, or lacking a principal inspector, the manager of the local flight standards district office or certificate holding district office before operating any aircraft complying with this AD through an AMOC.

(g) Additional Information

The subject of this AD is addressed in European Aviation Safety Agency AD No. 2012–0206, dated October 2, 2012.

(h) Subject

Joint Aircraft Service Component (JASC) Code: 2510: Flight Compartment Equipment.

Issued in Fort Worth, Texas, on May 28, 2013.

Kim Smith,

Directorate Manager, Rotorcraft Directorate, Aircraft Certification Service.

[FR Doc. 2013–13300 Filed 6–4–13; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2013–0478; Directorate Identifier 2012–SW–092–AD]

RIN 2120–AA64

Airworthiness Directives; Agusta S.p.A. (Type Certificate Currently Held by AgustaWestland S.p.A.) Helicopters (Agusta)

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: We propose to adopt a new airworthiness directive (AD) for certain Agusta Model A109C, A109E, A109S, A109K2, and AW109SP helicopters. This proposed AD would require inspecting the lock wires securing the tail rotor (T/R) duplex bearing locking nut (locking nut) to determine whether any lock wires are missing or damaged. This proposed AD is prompted by reports of loosening T/R locking nuts, which if not corrected, could result in failure of the T/R and subsequent loss of control of the helicopter.

DATES: We must receive comments on this proposed AD by August 5, 2013.

ADDRESSES: You may send comments by any of the following methods:

- *Federal eRulemaking Docket:* Go to *http://www.regulations.gov.* Follow the online instructions for sending your comments electronically.
- *Fax:* 202–493–2251.
- *Mail:* Send comments to the U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE., Washington, DC 20590–0001.
- *Hand Delivery:* Deliver to the ''Mail'' address between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

Examining the AD Docket

You may examine the AD docket on the Internet at *http://www.regulations.gov* or in person at the Docket Operations Office between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The AD docket contains this proposed AD, the economic evaluation, any comments received, and other information. The street address for the Docket Operations Office (telephone 800–647–5527) is in the **ADDRESSES** section. Comments will be available in the AD docket shortly after receipt.

For service information identified in this proposed AD, contact Agusta Westland, Customer Support & Services, Via Per Tornavento 15, 21019 Somma Lombardo (VA) Italy, ATTN: Giovanni Cecchelli; telephone 39–0331–711133; fax 39 0331 711180; or at *http://www.agustawestland.com/technical-bullettins.* You may review the referenced service information at the FAA, Office of the Regional Counsel, Southwest Region, 2601 Meacham Blvd., Room 663, Fort Worth, Texas 76137.

FOR FURTHER INFORMATION CONTACT: Robert Grant, Aviation Safety Engineer, Safety Management Group, FAA, 2601 Meacham Blvd., Fort Worth, Texas 76137; telephone 817–222–5110; email *robert.grant@faa.gov.*

SUPPLEMENTARY INFORMATION:

Comments Invited

We invite you to participate in this rulemaking by submitting written comments, data, or views. We also invite comments relating to the economic, environmental, energy, or federalism impacts that might result

from adopting the proposals in this document. The most helpful comments reference a specific portion of the proposal, explain the reason for any recommended change, and include supporting data. To ensure the docket does not contain duplicate comments, commenters should send only one copy of written comments, or if comments are filed electronically, commenters should submit only one time.

We will file in the docket all comments that we receive, as well as a report summarizing each substantive public contact with FAA personnel concerning this proposed rulemaking. Before acting on this proposal, we will consider all comments we receive on or before the closing date for comments. We will consider comments filed after the comment period has closed if it is possible to do so without incurring expense or delay. We may change this proposal in light of the comments we receive.

Discussion

The European Aviation Safety Agency (EASA), which is the Technical Agent for the Member States of the European Union, has issued EASA AD No. 2012–0195–E, dated September 24, 2012, and corrected September 25, 2012 (AD 2012–0195–E), to correct an unsafe condition for certain Agusta Model A109E, A109LUH, A109S, AW109SP, A109C, and A109K2 helicopters. EASA advises that they have received reports of the T/R locking nut, part number (P/N) 109–0130–97, loosening on A109 helicopters. According to EASA, an investigation revealed that, in every occurrence, one or both of the lock wires securing the locking nut were either damaged or absent from the T/R. EASA states that this condition, if not detected and corrected, could lead to failure of the T/R function and subsequent loss of control of the helicopter. The EASA AD requires repetitively inspecting the lock wires which secure the T/R locking nut for missing and damaged lock wires. The EASA AD also requires removing and reassembling the housing and slider group of the T/R rotating controls, which is terminating action for the repetitive inspections.

FAA's Determination

These helicopters have been approved by the aviation authority of Italy and are approved for operation in the United States. Pursuant to our bilateral agreement with Italy, EASA, its technical representative, has notified us of the unsafe condition described in its AD. We are proposing this AD because we evaluated all known relevant information and determined that an unsafe condition is likely to exist or develop on other helicopters of the same type design.

Related Service Information

Agusta has published Bollettino Tecnico (BT) No. 109–134 for Model A109C helicopters, BT No. 109EP–121 for Model A109E helicopters, BT No. 109S–48 for Model A109S helicopters, BT No. 109K–54 for Model A109K2 helicopters, and BT No. 109SP–051 for Model AW109SP helicopters. All of the BTs are dated September 21, 2012. The BTs specify procedures for inspecting the lock wires of the T/R locking nut and for removing and reassembling the housing and slider group of the T/R rotating controls.

Proposed AD Requirements

This proposed AD would require:

- Within 5 hours time-in-service (TIS) inspecting both lock wires which secure the T/R locking nut to the housing to determine that both wires are present and not damaged. If only one wire is installed and it is not damaged, before further flight, installing a second lock wire. If one or both lock wires are installed, and either one or both are damaged, before further flight, removing and reassembling the housing and slider group of the T/R rotating controls.
- Within 25 hours TIS from the initial inspection, and thereafter at intervals not exceeding 25 hours TIS, inspecting both lock wires to determine that both wires are present and not damaged. If one or both lock wires are installed, and either one or both are damaged, before further flight, removing and reassembling the housing and slider group of the T/R rotating controls.
- Within 100 hours TIS, removing and reassembling the housing and slider group of the T/R rotating controls.
- Removing and reassembling the housing and slider group of the T/R rotating controls, either within 100 hours TIS or because a lock wire is damaged, is terminating action for the repetitive inspections.

Differences Between This Proposed AD and the EASA AD

The EASA AD requires reassembling the housing and slider group within 100 flight hours or 7 months, while the proposed AD would require this action within 100 hours TIS.

Costs of Compliance

We estimate that this proposed AD would affect 146 helicopters of U.S. Registry. We estimate that operators may incur the following costs in order to comply with this AD. Based on an average labor rate of $85 per hour, inspecting the lock wire will require about 0.25 work-hour, for a cost per helicopter of $22 and a total cost to U.S. operators of $3,212 per inspection cycle. If necessary, installing a lock wire will require about 0.25 work-hour and the required parts cost would be negligible, for a cost per helicopter of $22 and a total cost to U.S. operators of $3,212. Removing and reassembling the housing and slider group of the T/R rotating controls would require about 8 work-hours, for a cost per helicopter of $680 and a total cost to U.S. operators of $99,280.

Authority for This Rulemaking

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

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

Regulatory Findings

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

For the reasons discussed, I certify this proposed regulation:

1. Is not a ''significant regulatory action'' under Executive Order 12866;

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

3. Will not affect intrastate aviation in Alaska 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.

We prepared an economic evaluation of the estimated costs to comply with this proposed AD and placed it in the AD docket.

List of Subjects in 14 CFR Part 39

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

The Proposed Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

Agusta S.P.A. Helicopters (Type Certificate Currently Held by Agustawestland S.P.A.) (AGUSTA): Docket No. FAA–2013–0478; Directorate Identifier 2012–SW–092–AD.

(a) Applicability

This AD applies to Agusta Model A109C, A109S, and A109K2 helicopters, all serial numbers; Model A109E helicopters, serial number (S/N) 11002 through 11807 except S/N 11796; and Model AW109SP helicopters, S/N 22202 through 22278, except S/N 22239, 22264, 22266, 22272, 22273, 22275, and 22277, certificated in any category.

(b) Unsafe Condition

This AD defines the unsafe condition as a missing or broken lock wire securing the tail rotor (T/R) duplex bearing locking nut (locking nut). This condition could result in loosening of the locking nut, failure of the T/R, and subsequent loss of control of the helicopter.

(c) Comments Due Date

We must receive comments by August 5, 2013.

(d) Compliance

You are responsible for performing each action required by this AD within the specified compliance time unless it has already been accomplished prior to that time.

(e) Required Actions

(1) Within 5 hours time-in-service (TIS), inspect each lock wire securing the T/R locking nut to the housing.

(i) If only one lock wire is installed and it is not damaged, before further flight, install a second lock wire.

(ii) If one or both lock wires are installed, and either one or both are damaged, before further flight, remove and reassemble the housing and slider group of the T/R rotating controls.

(2) Within 25 hours TIS from the inspection required by paragraph (e)(1) of this AD, and thereafter at intervals not exceeding 25 hours TIS, inspect the lock wires which secure the T/R locking nut to the housing. If either lock wire is missing or damaged, before further flight, remove and reassemble the housing and slider group of the T/R rotating controls.

(3) Within 100 hours TIS, remove and reassemble the housing and slider group of the T/R rotating controls.

(4) Removing and reassembling the housing and slider group of the T/R rotating controls as required by either paragraph (e)(1)(ii) or (e)(2) is terminating action for this AD.

(f) Special flight permit

Special flight permits are prohibited.

(g) Alternative Methods of Compliance (AMOCs)

(1) The Manager, Safety Management Group, FAA, may approve AMOCs for this AD. Send your proposal to: Robert Grant, Aviation Safety Engineer, Safety Management Group, FAA, 2601 Meacham Blvd., Fort Worth, Texas 76137; telephone 817–222–5110; email *robert.grant@faa.gov*.

(2) For operations conducted under a 14 CFR part 119 operating certificate or under 14 CFR part 91, subpart K, we suggest that you notify your principal inspector, or lacking a principal inspector, the manager of the local flight standards district office or certificate holding district office before operating any aircraft complying with this AD through an AMOC.

(h) Additional Information

(1) Agusta Bollettino Tecnico (BT) No. 109–134 for Model A109C helicopters, BT No. 109EP–121 for Model A109E helicopters, BT No. 109S–48 for Model A109S helicopters, BT No. 109K–54 for Model A109K2 helicopters, and BT No. 109SP–051 for Model AW109SP helicopters, all dated September 21, 2012, which are not incorporated by reference, contain additional information about the subject of this AD. For service information identified in this AD, contact Agusta Westland, Customer Support & Services, Via Per Tornavento 15, 21019 Somma Lombardo (VA) Italy, ATTN: Giovanni Cecchelli; telephone 39–0331–711133; fax 39 0331 711180; or at *http://www.agustawestland.com/technical-bullettins*. You may review the referenced service information at the FAA, Office of the Regional Counsel, Southwest Region, 2601 Meacham Blvd., Room 663, Fort Worth, Texas 76137.

(2) The subject of this AD is addressed in European Aviation Safety Agency AD No. 2012–0195–E, dated September 24, 2012, and corrected September 25, 2012.

(i) Subject

Joint Aircraft Service Component (JASC) Code: 6400: Tail Rotor System.

Issued in Fort Worth, Texas, on May 28, 2013.

Kim Smith,

Directorate Manager, Rotorcraft Directorate, Aircraft Certification Service.

[FR Doc. 2013–13293 Filed 6–4–13; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2013–0481; Directorate Identifier 2011–SW–003–AD]

RIN 2120–AA64

Airworthiness Directives; Bell Helicopter Textron, Inc. Helicopters

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: We propose to adopt a new airworthiness directive (AD) for Bell Helicopter Textron, Inc. (Bell) Model 206A, 206B, 206L, 206L–1, 206L–3, 206L–4, and 407 helicopters with an Apical Industries, Inc. (Apical) emergency float kit installed under supplemental type certificate (STC) number SR01535LA. This proposed AD would require inspecting, labeling, and replacing the float inflation hoses. This proposed AD is prompted by an incident in which the floats installed on a helicopter failed to deploy. The proposed actions are intended to prevent failure of the emergency floatation gear to deploy during an emergency event.

DATES: We must receive comments on this proposed AD by August 5, 2013.

ADDRESSES: You may send comments by any of the following methods:

- *Federal eRulemaking Docket:* Go to *http://www.regulations.gov*. Follow the online instructions for sending your comments electronically.
- *Fax:* 202–493–2251.
- *Mail:* Send comments to the U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE., Washington, DC 20590–0001.
- *Hand Delivery:* Deliver to the ''Mail'' address between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

Examining the AD Docket

You may examine the AD docket on the Internet at *http://www.regulations.gov* or in person at the

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

For service information identified in this proposed AD, contact Apical Industries, Inc., 2608 Temple Heights Drive, Oceanside, CA 92056–3512; telephone (760) 724–5300; fax: (760) 758–9612; or at *www.apicalindustries.com.* You may review the referenced service information at the FAA, Office of the Regional Counsel, Southwest Region, 2601 Meacham Blvd., Room 663, Fort Worth, Texas 76137.

FOR FURTHER INFORMATION CONTACT: Venessa Stiger, Cabin Safety/ Mechanical & Environmental Systems, Los Angeles Aircraft Certification Office, Transport Airplane Directorate, FAA, 3960 Paramount Blvd., Lakewood, California 90712–4137; telephone (562) 627–5337; email *venessa.stiger@faa.gov.*

SUPPLEMENTARY INFORMATION:

Comments Invited

We invite you to participate in this rulemaking by submitting written comments, data, or views. We also invite comments relating to the economic, environmental, energy, or federalism impacts that might result from adopting the proposals in this document. The most helpful comments reference a specific portion of the proposal, explain the reason for any recommended change, and include supporting data. To ensure the docket does not contain duplicate comments, commenters should send only one copy of written comments, or if comments are filed electronically, commenters should submit only one time.

We will file in the docket all comments that we receive, as well as a report summarizing each substantive public contact with FAA personnel concerning this proposed rulemaking. Before acting on this proposal, we will consider all comments we receive on or before the closing date for comments. We will consider comments filed after the comment period has closed if it is possible to do so without incurring expense or delay. We may change this proposal in light of the comments we receive.

Discussion

We propose to adopt a new AD for Bell Model 206A, 206B, 206L, 206L–1, 206L–3, 206L–4, and 407 helicopters with an Apical emergency float kit installed under STC number SR01535LA. This proposed AD is prompted by an incident in which the floats did not deploy evenly and the right-hand (RH) mid-float ruptured on a helicopter modified with an Apical emergency float kit. An investigation determined that the uneven deployment resulted from incorrect installation of the float inflation hoses on the port fitting at the base of the forward crosstube saddle. Subsequent inspection of one operator's fleet revealed more instances of incorrect inflation hose installation. This proposed AD would require inspecting the hoses at the port fittings for correct installation and condition, labeling the port fittings, and replacing the float inflation hoses. We are proposing this AD to prevent failure of the emergency floats to inflate fully in an emergency.

FAA's Determination

We are proposing this AD because we evaluated all known relevant information and determined that an unsafe condition exists and is likely to exist or develop on other products of the same type design.

Related Service Information

We have reviewed Apical Alert Service Bulletin No. SB2010–03, Revision C, dated December 21, 2011 (ASB). The ASB provides instructions for inspecting the float inflation hoses, installing an aft float label onto the port fittings, installing a port fitting adapter on the port fittings, and replacing the hoses leading to the aft floats of each affected helicopter.

Proposed AD Requirements

This proposed AD would require:

- Within 45 hours time-in-service (TIS), inspecting each float inflation hose port fitting for corrosion, condition, or a bend in the tubing, and replacing the hose if there is corrosion or damage that has penetrated the base material more than .010 inch. If there is a bend in the tubing greater than 5 degrees, bending the port fitting back to its original position. Installing a marking label on each port fitting which states ''AFT FLOAT.''
- Within 6 months, installing a port fitting adapter on each port fitting and replacing each aft float hose.

Differences Between This Proposed AD and the Service Information

The ASB requires installing the port fitting adapter and replacing the aft hose by a specific calendar date, while the proposed AD requires these actions be accomplished within 6 months.

Costs of Compliance

We estimate that this proposed AD would affect 265 helicopters of U.S. Registry. Based on an average labor rate of $85 per hour, we estimate that operators may incur the following costs in order to comply with this AD. Inspecting the float inflation hoses and installing the marking labels will require about 1 work hour, and required parts will cost about $2, for a cost per helicopter of $87, and a total cost to U.S. operators of $23,055. Installing the port fitting adaptor and replacing the aft float hose assembly will require about 1 work hour, and required parts will cost about $165, for a cost per helicopter of $250. Thus, we estimate a total cost to U.S. operators of $89,305.

If any fitting has excessive corrosion or damage, replacing the fitting will require about 1 work hour, and required parts will cost about $125, for a cost per helicopter of $210.

Authority for This Rulemaking

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

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

Regulatory Findings

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

For the reasons discussed, I certify this proposed regulation:

1. Is not a ''significant regulatory action'' under Executive Order 12866;

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

3. Will not affect intrastate aviation in Alaska 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.

We prepared an economic evaluation of the estimated costs to comply with this proposed AD and placed it in the AD docket.

List of Subjects in 14 CFR Part 39

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

The Proposed Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

Bell Helicopter Textron, Inc.: Docket No. FAA–2013–0481; Directorate Identifier 2011–SW–003–AD.

(a) Applicability

This AD applies to Bell Helicopter Textron, Inc. (Bell) Model 206A, 206B, 206L, 206L–1, 206L–3, 206L–4, and 407 helicopters with an Apical Industries, Inc. (Apical) emergency float kit installed under supplemental type certificate (STC) number SR01535LA, certificated in any category.

(b) Unsafe Condition

This AD defines the unsafe condition as incorrectly installed float inflation hoses, which could result in failure of the emergency floats to inflate fully during an emergency.

(c) Comments Due Date

We must receive comments by August 5, 2013.

(d) Compliance

You are responsible for performing each action required by this AD within the specified compliance time unless it has already been accomplished prior to that time.

(e) Required Actions

(1) Within 45 hours time-in-service:

(i) Inspect each float inflation hose port fitting at the left-hand (LH) and right-hand (RH) forward crosstube saddles for corrosion, damage, or a bend in the tubing greater than 5 degrees from their original position.

(A) If there is corrosion that has penetrated the base material more than .010 inch, or damage that has removed more than .010 inch of base material, before further flight, replace the port fitting.

(B) If there is a bend in the port fitting tubing greater than 5 degrees from the original position of the tube, bend the port fitting back to its original position to enable complete sealing of the port fitting adapter.

(ii) Inspect the position of each float inflation hose for proper connection and routing to the LH and RH port fittings. If the position of any float inflation hose is not as shown in figure 2 of Apical Alert Service Bulletin (ASB) No. SB2010–03, Revision C, dated December 21, 2011 (ASB SB2010–03), before further flight, correct the installation of the float inflation hose at the port fitting.

(iii) Install a marking label on the LH and RH port fittings as shown in figures 3 and 4 of ASB SB2010–03 and seal the marking label with clear shrink tubing.

(2) Within 6 months:

(i) Remove each hose connecting the aft float to the port fitting, part number (P/N) 602.1417 for Model 206A and 206B helicopters, P/N 602.1420 for Model 206L, 206L–1, 206L–3, and 206L–4 helicopters, or P/N 602.1413 for Model 407 helicopters, from each skid tube.

(ii) Install a port fitting adaptor, P/N 614.8709, onto the straight line fitting on the LH and RH port fittings as depicted in figure 6 of ASB SB2010–03.

(iii) Install an aft float hose, P/N 602.1430 for Model 206A and 206B helicopters, P/N 602.1431 for Model 206L, 206L–1, 206L–3, and 206L–4 helicopters, or P/N 602.1429 for Model 407 helicopters, to each port fitting adaptor and aft float.

(3) Do not install a hose, P/N 602.1417 for Model 206A and 206B helicopters, P/N 602.1420 for Model 206L, 206L–1, 206L–3, and 206L–4 helicopters, or P/N 602.1413 for Model 407 helicopters, on any helicopter.

(f) Alternative Methods of Compliance (AMOC)

(1) The Manager, Los Angeles Aircraft Certification Office, FAA, may approve AMOCs for this AD. Send your proposal to: Venessa Stiger, Cabin Safety/Mechanical & Environmental Systems, Los Angeles Aircraft Certification Office, Transport Airplane Directorate, FAA, 3960 Paramount Blvd., Lakewood, California 90712–4137; telephone (562) 627–5337; email *venessa.stiger@faa.gov.*

(2) For operations conducted under a 14 CFR part 119 operating certificate or under 14 CFR part 91, subpart K, we suggest that you notify your principal inspector, or lacking a principal inspector, the manager of the local flight standards district office or certificate holding district office before operating any aircraft complying with this AD through an AMOC.

(g) Subject

Joint Aircraft Service Component (JASC) Code: 3212: Emergency Flotation Section.

Issued in Fort Worth, Texas, on May 28, 2013.

Kim Smith,

Directorate Manager, Rotorcraft Directorate, Aircraft Certification Service.

[FR Doc. 2013–13302 Filed 6–4–13; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Docket No. FAA–2013–0414; Airspace Docket No. 13–ANM–14]

Proposed Modification of Class E Airspace; Brigham City, UT

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This action proposes to modify Class E airspace at Brigham City Airport, Brigham City, UT. The proposed decommissioning of the Brigham City Nondirectional Radio Beacon (NDB) has made this action necessary for the safety and management of Instrument Flight Rules (IFR) operations at the airport. This action also would make an adjustment to the geographic coordinates of the airport.

DATES: Comments must be received on or before July 22, 2013.

ADDRESSES: Send comments on this proposal to the U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE., Washington, DC 20590; telephone (202) 366–9826. You must identify FAA Docket No. FAA–2013–0414; Airspace Docket No. 13–ANM–14, at the beginning of your comments. You may also submit comments through the Internet at *http://www.regulations.gov.*

FOR FURTHER INFORMATION CONTACT: Eldon Taylor, Federal Aviation Administration, Operations Support Group, Western Service Center, 1601 Lind Avenue SW., Renton, WA 98057; telephone (425) 203–4537.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested parties are invited to participate in this proposed rulemaking by submitting such written data, views, or arguments, as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory

decisions on the proposal. Comments are specifically invited on the overall regulatory, aeronautical, economic, environmental, and energy-related aspects of the proposal.

Communications should identify both docket numbers (FAA Docket No. FAA 2013–0414 and Airspace Docket No. 13–ANM–14) and be submitted in triplicate to the Docket Management System (see **ADDRESSES** section for address and phone number). You may also submit comments through the Internet at *http://www.regulations.gov.*

Commenters wishing the FAA to acknowledge receipt of their comments on this action must submit with those comments a self-addressed stamped postcard on which the following statement is made: ''Comments to FAA Docket No. FAA–2013–0414 and Airspace Docket No. 13–ANM–14''. The postcard will be date/time stamped and returned to the commenter.

All communications received on or before the specified closing date for comments will be considered before taking action on the proposed rule. The proposal contained in this action may be changed in light of comments received. All comments submitted will be available for examination in the public docket both before and after the closing date for comments. A report summarizing each substantive public contact with FAA personnel concerned with this rulemaking will be filed in the docket.

Availability of NPRM's

An electronic copy of this document may be downloaded through the Internet at *http://www.regulations.gov.* Recently published rulemaking documents can also be accessed through the FAA's Web page at *http://www.faa.gov/airports_airtraffic/air_traffic/publications/airspace_amendments/.*

You may review the public docket containing the proposal, any comments received, and any final disposition in person in the Dockets Office (see the **ADDRESSES** section for the address and phone number) between 9:00 a.m. and 5:00 p.m., Monday through Friday, except federal holidays. An informal docket may also be examined during normal business hours at the Northwest Mountain Regional Office of the Federal Aviation Administration, Air Traffic Organization, Western Service Center, Operations Support Group, 1601 Lind Avenue SW., Renton, WA 98057.

Persons interested in being placed on a mailing list for future NPRM's should contact the FAA's Office of Rulemaking, (202) 267–9677, for a copy of Advisory Circular No. 11–2A, Notice of Proposed Rulemaking Distribution System, which describes the application procedure.

The Proposal

The FAA is proposing an amendment to Title 14 Code of Federal Regulations (14 CFR) part 71 by modifying Class E airspace extending upward from 700 feet above the surface at Brigham City Airport, Brigham City, UT. The existing segment would extend from the 4.3-mile radius of the airport to 9.4 miles southwest of the airport instead of 7 miles from the NDB, keeping the same footprint. Decommissioning of the Brigham City NDB has made this action necessary, and would enhance the safety and management of aircraft operations. The geographic coordinates of the airport also would be updated to coincide with the FAA's aeronautical database.

Class E airspace designations are published in paragraph 6005, of FAA Order 7400.9W, dated August 8, 2012, and effective September 15, 2012, which is incorporated by reference in 14 CFR 71.1. The Class E airspace designation listed in this document will be published subsequently in this Order.

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

The FAA's authority to issue rules regarding aviation safety is found in Title 49 of the U.S. Code. Subtitle 1, Section 106, describes the authority for the FAA Administrator. Subtitle VII, Aviation Programs, describes in more detail the scope of the agency's authority. This rulemaking is promulgated under the authority described in Subtitle VII, Part A, Subpart I, Section 40103. Under that section, the FAA is charged with prescribing regulations to assign the use of the airspace necessary to ensure the safety of aircraft and the efficient use of airspace. This regulation is within the scope of that authority as it would modify controlled airspace at Brigham City Airport, Brigham City, UT.

This proposal will be subject to an environmental analysis in accordance with FAA Order 1050.1E, ''Environmental Impacts: Policies and Procedures'' prior to any FAA final regulatory action.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me, the Federal Aviation Administration proposes to amend 14 CFR Part 71 as follows:

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

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

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

§ 71.1 [Amended]

■ 2. The incorporation by reference in 14 CFR Part 71.1 of the Federal Aviation Administration Order 7400.9W, Airspace Designations and Reporting Points, dated August 8, 2012, and effective September 15, 2012 is amended as follows:

Paragraph 6005 Class E airspace areas extending upward from 700 feet or more above the surface of the earth.

* * * * *

ANM UT E5 Brigham City, UT [Modified]

Brigham City Airport, UT
(Lat. 41°33′16″ N., long. 112°03′44″ W.)

That airspace extending upward from 700 feet above the surface within a 4.3-mile radius of the Brigham City Airport, and within 4 miles each side of the 205° bearing of the Brigham City Airport extending from the 4.3-mile radius to 9.4 miles southwest of the airport.

Issued in Seattle, Washington, on May 24, 2013.

Clark Desing,

Manager, Operations Support Group, Western Service Center.

[FR Doc. 2013–13365 Filed 6–4–13; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF THE TREASURY

Financial Crimes Enforcement Network

31 CFR Part 1010

Proposed Renewal Without Change; Comment Request; Imposition of Special Measure Against Banco Delta Asia, Including Its Subsidiaries Delta Asia Credit Limited and Delta Asia Insurance Limited, as a Financial Institution of Primary Money Laundering Concern

AGENCY: Financial Crimes Enforcement Network, Department of the Treasury.

ACTION: Request for comments.

SUMMARY: As part of a continuing effort to reduce paperwork and respondent burden, FinCEN invites comment on a renewal, without change, to information collection requirements finalized on March 19, 2007 (72 FR 12730, RIN 1506–AA83) imposing a special measure against Banco Delta Asia, including its subsidiaries Delta Asia Credit Limited and Delta Asia Insurance Limited, as a financial institution of primary money laundering concern. This request for comments is being made pursuant to the Paperwork Reduction Act of 1995, Public Law 104–13, 44 U.S.C. 3506(c)(2)(A).

DATES: Written comments are welcome and must be received on or before August 5, 2013

ADDRESSES: Written comments should be submitted to: Financial Crimes Enforcement Network, P.O. Box 39, Vienna, VA 22183, Attention: Comment Request; Imposition of Special Measure against Banco Delta Asia. Comments also may be submitted by electronic mail to the following Internet address: *regcomments@fincen.gov,* again with a caption, in the body of the text, ''Attention: Comment Request; Imposition of Special Measure against Banco Delta Asia.''

Inspection of comments: Comments may be inspected, between 10 a.m. and 4 p.m., in the FinCEN reading room in Vienna, VA. Persons wishing to inspect the comments submitted must request an appointment with the Disclosure Officer by telephoning (703) 905–5034 (not a toll free call).

FOR FURTHER INFORMATION CONTACT: Financial Crimes Enforcement Network, Regulatory Policy and Programs Division at (800) 949–2732, Option 6.

SUPPLEMENTARY INFORMATION: *Abstract:* The Director of the Financial Crimes Enforcement Network is the delegated administrator of the Bank Secrecy Act (''Act''). The Act authorizes the Director to issue regulations to require all financial institutions defined as such in the Act to maintain or file certain reports or records that have been determined to have a high degree of usefulness in criminal, tax, or regulatory investigations or proceedings, or in the conduct of intelligence or counter-intelligence activities, including analysis, to protect against international terrorism.[1]

The notice of final rulemaking implemented section 5318A of Title 31, United States Code, by adding § 1010.655 to 31 CFR Chapter X. In general, the regulations require covered financial institutions to establish, document, and maintain programs as an aid in protecting and securing the U.S. financial system.

Title: Imposition of Special Measure against Banco Delta Asia, including its subsidiaries Delta Asia Credit Limited and Delta Asia Insurance Limited, as a financial institution of primary money laundering concern.

Office of Management and Budget (''OMB'') Control Number: 1506–0045.

Abstract: The Financial Crimes Enforcement Network is issuing this notice to renew the control number for the imposition of a special measure against Banco Delta Asia, including its subsidiaries Delta Asia Credit Limited and Delta Asia Insurance Limited, as a financial institution of primary money laundering concern pursuant to the authority contained in 31 U.S.C. 5318A.

Current Action: Renewal without change for existing proposed regulations.

Type of Review: Extension of a currently approved information collection.

Affected Public: Businesses and certain not for-profit institutions.

Burden: Estimated Number of Respondents: 5,000.

Estimated Number of Responses: 5,000.

Estimated Number of Hours: 5,000.

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a valid control number assigned by OMB. Records required to be retained under the Act must be retained for five years. Generally, information collected pursuant to the Act is confidential but may be shared as provided by law with regulatory and law enforcement authorities.

Request for Comments: Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance and purchase of services to provide information.

Dated: May 31, 2013.

Jennifer Shasky Calvery,

Director, Financial Crimes Enforcement Network.

[FR Doc. 2013–13323 Filed 6–4–13; 8:45 am]

BILLING CODE 4810–02–P

[1] Public Law 91–508, as amended and codified at 12 U.S.C. 1829b, 12 U.S.C. 1951–1959 and 31 U.S.C. 5311–5332. Language expanding the scope of the Bank Secrecy Act to intelligence or counter-intelligence activities to protect against international terrorism was added by section 358 of the Uniting and Strengthening America by Providing Appropriate Tools Required to Intercept and Obstruct Terrorism Act of 2001, Public Law107–56.

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 151

[Docket No. USCG–2012–0924]

RIN 1625–AB68

Ballast Water Management Reporting and Recordkeeping

AGENCY: Coast Guard, DHS.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Coast Guard proposes to amend its existing ballast water management (BWM) reporting and recordkeeping requirements. The Coast Guard will require vessels with ballast tanks operating exclusively on voyages between ports or places within a single Captain of the Port (COTP) Zone to submit an annual report of their BWM practices. The Coast Guard also proposes to update the current ballast water report to include only data that is essential to understanding and analyzing BWM practices. The proposed rule will allow most vessels to submit ballast water reports after arrival to the port or place of destination.

DATES: Comments and related material must either be submitted to our online

docket via *http://www.regulations.gov* on or before August 5, 2013 or reach the Docket Management Facility by that date. Comments sent to the Office of Management and Budget (OMB) on collection of information must reach OMB on or before August 5, 2013.

ADDRESSES: You may submit comments identified by docket number USCG–2012–0924 using any one of the following methods:

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

(2) *Fax:* 202–493–2251.

(3) *Mail:* Docket Management Facility (M–30), U.S. Department of Transportation, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE., Washington, DC 20590–0001.

(4) *Hand delivery:* Same as mail address above, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The telephone number is 202–366–9329.

To avoid duplication, please use only one of these four methods. See the ''Public Participation and Request for Comments'' portion of the **SUPPLEMENTARY INFORMATION** section below for instructions on submitting comments.

Collection of Information Comments: If you have comments on the collection of information discussed in section VI.D of this NPRM, you must also send comments to the Office of Information and Regulatory Affairs (OIRA), Office of Management and Budget. To ensure that your comments to OIRA are received on time, the preferred methods are by email to *oira_submission@omb.eop.gov* (include the docket number and ''Attention: Desk Officer for Coast Guard, DHS'' in the subject line of the email) or fax at 202–395–6566. An alternate, though slower, method is by U.S. mail to the Office of Information and Regulatory Affairs, Office of Management and Budget, 725 17th Street NW., Washington, DC 20503, ATTN: Desk Officer, U.S. Coast Guard.

FOR FURTHER INFORMATION CONTACT: If you have questions on this proposed rule, call or email LCDR Rodney Wert, Environmental Standards Division, U.S. Coast Guard (CG–OES–3); telephone 202–372–1434, email, *rodney.wert@uscg.mil.* If you have questions on viewing or submitting material to the docket, call Ms. Barbara Hairston, Program Manager, Docket Operations, telephone 202–366–9826.

SUPPLEMENTARY INFORMATION:

Table of Contents for Preamble

I. Public Participation and Request for Comments
A. Submitting Comments
B. Viewing Comments and Documents
C. Privacy Act
D. Public Meeting
II. Abbreviations
III. Background
IV. Discussion of Proposed Rule
V. Regulatory Analyses
A. Regulatory Planning and Review
B. Small Entities
C. Assistance for Small Entities
D. Collection of Information
E. Federalism
F. Unfunded Mandates Reform Act
G. Taking of Private Property
H. Civil Justice Reform
I. Protection of Children
J. Indian Tribal Governments
K. Energy Effects
L. Technical Standards
M. Environment

I. Public Participation and Request for Comments

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

A. Submitting Comments

If you submit a comment, please include the docket number for this rulemaking (USCG–2012–0924), indicate the specific section of this document to which each comment applies, and provide a reason for each suggestion or recommendation. You may submit your comments and material online or by fax, mail, or hand delivery, but please use only one of these means. We recommend that you include your name and a mailing address, an email address, or a phone number in the body of your document so that we can contact you if we have questions regarding your submission.

To submit your comment online, go to *http://www.regulations.gov* and insert ''USCG–2012–0924'' in the ''Search'' box. Click on ''Submit a Comment'' in the ''Actions'' column. If you submit your comments by mail or hand delivery, submit them in an unbound format, no larger than 8½ by 11 inches, suitable for copying and electronic filing. If you submit comments by mail and would like to know that they reached the Facility, please enclose a stamped, self-addressed postcard or envelope.

We will consider all comments and material received during the comment period and may change this proposed rule based on your comments.

B. Viewing Comments and Documents

To view comments, as well as documents mentioned in this preamble as being available in the docket, go to *http://www.regulations.gov* and insert ''USCG–2012–0924'' in the ''Search'' box. Click the ''Open Docket Folder'' in the ''Actions'' column. If you do not have access to the internet, you may view the docket online by visiting the Docket Management Facility in Room W12–140 on the ground floor of the Department of Transportation West Building, 1200 New Jersey Avenue SE., Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. We have an agreement with the Department of Transportation to use the Docket Management Facility.

C. Privacy Act

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

D. Public Meeting

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

II. Abbreviations

BWM Ballast Water Management
CFR Code of Federal Regulations
COTP Coast Guard Captain of the Port
EEZ Exclusive Economic Zone
MISLE Marine Information for Safety and Law Enforcement
NANPCA Non-indigenous Aquatic Nuisance Prevention and Control Act of 1990
NBIC National Ballast Information Clearinghouse
NIS Nonindigenous Species
NISA National Invasive Species Act of 1996
OMB U.S. Office of Management and Budget
RFA Regulatory Flexibility Act
SANS Ship Arrival Notification System

III. Background

The Nonindigenous Aquatic Nuisance Prevention and Control Act of 1990 (NANPCA), as amended by the National Invasive Species Act of 1996 (NISA), requires the Secretary of Homeland

Security (the Secretary) to ensure, to the maximum extent practicable, that aquatic nuisance species are not discharged into waters of the United States from vessels. 16 U.S.C. 4711(c)(2)(A). The Secretary is also directed to prescribe requirements for vessels to maintain and submit information on their ballasting practices, as a means for the Secretary to determine vessels' effective compliance with the ballast water management (BWM) program. 16 U.S.C. 4711(c)(2)(F).

The Commandant of the Coast Guard carries out these functions and authorities for the Secretary pursuant to a delegation of authority charging the Coast Guard with establishing and enforcing regulations to prevent the introduction and spread of aquatic nuisance species in the waters of the United States through the ballast water of vessels. Department of Homeland Security Delegation No. 0170.1(II.)(57).

A full discussion of the legislative and regulatory history of the Coast Guard's actions to implement both NANPCA and NISA may be found in the final rule for ''*Standards for Living Organisms in Ships' Ballast Water Discharged in U.S. Waters,*'' published on March 23, 2012. 77 FR 17254.

The Coast Guard proposes to amend its existing BWM reporting and recordkeeping requirements (OMB Control Number 1625–0069) to require vessels equipped with ballast tanks and operating exclusively on voyages between ports or places within a single Captain of the Port (COTP) Zone to submit an annual summary report of their BWM practices. By making this change, the Coast Guard will be able to obtain a better understanding of the BWM practices of vessels that were previously exempt from reporting. This would improve the breadth and quality of available BWM information, enabling the Coast Guard and others to make the most informed programmatic and regulatory decisions.

The Coast Guard also proposes to update the current ballast water report form so it includes only data that is essential to understanding and analyzing ballast water management practices. For those vessels currently required to submit BWM reports and maintain BWM records, the amendments are aimed at simplifying and clarifying the reporting and recordkeeping process and reducing the associated administrative burden. The proposed rule will also allow vessels that are not bound for the Great Lakes or the Hudson River, north of the George Washington Bridge from outside of the Exclusive Economic Zone, to submit ballast water reports after arrival to the port or place of destination.

IV. Discussion of Proposed Rule

As detailed in Section V.A.4 of the final rule ''Standards for Living Organisms in Ships' Ballast Water Discharged in U.S. Waters,'' (March 23, 2012–77 FR 17254), the Coast Guard postponed amending BWM reporting and recordkeeping requirements to a future rulemaking project. The Coast Guard now proposes to update the reporting and recordkeeping requirements.

This proposed rule would require vessels with ballast tanks and operating exclusively on voyages between ports or places within a single COTP Zone to submit an annual summary report of their BWM practices. The Coast Guard does not currently collect BWM information on this segment of the maritime population. The ''Standards for Living Organisms in Ships' Ballast Water Discharged in U.S. Waters'' rulemaking highlighted the need for additional data to be reported by these vessels. The Coast Guard is proposing a streamlined approach to meet this need with minimal burden to the public, requiring an annual submission summarizing the applicable BWM practices. This information will assist the Coast Guard in meeting the statutory requirements for maintaining a clearinghouse on national ballast water data and collect additional data for use in future rulemakings, if needed.

The Coast Guard proposes this annual summary report be required for a three year period. The first report would be due no later than March 31 of the first full year following publication of this rule and report on a vessel's ballasting practices for the previous calendar year. For example, if this rule publishes in 2013, the first report would be due no later than March 31, 2015 and report on the vessel's ballasting practices for the calendar year ending December 31, 2014. The third and final report would be due no later than March 31, 2017 and cover the 2016 calendar year.

The Coast Guard also proposes several changes to the recordkeeping and reporting requirements currently prepared by vessels with ballast water tanks that enter U.S. waters. These changes are intended to: (1) Facilitate compliance by aligning Federal recordkeeping requirements with international practices to the greatest extent practicable; (2) minimize the administrative burden on the regulated population by allowing those vessels that are not bound for the Great Lakes or the Hudson River, north of the George Washington Bridge from outside of the Exclusive Economic Zone, to submit ballast water reports after arrival to the port or place of destination, thereby greatly reducing the need for amended reports; and (3) improve efficiency in data handling by changing the reporting format and encouraging electronic report submission. Due to additional compliance monitoring for vessels bound for the Great Lakes and Hudson River, above George Washington Bridge, those vessels will still need to submit reports 24 hours prior to their arrival.

The revised form is discussed below in section VI.D, Collection of Information. The form is available in the docket for this rulemaking (USCG–2012–0924).

V. Regulatory Analyses

We developed this proposed rule after considering numerous statutes and executive orders related to rulemaking. Below we summarize our analyses based on 14 of these statutes or executive orders.

A. Regulatory Planning and Review

Executive Orders 12866 (''Regulatory Planning and Review'') and 13563 (''Improving Regulation and Regulatory Review'') direct agencies to assess the costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects, distributive impacts, and equity). Executive Order 13563 emphasizes the importance of quantifying both costs and benefits, reducing costs, harmonizing rules, and promoting flexibility.

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 that Order. The Office of Management and Budget (OMB) has not reviewed it under that Order. Nonetheless, we developed an analysis of the costs and benefits of the proposed rule to ascertain its probable impacts on industry. We consider all estimates and analysis in this Regulatory Analysis to be draft and subject to change in consideration of public comments. Table 1 presents a summary of the economic impact of the proposed rule. A detailed description of the estimates is presented in the next sections.

TABLE 1—SUMMARY OF REGULATORY ECONOMIC IMPACTS

Proposed changes	Description	Affected population	Costs (7% discount rate)		Benefits
			Annualized	Total	
1. Require vessels operating exclusively on voyages between ports and places within one COTP Zone to report ballast water management practices.	Owners and operators of vessels with ballast tanks and operating exclusively on voyages between ports or places within one COTP Zone would be required to submit an annual summary of their ballast water management practices. This information collection requirement would be for a 3 year period.	400 owners and operators of 1,280 vessels operating in one COTP Zone.	$22,110	$155,292	Improve the breadth and quality of BWM data, enabling the Coast Guard and others to make the most informed programmatic and regulatory actions to prevent nonindigenous species (NIS) invasions in U.S. waters.
2. Update current ballast water report requirements.	Update current ballast water report. Vessels already complying with 33 CFR 151.2070 requirements would not incur additional burden due to the updates.	Vessels currently reporting ballast water management activities under 33 CFR 151.2070.	$0	$0	Concise reporting and inclusion of only essential data on ballast water management practices.
3. Allow vessel owners and operators to submit ballast water reports after arrival to the port or place of destination.	Currently, vessels are required to submit reports 24 hours prior to arrival. Allowing vessels to report after arrival—when their ballasting activities are complete—should greatly reduce the need for post-arrival amendments.	Vessels currently reporting ballast water management activities under 33 CFR 151.2070.	($184,868) Cost savings.	($1,298,437) Cost savings.	Reduce the administrative burden on the regulated population. We estimate that this proposed rule will eliminate an average of 10,717 post-arrival reports per year.
4. Change the format of electronic report.	Standardize the data format and add pull down menus to reduce data entry errors.	Vessels currently reporting ballast water management activities under 33 CFR 151.2070.	$0	$0	Facilitate electronic report submission and improve efficiency in data handling and analysis.

A draft Regulatory Analysis follows. This proposed rule would modify and amend the following recordkeeping requirements and procedures:

1. Require Vessels Operating in One COTP Zone To Report Ballast Water Management Practices

In this proposed rule, the Coast Guard would require owners and operators of vessels with ballast tanks operating exclusively on voyages between ports or places within a single COTP Zone to submit an annual summary report of their ballast water management practices for a period of 3 years.

Based on data from the Coast Guard Marine Information for Safety and Law Enforcement (MISLE) and the Ship Arrival Notification System (SANS), we estimate that the proposed rule would have an annual affect on 1,280 U.S.-flagged vessels that operate exclusively between ports or places within one COTP Zone. Table 2 presents the vessel types affected by this requirement. These vessels are currently exempted from the ballast water reporting requirements under 33 CFR 151.2070. Owners and operators of these vessels would be required to submit an annual summary report of their BWM practices to the Coast Guard for a period of 3 years.

TABLE 2—U.S. FLAG VESSELS OPERATING EXCLUSIVELY BETWEEN PORTS OR PLACES WITHIN ONE COTP ZONE

Vessel type	Affected population
Commercial Fishing Vessel	117
Fish Processing Vessel	4
Freight Ship	117
Industrial Vessel	28
Mobile Offshore Drilling Unit	5
Offshore Supply Vessel	175
Oil Recovery	6
Passenger (inspected)	154
Passenger (uninspected)	3
Research Vessel	11
Tank Ship	29
Towing Vessel	604
Other Vessels [1]	27
Total	1,280

Source: MISLE and SANS data

For the purposes of the cost analysis, we assume that all vessels discharge ballast water. We estimated that the total annual burden hours required would be approximately 40 minutes per vessel per year.

We anticipate vessels would need 15 minutes to fill out and submit their annual ballasting report. Most of the information required is well known by the vessel manager and does not require additional document consultation. The information that does not require additional document consultation

[1] Includes permanently moored vessels, school ships, and vessels with unspecified vessel type.

includes: vessel name, identification number, type, operator, tonnage, call sign, COTP Zone of operation, number of ballast water tanks, total ballast water capacity, and primary port of ballast water loading and discharge.

We formulate that the remaining 25 minutes is the total time allocated (over the entire year) for vessel operators to assemble and evaluate information to estimate the number of trips where ballast water is discharged and the volume of discharge occurring during vessel operations. While there is certainly the possibility that some vessels may take longer for this, vessels that do not discharge ballast water will incur only 15 minutes to fill out and submit the annual form.

We assume that the vessel manager, with an estimated wage rate of $69/hr [2], would be in charge of this reporting. The annual cost per vessel is $46.23 (.67 hrs × $69/hr) and the total cost per vessel for the 3-year period is $137. The estimated annual cost of the new reporting requirement for the 1,280 vessels, operating exclusively between ports or places within a single COTP Zone, is, $59,174 (1,280 vessels × .67 hrs × $69 hr) (undiscounted). The total cost for a reporting period of 3 years is $177,522 (undiscounted) or $155,291 (at seven percent discount rate). Table 3 presents the reporting costs for vessels operating exclusively between ports or places within a single COTP Zone.

TABLE 3—ANNUAL AND TOTAL COST OF REPORTING (IN US$) FOR VESSELS OPERATING EXCLUSIVELY BETWEEN PORTS OR PLACES WITHIN A SINGLE COTP ZONE

Year [3]	Cost		
	Undiscounted	At 7 percent discount rate	At 3 percent discount rate
1	$59,174	$55,303	$57,450
2	$59,174	$51,685	$55,777
3	$59,174	$48,304	$54,153
4–10	$0	$0	$0
Total	$177,523	$155,292	$167,380
Annualized	.....	$22,110	$19,622

This proposed rule would collect information on ballast water operations from vessels operating exclusively between ports or places within a single COTP Zone; a segment of the industry for which the Coast Guard has limited information. Comments to the recent ballast water discharge standard regulatory docket (Docket No. USCG–2001–10486) asserted that the Coast Guard does not fully understand ballasting practices of this segment of the maritime industry. The Coast Guard seeks to improve the breadth and quality of its BWM data so it can make the most informed programmatic and regulatory actions, to evaluate if the need for further regulation is required for this specific population.

Coast Guard considered several alternatives for collecting the needed information on the ballast practices for vessels operating exclusively between ports or places within a single COTP Zone. One alternative would require these vessels to complete a full ballast water reporting form (33 CFR 151.2070) upon each entry into port, similar to existing requirements for other vessels operating outside a single COTP Zone. The Coast Guard instead chose the proposed alternative that requires only an annual summary report of ballast activities with a limited number of required data elements. The Coast Guard is also proposing to collect this data for only 3 years. Coast Guard believes that the annual summary report for 3 years provides sufficient information necessary to characterize ballast practices for vessels operating exclusively between ports or places within a single COTP Zone, while minimizing the reporting burden to these entities.

2. *Update Current Ballast Water Report Requirements (33 CFR 151.2070)*

The Coast Guard proposes to update the ballast water reporting form to make it more concise and include only essential data on ballast water management practices. Current recordkeeping requirements on 33 CFR 151.2070 would be amended to include only data fields essential for understanding and analyzing ballast water management practices of vessels operating in waters of the U.S.

Vessels that are already submitting ballast water reports to comply with 33 CFR 151.2070 requirements would not incur additional burden due to the reporting updates. Updates to the reporting would make questions clear and concise. We do not expect a significant reduction in burden due to these changes because two additional required items would be likely to offset any time savings. The most time consuming report section (section 5, ''Ballast Water History'') would be restructured, but the content would be maintained. Currently, vessels equipped with ballast water tanks bound for ports or places within the U.S. or entering U.S. waters are required to submit a ballast water report. According to the OMB collection of information 1625–0069, it takes approximately 40 minutes to complete and submit the report. The Code of Federal Regulations at 33 CFR 151.2070 presents detailed information on reporting and recordkeeping requirements. This proposed rule would make updates to the reporting that would not result in a significant change of burden. Therefore, there is no additional cost associated with these changes.

In updating the current reporting form, the Coast Guard would improve the utility of the data provided by the vessel population already required under existing regulations to submit reports to the Coast Guard.

3. *Allow Vessels To Submit Ballast Water Reports After Arrival to the Port or Place of Destination*

Under the current 33 CFR 151.2060, vessels are required to submit reports on ballast water management 24 hours before arrival and predict their ballasting operations. The National Ballast Information Clearinghouse (NBIC) estimates that approximately 40 percent of the amended reports it

[2] Fully loaded wage rate for GS–12 (equivalent) out-of-govt., obtained from Enclosure (2) to COMDTINST 7310.1M and validated based on the Bureau of Labor Statistics (BLS) subcategory Managers (Occupation Code 11–9199).

[3] The Coast Guard anticipates the information collection requirement would lapse after the completion of 3 years.

receives are due to the timing of the reports. In these cases, vessels owners and operators revise their reports with the actual ballasting information and resubmit them to the NBIC. Allowing those vessels that are not bound for the Great Lakes or the Hudson River, north of the George Washington Bridge from outside of the Exclusive Economic Zone, to submit ballast water reports after arrival to the port or place of destination greatly reduces the need for amended reports. We estimate that an average of 10,717 reports [4] are amended and resubmitted every year due to the timing of submission. We estimate that it would take the vessel manager approximately 15 minutes to amend and resend the reports. Therefore, we expect that this amendment will result in an annual reduction of burden of approximately 2,679 hours (10,717 reports × 0.25 hours [5]), representing a cost savings of $184,868 (2,679 hours × $69/hr [6]) per year to the industry. The total cost savings (Table 4) that results from allowing report submittal after arrival at a port for a 10-year period is $1,298,437 (at 7 percent discount rate).

TABLE 4—ANNUAL AND TOTAL COST SAVINGS OF CHANGING THE TIME OF THE REPORT

Year	Cost savings		
	Undiscounted	At 7 percent discount rate	At 3 percent discount rate
1	($184,868)	($172,774)	($179,484)
2	($184,868)	($161,471)	($174,256)
3	($184,868)	($150,908)	($169,181)
4	($184,868)	($141,035)	($164,253)
5	($184,868)	($131,809)	($159,469)
6	($184,868)	($123,186)	($154,824)
7	($184,868)	($115,127)	($150,315)
8	($184,868)	($107,595)	($145,937)
9	($184,868)	($100,556)	($141,686)
10	($184,868)	($93,978)	($137,559)
Total	($1,848,683)	($1,298,437)	($1,576,964)
Annualized	.....	($184,868)	($184,868)

4. *Change the Format of Electronic Reports*

The Coast Guard expects to improve reporting efficiency and data handling by changing the format of the electronic report that can be found in Information Collection Request (ICR), OMB Control number 1625–0069. The proposed changes include standardized data formats and the addition of pull down menus. We do not anticipate any significant change in the reporting burden and, therefore, expect no additional costs or cost savings to the industry. According to the NBIC data from the past 6 years, approximately 99 percent of reports have been submitted electronically. In recent years, 100 percent of the reports have been submitted electronically. Standardized data entry would improve data quality and, as a result, data analyses would be easier and less time consuming.

5. *Summary of Economic Impact of Proposed Rule*

We estimate that this proposed rule would result in a total and annualized cost savings of $1,143,145 and $162,758 respectively, at 7 percent discount rate, over a 10-year period of analysis. These estimates are developed and shown in Table 5.

TABLE 5—ANNUAL AND TOTAL ECONOMIC IMPACT OF PROPOSED RULE

[At 7 percent discount rate]

Year	1. Report from vessels operating exclusively in one COTP Zone (cost)	2. Update Current Ballast Water Report	3. Allow vessels to submit reports after arrival (cost savings)	4. Require reports be submitted electronically	Economic impact of proposed rule
1	$55,303	$0	($172,774)	$0	($117,471)
2	$51,685	$0	($161,471)	$0	($109,786)
3	$48,304	$0	($150,908)	$0	($102,604)
4	—	$0	($141,035)	$0	($141,035)
5	—	$0	($131,809)	$0	($131,809)
6	—	$0	($123,186)	$0	($123,186)
7	—	$0	($115,127)	$0	($115,127)
8	—	$0	($107,595)	$0	($107,595)
9	—	$0	($100,556)	$0	($100,556)
10	—	$0	($93,978)	$0	($93,978)
Total	$155,292	$0	($1,298,437)	$0	($1,143,145)
Annualized	$22,110	$0	($184,868)	$0	($162,758)

Note: Totals may not add due to rounding.

[4] The estimate is based on data provided by NBIC on superseded reports for 2006 to 2012.

[5] Estimation based on time reported in the OMB 1625–0069 from vessel operators currently completing ballast water management reports to comply with 33 CFR 151.2070.

[6] Wage rate obtained from Enclosure (2) to COMDTINST 7310.1M and validated based on the BLS subcategory Managers (Occupation Code 11–9199).

B. Small Entities

Under the Regulatory Flexibility Act (RFA) (5 U.S.C. 601–612), we have considered whether this proposed rule would have a significant economic impact on a substantial number of small entities. The term ''small entities'' comprises small businesses, not-for-profit organizations that are independently owned and operated and are not dominant in their fields, and governmental jurisdictions with populations of less than 50,000.

As described in the ''Regulatory Analyses'' section, we expect minimal costs per vessel (an annual cost of $45.54 for a 3-year period) to owners of vessels operating exclusively between ports or places within a single COTP Zone. Based on available data, we estimate that about 74 percent of entities affected by this proposed rule are small under the RFA and the Small Business Administration's size standards. The economic impact of the 3-year reporting requirement is less than 1 percent of revenue for 100 percent of the small entities. We estimate that small entities will experience an average annual cost of $139 (non-discounted) (cost is based on small entities managing, on average, 3 vessels). Therefore, the Coast Guard expects that this proposed rule would not have a significant economic impact on small entities. Through this proposed rule, the Coast Guard would obtain information on ballast water operations from a segment of the industry for which there is limited information, and improve the utility of the data provided to Coast Guard.

Owners and operators of applicable vessels already reporting ballast water management practices under 33 CFR 151.2070 would incur a cost savings as a result of the elimination of post-arrival amendments due to time of the reporting.[7]

Therefore, the Coast Guard certifies that under 5 U.S.C. 605(b), this proposed rule, if promulgated, 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 rule would have a significant economic impact on it, please submit a comment to the Docket Management Facility at the address under **ADDRESSES**. In your comment, explain why you think it qualifies and how and to what degree this rule would economically affect it.

C. Assistance for Small Entities

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Pub. L. 104–121), we want to assist small entities in understanding this proposed rule so that they can better evaluate its effects on them and participate in the rulemaking. If the proposed rule would affect your small business, organization, or governmental jurisdiction and you have questions concerning its provisions or options for compliance, please consult LCDR Rodney Wert, Environmental Standards Division, U.S. Coast Guard (CG–OES–3); telephone 202–372–1434, email, *rodney.wert@uscg.mil.* The Coast Guard will not retaliate against small entities that question or complain about this rule or any policy or action of the Coast Guard.

Small businesses may send comments on the actions of Federal employees who enforce, or otherwise determine compliance with, Federal regulations to the Small Business and Agriculture Regulatory Enforcement Ombudsman and the Regional Small Business Regulatory Fairness Boards. The Ombudsman evaluates these actions annually and rates each agency's responsiveness to small business. If you wish to comment on actions by employees of the Coast Guard, call 1–888–REG–FAIR (1–888–734–3247).

D. Collection of Information

This proposed rule would modify an existing collection of information under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520). As defined in 5 CFR 1320.3(c), ''collection of information'' comprises reporting, recordkeeping, monitoring, posting, labeling, and other, similar actions. The title and description of the information collections, a description of those who must collect the information, and an estimate of the total annual burden follow. The burden hour estimates cover the time for reviewing instructions, searching existing sources of data, gathering and maintaining the data needed, and completing and reviewing the collection.

Title: Ballast Water Management Reporting and Recordkeeping

OMB Control Number: 1625–0069

Summary of The Collection Of Information: This proposed rule would modify the existing BWM recordkeeping requirements in 33 CFR 151.2070 and amend the ballast water report (OMB Control Number 1625–0069). In this proposed rule, the Coast Guard would require vessels with ballast tanks and operating exclusively on voyages between ports or places within a single COTP Zone to submit an annual summary report of their BWM practices for 3 years. The Coast Guard also proposes to update the ballast water report to include only data that are essential to understanding and analyzing ballast water management practices. The proposed rule would also allow most vessels to submit ballast water reports after arrival to the port or place of destination.

Need For Information: It is essential for the Coast Guard to improve the breadth and quality of its ballast water management data so it can make the most informed programmatic and regulatory actions to prevent the introduction of aquatic NIS in U.S. waters. Limited information is available for vessels operating exclusively between ports or places within a single COTP Zone, since most of these vessels are exempted from the reporting requirements of 33 CFR 151.2070.

Proposed Use of Information: Obtain BWM data for a segment of the industry for which the Coast Guard has limited information and improve the utility of the data provided by the currently regulated vessel population. Additionally, this proposed rule will minimize the administrative burden on the currently regulated population (under 33 CFR 151.2070) by allowing most vessels to submit ballast water reports after arrival and make reporting more concise by including only essential data.

Description of The Respondents: The respondents are:

(a) Owners and operators of vessels with ballast water tanks operating exclusively on voyages between ports or places within a single COTP Zone. These vessel owners and operators are currently exempted from reporting ballast water practices under 33 CFR 151.2070. This proposed rule would require them to submit annual summary reports of their ballast water management practices. The Coast Guard proposes that the information collection requirement end after 3 years.

(b) Owners and operators of vessels currently reporting ballast water management activities under 33 CFR 151.2070.

Number of Respondents: The current approved collection of information (OMB 1625–0069) includes owners and operators of vessels currently reporting ballast water management activities under 33 CFR 151.2070. The current reported number of respondents is

[7] In this proposed rule, most vessel owners and operators would be allowed to report ballast water management practices after arrival instead of 24 hours prior to arrival, as it is currently required under 33 CFR 151.2070. Due to additional compliance monitoring for vessels bound for the Great Lakes and Hudson River, above George Washington Bridge, those vessels will still need to submit reports 24 hours prior to their arrival under 33 CFR 151.1516.

8,383. These respondents would be subjected to the amendments of the ballast water reporting (for more information, see Section V. Regulatory Analyses, A.1, A.2 and A.4 of this preamble) and changes to reporting time (for more information, see Section V. Regulatory Analyses, A.3 of this preamble).

The requirements of this proposed rule would also add 1,280 respondents from vessels with ballast water tanks operating exclusively on voyages between ports or places within a single COTP Zone. Therefore, the total number of respondents would increase by 1,280 to 9,663 (8,383 current respondents + 1,280 new respondents due to the requirements of this proposed rule).

Frequency of Response: Current respondents under 33 CFR 151.2070 would continue to report upon arrival to U.S. ports. New respondents (owners and operators of vessels operating exclusively on voyages between ports or places within a single COTP Zone) would have to report once a year for a period of 3 years.

Burden of Response: We estimate that the response would take approximately 40 minutes per report for vessels with ballast water tanks operating exclusively on voyages between ports or places within a single COTP Zone.

Estimate of Total Annual Burden: The annual burden is estimated as follows:

(a) *Annual burden for new reporting requirement for vessels operating within a single COTP Zone:* This rule would create a new burden of 858 hours (1,280 vessels × .67 hours [8]) for the private sector.

(b) *Annual burden for current reporting requirements:* As described in section V. of this preamble, this proposed rule would allow most vessels to report no later than six hours after arrival (instead of 24 hours prior to arrival as it is currently required under 33 CFR 151.2070). Therefore, this population of vessels would not see a change in the amount of annual burden, since this proposed rulemaking only changes when vessels have to submit the report.

This proposed rule would result in a total annual burden increase of 858 hours due to the new requirement for vessels operating exclusively on voyages between ports or places within a single COTP Zone. We estimate the total annual cost burden to be $59,174 (non-discounted).

As required by the Paperwork Reduction Act of 1995 (44 U.S.C. 3507(d)), we will submit a copy of this proposed rule to the Office of Management and Budget (OMB) for its review of the collection of information.

We ask for public comment on the proposed collection of information to help us determine how useful the information is; whether it can help us perform our functions better; whether it is readily available elsewhere; how accurate our estimate of the burden of collection is; how valid our methods for determining burden are; how we can improve the quality, usefulness, and clarity of the information; and how we can minimize the burden of collection.

If you submit comments on the collection of information, submit them both to OMB and to the Docket Management Facility where indicated under **ADDRESSES**, by the date under **DATES**.

You need not respond to a collection of information unless it displays a currently valid control number from OMB. Before the Coast Guard could enforce the collection of information requirements in this proposed rule, OMB would need to approve the Coast Guard's request to collect this information.

E. Federalism

A rule has implications for federalism under Executive Order 13132, Federalism, if it has a substantial direct effect on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government.

We have analyzed this rule under that Order and have determined that it does not have implications for federalism. NANPCA, as amended by NISA, contains a ''savings provision'' that saves States their authority to ''adopt or enforce control measures for aquatic nuisance species, [and nothing in the Act would] diminish or affect the jurisdiction of any State over species of fish and wildlife.'' 16 U.S.C. 4725. It also requires that ''[a]ll actions taken by Federal agencies in implementing the provisions of [the Act] be consistent with all applicable Federal, State, and local environmental laws.'' Thus, the congressional mandate is clearly for a Federal-State cooperative regime in combating the introduction of aquatic NIS into the waters of the United States from ships' ballast water.

F. Unfunded Mandates Reform Act

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

G. Taking of Private Property

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

H. Civil Justice Reform

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

I. Protection of Children

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

J. Indian Tribal Governments

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

K. Energy Effects

We have analyzed this proposed rule under Executive Order 13211, Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use. We have determined that it is not a ''significant energy action'' under that order because it is not a ''significant regulatory action'' under Executive Order 12866 and is not likely to have a significant adverse effect on the supply, distribution, or use of

[8] The estimation based on time required for reporting. Most information is well known by the vessel manager and does not require additional document or consultation. The questions are: vessel name, number, identification number, type, operator, tonnage, call sign, COTPZ of operation, number of ballast water tanks, total ballast water capacity, primary port of ballast water loading and discharge, estimated number of trips where ballast water is discharged and volume.

energy. The Administrator of the Office of Information and Regulatory Affairs has not designated it as a significant energy action. Therefore, it does not require a Statement of Energy Effects under Executive Order 13211.

L. Technical Standards

The National Technology Transfer and Advancement Act (15 U.S.C. 272 note) directs agencies to use voluntary consensus standards in their regulatory activities unless the agency provides Congress, through the Office of Management and Budget, with an explanation of why using these standards would be inconsistent with applicable law or otherwise impractical. Voluntary consensus standards are technical standards (e.g., specifications of materials, performance, design, or operation; test methods; sampling procedures; and related management systems practices) that are developed or adopted by voluntary consensus standards bodies.

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

M. Environment

We have analyzed this proposed rule under Department of Homeland Security Management Directive 023–01 and Commandant Instruction M16475.lD, which guide the Coast Guard in complying with the National Environmental Policy Act of 1969 (NEPA) (42 U.S.C. 4321–4370f), and have made a preliminary determination that this action is one of a category of actions that do not individually or cumulatively have a significant effect on the human environment. A preliminary environmental analysis checklist supporting this determination is available in the docket where indicated under the ''Public Participation and Request for Comments'' section of this preamble. This rule is likely to be categorically excluded under section 2.B.2, figure 2–1, paragraph (34)(a) of the Instruction. This rule involves regulations that are editorial and procedural. An environmental analysis checklist is 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 151

Administrative practice and procedure, Ballast water management, Oil pollution, Penalties, Reporting and recordkeeping requirements, Water pollution control.

For the reasons discussed in the preamble, the Coast Guard proposes to amend 33 CFR part 151 as follows:

Title 33—Navigation and Navigable Waters

CHAPTER I—COAST GUARD

Subchapter O—Pollution

PART 151—VESSELS CARRYING OIL, NOXIOUS LIQUID SUBSTANCES, GARBAGE, MUNICIPAL OR COMMERCIAL WASTE, AND BALLAST WATER

Subpart C—Ballast Water Management for Control of Nonindigenous Species in the Great Lakes and Hudson River

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

Authority: 16 U.S.C. 4711; Department of Homeland Security Delegation No. 0170.1.

■ 2. In § 151.1516, revise paragraph (a) to read as follows:

§ 151.1516 Compliance Monitoring.

(a) The master of each vessel equipped with ballast tanks must provide the following information, in written form, to the Captain of the Port (COTP):

* * * * *

Subpart D—Ballast Water Management for Control of Nonindigenous Species in Waters of the United States

■ 3. The authority citation for subpart D continues to read as follows:

Authority: 16 U.S.C. 4711; Department of Homeland Security Delegation No. 0170.1.

■ 4. Amend § 151.2015 as follows:

■ a. Revise paragraph (b);

■ b. Redesignate paragraph (c) as paragraph (d);

■ c. Add new paragraph (c);

■ d. Revise newly redesignated paragraph (d)(3); and

■ e. Add Table 1 to paragraph (d) to read as follows:

§ 151.2015 Exemptions.

* * * * *

(b) Crude oil tankers engaged in coastwise trade are exempt from the requirements of §§ 151.2025 (ballast water management (BWM) requirements), 151.2060 (reporting), and 151.2070 (recordkeeping) of this subpart.

(c) Vessels that operate exclusively on voyages between ports or places within a single COTP Zone are exempt from the requirements of §§ 151.2025 (ballast water management (BWM) requirements), and 151.2070 (recordkeeping) of this subpart.

(d) * * *

* * * * *

(3) Vessels that operate in more than a single COTP Zone and take on and discharge ballast water exclusively in a single COTP Zone.

TABLE 1—TABLE OF 33 CFR 151.2015 SPECIFIC EXEMPTIONS FOR TYPES OF VESSELS

	151.2025 (Management)	151.2060 (Reporting)	151.2070 (Recordkeeping)
Department of Defense or Coast Guard vessel subject to 46 U.S.C. 4713.	Exempt	Exempt	Exempt.
Vessel of the Armed Forces subject to the ''Uniform National Discharge Standards for Vessels of the Armed Forces'' (33 U.S.C. 1322(n)).	Exempt	Exempt	Exempt.
Crude oil tankers engaged in coastwise trade	Exempt	Exempt	Exempt.
Vessel operates exclusively on voyages between ports or places within a single COTP Zone.	Exempt	Applicable	Exempt.
Seagoing vessel operates on voyages between ports or places in more than one COTP Zone, does not operate outside of EEZ, and ≤ 1600 gross register tons or ≤ 3000 gross tons (ITC).	Exempt	Applicable	Applicable.
Non-seagoing vessel	Exempt	Applicable	Applicable (unless operating exclusively on voyages between ports or places within a single COTP Zone).

TABLE 1—TABLE OF 33 CFR 151.2015 SPECIFIC EXEMPTIONS FOR TYPES OF VESSELS—Continued

	151.2025 (Management)	151.2060 (Reporting)	151.2070 (Recordkeeping)
Vessel operates between ports or places in more than one COTP Zone and takes on and discharges ballast water exclusively in one COTP Zone.	Exempt	Applicable	Applicable.

■ 5. Amend § 151.2060 as follows:
■ a. Revise paragraph (b);
■ b. Redesignate paragraph (c) as paragraph (d);
■ c. Add paragraph (c);
■ b. Revise newly designated paragraph (d);
■ c. Add paragraphs (e) and (f) to read as set out below:

§ 151.2060 Reporting requirements.

* * * * *

(b) Unless operating exclusively on voyages between ports or places within a single COTP Zone, the master, owner, operator, agent, or person in charge of a vessel subject to this subpart and this section must submit a ballast water report to the National Ballast Information Clearinghouse (NBIC) by electronic ballast water report format using methods specified at the NBIC's Web site at *http://invasions.si.edu/nbic/submit.html.* The ballast water report will include the information listed in paragraph (c) and must be submitted as follows:

(1) *For any vessel bound for the Great Lakes from outside the EEZ:*

(i) Submit a ballast water report at least 24 hours before the vessel arrives in Montreal, Quebec.

(ii) Non-U.S. and non-Canadian flag vessels may complete the St. Lawrence Seaway Ballast Water Form and submit it in accordance with the applicable Seaway notice as an alternative to this requirement.

(2) *For any vessel bound for the Hudson River north of the George Washington Bridge entering from outside the EEZ:* Submit the ballast water report at least 24 hours before the vessel enters New York, NY.

(3) *For any vessel that is equipped with ballast water tanks and bound for ports or places in the United States and not addressed in paragraphs (b)(1) and (b)(2) of this section:* Submit the ballast water report no later than 6 hours after arrival at the port or place of destination, or prior to departure from that port or place of destination, whichever is earlier.

(c) The ballast water report required by paragraph (b) will include the following information:

(1) Vessel information. This includes the vessel's name, International Maritime Organization (IMO) number or other vessel identification number if an IMO number is not issued, country of registry, operator, type and tonnage.

(2) Voyage information. This includes the port and date of arrival, vessel agent name and contact information, last port and country of call, and next port and country of call.

(3) Ballast water information. This includes the vessel's total ballast water capacity, total number of ballast water tanks, total volume of ballast water onboard, and total number of ballast water tanks in ballast. All volumes are reported in cubic meters (m^3).

(4) Information on ballast water tanks that are to be discharged into the waters of the United States or to a reception facility. Include the following for each tank discharged:

(i) The numerical designation, type and capacity of the ballast tank.

(ii) The source of the ballast water. This includes date(s), location(s), and volume(s). If a tank has undergone ballast water exchange, provide the loading port of the ballast water that was discharged during the exchange.

(iii) The date(s), starting location(s), ending location(s) and method(s) of ballast water management.

(iv) The date(s), location(s), and volume(s) of any ballast water discharged into the waters of the United States or to a reception facility.

(5) Certification of accurate information. Include the name and title of the individual (i.e. master, owner, operator, agent, person in charge) attesting to the accuracy of the information provided and that the activities were in accordance with the ballast water management plan required by § 151.2050(g). If exceptional circumstances required deviation from the plan, the details surrounding the need for deviation and associated actions must be explained.

(d) If the information submitted in accordance with paragraph (c) changes, the master, owner, operator, agent, or person in charge of the vessel must submit an amended report before the vessel departs the waters of the United States or not later than 24 hours after departure from the port or place, whichever is earlier.

(e) The master, owner, operator, agent, or person in charge of a vessel operating on voyages exclusively between ports or places within a single COTP Zone, and subject to this subpart and this section, must submit the information required by paragraph (f) to the National Ballast Information Clearinghouse (NBIC) by electronic Annual Ballast Water Summary Report format using methods specified at the NBIC's Web site at *http://invasions.si.edu/nbic/submit.html.* The Annual Ballast Water Summary Report will be required for a period of three years on the following schedule:

(1) Report on the vessel's ballasting practices for calendar year [INSERT 1 YEAR AFTER THE DATE OF PUBLICATION OF FINAL RULE] due no later than March 31,[INSERT 2 YEAR AFTER THE DATE OF PUBLICATION OF FINAL RULE).

(2) Report on the vessel's ballasting practices for calendar year [INSERT 2 YEAR AFTER DATE OF PUBLICATION OF THE FINAL RULE] due no later than March 31, [INSERT 3 YEARS AFTER DATE OF PUBLICATION OF FINAL RULE].

(3) Report on the vessel's ballasting practices for calendar year [INSERT 3 YEARS AFTER DATE OF PUBLICATION OF FINAL RULE] due no later than March 31, [INSERT 4 YEARS AFTER DATE OF PUBLICATION OF FINAL RULE].

(f) The Annual Ballast Water Summary Report will include the following information:

(1) Vessel information. This includes name, identification number, vessel type, operator, tonnage, call sign and COTP Zone of operation.

(2) Ballast information. This includes the number of ballast tanks and total ballast water capacity.

(3) Operational information. This includes primary port of ballast water loading, primary port of ballast water discharge, estimated number of trips where ballast water is discharged, estimated volume of ballast water discharged per trip and certification of compliance with § 151.2050.

■ 6. Revise § 151.2070 to read as follows:

§ 151.2070 Recordkeeping requirements.

(a) The master, owner, operator, agent, or person in charge of a vessel bound for a port or place in the United States, unless specifically exempted by § 151.2015 of this subpart, must ensure the maintenance of written records that include the following information:

(1) *Vessel information.* This includes the vessel's name, International Maritime Organization (IMO) number (or other vessel identification number if IMO number is not issued), gross tonnage, total ballast water capacity, and country of registry (flag).

(2) *Ballast water uptake information.* This includes the date(s) and location(s) where the ballast water was taken on board, the volume(s) of the ballast water taken on board, and the numerical designation(s) of the tank(s) receiving the ballast water. Record all volumes in cubic meters (m^3).

(3) *Ballast water management information.* This includes the date(s) and location(s) where the management takes place, the volume(s) of ballast water managed, the numerical designation(s) of the tank(s) managed, and the management method used. Record all volumes in cubic meters (m^3).

(4) *Ballast water discharge information.* This includes the date(s) and location(s) of where the ballast water was discharged, the volume(s) of ballast water discharged, the numerical designation(s) of the tank(s) from which the ballast water was discharged, and whether the discharge was into the surrounding waters or to a reception facility. Record all volumes in cubic meters (m^3).

(5) *Discharge of sediment.* If sediment was discharged within the jurisdiction of the United States, include the name and location of the facility where the sediment discharge took place.

(6) *Certification of accurate information.* Include the master, owner, operator, agent, person in charge, or responsible officer's printed name, title, and signature attesting to the accuracy of the information provided and that the activities were in accordance with the ballast water management plan required by § 151.2050(g). If exceptional circumstances required deviation from the plan, the details surrounding the need for deviation and associated actions must be explained.

(b) The master, owner, operator, agent, or person in charge of a vessel subject to this section must retain a signed copy of this information onboard the vessel for 2 years.

(c) The master, owner, operator, agent, or person in charge of a vessel subject to this section must retain the monitoring records required in 46 CFR 162.060–20(b) for 2 years. These records may be stored on digital media but must be readily viewable for Coast Guard inspection.

Dated: May 29, 2013.

J. G. Lantz,

Director of Commercial Regulations and Standards, U.S. Coast Guard.

[FR Doc. 2013–13140 Filed 6–4–13; 8:45 am]

BILLING CODE 9110–04–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R04–OAR–2013–0062; FRL–9819–9]

Approval and Promulgation of Implementation Plans; Kentucky: Kentucky Portion of Cincinnati-Hamilton, Supplement Motor Vehicle Emissions Budget Update

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: EPA is proposing to approve a revision to the Kentucky State Implementation Plan (SIP), submitted to EPA on August 9, 2012, by the Commonwealth of Kentucky, through the Kentucky Energy and Environment Cabinet, Division for Air Quality. Kentucky's August 9, 2012, SIP revision includes changes to the maintenance plan for the Kentucky portion of the Cincinnati-Hamilton, OH-KY-IN, maintenance area for the 1997 8-hour ozone national ambient air quality standard (NAAQS). The Cincinnati-Hamilton, OH-KY-IN, maintenance area for the 1997 8-hour ozone NAAQS includes the counties of Boone, Campbell and Kenton in Kentucky (hereafter also referred to as Northern Kentucky); a portion of Dearborn County, Indiana; and the entire counties of Butler, Clermont, Clinton, Hamilton and Warren in Ohio. Kentucky's August 9, 2012, SIP revision proposes to update the motor vehicle emissions budget using an updated mobile emissions model, the Motor Vehicle Emissions Simulator (also known as MOVES2010a), and to increase the safety margin allocated to motor vehicle emissions budgets for nitrogen oxides and volatile organic compounds for Northern Kentucky to account for changes in the emissions model and vehicle miles traveled projection model. EPA is proposing to approve this SIP revision because the Commonwealth has demonstrated that it is consistent with the Clean Air Act.

DATES: Comments must be received on or before July 5, 2013.

ADDRESSES: Submit your comments, identified by Docket ID No. EPA–R04–OAR–2013–0062, by one of the following methods:

1. *www.regulations.gov:* Follow the on-line instructions for submitting comments.
2. *Email:* R4–RDS@epa.gov.
3. *Fax:* (404) 562–9019.
4. *Mail:* EPA–R04–OAR–2013–0062, Regulatory Development Section, Air Planning Branch, Air, Pesticides and Toxics Management Division, U.S. Environmental Protection Agency, Region 4, 61 Forsyth Street SW., Atlanta, Georgia 30303–8960.
5. *Hand Delivery or Courier:* Ms. Lynorae Benjamin, Chief, Regulatory Development Section, Air Planning Branch, Air, Pesticides and Toxics Management Division, U.S. Environmental Protection Agency, Region 4, 61 Forsyth Street SW., Atlanta, Georgia 30303–8960. Such deliveries are only accepted during the Regional Office's normal hours of operation. The Regional Office's official hours of business is Monday through Friday, 8:30 to 4:30, excluding federal holidays.

Please see the direct final rule which is located in the Rules section of this **Federal Register** for detailed instructions on how to submit comments.

FOR FURTHER INFORMATION CONTACT: Kelly Sheckler of the Air Quality and Transportation Modeling Section, in the Air Planning Branch, Air, Pesticides and Toxics Management Division, U.S. Environmental Protection Agency, Region 4, 61 Forsyth Street SW., Atlanta, Georgia 30303–8960. Kelly Sheckler may be reached by phone at (404) 562–9222, or via electronic mail at *sheckler.kelly@epa.gov*.

SUPPLEMENTARY INFORMATION: 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 submittal and anticipates no adverse comments. A detailed rationale for the approval is set forth in the direct final rule. If no adverse comments are received in response to this rule, no further activity is contemplated. If EPA receives 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 rule. EPA will not institute a second comment period on this document. Any parties

interested in commenting on this document should do so at this time.

For additional information see the direct final rule which is published in the Rules Section of this **Federal Register**.

Dated: May 22, 2013.

A. Stanley Meiburg,

Acting Regional Administrator, Region 4.

[FR Doc. 2013–13187 Filed 6–4–13; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 180

[EPA–HQ–OPP–2013–0023; FRL–9386–2]

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 July 5, 2013.

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.htm.* 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: A contact person, with telephone number and email address, is listed at the end of each pesticide petition summary. You may also reach each contact person by mail at Registration Division (7505P), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave. NW., Washington, DC 20460–0001.

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 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 submitting comments, remember to:

i. Identify the document by docket ID number and other identifying information (subject heading, **Federal Register** date and page number).

ii. Follow directions. The Agency may ask you to respond to specific questions or organize comments by referencing a Code of Federal Regulations (CFR) part or section number.

iii. Explain why you agree or disagree; suggest alternatives and substitute language for your requested changes.

iv. Describe any assumptions and provide any technical information and/or data that you used.

v. If you estimate potential costs or burdens, explain how you arrived at your estimate in sufficient detail to allow for it to be reproduced.

vi. Provide specific examples to illustrate your concerns and suggest alternatives.

vii. Explain your views as clearly as possible, avoiding the use of profanity or personal threats.

viii. Make sure to submit your comments by the comment period deadline identified.

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); 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 online 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 2E8074.* (EPA–HQ–OPP–2013–0295). Cheminova A/S, c/o Cheminova, Inc., 1600 Wilson Blvd., Suite 700, Arlington, VA 22209–2510, requests to establish import tolerances in 40 CFR Part 180 for residues of the fungicide flutriafol, in or on coffee, bean, green at 0.20 parts per million (ppm) and coffee, instant at 0.30 ppm. Adequate enforcement analytical methods for determining flutriafol in/on appropriate raw agricultural commodities and processed commodities are available for the established and proposed tolerances. Contact: Tamue Gibson, (703) 305–9096, email address: *gibson.tamue@epa.gov*.

2. *PP 2E8123.* (EPA–HQ–OPP–2013–0141). Syngenta Crop Protection LLC., P.O. Box 18300, Greensboro, NC 27419–8300, requests to establish import tolerances in 40 CFR part 180 for residues of the fungicide, benzovindiflupyr (SYN545192), in or on coffee, bean, green at 0.09 ppm; and sugarcane, cane at 0.04 ppm. QuEChERS multi-residue method (EN 15662:2009) has been validated and independently validated for post-registration monitoring of SYN545192 for compliance with maximum residue levels (MRLs) and import tolerances in plant and animal commodities. Contact: Shaunta Hill, (703) 347–8961, email address: *hill.shaunta@epa.gov.*

3. *PP 2E8137.* (EPA–HQ–OPP–2013–0038). Interregional Research Project Number 4 (IR–4), 500 College Road East, Suite 201W, Princeton, NJ 08540, requests to establish tolerances in 40 CFR part 180 for residues of the insecticide flonicamid and its metabolites and degradates determined by measuring flonicamid [*N*-(cyanomethyl)-4-(trifluoromethyl)- 3-pyridinecarboxamide] and its metabolites TFNA (4-trifluoromethyl-nicotinic acid), TFNA–AM (4-trifluoromethyl-nicotinamide), and TFNG [*N*-(4-trifluoro-methylnicotinoyl)glycine], calculated as the stoichiometric equivalent of flonicamid, in or on alfalfa, forage at 7.0 ppm; alfalfa, hay at 0.20 ppm; alfalfa, seed at 1.5 ppm; clover, forage at 7.0 ppm; clover, hay at 4.0 ppm; peppermint, tops at 7.0 ppm; spearmint, tops at 7.0 ppm; vegetable, fruiting, group 8–10 at 0.40 ppm; vegetable, cucurbit, group 9 at 1.5 ppm; fruit, pome, group 11–10 at 0.20 ppm; and fruit, stone, group 12–12 at 0.60 ppm. Analytical methodology has been developed to determine the residues of flonicamid and its three major plant metabolites, TFNA, TFNG, and TFNA–AM in various crops. The residue analytical method for the majority of crops includes an initial extraction with acetonitrile (ACN)/deionized (DI) water, followed by a liquid-liquid partition with ethyl acetate. The residue method for wheat straw is similar, except that a C_{18} solid phase extraction (SPE) is added prior to the liquid-liquid partition. The final sample solution is quantitated using liquid chromatography (LC) equipped with a reverse phase column and a triple quadruple mass spectrometry (MS/MS). Contact: Andrew Ertman, (703) 308–9367, email address: *ertman.andrew@epa.gov.*

4. *PP 3E8146.* (EPA–HQ–OPP–2013–0258). BASF Corporation, P.O. Box 13528, Research Triangle Park, NC 27709, requests to establish tolerances in 40 CFR part 180 for residues of the insecticide metaflumizone, in or on tomato at 0.6 ppm; bell pepper at 0.6 ppm; and eggplant at 0.6 ppm. BASF Analytical Method No. 531/0 was developed to determine residues of metaflumizone and its metabolites M320I04 and M320I23 in crop matrices. In this method, residues of metaflumizone are extracted from plant matrices with methanol/water (70:30; v/v) and then partitioned into dichloro-methane. For oily matrices, the residues are extracted with a mixture of isohexane/acetonitrile (1:1; v/v). The final determination of metaflumizone and its metabolites is performed by LC/MS/MS. Contact: Julie Chao, (703) 308–8735, email address: *chao.julie@epa.gov.*

5. *PP 3E8150.* (EPA–HQ–OPP–2013–0161). Interregional Research Project Number 4 (IR–4), 500 College Road East, Suite 201W, Princeton, NJ 08540, requests to establish tolerances in 40 CFR part 180 for residues of the fungicide fenamidone, [4H-imidazol-4-one, 3,5-dihydro-5-methyl-2-(methylthio)-5-phenyl-3-(phenylamino)-, (S)-], in or on ginseng at 0.80 ppm; bean, succulent at 0.80 ppm; onion, bulb, subgroup 03–07A at 0.20 ppm; and onion, green, subgroup 03–07B at 1.5 ppm. Although residue levels approaching the proposed tolerances are unlikely, independently validated enforcement methods are available for determining residues of fenamidone and relevant metabolites. Residues are quantified by high performance liquid chromatography (HPLC) with MS/MS detection. Contact: Laura Nollen, (703) 305–7390, email address: *nollen.laura@epa.gov.*

6. *PP 3E8167.* (EPA–HQ–OPP–2012–0589). Interregional Research Project Number 4 (IR–4), 500 College Road East, Suite 201W, Princeton, NJ 08540, requests to establish a tolerance in 40 CFR part 180 for residues of the herbicide fomesafen, in or on bean, lima, succulent at 0.05 ppm. The gas chromatography with Nitrogen-Phosphorus detection (GC–NPD) has been developed and validated for residues of fomesafen in snap/dry beans, cotton seed, and cotton gin byproducts, as well as for other crops, and is used to measure and evaluate the chemical fomesafen. Contact: Laura Nollen, (703) 305–7390, email address: *nollen.laura@epa.gov.*

7. *PP 2F8101.* (EPA–HQ–OPP–2013–0226). Bayer CropScience LP, 2 T.W. Alexander Drive, P.O. Box 12014, Research Triangle Park NC 27709, requests to establish tolerances in 40 CFR part 180 for residues of the insecticide flupyradifurone, in or on aspirated grains, fractions at 40 ppm; root vegetables, except sugar beets, crop subgroup 1B at 1.5 ppm; tuberous and corm vegetable, crop sub-group 1C at 0.5 ppm; onion, bulb subgroup, crop subgroup 3–07A at 0.3 ppm; onion, green subgroup, crop subgroup 3–07B at 3 ppm; leafy vegetables, except brassica vegetables, crop group 4 at 40 ppm; taro, leaves at 40 ppm; head and stem brassica, crop subgroup 5A at 6 ppm; leafy brassica, greens, crop subgroup 5B at 40 ppm; turnip, greens at 40 ppm; edible-podded legume vegetables, crop subgroup 6A at 5 ppm; succulent shelled pea and bean, crop subgroup 6B at 4 ppm; dried shelled pea and bean except soybean, crop subgroups 6C at 6 ppm; foliage of legume vegetables, including soybeans, crop group 7, forage green vines at 40 ppm; foliage of legume vegetables, including soybean, crop group 7, hay at 50 ppm; soybean, seed at 4 ppm; fruiting vegetables, except cucurbits, crop group 8–10, fruit at 3 ppm; tomato, paste at 4 ppm; cucurbit vegetables, crop group 9, fruit at 2 ppm; citrus fruits, crop group 10–10, fruit at 3 ppm; citrus, pulp, dried at 15 ppm; pome fruits, crop group 11–10, fruit at 1.5 ppm; bushberry, subgroup, crop subgroup 13–07B at 4 ppm; small fruit vine climbing subgroup, except fuzzy

kiwifruit, crop subgroup 13–07F at 3 ppm; grapes, raisin at 6 ppm; low growing berry subgroup, crop subgroup 13–07G at 1.5 ppm; tree nuts, crop group 14, nutmeat at 0.15 ppm; pistachio at 0.15 ppm; tree nut, crop group 14, hulls at 15 ppm; grain, cereal, crop group 15, except rice grain at 4 ppm; sweet corn, kernels plus cobs with husks removed (K+CWHR) at 0.4 ppm; wheat, bran at 5 ppm; rice, grain (rotational crop) at 4 ppm; grain cereal (forage, fodder and straw), group 16, forage at 20 ppm; grain cereal (forage, fodder and straw), group 16, hay at 40 ppm; grain cereal (forage, fodder and straw), group 16, straw at 30 ppm; grain cereal (forage, fodder and straw), group 16, stover at 15 ppm; cotton, undelinted seed crop subgroup 20C at 0.9 ppm; cotton, gin by-products at 40 ppm; nongrass animal feeds, forage, crop group 18 at 20 ppm; nongrass animal feeds, hay, crop group 18 at 40 ppm; coffee, bean, green at 2 ppm; coffee, bean, roasted, instant at 3 ppm; hops at 20 ppm; peanut, hay at 30 ppm; peanut, nutmeat at 0.15 ppm; prickly pear cactus, fruit at 0.5 ppm; pitaya, fruit at 0.5 ppm; prickly pear cactus, pads at 0.9 ppm; cattle/goat/hog/horse/sheep, fat at 0.5 ppm; cattle/goat/hog/horse/sheep, meat at 1 ppm; cattle/goat/hog/horse/sheep, meat byproducts at 2 ppm; milk at 0.3 ppm; poultry, eggs at 0.3 ppm; poultry, meat at 0.5 ppm; and poultry, meat byproducts at 0.5 ppm. Tolerances are being proposed in primary crops, rotational crops, animal tissues and milk for flupyradifurone and the metabolite difluoroacetic acid (DFA). The analytical method involves, solvent extraction, purification through a C_{18} solid-phase extraction column, and addition of a mixture of stable, isotopically labeled internal standards. Quantitation is by HPLC-electrospray ionization/MS/MS. Contact: Jessica Rogala, (703) 347–0263, email address: *rogala.jessica@epa.gov.*

8. *PP 2F8120.* (EPA–HQ–OPP–2013–0015). Dow AgroSciences, 9330 Zionsville Road, Indianapolis, IN 46268, requests to establish tolerances in 40 CFR part 180 for the combined residues of the herbicide aminopyralid (XDE–750: 4-amino-3,6-dichloropyridine-2-carboxylic acid) and its glucose conjugate, expressed as total parent, in or on fish—shellfish, mollusc at 0.01 ppm; fish—shellfish, crustacean at 0.01 ppm;, fish—freshwater finfish at 0.04 ppm. Adequate analytical methods for enforcement purposes are available to monitor residues of aminopyralid in fish and shellfish. The analytical method GRM 07.08 uses LC/MS/MS. Contact: Bethany Benbow, (703) 347–8072, email address: *benbow.bethany@epa.gov.*

9. *PP 2F8121.* (EPA–HQ–OPP–2013–0141). Syngenta Crop Protection LLC., P.O. Box 18300, Greensboro, NC 27419–8300, requests to establish tolerances in 40 CFR part 180 for residues of the fungicide benzovindiflupyr, in or on apple, wet pomace at 0.6 ppm; barley, grain at 1.5 ppm; barley, hay at 15 ppm; barley, straw at 15 ppm; corn, field, grain at 0.02 ppm; corn, field, forage at 3 ppm; corn, field, stover at 15 ppm; corn, pop, grain at 0.02 ppm; corn, pop, stover at 15 ppm; corn, sweet, ear at 0.01 ppm; corn, sweet, forage at 4 ppm; corn, sweet, stover at 5 ppm; cottonseed, subgroup 20C at 0.15 ppm; cotton, grin byproducts at 3 ppm; vegetables, cucurbit, crop group 9 at 0.2 ppm; fruits, pome, crop group 11–10 at 0.2 ppm; fruits, small vines climbing, except fuzzy kiwi subgroup 13–07F at 1 ppm; grain, aspirated fractions at 7 ppm; oat, grain at 1.5 ppm; oat, hay at 15 ppm; oat, straw at 15 ppm; peas and bean, dried shelled, except soybean, subgroup 6C at 0.2 ppm; peas, hay at 7 ppm; peas, vine at 1.5 ppm; peanut, nutmeat at 0.01 ppm; peanut, hay at 15 ppm; potato, wet peel at 0.1 ppm; raisin at 4 ppm; rapeseed, subgroup 20A at 0.15 ppm; rye, grain at 0.1 ppm; rye, hay at 15 ppm; rye, straw at 10 ppm; soybean, seed at 0.07 ppm; soybean, forage at 15 ppm; soybean, hay at 50 ppm; vegetables, fruiting, crop group 8–10 at 0.8 ppm; vegetables, tuberous and corm subgroup 1C at 0.02 ppm; wheat, grain at 0.1 ppm; wheat, forage at 4 ppm; wheat, hay at 15 ppm; wheat, straw at 10 ppm; and in or on the following animal commodities: Cattle, fat at 0.01 ppm; cattle, kidney at 0.01 ppm; cattle, liver at 0.01 ppm; cattle, meat at 0.01 ppm; cattle, byproducts at 0.01 ppm; egg at 0.01 ppm; goat, fat at 0.01 ppm; goat, kidney at 0.01 ppm; goat, liver at 0.01 ppm; goat, meat at 0.01 ppm; goat, meat byproducts at 0.01 ppm; hog, fat at 0.01 ppm; hog, liver at 0.01 ppm; hog, meat at 0.01 ppm; hog, meat byproducts at 0.01 ppm; horse, fat at 0.01 ppm; horse, kidney at 0.01 ppm; horse, liver at 0.01 ppm; horse, meat at 0.01 ppm; horse, meat byproducts at 0.01 ppm; milk at 0.01 ppm; milk, fat at 0.01 ppm; egg at 0.01 ppm; poultry, byproducts at 0.01 ppm; poultry, fat at 0.01 ppm; poultry, liver at 0.01 ppm; poultry, meat at 0.01 ppm; poultry, skin at 0.01 ppm; sheep, fat at 0.01 ppm; sheep, kidney at 0.01 ppm; sheep, liver at 0.01 ppm; sheep, meat at 0.01 ppm; and sheep, meat byproduct at 0.01 ppm. The proposed definition of the residue for benzovindiflupyr (SYN545192) in commodities of plant origin is parent SYN545192 for both compliance monitoring and consumer risk assessments. The corresponding definitions in commodities of animal origin are parent SYN545192 for monitoring and sum of SYN545192 and SYN546039 for risk assessment. Both Method GRM042.03A and GRM042.04A for plant products have been developed to determine parent SYN545192 and its metabolite SYN546039 (and conjugates) with a limit of quantification (LOQ) of 0.01 mg/kg for both analytes. GRM042.04A also determines metabolite SYN545720 with an LOQ of 0.01 mg/kg. Method GRM042.08A has been developed for the determination of SYN545192 and its metabolites SYN546039 and SYN546206 in rotational crops, with an LOQ of 0.01 mg/kg for all three analytes. Method GRM042.06A (also known as Charles River Method No. 1887 Version 2.0) for animal products has been validated for use in pre-registration development studies. The method determines parent SYN545192 and its metabolites SYN546039 and SYN546422, with an LOQ of 0.01 mg/kg for each analyte. Method GRM023.03A was used to analyze residues of SYN545720 in the storage stability study demonstrating the storage stability of SYN545720 residues in a range of commodities under frozen conditions. Contact: Shaunta Hill, (703) 347–8961, email address: *hill.shaunta@epa.gov.*

10. *PP 2F8134.* (EPA–HQ–OPP–2013–0151). Syngenta Crop Protection LLC., P.O. Box 18300, Greensboro, NC 27419–8300, requests to establish a tolerance in 40 CFR part 180 for residues of the fungicide difenoconazole, 1-[2-[2-chloro-4-(4-chlorophenoxy)phenyl]-4-methyl-1,3-dioxolan-2-ylmethyl]-1H–1,2,4-triazole, in or on rapeseed, subgroup 20A at 0.1 ppm. For plants, Syngenta Crop Protection, LLC has submitted practical analytical method (AG–575B) for detecting and measuring levels of difenoconazole in or on food with a LOQ that allows monitoring of food with residues at or above the levels set in the proposed tolerances. Residues are qualified by LC/MS/MS. For livestock, a practical analytical method (AG–544A) for detecting and measuring levels of difenoconazole in or on cattle tissues and milk, and poultry tissues and eggs, with an LOQ that allows monitoring of food with residues at or above the levels set in the proposed tolerances. Tolerances in meat, milk, poultry or eggs were established for enforcement purposes. Contact: Rose Mary Kearns, (703) 305–5611, email address: *kearns.rosemary@epa.gov.*

11. *PP 3F8142.* (EPA–HQ–OPP–2013–0138). ISK Biosciences Corporation,

7470 Auburn Road, Suite A, Concord, Ohio, 44077, requests to establish tolerances in 40 CFR part 180 for residues of the fungicide isofetamid, *N*-[1,1 -dimethyl-2-[2-methyl-4-(l-methylethoxy)phenyl]-2-oxoethyl]-3-methyl-2-thiophenecarboxamide (CA) and its metabolite GPTC, *N*-[1,l-dimethyl-2-(4-β-D-glucopyranosyloxy-2-methylphenyl)-2-oxoethyl]-3-methyl-2-thiophenecarboxamide, expressed as isofetamid, in or on almond at 0.02 ppm; almond, hulls at 0.2 ppm; lettuce, head at 6.0 ppm; lettuce, leaf at 7.0 ppm; fruit, small vine climbing, except fuzzy kiwifruit, subgroup 13–07F at 3.0 ppm; berry, low growing, subgroup 13–07G at 4.0 ppm; and rapeseed, subgroup 20A at 0.04 ppm. The LC/MS/MS method proposed for residue analysis of plants and plant products determines the residues of parent IKF–5411 and its metabolite, GPTC. The method involves extraction of samples with acetone or with acetonitrile: water (80:20 v/v) mixture. Extracts are then subjected to SPE clean-up, with subsequent quantification of residues by liquid chromatography with tandem mass spectrometric determination (LC/MS/MS). Contact: Dominic Schuler, (703) 347–0260, email address: *schuler.dominic@epa.gov.*

12. *PP 3F8158.* (EPA–HQ–OPP–2013–0235). DuPont Crop Protection, Stine-Haskell Research Center, P.O. Box 30, Newark, DE 19714, requests to establish tolerances in 40 CFR part 180 for residues of the insecticide, chlorantraniliprole, 3-bromo-N-[4-chloro-2-methyl-6-[(methylamino)-carbonyl]phenyl]-1-(3-chloro-2-pyridinyl)-1H-pyrazole-5-carboxamide, in or on peanuts at 0.06 ppm; and peanut, hay at 90 ppm. The petitioner believes no analytical method is needed since chlorantraniliprole and its metabolic degradates are not of toxicological concern and therefore, analytical methods are not applicable. Contact: Jennifer Urbanski, (703) 347–0156, email address: *urbanski.jennifer@epa.gov.*

13. *PP 3F8166.* (EPA–HQ–OPP–2013–0268). Syngenta Crop Protection, LLC, P.O. Box 18300, Greensboro, NC 27419–8300, requests to establish tolerances in 40 CFR part 180 for residues of the fungicide thiabendazole, [2-(4-thiazolyl) benzimidazole] and its metabolite benzimidazole (free and conjugated), in or on vegetable, root (except sugarbeet), subgroup 1B at 0.02 ppm; radish, tops at 0.02 ppm; onion, bulb, subgroup 3–07A at 0.02 ppm; brassica, head and stem, subgroup 5–A at 0.02 ppm; vegetable, cucurbit, group 9 at 0.02 ppm; barley, grain at 0.05 ppm; barley, hay at 0.15 ppm; barley, straw at 0.15 ppm; wheat, hay at 0.09 ppm; wheat, forage at 0.2 ppm; oat, grain at 0.05 ppm; oat, hay at 0.09 ppm; oat, straw at 0.09 ppm; oat, forage at 0.2 ppm; rye, grain at 0.05 ppm; rye, straw at 0.15 ppm; rye, forage at 0.2 ppm; triticale, grain at 0.05 ppm; triticale, hay at 0.09 ppm; triticale, straw at 0.09 ppm; triticale, forage at 0.2 ppm; alfalfa, forage at 0.02 ppm; alfalfa, hay at 0.02 ppm; alfalfa, seed at 0.02 ppm; and spinach at 0.02 ppm. The Pesticide Analytical Manual (PAM) Vol. II lists four spectrophotofluoro-metric methods (Methods I, A, B, and C) for determining residues of thiabendazole per se in or on plant commodities, and one spectrophotofluorometric method (Method D) for determining residues of thiabendazole and 5-hydroxy-thiabendazole in milk. Contact: Rose Mary Kearns, (703) 305–5611, email address: *kearns.rosemary@epa.gov.*

Amended Tolerance

1. *PP 2E8137.* (EPA–HQ–OPP–2013–0038). Interregional Research Project Number 4 (IR–4), 500 College Road East, Suite 201W, Princeton, NJ 08540, also proposes, upon the approval of the aforementioned tolerances under ''New Tolerance,'' to remove established tolerances in 40 CFR 180.613 for residues of the insecticide flonicamid and its metabolites and degradates determined by measuring flonicamid [*N*-(cyanomethyl)-4-(trifluoromethyl)- 3-pyridinecarboxamide] and its metabolites TFNA (4-trifluoromethyl-nicotinic acid), TFNA–AM (4-trifluoromethyl-nicotinamide), and TFNG [*N*-(4-trifluoro-methylnicotinoyl)glycine], calculated as the stoichiometric equivalent of flonicamid, in or on the following crop groups: Vegetable, fruiting, group 8; fruit, pome, group 11; fruit, stone, group 12; cucumber; and vegetable, cucurbit, group 9, except cucumber. Contact: Andrew Ertman, (703) 308–9367, email address: *ertman.andrew@epa.gov.*

2. *PP 3E8150.* (EPA–HQ–OPP–2013–0161). 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 180.579 for residues of the fungicide fenamidone, [4H-imidazol-4-one, 3,5-dihydro-5-methyl-2-(methylthio)-5-phenyl-3-(phenylamino)-, (S)-], by removing the established tolerances in or on garlic at 0.20 ppm; garlic, great headed at 0.20 ppm; leek at 1.5 ppm; onion, bulb at 0.20 ppm; onion, green at 1.5 ppm; onion, welsh at 1.5 ppm; shallot, bulb at 0.20 ppm; and shallot, fresh leaves at 1.5 ppm, as they will be superseded by the tolerances described above under ''New Tolerance'' for PP 3E8150. Contact: Laura Nollen, (703) 305–7390, email address: *nollen.laura@epa.gov.*

3. *PP 2F8129.* (EPA–HQ–OPP–2013–0008). BASF Corporation, 26 Davis Drive, P.O. Box 13528, Research Triangle Park, NC 27709–3528, requests to amend 40 CFR 180.649 by amending tolerances for residues of saflufenacil, including its metabolites and degradates, in or on the raw agricultural commodities rice, straw at 0.30 ppm. In addition, the current commodity definition, ''Grain, cereal, forage, fodder and straw group 16'' would be revised to ''Grain, cereal, forage, fodder and straw group 16 (except rice straw)''. Compliance with the tolerances levels is to be determined by measuring only the sum of saflufenacil, 2-chloro-5-[3,6-dihydro-3-methyl-2,6-dioxo-4-(trifluoromethyl)-1(2*H*)-pyrimidinyl]-4-fluoro-*N*-[[methyl(1-methylethyl) amino] sulfonyl]benzamide, and its metabolites *N*-[2-chloro-5-(2,6-dioxo-4-(trifluoromethyl)-3,6-dihydro-1(2*H*)-pyrimidinyl)-4-fluorobenzoyl]-*N'*-isopropyl sulfamide and *N*-[4-chloro-2-fluoro-5-({[(isopropylamino)sulfonyl]amino} carbonyl) phenyl]urea, calculated as the stoichiometric equivalent of saflufenacil, in or on the commodities. Adequate enforcement methodology (LC/MS/MS) methods D0603/02 (plants) and L0073/01 (livestock) is available to enforce the tolerance expression. Contact: Bethany Benbow, (703) 347–8072, email address: *benbow.bethany@epa.gov.*

4. *PP 3F8160.* (EPA–HQ–OPP–2013–0231). Syngenta Crop Protection, LLC, P.O. Box 18300, Greensboro, NC 27419–8300, requests to amend 40 CFR 180.571 by amending tolerances for residues of the herbicide mesotrione, by increasing the soybean tolerance from 0.01 ppm to 0.02 ppm. Syngenta Method RAM 366/01, ''Residue Analytical Method for the Determination of Residues of Mesotrione and 4-(Methylsulfonyl)-2-Nitrobenzoic Acid (MNBA) in Crop Samples'' with modifications was used for the analysis of soybeans. Contact: Michael Walsh, (703) 308–2972, email address: *walsh.michael@epa.gov.*

New Tolerance Exemption

1. *PP 2E8093.* (EPA–HQ–OPP–2013–0175). Winfield Solutions, LLC, PO Box 64589, St. Paul, MN 55164, requests to establish an exemption from the requirement of a tolerance for residues of sodium metabisulfite (CAS No. 7681–57–4) under 40 CFR 180.920, when used as a pesticide inert ingredient (preservative), at not more than 0.5% by weight, in pesticide formulations applied to growing crops only. The

petitioner believes no analytical method is needed because this information is not required for the establishment of a tolerance exemption. Contact: William Cutchin, (703) 305–7990, email address: *cutchin.william@epa.gov.*

2. *PP 2E8096.* (EPA–HQ–OPP–2013–0237). Becker Underwood, Inc., 801 Dayton Avenue, Ames, IA 50010, requests to establish an exemption from the requirement of a tolerance for residues of the ammonium persulfate (APS) (CAS No. 7727–54–0) in or on food crops under 40 CFR 180.910 for pre- and post- harvest applications at 0.05% when used as a pesticide inert ingredient in pesticide formulations. The petitioner believes no analytical method is needed because this information is not required for the establishment of a tolerance exemption. Contact: William Cutchin, (703) 305–7990, email address: *cutchin.william@epa.gov.*

3. *PP IN–10545.* (EPA–HQ–OPP–2013–0165). BASF Corporation, c/o Lewis & Harrison, LLC, 122 C Street NW., Suite 740, Washington DC 20001, requests to establish an exemption from the requirement of a tolerance for residues of Alkyl ($C_8 - C_{10}$) polyglucosides (CAS Reg. No. 68515–73–1) under 40 CFR 180.940(a) when used as a pesticide inert ingredient as a surfactant without limitation in antimicrobial pesticide formulations. The petitioner believes no analytical method is needed because it is not pertinent or required for this petition since an exemption from the tolerance is requested. Contact: Deirdre Sunderland, (703) 603–0851, email address: *sunderland.deirdre@epa.gov.*

Amended Tolerance Exemption

1. PP 2E8087. (EPA–HQ–OPP–2012–0863). Joint Inerts Task Force, Cluster Support Team 8 (JITF CST8), EPA Company Number 84942, c/o Huntsman Corp., 8600 Gosling Rd., The Woodlands, TX 77381, requests to amend exemptions from the requirement of a tolerance by adding Chemical Abstracts Service Registry Numbers (CASRNs) for pre-harvest use in or on all the raw agricultural commodities under 40 CFR 180.920 and when applied to animals under 40 CFR 180.930 for the following two chemistry descriptors that are used as surfactants: 1: dimethylaminopropylamine, isopropylamine, ethanolamine, and triethanolamine salts of alkyl ($C_8 - C_{24}$) benzene-sulfonic acid (without limits) for CASRNs: 12068–12–1; 121617–08–1; 193562–36–6; 26836–07–7; 3088–30–0; 58089–99–9; 61886–59–7; 61931–76–8; 67924–05–4; 68110–32–7; 68259–35–8; 68442–72–8; 68567–69–1; 68815–30–5; 68815–35–0; 68953–98–0; 70528–84–6; 72391–21–0; 84961–74–0; 85480–55–3; 85480–56–4; 85995–82–0; 90194–54–0; 90194–55–1; 90218–09–0; 90218–11–4; 96687–54–6; and 99924–49–9; and 2: diethanolamine salts of alkyl ($C_8 - C_{24}$) benzenesulfonic acid (not to exceed 7% of pesticide formulation) for CASRNs: 67815–95–6; 67889–94–5; 67889–95–6; 68259–34–7; 68478–47–7; 68567–68–0; 68815–34–9; 68815–37–2; 68891–02–1; 84989–15–1; 85338–09–6; 90194–39–1; 90194–40–4; and 90218–08–9. Prior to the submission of this petition to add missing CASRNs, Pesticide Petition 8E7472 (docket ID number EPA–HQ–OPP–2008–0889) was submitted to the Agency and these CASRNs were missing from the petition. JITF CST8 is relying on the information submitted in 8E7472 to support this petition which includes the exact same chemistry of alkylbenzene sulfonates. JITF CST8 does not expect the addition of these CASRNs to result in additional exposure or risk. The petitioner believes no analytical method is needed because this information is not required for the establishment of a tolerance exemption. Contact: Elizabeth Fertich, (703) 347–8560, email address: *fertich.elizabeth@epa.gov.*

2. PP 2E8092. (EPA–HQ–OPP–2012–0862). Joint Inerts Task Force, Cluster Support Team 2, (JITF CST2), EPA Company Number 84914, c/o Huntsman Corp., 8600 Gosling Rd., The Woodlands, TX 77381, requests to amend exemptions from the requirement of a tolerance by adding Chemical Abstracts Service Registry Numbers (CASRNs) for post-harvest use on agricultural crops under 40 CFR 180.910 and when applied to animals under 40 CFR 180.930 for the following two chemistry descriptors that are used as surfactants not to exceed 30% of pesticide formulation: Alkyl alcohol alkoxylate phosphate and sulfate derivatives (AAAPD and AAASD respectively), including: AAAPD surfactants: 40 CFR 180.910 and 180.930: α-Alkyl (minimum C_6 linear or branched, saturated and or unsaturated)-ω-hydroxypolyoxyethylene polymer with or without polyoxypropylene, mixture of di- and monohydrogen phosphate esters and the corresponding ammonium, calcium, magnesium, monoethanolamine, potassium, sodium, and zinc salts of the phosphate esters; minimum oxyethylene content averages 2 moles; minimum oxypropylene content is 0 moles; used as surfactants not to exceed 30% of pesticide formulation for CASRNs: 103170–31–6; 103170–32–7; 106233–09–4; 106233–10–7; 1072943–56–6; 110392–49–9; 111798–26–6; 111905–50–1; 116671–23–9; 117584–36–8; 1187742–89–7; 1187743–35–6; 119415–05–3; 121158–61–0; 121158–63–2; 125139–13–1; 125301–86–2; 125301–87–3; 126646–03–5; 129870–77–5; 129870–80–0; 130354–37–9; 136504–88–6; 143372–50–3; 143372–51–4; 154518–40–8; 155240–11–2; 160498–49–7; 160611–24–5; 171543–66–1; 210493–60–0; 246159–55–7; 251298–11–0; 261627–68–3; 26982–05–8; 31800–89–2; 39341–09–8; 39341–65–6; 39464–69–2; 422563–19–7; 50668–50–3; 51884–64–1; 57486–09–6; 59112–71–9; 62362–49–6; 63747–86–4; 63887–55–8; 66272–25–1; 67786–06–5; 67989–06–4; 68071–37–4; 68130–44–9; 68130–45–0; 68130–46–1; 68186–29–8; 68186–34–5; 68238–84–6; 68311–04–6; 68389–72–0; 68413–78–5; 68425–75–2; 68439–39–4; 68511–15–9; 68511–36–4; 68551–05–3; 68585–15–9; 68585–16–0; 68585–17–1; 68585–39–7; 68603–24–7; 68607–14–7; 68610–64–0; 68649–30–9; 68650–84–0; 68855–46–9; 68856–03–1; 68890–90–4; 68890–91–5; 68891–12–3; 68891–26–9; 68909–65–9; 68909–67–1; 68909–69–3; 68921–24–4; 68921–60–8; 68954–87–0; 68954–88–1; 68954–92–7; 68987–35–9; 69029–43–2; 69980–69–4; 70247–99–3; 70248–14–5; 70903–63–8; 71965–23–6; 71965–24–7; 72480–27–4; 72623–67–7; 72623–68–8; 72828–56–9; 72828–57–0; 73018–34–5; 73050–08–5; 73050–09–6; 73361–29–2; 73378–71–9; 73378–72–0; 73559–42–9; 73559–43–0; 73559–44–1; 73559–45–2; 74499–76–6; 76930–25–1; 78330–22–0; 9004–80–2; 91254–26–1; 93925–54–3; and 96416–89–6; and AAASD surfactants: 40 CFR 180.910 and 180.930: α-Alkyl (C_6-C_{15})-ω-hydroxypoly (oxyethylene) sulfate, and its ammonium, calcium, magnesium, potassium, sodium, and zinc salts, poly(oxyethylene content averages 2–4 moles; used as surfactants not to exceed 30% of pesticide formulations for CASRNs: 106597–03–9; 110392–50–2; 125301–88–4; 125301–89–5; 125301–92–0; 125736–54–1; 157707–85–2; 160104–51–8; 160901–27–9; 160901–28–0; 160901–29–1; 160901–30–4; 161025–28–1; 161074–79–9; 162063–19–6; 27140–00–7; 27731–61–9; 27731–62–0; 34431–25–9; 35015–74–8; 52286–18–7; 52286–19–8; 54116–08–4; 61702–79–2; 63428–86–4; 63428–87–5; 65086–57–9; 65086–79–5; 67674–66–2; 67845–82–3; 67845–83–4; 68037–05–8; 68037–06–9; 68171–41–5; 68610–66–2; 68649–53–6; 68890–88–0; 68891–29–2; 68891–30–5; 69011–37–6; 75422–21–8; 78330–16–2; 78330–17–3; 78330–25–3; 78330–26–4; 78330–27–5; 78330–28–6; 78330–29–7; 78330–30–0; 9021–91–4; and 96130–61–9. Prior to the submission of this petition to add missing CASRNs,

Pesticide Petition 9E7533 (docket ID number EPA–HQ–OPP–2009–0131) was submitted to the Agency and these CASRNs were missing from the petition. JITF CST2 is relying on the information submitted in 9E7533 to support this petition which includes the exact same chemistries. JITF CST2 does not expect the addition of these CASRNs to result in additional exposure or risk. The petitioner believes no analytical method is needed because this information is not required for the establishment of a tolerance exemption. Contact: Elizabeth Fertich, (703) 347–8560, email address: *fertich.elizabeth@epa.gov*.

List of Subjects in 40 CFR Part 180

Environmental protection, Agricultural commodities, Feed additives, Food additives, Pesticides and pests, Reporting and recordkeeping requirements.

Dated: May 22, 2013.

Lois Rossi,

Director, Registration Division, Office of Pesticide Programs.

[FR Doc. 2013–13334 Filed 6–4–13; 8:45 am]

BILLING CODE 6560–50–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

[Docket No. FWS–HQ–ES–2012–0077; 4500030115]

Endangered and Threatened Wildlife and Plants; 12-Month Findings on Petitions To Delist U.S. Captive Populations of the Scimitar-horned Oryx, Dama Gazelle, and Addax

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of 12-month petition findings.

SUMMARY: We, the U.S. Fish and Wildlife Service (''Service''), announce 12-month findings on two petitions to remove the U.S. captive-bred and U.S. captive ''populations'' of three antelope species, the scimitar-horned oryx (*Oryx dammah*), dama gazelle (*Gazella dama*), and addax (*Addax nasomaculatus*), from the List of Endangered and Threatened Wildlife as determined under the Endangered Species Act of 1973, as amended (Act). Based on our review, we find that delisting the U.S. captive animals or U.S. captive-bred members of these species is not warranted.

DATES: The findings announced in this document were made on June 5, 2013.

ADDRESSES: These findings are available on the Internet at *http://www.regulations.gov* at Docket Number FWS–HQ–ES–2012–0077. Supporting documentation we used in preparing these findings is available for public inspection, by appointment, during normal business hours at the U.S. Fish and Wildlife Service, 4401 North Fairfax Drive, Room 420, Arlington, VA 22203. Please submit any new information, materials, comments, or questions concerning these findings to the above street address.

FOR FURTHER INFORMATION CONTACT: Janine Van Norman, Chief, Branch of Foreign Species, Endangered Species Program, U.S. Fish and Wildlife Service, 4401 North Fairfax Drive, Room 420, Arlington, VA 22203; telephone 703–358–2171. If you use a telecommunications device for the deaf (TDD), call the Federal Information Relay Service (FIRS) at 800–877–8339.

SUPPLEMENTARY INFORMATION:

Background

Section 4(b)(3)(B) of the Act (16 U.S.C. 1531 *et seq.*) requires that, for any petition to revise the Federal Lists of Endangered and Threatened Wildlife and Plants that contains substantial scientific or commercial information that delisting the species may be warranted, we make a finding within 12 months of the date of receipt of the petition. In this finding, we will determine that the petitioned action is: (1) Not warranted, (2) warranted, or (3) warranted, but the immediate proposal of a regulation implementing the petitioned action is precluded by other pending proposals to determine whether species are endangered or threatened, and expeditious progress is being made to add or remove qualified species from the Federal Lists of Endangered and Threatened Wildlife and Plants. We must publish these 12-month findings in the **Federal Register**.

Previous Federal Action(s)

Two subspecies of the dama gazelle, the Mhorr gazelle (*Gazella dama mhorr*) and Rio de Oro dama gazelle (*G. d. lozanoi*) were listed as endangered in their entirety, i.e., wherever found, on June 2, 1970 (35 FR 8491). On November 5, 1991, we published in the **Federal Register** (56 FR 56491) a proposed rule to list the scimitar-horned oryx, addax, and dama gazelle as endangered in their entirety. We reopened the comment period on the November 5, 1991, proposed rule to request information and comments from the public on July 24, 2003 (68 FR 43706), and again on November 26, 2003 (68 FR 66395).

On February 1, 2005 (70 FR 5117), we announced a proposed rule and notice of availability of a draft environmental assessment to add new regulations under the Act to govern certain activities with U.S. captive-bred scimitar-horned oryx, addax, and dama gazelle, should they become listed as endangered. The proposed rule covered U.S. captive-bred live animals, including embryos and gametes, and sport-hunted trophies, and would authorize, under certain conditions, certain otherwise prohibited activities that enhance the propagation or survival of the species. The ''otherwise prohibited activities'' were take; export or reimport; delivery, receipt, carrying, transport, or shipment in interstate or foreign commerce, in the course of a commercial activity; or sale or offering for sale in interstate or foreign commerce. In the proposed rule, we found that the scimitar-horned oryx, addax, and dama gazelle are dependent on captive breeding and activities associated with captive breeding for their conservation, and that activities associated with captive breeding within the United States enhance the propagation or survival of these species. We accepted comments on this proposed rule until April 4, 2005.

On September 2, 2005, we published a final rule listing the scimitar-horned oryx, addax, and dama gazelle as endangered in their entirety (70 FR 52319). On September 2, 2005, we also added a new regulation (70 FR 52310) at 50 CFR 17.21(h) to govern certain activities with U.S. captive-bred animals of these three species, as described above. The promulgation of the regulation at 50 CFR 17.21(h) was challenged as violating section 10 of the Act and the National Environmental Policy Act (42 U.S.C. 4321 *et seq.*), first in both the U.S. District Court for the Northern District of California and the U.S. District Court for the District of Columbia, but then transferred and consolidated in the U.S. District Court for the District of Columbia (see *Friends of Animals, et al.,* v. *Ken Salazar, Secretary of the Interior* and *Rebecca Ann Cary, et al.,* v. *Rowan Gould, Acting Director, Fish and Wildlife Service, et al., 626 F. Supp. 2d 102* (D.DC 2009)). The Court found that the rule for the three antelope species violated section 10(c) of the Act by not providing the public an opportunity to comment on activities being carried out with these three antelope species. On June 22, 2009, the Court remanded the rule to the Service for action consistent with its opinion. To comply with the Court's

order, we published a proposed rule on July 7, 2011 (76 FR 39804), to remove the regulation at 50 CFR 17.21(h), thus eliminating the exclusion for U.S. captive-bred scimitar-horned oryx, addax, and dama gazelle from certain prohibitions under the Act. Under the proposed rule, any person who intended to conduct an otherwise prohibited activity with U.S. captive-bred scimitar-horned oryx, addax, or dama gazelle would need to qualify for an exemption or obtain authorization for such activity under the Act and applicable regulations. On January 5, 2012, we published a final rule (77 FR 431) removing the regulation at 50 CFR 17.21(h).

On June 29, 2010, we received two petitions, one dated June 29, 2010, from Nanci Marzulla, submitted on behalf of the Exotic Wildlife Association (EWA), and one dated June 28, 2010, from Anna M. Seidmann submitted on behalf of Safari Club International and Safari Club International Foundation (SCI). The SCI petitioner requested that the ''U.S. captive populations'' of three antelope species, the scimitar-horned oryx (*Oryx dammah*), dama gazelle (*Gazella dama*), and addax (*Addax nasomaculatus*), be removed from the Federal List of Endangered and Threatened Wildlife (List) under the Act. The SCI petitioner also requested that we ''correct the Endangered Species Act listing of scimitar-horned oryx, dama gazelle, and addax to specify that only the populations in the portion of their range outside of the United States are classified as endangered.'' The EWA petitioner requested that the ''U.S. captive-bred populations'' of these same three species be removed from the List. Both petitions indicated that removal or delisting of the U.S. captive or U.S. captive-bred individuals of these species was warranted pursuant to 50 CFR 424.11(d)(3) because the Service's interpretation of the original data that these species are endangered in their entirety was in error. EWA's petition contained an additional ground for recommending delisting of the ''U.S. captive-bred populations'' of these species on the basis that these ''populations'' have recovered pursuant to 50 CFR 424.11(d)(2). Both petitions clearly identified themselves as such and included the requisite identification information for the petitioners, as required by 50 CFR 424.14(a). On September 19, 2012, we published 90-day findings (77 FR 58084) on these petitions indicating that the petitions presented substantial information indicating that delisting the petitioned entities may be warranted.

Species Information

The scimitar-horned oryx, dama gazelle, and addax are each native to several countries in northern Africa. Although previously widespread in the region, populations have been greatly reduced primarily as a result of habitat loss, uncontrolled killing, and inadequacy of regulatory mechanisms (70 FR 52319). Estimated numbers of individuals in the wild are extremely low. The oryx is believed to be extirpated in the wild, the addax numbers fewer than 300, and the dama gazelle numbers fewer than 500. All three species are listed in Appendix I of the Convention on International Trade in Endangered Species of Wild Fauna and Flora (CITES). The International Union for Conservation of Nature (IUCN) Red List categorizes the oryx as ''extinct in the wild,'' and the dama gazelle and addax as ''critically endangered'' (IUCN Species Survival Commission (SSC) Antelope Specialist Group 2008 in IUCN Redlist 2012a ; Newby and Wacher 2008 in IUCN Redlist 2012b; Newby *et al.* 2008 in IUCN Redlist 2012c). All three species are listed under the Act as endangered in their entirety (see 50 CFR 17.11(h)).

The Sahara Sahel Interest Group (SSIG) estimates that there are approximately 4,000 to 5,000 scimitar-horned oryx, 1,500 addax, and 750 dama gazelle in captivity worldwide (70 FR 52319). These include at least 1,550 scimitar-horned oryx and 600 addax held in managed breeding programs in several countries around the world. We are unaware of information indicating numbers of dama gazelle currently held in managed breeding programs. In addition to individuals of these species held in managed breeding programs, captive individuals are held in private collections and on private game farms and ranches in the United States and the Middle East (IUCN SSC Antelope Specialist Group 2008 in IUCN Redlist 2012a; Newby and Wacher 2008 in IUCN Redlist 2012b; Newby *et al.* 2008 in IUCN Redlist 2012c; 70 FR 52310).

As part of planned reintroduction projects, captive-bred individuals of the three antelope species have been released into fenced, protected areas in Tunisia, Morocco, and Senegal. These animals may be released into the wild when adequately protected habitat is available. However, continued habitat loss and wanton killing have made reintroduction nonviable in most cases (70 FR 52319).

For more information on the scimitar-horned oryx, dama gazelle, and addax, see our final listing rule for these species (70 FR 52319; September 2, 2005).

Evaluation of Listable Entities

Under section 3(16) of the Act, we may consider for listing any species, which includes subspecies of fish, wildlife and plants, or any distinct population segment (DPS) of vertebrate fish or wildlife that interbreeds when mature (16 U.S.C. 1532(16)). Such entities are considered eligible for separate listing status under the Act (and, therefore referred to as listable entities) should we determine that they meet the definition of an endangered species or threatened species.

As previously mentioned, SCI requests delisting of the ''U.S. captive populations'' of the three antelope species based on the assertion that the Service committed ''errors'' in the interpretation of the best scientific and commercial data available at the time of the 2005 determination to list the scimitar-horned oryx, dama gazelle, and addax as endangered in their entirety. SCI also requests that we ''correct the Endangered Species Act listing of scimitar-horned oryx, dama gazelle, and addax to specify that only the populations in the portion of their range outside of the United States are classified as endangered.'' EWA requests delisting of the ''U.S. captive-bred populations'' of the three antelope species on the basis that the Service's interpretation of the original data for the listings was also in error, and in addition asserts that captive-bred animals of the three species that are held in the United States are recovered.

Essentially, both petitioners request separate designation, or legal status, under the Act for captive animals held within the United States from that of members of the same taxonomic species located in the wild or held in captivity elsewhere around the world. These petitions raised questions regarding whether the Service has any discretion to differentiate the listing status of specimens in captivity from those in the wild.

The Service has not had an absolute policy or practice with respect to this issue, but generally has included wild and captive animals together when it has listed species. In the 2005 listing determination for the scimitar-horned oryx (*Oryx dammah*), dama gazelle (*Gazella dama*), and addax (*Addax nasomaculatus*) (70 FR 52319), the Service found that a differentiation in the listing status of captive specimens of these antelopes in the United States was not appropriate. On March 12, 1990, we published in the **Federal Register** (55 FR 9129) a final rule reclassifying the

wild populations of chimpanzees as endangered, while captive chimpanzees remained classified as threatened, and captive chimpanzees within the United States continued to be covered by a special rule allowing activities otherwise prohibited. SCI and EWA, in their petitions to delist U.S. captive and U.S. captive-bred ''populations'' of scimitar-horned oryx, dama gazelle, and addax, asserted that the treatment by the Service of chimpanzees in 1990 warrants similar treatment now for these antelope species. In addition, in comments dated May 7, 2013, SCI points to the Service's 90-day finding on a petition to list plains bison as threatened. Because the Service had not formally stated whether the current statute, regulations, and policies applicable provide any discretion to differentiate the listing status of specimens in captivity from those in the wild, we reviewed the issues raised by these petitions and in the comments to ensure the Act is implemented appropriately.

As discussed below, we find that the Act does not allow for captive-held animals to be assigned separate legal status from their wild counterparts on the basis of their captive state, including through designation as a separate DPS [1]. It is also not possible to separate out captive-held specimens for different legal status under the Act by other approaches (see *Other Potential Approaches for Separate Legal Status*).[2]

Provisions of the Act

The legal mandate of section 4(a)(1) is to determine ''whether any *species* is an endangered species or threatened species. . . .'' (emphasis added). In the Act, a ''species'' is defined to include any subspecies and any DPS of a vertebrate animal, as well as taxonomic species. Other than a taxonomic species or subspecies, captive-held specimens (of a vertebrate animal species) would have to qualify as a ''distinct population segment . . . which interbreeds when mature'' to qualify as a separate DPS.[3] Nothing in the plain language of the definitions of ''endangered species,'' ''threatened species,'' or ''species'' expressly indicates that captive-held animals can or cannot have separate status under the Act on the basis of their state of captivity. However, certain language in the Act is inconsistent with a determination of separate legal status for captive-held animals.

Under section 4(c)(1), the agency is to specify for each species listed ''over what portion of its range'' it is endangered or threatened.[4] ''Range,'' while not defined in the Act, consistently has been interpreted as that general geographic area where the species is found in the wild. Thus, a group of animals held solely in captivity and analyzed as a separate listable entity has no ''range,'' separate from that of the species to which it belongs, at least as that term has been applied under the Act. The Service has consistently interpreted ''range'' in the Act as a geographic area where the species is found in the wild.

As demonstrated in various species' listings at 50 CFR 17.11 and 17.12, information in the ''Historic Range'' column is the range of the species in the wild. For none of these species does the ''range'' information include countries or geographic areas on the basis of where specimens are held in captivity, even though the Service knows that specimens of many of these species have long been held in facilities outside their native range, including in the United States.

Also, in analyzing the ''present or threatened destruction, modification, or curtailment of [a species'] habitat or *range''* (emphasis added) (see section 4(a)(1)(A) of the Act), the Service has traditionally analyzed habitat threats in the native range of wild specimens and not included other geographic areas where specimens have been moved to and are being held in captivity. We are not aware of any Service listing decision where analysis of threats to the ''range'' has included geographic areas outside the native range where specimens are held in captivity.

In analyzing other threats to a species (see sections 4(a)(1)(B), 4(a)(1)(C), 4(a)(1)(D), and 4(a)(1)(E) of the Act), the Service has also limited its analysis to threats acting upon wild specimens within the native range of the species, and has not included analysis of ''threats'' to animals held in captivity except as those threats impact the potential for the captive population to contribute to recovery of the species in the geographic area where wild specimens are native.

Finally, the Service's 2011 draft policy on the meaning of the phrase ''significant portion of its range'' (SPR) (76 FR 76987; December 9, 2011) defines ''range'' as the ''general geographic area within which that species can be found at the time the Fish and Wildlife Service or National Marine Fisheries Service makes any particular status determination. This range includes those areas used throughout all or part of the species' life cycle, even if they are not used regularly (e.g., seasonal habitats). Lost historical range is relevant to the analysis of the status of the species, but it cannot constitute a signficant portion of a species' range. The ''general geographic area within which the species can be found'' is broad enough to include geographic areas where animals have been moved by humans and are being held in captivity beyond the geographic area in which specimens are found in the wild. However, the Service has not applied the definition in this manner in the past and does not intend to do so in the future. SPR analyses have been and will be limited to geographic areas where specimens are found in the wild.

In addition to the use of ''range'' in sections 4(a)(1) and 4(c)(1), the definitions of ''endangered species'' and ''threatened species,'' found in section 3 of the Act, also discuss the role of the species range in listing determinations. The Act defines an endangered species as ''any species which is in danger of extinction throughout all or a significant portion of its range,'' and a threatened species as ''any species which is likely to become an endangered species… throughout all or a significant portion of its range.'' As noted above, ''range'' has consistently been interpreted by the Service as being the natural range of the species in the wild.[5] For all the reasons

[1] As compared to populations that exist in the wild, ''captivity'' is defined as ''living wildlife… held in a controlled environment that is intensively manipulated by man for the purpose of producing wildlife of the selected species, and that has boundaries designed to prevent animal [sic], eggs or gametes of the selected species from entering or leaving the controlled environment. General characteristics of captivity may include but are not limited to artificial housing, waste removal, health care, protection from predators, and artificially supplied food'' (50 CFR 17.3).

[2] The analysis in this document addresses only situations where it is not disputed that the specimens are members of a wildlife species. This analysis does not address situations where members of a species have been held in captivity for a sufficiently long period that they have developed into a separate domesticated form of the species, including where the domesticated form is sufficiently distinct to be considered a separate taxonomic species or subspecies (e.g., domesticated donkey vs. the African wild ass).

[3] The Service has already found that the U.S. captive groups of these three species may not meet the definition of ''population'' (70 FR 52310).

[4] Even though the Service has taken the position in its draft SPR policy (76 FR 76987) that the range information called for under section 4(c)(1) is for information purposes, this statutory language still informs the question of Congress' intent under the statute.

[5] *See also* Endangered Species Act: Hearings on H.R. 37, H.R. 470, H.R. 471, H.R. 1461, H.R. 1511, H.R. 2669, H.R. 2735, H.R. 3310, H.R. 3696, H.R. 3795, H.R. 4755, H.R. 2169 and H.R. 4758 Before the House Subcomm. on Fisheries and Wildlife Conservation and the Environment, House Comm. on Merchant Marine and Fisheries, 93d Cong. 198 (1973) (hereinafter 1973 Hearing on H.R. 37 and others) (Letter from S. Dillon Ripley, Secretary of

discussed above, a group of animals held in captivity could not have separate legal status under the Act because they have no ''range'' that is separate from the range of the species in the wild to which they belong as that term is used in the Act.

Certain provisions in sections 9 and 10 of the Act show that what Congress intended was that captive-held animals would generally have the same legal status as their wild counterparts by providing certain exceptions for animals held in captivity. Section 9(b)(1) of the Act provides an exemption from certain section 9(a)(1) prohibitions for listed animals held in captivity or in a controlled environment as of the date of the species listing (or enactment of the Act), provided the holding in captivity and any subsequent use is not in the course of a commercial activity. Section 9(b)(2) of the Act provides an exemption from all section 9(a)(1) prohibitions for raptors held in captivity or in a controlled environment as of 1978 and their progeny. Section 10(a)(1)(A) of the Act allows permits to ''enhance the *propagation* or survival'' of the species (emphasis added). This demonstrates that Congress recognized the value of captive-holding and propagation of listed specimens held in captivity, but intended that such specimens would be protected under the Act, with these activities generally regulated by permit.[6] If captive-held specimens could simply be excluded through the listing process, none of these exceptions and permits would have been needed.

Purpose of the Act

Meaning of Section 2(b) of the Act

The full purposes of the Act, stated in section 2(b), are ''to provide a means whereby the ecosystems upon which endangered species and threatened species depend may be conserved [hereafter referred to as the first purpose], to provide a program for the conservation of such endangered species and threatened species [hereafter referred to as the second purpose], and to take such steps as may be appropriate to achieve the purposes of the treaties and conventions set forth in subsection (a) of this section [hereafter referred to as the third purpose]''. It has been stated, without explanation, that the language of section 2(b) of the Act supports protecting only specimens that occur in the wild. However, the purposes listed in section 2(b) indicate that the three provisions are intended to have independent meaning, with little to indicate that Congress' intent was to protect only specimens of endangered or threatened species found in the wild. The treaties and conventions under the third purpose are expressly those listed in section 2(a)(4) of the Act, all of which are for the protection of wildlife and plants, and none of which are limited to protection of endangered or threatened specimens in the wild.[7] The first purpose calls for conservation of ecosystems, independent of conservation of species themselves (which is separately listed as the second purpose). This does focus on protection of native habitats (those inhabited by the species in the wild in its native range), as it is generally the ecosystems or habitats within which a species has evolved that are those upon which it ''depends.'' However, the phrase ''upon which endangered species and threatened species depend'' indicates only that ecosystem (i.e., habitat) protection should be focused on that used by endangered and threatened species, and does not indicate that the sole focus of the Act is conservation of species within their native ecosystems. Several provisions in the Act provide authority to protect habitat, independent of authorities applicable to protection and regulation of specimens of listed species themselves. See, for example, section 5 (Land Acquisition), section 6 (Cooperation With the States), section 7 (Interagency Cooperation), and section 8 (International Cooperation).

It is the second purpose under section 2(b) of the Act that speaks to the conservation of species themselves that are endangered or threatened. However, nothing in the language of the second purpose indicates that conservation programs should be limited to specimens located in the wild. The plain language of section 2(b) refers to ''species,'' with no distinction between wild specimens of the species as compared to captive-held specimens of the species. Thus, nothing in the plain language indicates that captive-held specimens should be excluded from the Act's processes and protections that would contribute to recovery (i.e., ''conservation'') of the entire taxonomic species. It is true that the phrasing of the second purpose (''to provide a program for the conservation of *such* endangered species and threatened species'' (emphasis added)) links the second purpose of species recovery to the first purpose of ecosystem (i.e., native habitat) protection, thus making the goal of the statute recovery of endangered and threatened species in their natural ecosystems. But there is nothing in the phrasing to indicate that the specific provisions of the statute for meeting this goal should be limited to specimens of the species located within the ecosystems upon which they depend.

Separate Legal Status Is Inconsistent With Section 2(b)

The potential consequences of captive-held specimens being given separate legal status under the Act on the basis of their captive state, particularly where captive-held specimens would have no legal protection while wild specimens are listed as endangered or threatened,[8] indicate that such separate legal status is not consistent with the section 2(b) purpose of conserving endangered and threatened species. Congress specifically recognized ''overutilization for commercial, recreational, scientific, or educational purposes'' as a potential threat that contributes to the risk of extinction for many species. If captive-held specimens could have separate legal status under the Act, the threat of overutilization would likely increase. For example, the taxonomic species would potentially be subject to increased take and trade in ''laundered'' wild-caught specimens to feed U.S. or foreign market demand because protected wild specimens would be generally indistinguishable from unprotected captive-held specimens. Because there would be no restriction or regulation on the taking, sale, import,

Smithsonian Institute, to Chairman, House Comm. on Merchant Marine and Fisheries, April 23, 1973 (lauding H.R. 4758, the Administration's legislative proposal that contained a definition of ''endangered species'' substantially similar to the statutory definition eventually adopted by Congress in the 1973 Act: ''In effect the bill offers a great deal of flexibility by providing that a species may be placed on the list if the Secretary determines that it is presently threatened with extinction, not only in all of its *natural* range, but in a significant part thereof, as well.'') (emphasis added)).

[6] *See* Endangered Species Conservation Act of 1972: Hearing on S. 249, S. 3199 and S. 3818 Before the Senate Subcomm. on the Environment, Senate Comm. on Commerce, 92nd Cong. 211–12 (1972) (statement of Deborah Appel, Assistant to the Director for Public Information, National Audubon Society) (endorsing S. 3199, a bill considered by the Senate that contained similar language eventually adopted by Congress in the purpose section of the 1973 Act, but advising against a specific mandate requiring captive propagation because''the capture of specimens for experiment in captive propagation may in itself endanger the chances of some rare species for survival in the wild.'').

[7] Nor are these treaties and conventions limited to protection of species listed as endangered or threatened under the Act.

[8] If it were determined that captive-held animals can have separate legal status on the basis of their captive state, proponents of separate legal status could argue that these captive specimens do not qualify as endangered or threatened species because they do not face ''threats'' that create a substantial risk of extinction to the captive specimens such as those faced by the wild population (see *Section 4: Listing Captive-held Specimens*).

export, or transport in the course of commercial activities in interstate or foreign commerce of captive specimens by persons subject to U.S. jurisdiction, there would be a potential legal U.S. market in captive-held endangered or threatened specimens and their progeny operating parallel to any illegal U.S. market (or U.S. citizen participation in illegal foreign markets) in wild specimens. With the difficulty of distinguishing captive-held from wild specimens, especially when they are broken down into their parts and products, illegal wild specimens of commercial value could likely easily be passed off as legal captive specimens and thus be traded as legal specimens.

If captive-held specimens could have separate legal status under the Act, the taxonomic species would also potentially be subject to increased take of animals from the wild and illegal transfer of wild specimens into captivity. The United States is one of the world's largest markets for wildlife and wildlife products.[9] Poachers and smugglers would have increased incentive to remove animals from the wild and smuggle them into captive-holding facilities in the United States for captive propagation or subsequent commercial use of either live or dead specimens, because once in captivity there would be no Act restrictions on use of the captive-held specimens or their offspring. This would be a particular issue for foreign species where States regulate native wildlife (and therefore captive-held domestic endangered or threatened specimens would continue to be regulated under State law), but often do not regulate use of nonnative wildlife. This could be a particularly lucrative trade for poachers and smugglers because many endangered and threatened species (particularly foreign species) are at risk of extinction because of their high commercial value in trade (as trophies or pets, or for their furs, horns, ivory, shells, or medicinal or decorative use).

Congress included the similarity-of-appearance provision in section 4(e) to allow the Service to regulate species under the Act where one species so closely resembles an endangered or threatened species that enforcement cannot distinguish between the protected and unprotected species and this difficulty is a threat to the species. The Service's only option in the cases of ''take'' described above would be to complete separate similarity-of-appearance listings for captive-held animals. A similarity-of-appearance listing under the Act for captive-held specimens would make captive specimens subject to the same restrictions as listed wild specimens.

Operation of Key Provisions of the Act

As described in the following subsections, operation of key provisions in section 4 and section 7 of the Act also indicate that it would not be consistent with Congressional intent or the purpose of the Act to treat groups of captive-held specimens as separate listable entities on the basis of their captive state.

Section 4: Listing Captive-Held Specimens

The section 4 listing process is not well suited to analyzing threats to an entirely captive-held group of specimens that are maintained under controlled, artificial conditions.

If wild populations and captive-held specimens could qualify as separate listable entities, and it was determined that captive-held specimens do not qualify as endangered or threatened, captive-held specimens would receive no assistance or protection under the Act even in cases where wild populations continue to decline, even to the point of the species being extirpated in the wild, with the specimens in captivity being the only remaining members of the species and survival of the species being dependent on the survival of the captive-held specimens. This would not be consistent with the purposes of the Act.

Groupings of captive-held specimens might not meet the definition of endangered or threatened under the statutory factors because the scope of the section 4 analysis for a captive-specimens listing would be the conditions under which the captive-held specimens exist, not the conditions of the members of the species in the wild, as the captive-held members of the species and wild members of the species would be under separate consideration for listing under the Act and therefore under separate 5-factor analyses. Groupings of solely captive-held specimens might not meet the definition of endangered (in danger of extinction throughout all or a significant portion of their range) or threatened (likely to become endangered within the foreseeable future) when the conditions for individual specimens' survival are carefully controlled under human management, especially for species that readily breed in captivity, where breeding has resulted in large numbers of genetically diverse specimens, or where there are no known uncontrollable threats such as disease.

The majority of the the section 4(a)(1) factors would be difficult to apply to captive-held specimens with a range independent of wild specimens because they are not readily suited to evaluating specimens held in captivity or might contribute to a determination that the entity under consideration (separate groupings of captive -held specimens) does not qualify as endangered or threatened. There may be situations where only disease threats (factor C) and other natural or manmade factors (factor E) would be applicable to consideration of purely captive-held groups of specimens. The present or threatened destruction, modification, or curtailment of habitat or range (factor A) may not be a threat for a listable entity consisting solely of captive-held specimens, because the physical environment under which captive specimens are held is generally readily controllable and, in many cases, optimized to ensure the physical health of the animal. Overutilization (factor B) is unlikely to be a factor threatening the continued existence of groups of captive-held specimens where both breeding and culling are managed to ensure the continuation of stock at a desired level based on ownership interest and market demand. Predation (factor C) may rarely be a factor for captive-held specimens because predators may be more readily controlled. Human management may provide for all essential life functions, thereby eliminating selection or competition for mates, food, water resources, and shelter.

It is unclear how the ''inadequacy of existing regulatory mechanisms'' (factor D) would apply to captive-held specimens with a range independent of wild specimens because this factor generally applies in relationship to threats identified under the other factors. Regulatory mechanisms applicable to wild specimens usually include measures to protect natural habitat and laws that regulate activities such as take, sale, and import and export. However, there might be no regulatory mechanisms applicable when the group of specimens under consideration is in captivity (except perhaps general humane treatment or animal health laws).

Section 4: Delisting Captive-Held Specimens

If wild populations and groups of captive-held specimens could qualify as separate listable entities, and because groupings of captive-held specimens may not meet the definitions of endangered or threatened under the statutory factors (as discussed above),

[9] See USFWS Office of Law Enforcement Annual Report for FY 2009 p. 7.

captive-held specimens currently listed as endangered or threatened (because they were originally listed along with wild specimens as a single listed entity) could be petitioned for, and might qualify for, delisting. These specimens would therefore lose any legal protections of the Act, even as wild populations continue to decline, including to the point of extirpation in the wild. This likewise would not be consistent with the purpose of the Act.

Section 4: Listing Effects on Wild Populations

If wild specimen populations and groups of captive-held specimens could qualify as separate listable entities, and because the analysis for determining legal status of wild populations would be separate from the analysis for determining legal status of captive specimens, the wild population would likely qualify for delisting in the event that all specimens are lost from the wild (in other words, if they became extinct in the wild), thereby removing both incentives and protections for conservation of the species in the wild and the conservation of its ecosystem.

Under the Service's standard section 4 process, both captive-held and wild specimens of the species are members of the listed entity and have legal status as endangered or threatened. In situations where all specimens in the wild are gone, either because they are extirpated due to threats or because, as a last conservation resort, the remaining wild specimens are captured and moved into captivity, the species remains listed until specimens from captivity can be reintroduced to the wild and wild populations are recovered. However, if captive specimens and wild populations could have separate legal status, once all members of the wild population were gone from the wild, the wild population could be petitioned for and would likely qualify for delisting under 50 CFR 424.11(d)(1) as a ''species'' that is now extinct. As shown above, the separate captive-held members of the taxonomic species might not qualify for legal status as endangered or threatened, due to the lack of ''threats'' that create a risk of extinction to the viability of a sustainable, well-managed pool of captive animals. With no listed entities and therefore no authority to use funding or other provisions of the Act for the species, the Service would lose valuable tools for recovery of the species to the wild. This would clearly not be consistent with the purpose of the Act.

Section 7: Consultation

All Federal agencies have a legal obligation to ensure that their actions are not likely to jeopardize the continued existence of endangered and threatened species. This means that for separately listed captive-held endangered or threatened specimens, any Federal agency that is taking an action within the United States or on the high seas that may affect the captive-held listed species arguably would have a legal duty to consult with the Service. However, the section 7 consultation process is not well suited to analysis of adverse impacts posed to a purely captive-held group of specimens given that such specimens are maintained under controlled, artificial conditions.

Section 4: Designation of Critical Habitat

For any listed entity located within the United States or on the high seas, we have a section 4 duty to designate critical habitat unless such habitat is not prudent.[10] Although it is appropriate not to designate critical habitat for foreign species or to limit a critical habitat designation to natural habitats for U.S. species when a listing is focused on the species in the wild (even when some members of the species may be held in captivity within the United States), it is not clear how the Service would support not designating critical habitat when the listed entity would consist entirely of captive-held specimens (when the focus of captivity is within the United States). As with the consultation process, the critical habitat designation duty is not well suited for listings that consist entirely of captive-held specimens, especially given the anomaly of identifying the physical and biological features that would be essential to the conservation of a species consisting entirely of captive animals in an artificial environment. These complexities related to section 7 consultations and designation of critical habitat indicate that Congress did not intend the Service to treat groups of captive-held specimens as separate listable entities on the basis of their captive state.

Legislative History

Legislative history surrounding the 1978 amendment of the definition of ''species'' in the Act indicates that Congress intended designation of DPSes to be used for designation of wild populations, not separation of captive-held specimens from wild members of the same taxonomic species. The original (1973) definition of species was ''any subspecies . . . and any other group of fish or wildlife of the same species or smaller taxa in common spatial arrangement that interbreed when mature'' (Pub. L. 93–205). In 1978, Congress amended the Act to the Act's current definition of species, substituting ''distinct population segment'' for ''any other group'' and ''common spatial distribution'' following testimony on the inadequacy of the original definition, such as the exclusion of one category of populations commonly recognized by biologists: disjunct allopatric populations that are separated by *geographic barriers* from other populations of the same species and are consequently reproductively isolated from them physically (See Endangered Species Act Oversight: Hearing Before Senate Subcommittee on Resource Protection, Senate Committee on Environment and Public Works, 95th Cong. 50 (July 7, 1977) (hereinafter 1977 Oversight Hearing) (letter from Tom Cade, Program Director, The Peregrine Fund, to Director of the Service)). Although there was discussion regarding population stocks and reproductive isolation generally, particularly in association with development of the 1973 definition,[11] discussions that provide additional context on the scope of the definition of ''species'' show that Congress thought of the population-based listing authority as appropriate for populations that are distinct for natural and evolutionary reasons. For example, one witness discussed ''species'' as associated with the concept of geographic reproductive isolation and including characteristics of a population's ability or inability to freely exchange genes in nature (See 1977 Oversight Hearing at 50 (Cade letter)). There is no evidence that Congress intended for the agency to use the authority to separately list groups of animals that have been artificially separated from other members of the species through human removal from the wild and maintenance in a controlled environment. Examples in testimony for which population-based listing authority would be appropriately used were all for wild populations (See 1973 Hearing on H.R. 37 and others at 307 (statement of Stephen Seater, Defenders of Wildlife); Endangered Species Act of 1973: Hearings on S. 1592 and S. 1983 Before the Senate Subcomm. on Environment, Senate Comm. on Commerce, 93d Cong. 98

[10] Making a not determinable finding is also an option under section 4(b)(6)of the statute, but only delays the requirement to designate such critical habitat.

[11] *See* 1973 Hearing on H.R. 37 and others p. 286 (statement of John Grandy, National Parks and Conservation Assoc.) p. 307 (statement of Stephen Seater, Defenders of Wildlife), and pp. 299–300 (statement of Tom Garrett, Friends of the Earth).

(1973) (statement of John Grandy, National Parks and Conservation Assoc.); Endangered Species Authorization: Hearings on H.R. 10883 Before the House Subcomm. on Fisheries and Wildlife Conservation and the Environment, House Comm. on Merchant Marine and Fisheries, 95th Cong. 560 (1978) (statement of Michael Bean, Environmental Defense Fund)). No examples were given suggesting designation of captive-held specimens as appropriate DPSes.

Other Potential Approaches for Separate Legal Status

In addition to separate designation as ''species,'' there are two other approaches under which it could be argued that captive-held specimens could be given separate legal status from their wild counterparts: (1) Simply excluding captive-held members of the taxonomic species, subspecies, or DPS listable entity from the Act's protections, or (2) designating only wild members of the taxonomic species as a DPS, with captive-held specimens not included in the DPS. However, neither approach would be consistent with Congress' intent for the Act.

One court has already determined that captive-held specimens of a listable entity cannot simply be excluded when they are members of the listable entity, and the Service agrees with the court's reasoning in this case. The Service cannot exclude captive-held animals from a listing once these animals are determined to be part of the species. This case—*Alsea Valley Alliance* v. *Evans*—involved the listing of coho salmon by the National Marine Fisheries Service (NMFS). NMFS's 1993 Hatchery Policy (58 FR 17573; April 5, 1993) stated that hatchery populations could be included in the listing of wild members of the same evolutionary significant unit (equivalent to a DPS), but only if the hatchery fish were ''essential to recovery.'' In 1998, NMFS listed only ''naturally spawned'' specimens when it listed an evolutionary significant unit (ESU) of coho salmon (63 FR 42587; August 10, 1998). This decision was challenged in court, and the Court found NMFS's listing decision invalid because it excluded hatchery populations (which are fish held in captivity) even though they were part of the same DPS (or ESU) *Alsea Valley Alliance* v. *Evans,* 161 F. Supp. 2d 1154 (D. Or. 2001). The Court held that ''Congress expressly limited the Secretary's ability to make listing distinctions below that of subspecies or a DPS of a species,'' which was the practical result of excluding all hatchery specimens. NMFS subsequently changed its Hatchery Policy in 2005, stating that all hatchery fish that qualify as members of the ESU would be considered part of the ESU, would be considered in determining whether the ESU should be listed as endangered or threatened, and would be included in any listing under the Act (70 FR 37204; June 28, 2005). NMFS's 2005 Hatchery Policy was upheld by the Ninth Circuit Court in *Trout Unlimited* v. *Lohn,* 559 F. 3d 946 (2009).

For the same reasons as discussed earlier in this document, the Service also cannot simply designate wild members of the taxonomic species (or all wild members and those captive-held animals located outside the United States) as a DPS, leaving all captive-held animals, or captive-held animals located within the United States, unlisted. Although this would avoid designating captive-held animals as a separate DPS and would not technically be excluding animals that otherwise have been found to be members of a DPS (and thereby avoid the error the court found in the *Alsea Valley Alliance* v. *Evans* decision), the result would be separate legal status and no legal protections for captive-held specimens, and many of the same legal and conservation consequences discussed above would occur. For these reasons, we also find this outcome to be inconsistent with Congress' intent for the Act, primarily as inconsistent with the purposes of the Act.

Additional Arguments in the Petitions Are Not Supported

SCI argues in its petition that the Service ''has a history of not including non-native populations of a species when listing the native populations as endangered or threatened.'' However, the SCI petition fails to identify any Service policy or consistent practice regarding listing decisions under the Act that exclude or separately designate captive-held animals. The support cited by SCI in its petition is the Service's listing of the Arkansas River shiner, but the listing of that species is not relevant in considering SCI's petition for separate status for captive animals. In the Arkansas River shiner listing (63 FR 64772; November 23, 1998), as well as listings of some other species of fish with naturalized populations in the United States raised in later comments by SCI, the Service was considering wild populations, not animals held in captivity and under human control. Such wild populations do not exist in human-controlled environments and are not subject to human manipulation of their reproduction. Rather, they often inhabit natural or modified natural ecosystems; are self-sustaining; breed at will without human intervention; survive with little or no human assistance; and are subject to the same processes that affect native wild populations, including habitat loss or modification, disease, predation, human take (regulated or not), and stochastic events (floods, drought, hurricanes, fires, etc.). SCI and EWA appear to concede that scimitar-horned oryx, addax, and dama gazelle occurring in the United States, as well as animals occurring in other countries outside the species' ranges, are held in captivity. In its petition, EWA argues that the Service's 1990 listing for chimpanzees, the one current listing where captive animals are designated as a separate DPS, sets precedent for captive-held populations of widllife. The Service is currently processing a petition to list the species *Pan troglodytes* as endangered in its entirety. On September 1, 2011, we found that the petition presented substantial information indicating that listing the entire species as endangered may be warranted (76 FR 54423).

SCI and EWA also both argue on the basis of error—and citing to a 2007 memorandum issued by the Department of the Interior (DOI) Office of the Solicitor (DOI 2007)—that the Service should find that only the animals living in a significant portion of their range outside the United States should be classified as endangered and that the species are not endangered in the portion of their range that lies within the United States. It is correct that, in 2007, the Solicitor issued a legal opinion indicating that, based on use of the statutory term ''significant portion of its range,'' the Act allowed the Service to list and apply the protections of the Act only in that portion of the range where a species is found to be an endangered or threatened species. But in May 2011, and following two adverse court decisions on the agency's legal interpretation, the Solicitor withdrew this legal opinion (see 76 FR 76987; December 9, 2011). Since withdrawal of this legal opinion, the Service has published a draft policy that provides its interpretation of the phrase ''significant portion of its range'' (see 76 FR 76987; December 9, 2011). In the draft policy, the Service concluded that if a species is found to be endangered or threatened in only a significant portion of its range, the entire species is to be listed as endangered or threatened. Thus even if any one of the three antelope species were found to be endangered in only a significant portion of its range, as argued by SCI and EWA, the entire species would still be listed

as endangered and the Act's protections would apply to the species in its entirety. In their petitions, SCI and EWA note that all three species qualify for endangered species status elsewhere outside the United States. There was, therefore, no error on this basis in the 2005 listings of these three antelope species. Although this draft policy has not yet been finalized, the Service is considering the interpretations and principles contained in the draft policy as nonbinding guidance when making individual listing determinations, such as these 12-month findings. In addition, for the reasons provided above, the Service could not distinguish between and assign separate legal status to captive-held and wild members of a taxonomic species through an SPR analysis.

Findings

Section 4(b)(3) of the Act and our regulations at 50 CFR 424.14 provide that a person may petition to add or remove a ''species'' (as defined by the Act) from the Lists of Endangered or Threatened Wildlife or Plants, or change the listed status of a ''species.'' For the reasons given above, neither SCI nor EWA has petitioned to remove or reclassify a grouping of members of the three antelope that qualify to be designated as a separate ''species'' under the Act, and therefore the petitioned actions are not warranted.

Based on the analysis above, it is the Service's conclusion that, although the Act does not expressly address whether captive-held specimens of wildlife can have separate legal status, the language, purpose, operation, and legislative history of the Act, when considered together, indicate that Congress did not intend for captive-held specimens of wildlife to be subject to separate legal status on the basis of their captive state.[12] This includes designating groups of captive-held specimens as separate DPSes, excluding captive-held specimens during the listing of wild specimens of the same species, and de facto creating separate listed and nonlisted entities by designating one or more DPSes consisting of wild specimens and leaving captive specimens unlisted. It also would include using the ''significant portion of its range'' language in the definitions of ''endangered species'' and ''threatened species'' to provide separate legal status for captive-held specimens.

For the reasons given above, the U.S. captive, or U.S. captive-bred specimens of, scimitar-horned oryx, dama gazelle, and addax, do not qualify as separate ''species'' or otherwise qualify for separate legal status under the Act. Therefore, we find that delisting the U.S. captive, or U.S. captive-bred specimens of, scimitar-horned oryx, dama gazelle, and addax, is not warranted. This determination is consistent with our position on the status of U.S. captive-held members of these three antelope species since the 2005 listing decision (70 FR 52319; September 2, 2005). During the public comment periods on the proposed rule to list these three species in their entirety (56 FR 56491, 68 FR 43706, and 68 FR 66395), the Service received several comments indicating that it should list only wild specimens of the three species. In the final rule, the Service noted these comments but stated that ''it would not be appropriate to list captive and wild animals separately'' (70 FR 52319; September 2, 2005).

In sum, on the basis of our determination under section 4(b)(3)(B) of the Act, we conclude that removing the U.S. captive specimens or U.S. captive-bred specimens of scimitar-horned oryx, dama gazelle, and addax from the List of Endangered and Threatened Wildlife is not warranted. Although these captive specimens remain listed as endangered under the ESA, having these captive individuals listed under the ESA does not necessarily ban the hunting of these individuals on game ranches in the United States. We recognized at the time of listing the species that allowing ranches to continue in their management efforts for these species could help to ensure that a viable group of antelope would be available for reintroduction purposes if conditions in the species' native range improved. Therefore, we have been authorizing well-managed ranches to conduct various management practices, including limited hunting, through our Captive-Bred Wildlife Registration regulation and permitting process. Since the current regulations went into effect on April 4, 2012, we have approved 139 ranches to maintain the species, of which 107 have been authorized to conduct limited hunts to maintain viable herds on their ranches. We accomplished this effort through use of a simple application process through which ranches obtained the necessary permits.

We encourage interested parties to continue to gather data that will assist with the conservation of the scimitar-horned oryx, dama gazelle, and addax. If you wish to provide information regarding these species, you may submit your information or materials to Janine Van Norman, Chief, Branch of Foreign Species (see **FOR FURTHER INFORMATION CONTACT**), at any time.

References Cited

A complete list of references cited is available on the Internet at *http://www.regulations.gov* and upon request from the Branch of Foreign Species (see **FOR FURTHER INFORMATION CONTACT**).

Author

The primary authors of this notice are the staff of the Branch of Foreign Species (see **FOR FURTHER INFORMATION CONTACT**).

Authority

The authority for this action is the Endangered Species Act of 1973, as amended (16 U.S.C. 1531 *et seq.*).

Dated: May 28, 2013.

Daniel M. Ashe,

Director, U.S. Fish and Wildlife Service.

[FR Doc. 2013–13268 Filed 6–4–13; 8:45 am]

BILLING CODE 4310–55–P

[12] The decision on whether captive-held specimens can have separate legal status based on their captive state is a separate issue from the role that such specimens should play during a status review. The extent to which captive-held members of a species create or contribute to threats to the species (for example, by fueling trade) or the extent to which captive-held members of a species remove or reduce threats to the species by contributing to the conservation of the species (for example, by providing specimens for population augmentation or reintroduction) is part of the five-factor analysis under section 4(a)(1) of the Act, not a matter of whether the members are part of the listable entity.

Notices

Federal Register

Vol. 78, No. 108

Wednesday, June 5, 2013

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

Animal and Plant Health Inspection Service

[Docket No. APHIS–2013–0046]

Oral Rabies Vaccine Trial; Availability of a Supplemental Environmental Assessment

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Notice of availability and request for comments.

SUMMARY: We are advising the public that the Animal and Plant Health Inspection Service has prepared a supplemental environmental assessment (EA) relative to an oral rabies vaccination field trial in New Hampshire, New York, Ohio, Vermont, and West Virginia. The supplemental EA analyzes expanding the field trial for an experimental oral rabies vaccine for wildlife to additional areas in New York. The proposed field trial is necessary to evaluate whether the wildlife rabies vaccine will produce sufficient levels of population immunity against raccoon rabies. We are making the supplemental EA available to the public for review and comment.

DATES: We will consider all comments that we receive on or before July 5, 2013.

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

- *Federal eRulemaking Portal:* Go to *http://www.regulations.gov/#!documentDetail;D=APHIS-2013-0046-0001.*
- *Postal Mail/Commercial Delivery:* Send your comment to Docket No. APHIS–2013–0046, Regulatory Analysis and Development, PPD, APHIS, Station 3A–03.8, 4700 River Road, Unit 118, Riverdale, MD 20737–1238.

The supplemental environmental assessment and any comments we receive may be viewed at *http://www.regulations.gov/#!docketDetail;D=APHIS-2013-0046* or in our reading room, which is located in room 1141 of the USDA South Building, 14th Street and Independence Avenue SW., Washington, DC. Normal reading room hours are 8 a.m. to 4:30 p.m., Monday through Friday, except holidays. To be sure someone is there to help you, please call (202) 799–7039 before coming.

This notice and the supplemental environmental assessment are also posted on the APHIS Web site at *http://www.aphis.usda.gov/regulations/ws/ws_nepa_environmental_documents.shtml.*

FOR FURTHER INFORMATION CONTACT: Mr. Richard Chipman, Rabies Program Coordinator, Wildlife Services, APHIS, 59 Chennell Drive, Suite 7, Concord, NH 03301; (603) 223–9623. To obtain copies of the supplemental environmental assessment, contact Ms. Beth Kabert, Staff Wildlife Biologist, Wildlife Services, 140–C Locust Grove Road, Pittstown, NJ 08867; (908) 735–5654, fax (908) 735–0821, email: *beth.e.kabert@aphis.usda.gov.*

SUPPLEMENTARY INFORMATION:

Background

The Wildlife Services (WS) program in the Animal and Plant Health Inspection Service (APHIS) cooperates with Federal agencies, State and local governments, and private individuals to research and implement the best methods of managing conflicts between wildlife and human health and safety, agriculture, property, and natural resources. Wildlife-borne diseases that can affect domestic animals and humans are among the types of conflicts that APHIS–WS addresses. Wildlife is the dominant reservoir of rabies in the United States.

Currently, APHIS conducts an oral rabies vaccination (ORV) program to control the spread of rabies. The ORV program has utilized a vaccinia-rabies glycoprotein (V–RG) vaccine. APHIS–WS' use of the V–RG vaccine has resulted in several notable accomplishments, including the elimination of canine rabies from sources in Mexico, the successful control of gray fox rabies virus variant in western Texas, and the prevention of any appreciable spread of raccoon rabies in the eastern United States. While the prevention of any appreciable spread of raccoon rabies in the eastern United States represents a major accomplishment in rabies management, the V–RG vaccine has not been effective in eliminating raccoon rabies from high-risk spread corridors. This fact prompted APHIS–WS to evaluate rabies vaccines capable of producing higher levels of population immunity against raccoon rabies to better control the spread of this disease.

In 2011, APHIS–WS initiated a field trial to study the immunogenicity and safety of a promising new wildlife rabies vaccine, human adenovirus type 5 rabies glycoprotein recombinant vaccine in portions of West Virginia, including U.S. Department of Agriculture Forest Service National Forest System lands. The vaccine used in this field trial is an experimental oral rabies vaccine called ONRAB (produced by Artemis Technologies Inc., Guelph, Ontario, Canada).

To further assess the immunogenicity of ONRAB in raccoons and skunks for raccoon rabies virus variant, APHIS–WS determined the need to expand the field trial into portions of New Hampshire, New York, Ohio, Vermont, as well as West Virginia, including National Forest System lands. On July 9, 2012, we published in the **Federal Register** (77 FR 40322–40323, Docket No. APHIS–2012–0052) a notice [1] in which we announced the availability, for public review and comment, of an environmental assessment (EA) that examined the potential environmental impacts associated with the proposed field trial to test the safety and efficacy of the ONRAB vaccine in New Hampshire, New York, Ohio, Vermont, and West Virginia. We announced the availability of our final EA and finding of no significant impact in a notice published in the **Federal Register** (see footnote 1) on August 16, 2012 (77 FR 49409–49410, Docket No. APHIS–2012–0052). The field trial began in August 2012, taking place within approximately 10,483 square miles in portions of New Hampshire, New York, Ohio, Vermont, and West Virginia, including portions of National Forest System lands, excluding Wilderness Areas. The field trial is a collaborative effort among APHIS–WS; the Centers for Disease Control and Prevention; the vaccine manufacturer;

[1] To view the notice, the comments we received, the EA, and the followup finding of no significant impact, go to *http://www.regulations.gov/#!docketDetail;D=APHIS-2012-0052.*

the appropriate agriculture, health, and wildlife agencies for the States of New Hampshire, New York, Ohio, Vermont, and West Virginia; the Ontario Ministry of Natural Resources; and the Quebec Ministry of Natural Resources and Wildlife.

Given promising immunogenicity levels documented during the field trial of the ONRAB vaccine and the need for further field testing, APHIS is considering expanding the current field trial for the ONRAB vaccine to additional counties in New York. APHIS has prepared a supplemental EA in which we analyze expanding the area of the field trial zone in New York to include Erie, Franklin, Jefferson, Lewis, Niagara, St. Lawrence, and Wyoming Counties. This would add approximately 14 square miles to the field trial, increasing the field trial from approximately 10,483 square miles to approximately 10,697 square miles. The supplemental EA analyzes a number of environmental issues or concerns with the ONRAB vaccine and activities associated with the field trial, such as capture and handling animals for monitoring and surveillance purposes with regard to the proposed action.

We are making the supplemental EA available to the public for review and comment. We will consider all comments that we receive on or before the date listed under the heading **DATES** at the beginning of this notice.

The supplemental EA may be viewed on the Regulations.gov Web site or in our reading room (see **ADDRESSES** above for instructions for accessing Regulations.gov and information on the location and hours of the reading room). In addition, paper copies may be obtained by calling or writing to the individual listed under **FOR FURTHER INFORMATION CONTACT**.

The EA has been prepared in accordance with: (1) The National Environmental Policy Act of 1969 (NEPA), as amended (42 U.S.C. 4321 *et seq.*), (2) regulations of the Council on Environmental Quality for implementing the procedural provisions of NEPA (40 CFR parts 1500–1508), (3) USDA regulations implementing NEPA (7 CFR part 1b), and (4) APHIS' NEPA Implementing Procedures (7 CFR part 372).

Done in Washington, DC, this 3rd day of June 2013.

Kevin Shea,

Acting Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 2013–13435 Filed 6–4–13; 8:45 am]

BILLING CODE 3410–34–P

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

[Docket No. APHIS–2013–0032]

National Poultry Improvement Plan; General Conference Committee Meeting

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Notice of meeting.

SUMMARY: We are giving notice of a meeting of the General Conference Committee of the National Poultry Improvement Plan.

DATES: The General Conference Committee meeting will be held on June 20, 2013, from 7:30 a.m. to 2 p.m.

ADDRESSES: The meeting will be held at the Hotel Indigo Athens, 500 College Avenue, Athens, GA.

FOR FURTHER INFORMATION CONTACT: Dr. Denise L. Brinson, Acting Senior Coordinator, National Poultry Improvement Plan, VS, APHIS, 1506 Klondike Road, Suite 101, Conyers, GA 30094; (770) 922–3496.

SUPPLEMENTARY INFORMATION: The General Conference Committee (the Committee) of the National Poultry Improvement Plan (NPIP), representing cooperating State agencies and poultry industry members, serves an essential function by acting as a liaison between the poultry industry and the Department in matters pertaining to poultry health. The Committee meets to discuss significant poultry health issues and makes recommendations to improve the NPIP program.

Topics for discussion at the upcoming meeting include:

1. Salmonella update.
2. Salmonella tests for consideration.
3. Pooling of avian influenza samples.
4. Cooperative agreements and funds for testing.

The meeting will be open to the public. However, due to time constraints, the public will not be allowed to participate in the discussions during the meeting. Written statements on meeting topics may be filed with the Committee before or after the meeting by sending them to the person listed under **FOR FURTHER INFORMATION CONTACT**. Written statements may also be filed at the meeting. Please refer to Docket No. APHIS–2013–0032 when submitting your statements.

If you require special accommodations, such as a sign language interpreter, please call or write the person listed under **FOR FURTHER INFORMATION CONTACT**.

This notice of meeting is given pursuant to section 10 of the Federal Advisory Committee Act (5 U.S.C. App. 2).

Done in Washington, DC, this 3rd day of June 2013.

Kevin Shea,

Acting Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 2013–13436 Filed 6–4–13; 8:45 am]

BILLING CODE 3410–34–P

DEPARTMENT OF AGRICULTURE

Forest Service

Newspapers Used for Publication of Legal Notices by the Intermountain Region; Utah, Idaho, Nevada, and Wyoming

AGENCY: Forest Service, USDA.

ACTION: Notice.

SUMMARY: This notice lists the newspapers that will be used by the ranger districts, forests and regional office of the Intermountain Region to publish legal notices required under 36 CFR 215, 219, and 218. The intended effect of this action is to inform interested members of the public which newspapers the Forest Service will use to publish notices of proposed actions and notices of decision. This will provide the public with constructive notice of Forest Service proposals and decisions, provide information on the procedures to comment, object or appeal, and establish the date that the Forest Service will use to determine if comments or appeals were timely.

DATES: Publication of legal notices in the listed newspapers will begin on or after June 2013. The list of newspapers will remain in effect until October 2013, when another notice will be published in the **Federal Register**.

FOR FURTHER INFORMATION CONTACT: Kris Rutledge, Regional Appeals Coordinator, Intermountain Region, 324 25th Street, Ogden, UT 84401, and phone (801) 625–5146.

SUPPLEMENTARY INFORMATION: The administrative procedures at 36 CFR 215, 219, and 218 require the Forest Service to publish notices in a newspaper of general circulation. The content of the notices is specified in 36 CFR 215, 219 and 218. In general, the notices will identify: The decision or project, by title or subject matter; the name and title of the official making the decision; how to obtain additional information; and where and how to file comments or appeals. The date the notice is published will be used to establish the official date for the

beginning of the comment or appeal period. The newspapers to be used are as follows:

REGIONAL FORESTER, INTERMOUNTAIN REGION

Regional Forester decisions affecting National Forests in Idaho: ***Idaho Statesman***
Regional Forester decisions affecting National Forests in Nevada: ***Reno Gazette-Journal***
Regional Forester decisions affecting National Forests in Wyoming: ***Casper Star-Tribune***
Regional Forester decisions affecting National Forests in Utah: ***Salt Lake Tribune***
Regional Forester decisions that affect all National Forests in the Intermountain Region: ***Salt Lake Tribune***

ASHLEY NATIONAL FOREST

Ashley Forest Supervisor decisions: ***Vernal Express***
District Ranger decisions for Duchesne, Roosevelt: ***Uintah Basin Standard***
Flaming Gorge District Ranger for decisions affecting Wyoming: ***Rocket Miner***
Flaming Gorge and Vernal District Ranger for decisions affecting Utah: ***Vernal Express***

BOISE NATIONAL FOREST

Boise Forest Supervisor decisions: ***Idaho Statesman***
Cascade District Ranger decisions: ***The Star-News***
Emmett District Ranger decisions: ***Messenger-Index***
District Ranger decisions for Idaho City and Mountain Home: ***Idaho Statesman***
Lowman District Ranger decisions: ***Idaho World***

BRIDGER-TETON NATIONAL FOREST

Bridger-Teton Forest Supervisor and District Ranger decisions: ***Casper Star-Tribune***

CARIBOU-TARGHEE NATIONAL FOREST

Caribou-Targhee Forest Supervisor decisions for the Caribou portion: ***Idaho State Journal***
Caribou-Targhee Forest Supervisor decisions for the Targhee portion: ***Post Register***
District Ranger decisions for Ashton, Dubois, Island Park, Palisades and Teton Basin: ***Post Register***
District Ranger decisions for Montpelier, Soda Springs and Westside: ***Idaho State Journal***

DIXIE NATIONAL FOREST

Dixie Forest Supervisor decisions: ***Daily Spectrum***
District Ranger decisions for Cedar City, Escalante, Pine Valley and Powell: ***Daily Spectrum***
Fremont (formerly Teasdale) District Ranger decisions: ***Richfield Reaper***

FISHLAKE NATIONAL FOREST

Fishlake Forest Supervisor and District Ranger decisions: ***Richfield Reaper***

HUMBOLDT-TOIYABE NATIONAL FOREST

Humboldt-Toiyabe Forest Supervisor decisions that encompass all or portions of both the Humboldt and Toiyabe National Forests: ***Reno Gazette-Journal***
Humboldt-Toiyabe Forest Supervisor decisions for the Humboldt portion: ***Elko Daily Free Press***
Humboldt-Toiyabe Forest Supervisor decisions for the Toiyabe portion: ***Reno Gazette-Journal***
Austin District Ranger decisions: ***The Battle Mountain Bugle***
Bridgeport and Carson District Ranger decisions: ***Reno Gazette-Journal***
Ely District Ranger decisions: ***The Ely Times***
District Ranger decisions for Jarbidge, Mountain City and Ruby Mountains: ***Elko Daily Free Press***
Santa Rosa District Ranger decisions: ***Humboldt Sun***
Spring Mountains National Recreation Area District Ranger decisions: ***Las Vegas Review Journal***
Tonopah District Ranger decisions: ***Tonopah Times Bonanza-Goldfield News***

MANTI-LASAL NATIONAL FOREST

Manti-LaSal Forest Supervisor decisions: ***Sun Advocate***
Ferron District Ranger decisions: ***Emery County Progress***
Moab District Ranger decisions: ***Times Independent***
Monticello District Ranger decisions: ***San Juan Record***
Price District Ranger decisions: ***Sun Advocate***
Sanpete District Ranger decisions: ***Sanpete Messenger***

PAYETTE NATIONAL FOREST

Payette Forest Supervisor decisions: ***Idaho Statesman***
Council District Ranger decisions: ***Adams County Record***
District Ranger decisions for Krassel, McCall and New Meadows: ***Star News***
Weiser District Ranger decisions: ***Signal American***

SALMON-CHALLIS NATIONAL FOREST

Salmon-Challis Forest Supervisor decisions for the Salmon portion: ***The Recorder-Herald***
Salmon-Challis Forest Supervisor decisions for the Challis portion: ***The Challis Messenger***
District Ranger decisions for Lost River, Middle Fork and Challis-Yankee Fork: ***The Challis Messenger***
District Ranger decisions for Leadore, North Fork and Salmon-Cobalt: ***The Recorder-Herald***

SAWTOOTH NATIONAL FOREST

Sawtooth Forest Supervisor decisions: ***The Times News***
District Ranger decisions for Fairfield and Minidoka: ***The Times News***
Ketchum District Ranger decisions: ***Idaho Mountain Express***
Sawtooth National Recreation Area: ***The Challis Messenger***

UINTA-WASATCH-CACHE NATIONAL FOREST

Forest Supervisor decisions for the Uinta portion, including the Vernon Unit: ***Provo Daily Herald***
Forest Supervisor decisions for the Wasatch-Cache portion: ***Salt Lake Tribune***
Forest Supervisor decisions for the entire Uinta-Wasatch-Cache: ***Salt Lake Tribune***
District Ranger decisions for the Heber-Kamas, Pleasant Grove, and Spanish Fork Ranger Districts: ***Provo Daily Herald***
District Ranger decisions for Evanston and Mountain View: ***Uinta County Herald***
District Ranger decisions for Salt Lake: ***Salt Lake Tribune***
District Ranger decisions for Logan: ***Logan Herald Journal***
District Ranger decisions for Ogden: ***Standard Examiner***

Dated: May 28. 2013.

George C. Iverson,

Deputy Regional Forester.

[FR Doc. 2013–13296 Filed 6–4–13; 8:45 am]

BILLING CODE 3410–11–P

DEPARTMENT OF AGRICULTURE

Rural Housing Service

Notice of Funding Availability: Section 515 Multi-Family Housing Preservation Revolving Loan Fund Demonstration Program for Fiscal Year 2013

AGENCY: Rural Housing Service, USDA.

ACTION: Notice.

SUMMARY: The Rural Housing Service (RHS) of Rural Development previously

announced in a Notice published July 18, 2012, (77 FR 42265) the availability of funds and the timeframe to submit applications for loans to private non-profit organizations and State and local housing finance agencies to carry out a demonstration program to provide revolving loans for the preservation and revitalization of low-income Multi-Family Housing (MFH). Rural Development did not receive sufficient applications to use all the available funds. As a result, Rural Development is soliciting additional applications under this Notice for the remaining funding. This Notice removes the $1 million cap on subsequent loans that was established under previous Notices. Please note the removal of the $1 million cap on subsequent loans for existing intermediaries only applies to applications received under this Notice. Housing that is assisted by this demonstration program must be financed by Rural Development through its MFH loan program under Sections 515, 514 and 516 of the Housing Act of 1949. The goals of this demonstration program will be achieved through loans made to intermediaries. The intermediaries will establish their programs for the purpose of providing loans to ultimate recipients for the preservation and revitalization of low-income Sections 515, 514, and 516 MFH as affordable housing.

DATES: The deadline for receipt of all applications in response to this Notice is August 5, 2013 5:00 p.m., Eastern Time. The application closing deadline is firm as to date and hour. Rural Development will not consider any application that is received after the closing deadline. Applicants intending to mail applications must provide sufficient time to permit delivery on or before the closing deadline. Acceptance by a post office or private mailer does not constitute delivery. Facsimile, electronic transmissions and postage due applications will not be accepted.

FOR FURTHER INFORMATION CONTACT: Sherry Engel, Finance and Loan Analyst, Multi-Family Housing, U.S. Department of Agriculture, Rural Housing Service, 4949 Kirschling Court, Stevens Point, Wisconsin 54481 or by telephone at (715) 345–7677 or via email at: *sherry.engel@wdc.usda.gov* or Tiffany Tietz, Finance and Loan Analyst, Multi-Family Housing, U.S. Department of Agriculture, Rural Housing Service, 3260 Eagle Park Drive, Suite 107, Grand Rapids, Michigan 49525 or by telephone at (616) 942–4111, Extension 126, TDD (302) 857–3585 or via email at: *tiffany.tietz@wdc.usda.gov*. (Please note the phone numbers are not toll free numbers).

SUPPLEMENTARY INFORMATION:

Federal Agency Name: Rural Housing Service, USDA.

Funding Opportunity Title: Notice of Funding Availability: Section 515 Multi-Family Housing Preservation Revolving Loan Fund Demonstration Program for Fiscal Year 2012.

Announcement Type: Second announcement.

Catalog of Federal Domestic Assistance Numbers (CFDA): 10.415.

Dates: The deadline for receipt of all applications in response to this Notice is 5 p.m., Eastern Time, August 5, 2013. The application closing deadline is firm as to date and hour. Rural Development will not consider any application that is received after the closing deadline. Applicants intending to mail applications must provide sufficient time to permit delivery on or before the closing deadline. Acceptance by a post office or private mailer does not constitute delivery. Facsimile, electronic transmissions and postage due applications will not be accepted.

Paperwork Reduction Act

Under the Paperwork Reduction Act, 44 U.S.C. 3501 (2005) et seq., OMB must approve all ''collections of information'' by Rural Development. The Act defines ''collection of information'' as a requirement for ''answers to . . . identical reporting or recordkeeping requirements imposed on ten or more persons . . .'' (44 U.S.C. 3502(3)(A)). Because this Notice will receive less than ten respondents, the Paperwork Reduction Act does not apply.

Overview

Past fiscal years' appropriations acts provided funding for and authorized Rural Development to conduct a revolving loan fund demonstration program for the preservation and revitalization of Sections 515, 514 and 516 MFH portfolios. The money provided under the previous appropriations acts was authorized to be used until expended. Sections 514, 515 and 516 of the Housing Act of 1949 as amended, provide Rural Development the authority to make loans for low-income MFH, Farm Labor Housing (FLH), and related facilities.

Program Administration

I. Funding Opportunities Description

This Notice requests applications from eligible applicants for loans to establish and operate revolving loan funds for the preservation of low-income MFH properties within the Rural Development Sections 514, 515 and 516 MFH portfolios. Rural Development's regulations for the Section 514, 515 and 516 MFH program are published at 7 CFR part 3560.

Housing that is constructed or repaired must meet the Rural Development design and construction standards and the development standards contained in 7 CFR part 1924, subparts A and C, respectively. Once constructed, Sections 514, 515, and 516 MFH must be managed in accordance with 7 CFR part 3560. Tenant eligibility is limited to persons who qualify as a very low- or low-income household or who are eligible under the requirements established to qualify for housing benefits provided by sources other than Rural Development, such as U.S. Department of Housing and Urban Development Section 8 assistance or Low Income Housing Tax Credits (LIHTC) assistance, when a tenant receives such housing benefits. Additional tenant eligibility requirements are contained in 7 CFR 3560.152, 3560.577, and 3560.624.

II. Award Information

Past appropriations acts made funding available for loans to private non-profit organizations, or such non-profit organizations' affiliate loan funds and State and local housing finance agencies to carry out a housing demonstration program to provide revolving loans for the preservation of low-income MFH projects. The total amount of funding available for this program is up to $5,287,990. This funding consists of carryover funds from previous fiscal years. Loans to intermediaries under this demonstration program shall have an interest rate of no more than 1 percent and the Secretary of Agriculture may defer the interest and principal payment to Rural Development for up to 3 years during the first 3 years of the loan. The term of such loans shall not exceed 30 years. Funding priority will be given to entities with equal or greater matching funds from third parties, including housing tax credits for rural housing assistance and to entities with experience in the administration of revolving loan funds and the preservation of MFH.

Funding Restrictions

No loan made to a single intermediary applicant under this demonstration program may exceed $2,125,000 and any such loan may be limited by geographic area so that multiple loan recipients are not providing similar services to the same service areas.

Prior fiscal years Preservation Revolving Loan Funds (PRLF) loans that

were obligated and not closed within the above 2-year obligation period must be de-obligated to allow more immediate program use unless a 6-month extension is granted by the National Office. The request for an extension will be sent to the National Office by the relevant State Office.

Loans made to the PRLF ultimate recipient must meet the intent of providing decent, safe, and sanitary rural housing and be consistent with the requirements of Title V of the Housing Act of 1949, as amended.

III. Eligibility Information

Applicant Eligibility

(1) Eligibility requirements—*Intermediary*.

(a) The types of entities which may become intermediaries are private non-profit organizations, which may include faith and community based organizations, or such non-profit organizations' affiliate loan funds and State and local housing finance agencies.

(b) The intermediary must have:

(i) The legal authority necessary for carrying out the proposed loan purposes and for obtaining, giving security, and repaying the proposed loan.

(ii) A proven record of successfully assisting low-income MFH projects. Such record will include recent experience in loan making and loan servicing that is similar in nature to the loans proposed for the PRLF demonstration program. The applicant must provide documentation of a delinquency and loss rate note which does not exceed 4 percent. The applicant will be responsible for providing such information to Rural Development.

(iii) A staff with loan making and servicing experience.

(iv) A plan showing Rural Development, that the ultimate recipients will only use the funds to preserve low-income MFH projects.

(c) No loans will be extended to an intermediary unless:

(i) There is adequate assurance of repayment of the loan evidenced by the fiscal and managerial capabilities of the proposed intermediary.

(ii) The amount of the loan, together with other funds available, is adequate to complete the preservation or revitalization of the project.

(iii) The intermediary's prior calendar year audit is an unqualified audited opinion signed by an independent Certified Public Accountant (CPA) acceptable to the Agency and performed in accordance with Generally Accepted Government Auditing Standards (GAGAS). The unqualified audited opinion must provide a statement relating to the accuracy of the financial statements.

(d) Intermediaries, and the principals of the intermediaries, must not be suspended, debarred, or excluded based on the ''List of Parties Excluded from Federal Procurement and Nonprocurement Programs.'' In addition, intermediaries and their principals must not be delinquent on Federal debt or be Federal judgment debtors.

(e) The intermediary and its principal officers (including immediate family) must have no legal or financial interest in the ultimate recipient.

(f) The intermediary's Debt Service Coverage Ratio (DSCR) must be greater than 1.25 for the fiscal year immediately prior to the year of application. The DSCR is the financial ratio the loan committee will use to determine an applicant's capacity to borrow and service additional debt. The loan committee will use the intermediary's Earnings Before Interest and Taxes (EBIT) to determine DSCR. EBIT is determined by adding net income or net loss to depreciation and interest expense. The loan committee will compare the principal and interest payment multiplied by the DSCR to the EBIT derived from the applicants consolidated income statement. For example, if an applicant requests a loan amount of $2,000,000 at a one percent interest rate amortized over 30 years, the principal and interest payments will be $77,193, annually. Therefore, an applicant who requests $2,000,000 needs an EBIT of at least $96,491 ($77,193 × 1.25). Only debt service from unrestricted revolving loans will be considered in the above calculation. An unrestricted loan is an account in which the accumulated revenues are not dictated by a donor or sponsor.

(g) Intermediaries that have received one or more PRLF loans may apply for and be considered for subsequent PRLF loans provided all the following are met:

(i) For prior PRLF loans at least 50 percent of an intermediary's PRLF loans must have been disbursed to eligible ultimate recipients;

(ii) Intermediaries requesting subsequent loans must meet the requirements of section III (1), Applicant Eligibility, of this Notice;

(iii) The delinquency rate of the outstanding loans of the intermediary's PRLF revolving fund does not exceed 4 percent at the time of application for the subsequent loan;

(iv) The intermediary is in compliance with all applicable regulations and its loan agreements with Rural Development;

(v) Not more than one loan will be approved by Rural Development for an intermediary in any single fiscal year unless the request is authorized by a PRLF appropriation; and

(vi) Total outstanding PRLF indebtedness of an intermediary to Rural Development will not exceed $15 million at any time.

Only eligible applicants will be scored and ranked. Funding priority will be given to entities with equal or greater matching funds, including housing tax credits for rural housing assistance. Refer to the Selection Criteria section of the Notice for further information on funding priorities.

(2) Eligibility requirements—*Ultimate recipients*.

(a) To be eligible to receive loans from the PRLF, ultimate recipients must:

(i) Currently have a Rural Development Sections 515, 514 loans, or 516 grant for the property to be assisted by the PRLF demonstration program.

(ii) Certify that the principal officers (including their immediate family) of the ultimate recipient, hold no legal or financial interest in the intermediary.

(iii) Be in compliance with all Rural Development program requirements or have an Agency approved work plan in place which will correct a non-compliance status.

(b) Any delinquent debt to the Federal Government including a non-tax judgment lien (other than a judgment in the U.S. tax courts), by the ultimate recipient or any of its principals, shall cause the proposed ultimate recipient to be ineligible to receive a loan from the PRLF. PRLF may not be used to satisfy the delinquency.

(c) The ultimate recipient cannot be currently debarred or suspended from Federal Government programs.

(d) There is a continuous need for the property in the community as affordable housing.

Other Administrative Requirements

(1) The following policies and regulations apply to loans to intermediaries made in response to this Notice:

(a) PRLF intermediaries will be required to provide Rural Development with the following reports:

(i) An annual audit;

(A) The dates of the audit report period need not coincide with other reports on the PRLF. Audit reports shall be due 90 days following the audit period. The audit period will be set by the intermediary. The intermediary will notify Rural Development of the date. Audits must cover all of the

intermediary's activities. Audits will be performed by an independent CPA. An acceptable audit will be performed in accordance with GAGAS and include such tests of the accounting records as the auditor considers necessary in order to express an unqualified audited opinion on the financial condition of the intermediary.

(B) It is not intended that audits required by this program be separate from audits performed in accordance with State and local laws or for other purposes. To the extent feasible, the audit work for this program should be done in connection with these other audits. Intermediaries covered by OMB Circular A–133 should submit audits made in accordance with that circular.

(ii) Quarterly or semiannual performance reports (due to Rural Development 30 days after the end of the fiscal quarter or half);

(A) Performance reports will be required quarterly during the first year after loan closing. Thereafter, performance reports will be required semiannually. Also, Rural Development may resume requiring quarterly reports if the intermediary becomes delinquent in repayment of its loan or otherwise fails to fully comply with the provisions of its work plan or Loan Agreement, or Rural Development determines that the intermediary's PRLF is not adequately protected by the current financial status and paying capacity of the ultimate recipients.

(B) These performance reports shall contain information only on the PRLF, or if other funds are included, the PRLF portion shall be segregated from the others; and in the case where the intermediary has more than one PRLF from Rural Development, a separate report shall be made for each PRLF.

(C) The performance report will include the Standard Form (SF) 425, Federal Financial Report. This report will provide information on the intermediary's lending activity, income and expenses, financial condition and a summary of names and characteristics of the ultimate recipients the intermediary has financed.

(iii) Annual proposed budget for the following year; and other reports as Rural Development may require from time to time regarding the conditions of the loan.

(b) Security will consist of a pledge by the intermediary of all assets now or hereafter placed in the PRLF, including cash and investments, notes receivable from ultimate recipients, and the intermediary's security interest in collateral pledged by ultimate recipients. Except for good cause shown, Rural Development will not obtain assignments of specific assets at the time a loan is made to an intermediary or ultimate recipient. The intermediary will covenant in the loan agreement that, in the event the intermediary's financial condition deteriorates, the intermediary takes action detrimental to prudent fund operation, or the intermediary fails to take action required of a prudent lender, it will provide additional security, execute any additional documents, and undertake any reasonable acts Rural Development may request to protect Rural Development's interest or to perfect a security interest in any asset, including physical delivery of assets and specific assignments to Rural Development. All debt instruments and collateral documents used by an intermediary in connection with loans to ultimate recipients may be assignable.

(c) RHS may consider, on a case by case basis, subordinating its security interest on the ultimate recipient's property to the lien of the intermediary so that Rural Development has a junior lien interest when an independent appraisal verifies the Rural Development subordinated lien will continue to be fully secured.

(d) The term of the loan to an ultimate recipient may not exceed the lessor of 30 years or the remaining term of the Rural Development loan.

(e) When loans are made to ultimate recipients restrictive-use provisions must be incorporated, as outlined in 7 CFR 3560.662.

(f) The policies and regulations contained in 7 CFR part 1901, subpart F regarding historical and archaeological properties apply to all loans funded under this Notice.

(g) The policies and regulations contained in 7 CFR part 1940, subpart G regarding environmental assessments apply to all loans to ultimate recipients funded under this Notice. Loans to intermediaries under this program will be considered a categorical exclusion under the National Environmental Policy Act, requiring the completion of Form RD 1940–22, ''*Environmental Checklist for Categorical Exclusions,*'' by Rural Development.

(h) An Intergovernmental Review,'' will be conducted in accordance with the procedures contained in 7 CFR part 3015, subpart V, if the applicant is a cooperative.

(2) The intermediary agrees to the following:

(a) To obtain written Rural Development approval, before the first lending of PRLF funds to an ultimate recipient, of:

(i) All forms to be used for relending purposes, including application forms, loan agreements, promissory notes, and security instruments; and

(ii) The intermediary's policy with regard to the amount and form of security to be required.

(b) To obtain written approval from Rural Development before making any significant changes in forms, security policy, or the intermediary's work plan. Rural Development may approve changes in forms, security policy, or work plans at any time upon a written request from the intermediary and determination by Rural Development that the change will not jeopardize repayment of the loan or violate any requirement of this Notice or other Rural Development regulations. The intermediary must comply with the work plan approved by Rural Development so long as any portion of the intermediary's PRLF loan is outstanding;

(c) To allow Rural Development to take a security interest in the PRLF, the intermediary's portfolio of investments derived from the proceeds of the loan award, and other rights and interests as Rural Development may require;

(d) To return, as an extra payment on the loan, any funds that have not been used in accordance with the intermediary's work plan by a date 2 years from the date of the loan agreement, unless an extension has been granted. The intermediary acknowledges that Rural Development may cancel the approval of any funds not yet delivered to the intermediary if funds have not been used in accordance with the intermediary's work plan within the 2-year period. Rural Development, at its sole discretion, may allow the intermediary additional time to use the loan funds by delaying cancellation of the funds by no more than 3 additional years. If any loan funds have not been used by 5 years from the date of the loan agreement, the approval will be canceled for any funds that have not been delivered to the intermediary and, in addition, the intermediary will return, as an extra payment on the loan, any funds it has received and not used in accordance with the work plan. In accordance with the Rural Development approved promissory note, regular loan payments will be based on the amount of funds actually drawn by the intermediary.

(e) The intermediary will be required to enter into a Rural Development approved loan agreement and promissory note. The intermediary will receive a 30-year loan at a 1 percent interest rate. The loan will be deferred for up to 3 years if requested in the intermediary's work plan.

(f) Loans made to the PRLF ultimate recipient must meet the intent of providing decent, safe, and sanitary rural housing by preserving and regulating existing properties financed with Sections 514, 515, and 516 funds. They must also be consistent with the requirements of Title V of the Housing Act of 1949, as amended.

(g) When an intermediary proposes to make a loan from the PRLF to an ultimate recipient, Rural Development concurrence is required prior to final approval of the loan. The intermediary must submit a request for Rural Development concurrence of a proposed loan to an ultimate recipient. Such request must include:

(i) Certification by the intermediary that:

(A) The proposed ultimate recipient is eligible for the loan;

(B) The proposed loan is for eligible purposes;

(C) The proposed loan complies with all applicable statutes and regulations; and

(D) Prior to closing the loan to the ultimate recipient, the intermediary and its principal officers (including immediate family) hold no legal or financial interest in the ultimate recipient, and the ultimate recipient and its principal officers (including immediate family) hold no legal or financial interest in the intermediary.

(ii) Copies of sufficient material from the ultimate recipient's application and the intermediary's related files, to allow Rural Development to determine the:

(A) Name and address of the ultimate recipient;

(B) Loan purposes;

(C) Interest rate and term;

(D) Location, nature, and scope of the project being financed;

(E) Other funding included in the project;

(F) Nature and lien priority of the collateral; and

(G) Environmental impacts of this action. This will include an original Form RD 1940–20 completed and signed by the intermediary. Attached to this form will be a statement stipulating the age of the building to be rehabilitated and a completed and signed Federal Emergency Management Agency (FEMA) Form 81–93, ''Standard Flood Hazard Determination.'' If the age of the building is over 50 years or if the building is either on or eligible for inclusion in the National Register of Historic Places, then the intermediary will immediately contact Rural Development to begin Section 106 of the National Historic Preservation Act of 1966 consultation with the State Historic Preservation Officer. If the building is located within a 100-year flood plain, then the intermediary will immediately contact Rural Development to analyze any effects as outlined in 7 CFR part 1940, subpart G, Exhibit C. The intermediary will assist Rural Development in any additional requirements necessary to complete the environmental review.

(iii) Such other information as Rural Development may request on specific cases.

(h) Upon receipt of a request for concurrence in a loan to an ultimate recipient Rural Development will:

(i) Review the material submitted by the intermediary for consistency with Rural Development's preservation and revitalization principles which include the following;

(A) There is a continuing need for the property in the community as affordable housing. If Rural Development determines there is no continuing need for the property the ultimate recipient is ineligible for the loan;

(B) When the transaction is complete, the property will be owned and controlled by eligible Section 514, 515, or 516 borrowers;

(C) The transaction will address the physical needs of the property;

(D) Existing tenants will not be displaced because of increased post transaction rents;

(E) Post transaction basic rents will not exceed comparable market rents; and

(F) Any equity loan amount will be supported by a market value appraisal.

(ii) The Intermediary shall pledge as collateral for non-Rural Development funds its PRLF, including its portfolio of investments derived from the proceeds of other funds and this loan award.

(iii) Issue a letter concurring with the loan when all requirements have been met or notify the intermediary in writing the reasons for denial when Rural Development determines it is unable to concur with the loan.

IV. Application and Submission Information

Submission Address

Applications should be submitted to USDA Rural Housing Service; Attention: Tonya Boykin, Administrative Assistant; Multi-Family Housing, STOP 0782 (Room 1263–S); 1400 Independence Avenue SW., Washington, DC 20250–0782.

The application process is a two-step process. First, all applicants will submit proposals to the National Office for loan committee review. The initial loan committee will determine if the borrower is eligible, score the application, and rank the applicants according to the criteria established in this Notice. Only eligible borrowers will be scored. The loan committee will select proposals for further processing. In the event that a proposal is selected for further processing and the applicant declines, the next highest ranked unfunded applicant may be selected. Second, after the loan is obligated to the intermediary but prior to loan closing, the State Office in the applicant's residence or State where the applicant will be doing its intermediary work will provide written approval of all forms to be used for relending purposes, including application forms, loan agreements, promissory notes, and security instruments. Additionally, the State Office will provide written approval of the applicant's binding policy with regard to the amount and form of security to be required.

Once the loan closes, the applicant will be required to comply with the terms of its work plan which describes how the money will be used, the loan agreement, the promissory note and any other loan closing documents. At the time of loan closing, Rural Development and loan recipient shall enter into a loan agreement and a promissory note acceptable to Rural Development. Loans obligated by State Offices to intermediaries must close on or before the second anniversary of the dated pre-approval letter mentioned above. Applicants who have not closed by this date must de-obligate PRLF funds to allow further program use of funds.

Application Requirements

The application must contain the following:

(1) A summary page, that is double-spaced and not in narrative form, that lists the following items:

(a) Applicant's name.

(b) Applicant's Taxpayer Identification Number.

(c) Applicant's address.

(d) Applicant's telephone number.

(e) Name of applicant's contact person, telephone number, and address.

(f) Amount of loan requested.

(2) Form RD 4274–1, ''*Application for Loan (Intermediary Relending Program).*'' This form can be found at: *http://forms.sc.egov.usda.gov/efcommon/eFileServices/eForms/RD4274-1.PDF*.

(3) A written work plan and other evidence Rural Development require that demonstrates the feasibility of the intermediary's program to meet the objectives of this demonstration program. The plan must, at a minimum, include all of the following:

(a) Document the intermediary's ability to administer this demonstration program in accordance with the provisions of this Notice. In order to adequately demonstrate the ability to administer the program, the intermediary must provide a complete listing of all personnel responsible for administering this program along with a statement of their qualifications and experience. The personnel may be either members or employees of the intermediary's organization or contract personnel hired for this purpose. If the personnel are to be contracted for, the contract between the intermediary and the entity providing such service will be submitted for Rural Development review, and the terms of the contract and its duration must be sufficient to adequately service Rural Development loan through to its ultimate conclusion. If Rural Development determines the personnel lack the necessary expertise to administer the program, the loan request will be denied.

(b) Document the intermediary's ability to commit financial resources under the control of the intermediary to the establishment of the demonstration program. This should include a statement of the sources of non-Rural Development funds for administration of the intermediary's operations and financial assistance for projects.

(c) Demonstrate a need for loan funds. As a minimum, the intermediary should identify a sufficient number of proposed and known ultimate recipients to justify Agency funding of its loan request, or include well developed targeting criteria for ultimate recipients consistent with the intermediary's mission and strategy for this demonstration program, along with supporting statistical or narrative evidence that such prospective recipients exist in sufficient numbers to justify Rural Development funding of the loan request.

(d) Include a list of proposed fees and other charges it will assess to the ultimate recipients.

(e) Provide documentation to Rural Development that the intermediary has secured commitments of significant financial support from public agencies and private organizations or have received tax credits for the calendar year prior to this Notice.

(f) Include the intermediary's plan (specific loan purposes) for relending the loan funds. The plan must be of sufficient detail to provide Rural Development with a complete understanding of what the intermediary will accomplish by lending the funds to the ultimate recipient and the complete mechanics of how the funds will flow from the intermediary to the ultimate recipient. The service area, eligibility criteria, loan purposes, fees, rates, terms, collateral requirements, limits, priorities, application process, method of disposition of the funds to the ultimate recipient, monitoring of the ultimate recipient's accomplishments, and reporting requirements by the ultimate recipient's management must be addressed by the intermediary's relending plan.

(g) Provide a set of goals, strategies, and anticipated outcomes for the intermediary's program. Outcomes should be expressed in quantitative or observable terms such as low-income housing complexes rehabilitated or low-income housing units preserved, and should relate to the purpose of this demonstration program; and

(h) If the intermediary provides technical assistance, (providing technical assistance to ultimate recipients is not required as part of this program), the intermediary will provide specific information as to how and what type of technical assistance the intermediary will provide to the ultimate recipients and potential ultimate recipients. For instance describe the qualifications of the technical assistance providers, the nature of technical assistance that will be available, and expected and committed sources of funding for technical assistance. If other than the intermediary itself, describe the organizations providing such assistance and the arrangements between such organizations and the intermediary.

(4) A pro forma balance sheet at start-up and projected balance sheets for at least 3 additional years; and projected cash flow and earnings statements for at least 3 years supported by a list of assumptions showing the basis for the projections. The projected earnings statement and balance sheet must include one set of projections that shows the PRLF must extend to include a year with a full annual installment on the PRLF loan.

(5) A written agreement of the intermediary to Rural Development agreeing to the audit requirements.

(6) Form RD 400–4, ''*Assurance Agreement,*'' a copy of which can be obtained at: *http://forms.sc.egov.usda.gov/efcommon/eFileServices/eForms/RD400-4.PDF.*

(7) Complete organizational documents, including evidence of authority to conduct the proposed activities.

(8) Most recent unqualified audit report signed by a CPA and prepared in accordance with GAGAS.

(9) Form RD 1910–11, ''*Applicant Certification Federal Collection Policies for Consumer or Commercial Debts,*'' a copy of which can be obtained at: *http://forms.sc.egov.usda.gov/efcommon/eFileServices/eForms/RD1910-11.PDF.*

(10) Form AD–1047, ''*Certification Regarding Debarment, Suspension, and other Responsibility Matters—Primary Covered Transactions,*'' a copy of which can be obtained at: *http://www.ocio.usda.gov/forms/doc/AD1047-F-01-92.PDF.*

(11) Exhibit A–1 of RD Instruction 1940–Q, ''*Certification for Contracts, Grants, and Loans,*'' a copy of which can be obtained at: *http://www.rurdev.usda.gov/me/CBP/const/1940qa1.pdf.*

(12) Copies of the applicant's tax returns for each of the 3 years prior to the year of application, and most recent audited financial statements.

(13) A separate one-page information sheet listing each of the ''Selection Criteria'' contained in this Notice, followed by the page numbers of all relevant material and documentation that is contained in the proposal that supports these criteria. Applicants are also encouraged, but not required; to include a checklist of all of the application requirements and to have their application indexed and tabbed to facilitate the review process.

(14) Financial statements (consolidated or unconsolidated) for the year prior to this Notice.

(15) A borrower authorization statement allowing Rural Development the authorization to verify past and present earnings with the preparer of the intermediary's financial statements.

V. Application Review Information

All applications will be evaluated by a loan committee. The loan committee will make recommendations to the RHS Administrator concerning preliminary eligibility determinations and for the selection of applications for further processing based on the selection criteria contained in this Notice and the availability of funds. The Administrator will inform applicants of the status of their application within 30 days of the loan application closing date set forth in this Notice.

Selection Criteria

Selection criteria points will be allowed only for factors evidenced by well documented, reasonable work plans which provide assurance that the items have a high probability of being accomplished. The points awarded will be as specified in paragraphs (1) through (4) of this section. In each case, the intermediary's application must provide documentation that the selection criteria have been met in order to qualify for selection criteria points. If an

application does not cover one of the categories listed, it will not receive points for those criteria.

(1) Other funds. Points allowed under this paragraph are to be based on documented successful history or written evidence that the funds are available.

(a) The intermediary will obtain non-Rural Development loan or grant funds or provide housing tax credits (measured in dollars) to pay part of the cost of the ultimate recipients' project cost. Points for the amount of funds from other sources are as follows:

(i) At least 10 percent but less than 25 percent of the total development cost (as defined in 7 CFR 3560.11)—5 points;

(ii) At least 25 percent but less than 50 percent of the total development cost—10 points; or

(iii) 50 percent or more of the total development cost—15 points.

(b) The intermediary will provide loans to each ultimate recipient from its own funds (not loan or grant) to pay part of the ultimate recipients' project cost. The amount of the intermediary's own funds will average per project:

(i) At least 10 percent but less than 25 percent of the total development cost—5 points;

(ii) At least 25 percent but less than 50 percent of total development cost—10 points; or

(iii) 50 percent or more of total development cost—15 points.

(2) Intermediary contribution. The Intermediary will contribute its own funds not derived from Rural Development. The non-Rural Development contributed funds will be placed in a separate account from the PRLF account. The intermediary shall contribute funds not derived from Rural Development into a separate bank account or accounts according to their ''work plan.'' These funds are to be placed into an interest bearing counter-signature-account for 3 years as set forth in the loan agreement. The counter-signature-account will require a signature from a Rural Development employee and intermediary. After 3 years, these funds shall be commingled with the PRLF to provide loans to the ultimate recipient for the preservation and revitalization of Section 514, 515, or 516 MFH. The amount of non-Agency derived funds contributed to the PRLF will equal the following percentage of Rural Development PRLF:

(a) At least 5 percent but less than 15 percent—5 points;

(b) At least 15 percent but less than 25 percent—30 points; or

(c) 25 percent or more—50 points.

(3) Experience. The intermediary has actual experience in the administration of revolving loan funds and the preservation of MFH, with a successful record, for the following number of full years. Applicants must have actual experience in both the administration of revolving loan funds and the preservation of MFH in order to qualify for points under the selection criteria. If the number of years of experience differs between the two types of above listed experience, the type of experience with the lesser number of years will be used for the selection criteria.

(a) At least 1 but less than 3 years—5 points;

(b) At least 3 but less than 5 years—10 points;

(c) At least 5 but less than 10 years—20 points; or

(d) 10 or more years—30 points.

(4) Administrative. The Administrator may assign up to 25 additional points to an application to account for the following items not adequately covered by the other priority criteria set out in this section. The items that will be considered are the amount of funds requested in relation to the amount of need; a particularly successful affordable housing development record; a service area with no other PRLF coverage; a service area with severe affordable housing problems; a service area with emergency conditions caused by a natural disaster; an innovative proposal; the quality of the proposed program; economic development plan from the local community, particularly a plan prepared as part of a request for an Empowerment Zone/Enterprise Community (EZ/EC) designation; or excellent utilization of an existing revolving loan fund program. The Administrator will document the reasons for the particular point allocation.

VI. Appeal Process

All adverse determinations regarding applicant eligibility and the awarding of points as part of the selection process are appealable. Instructions on the appeal process.

Equal Opportunity and Nondiscrimination Requirements

(1) In accordance with the Equal Credit Opportunity Act, the Fair Housing Act of 1968, Title VI of the Civil Rights Act of 1964, Section 504 of the Rehabilitation Act of 1973, Executive Order 12898 Environmental Justice, the Age Discrimination Act of 1975, the Americans with Disabilities Act, and neither the intermediary nor Rural Development will discriminate against any employee, proposed intermediary or proposed ultimate recipient on the basis of sex, marital status, race, familial status, color, religion, national origin, age, physical or mental disability (provided the proposed intermediary or proposed ultimate recipient has the capacity to contract), because all or part of the proposed intermediary's or proposed ultimate recipient's income is derived from public assistance of any kind, or because the proposed intermediary or proposed ultimate recipient has in good faith exercised any right under the Consumer Credit Protection Act, with respect to any aspect of a credit transaction anytime Rural Development loan funds are involved.

(2) The policies and regulations contained in 7 CFR part 1901, subpart E apply to this program.

(3) The Rural Housing Service Administrator will assure that equal opportunity and nondiscrimination requirements are met in accordance with the Equal Credit Opportunity Act, the Fair Housing Act of 1968, Title VI of the Civil Rights Act of 1964, Section 504 of the Rehabilitation Act of 1973, Executive Order 12898 Environmental Justice, the Age Discrimination Act of 1975, and the Americans with Disabilities Act.

(4) All housing must meet the accessibility requirements found at 7 CFR 3560.60(d).

(5) To file a complaint of discrimination, write to: USDA, Assistant Secretary for Civil Rights, Office of the Assistant Secretary for Civil Rights, 1400 Independence Avenue SW., Stop 9410, Washington, DC 20250–9410. Or call toll-free at (866) 632–9992 (English) or (800) 877–8339 (TDD) or (866) 377–8642 (English Federal-relay) or (800) 845–6136 (Spanish Federal-relay). USDA is an equal opportunity provider and employer.

In accordance with Federal law and U.S. Department of Agriculture policy, this institution is prohibited from discriminating on the basis of race, color, national origin, age, disability, religion, sex, familial status, sexual orientation, and reprisal. (Not all prohibited bases apply to all programs).

Persons with disabilities who require alternative means for communication of program information (Braille, large print, audiotape, etc.) should contact USDA's TARGET Center at (202) 720–2600 (voice and TDD).

Dated: May 7, 2013.

Tammye Treviño,

Administrator, Rural Housing Service.

[FR Doc. 2013–13269 Filed 6–4–13; 8:45 am]

BILLING CODE 3410–XV–P

DEPARTMENT OF COMMERCE

[Docket No. 130520483–3483–01]

Privacy Act New System of Records

AGENCY: Department of Commerce.

ACTION: Notice; COMMERCE/DEPT–23, Information Collected Electronically in Connection with Department of Commerce Activities, Events, and Programs.

SUMMARY: This notice announces the Department's proposal for a new system of records under the Privacy Act. The system is entitled ''Information Collected Electronically in Connection with Department of Commerce Activities, Events, and Programs.'' The Department is creating a new system of records that will enable electronic registration, via the Internet, for Commerce-sponsored activities, events, and programs.

DATES: *Comment Date:* To be considered, written comments on the proposed amended system must be submitted on or before July 5, 2013.

Effective Date: Unless comments are received, the new system of records will become effective as proposed on the date of publication of this **Federal Register**.

ADDRESSES: Comments may be mailed to Brenda Dolan, U.S. Department of Commerce, Herbert C. Hoover Building, Suite 300, Room A326, 1401 Constitution Avenue NW., Washington, DC 20230.

FOR FURTHER INFORMATION CONTACT: For further information, please contact, Brenda Dolan, Departmental Freedom of Information and Privacy Act Officer, 202–482–3258.

SUPPLEMENTARY INFORMATION: The purpose of this system of records is to account for the electronic collection, maintenance and use of information in connection with Department of Commerce activities, events, and programs. Such activities, events, and programs include, but are not limited to: Conferences, roundtable discussions, forums, exhibits, summits, and presentations. The records from this system will be accessible by authorized representatives from the Department of Commerce, approved contractors, and in limited instances, individuals registered to participate in Commerce activities, events, and programs. The registrants will have the ability to: Register and, if necessary, submit payment for a variety of Department of Commerce activities, events and programs; sign-up for sponsorship opportunities; schedule individual matchmaking opportunities with other participants; register to exhibit; receive email updates regarding agendas and affiliated events; and perform other functions related to the agency-sponsored activity, event, or program.

COMMERCE/DEPT–23, ''Information Collected Electronically in Connection With Department of Commerce Activities, Events, and Programs.''

SYSTEM NAME:

Information Collected Electronically in Connection with Department of Commerce Activities, Events, and Programs.

SYSTEM LOCATION:

Information will be maintained electronically and under the control of the individual Departmental offices.

a. For Office of the Secretary, Chief Information Officer, 1401 Constitution Avenue NW., Washington, DC 20230.

b. For U.S. Census Bureau, Chief Information Officer, 4600 Silver Hill Road, Suitland, MD 20746.

c. For Bureau of Economic Analysis/Economic Statistics Administration, Chief Information Officer, 1401 Constitution Avenue NW., Washington, DC 20230.

d. For Economic Development Administration, Chief Information Officer, 1401 Constitution Avenue NW., Washington, DC 20230.

e. For Bureau of Industry and Security, Chief Information Officer, 1401 Constitution Avenue NW., Washington, DC 20230.

f. For International Trade Administration, Chief Information Officer, 1401 Constitution Avenue NW., Washington, DC 20230.

g. For Minority Business Development Agency, Office of the Secretary, Chief Information Officer, 1401 Constitution Avenue NW., Washington, DC 20230.

h. For National Institute of Standards and Technology, Chief Information Officer, 100 Bureau Drive, Gaithersburg, MD 20899.

i. For National Technical Information Service, Chief Information Officer, 5301 Shawnee Road, Alexandria, VA 22312

j. For National Telecommunications and Information Administration, Chief Information Officer, 1401 Constitution Avenue NW., Washington, DC 20230.

k. For National Oceanic and Atmospheric Administration, Chief Information Officer, 1305 East-West Highway, SSMC3, Silver Spring, MD 20910.

l. For U.S. Patent and Trademark Office, Chief Information Officer, 600 Dulany Street, Madison Building, Alexandria, VA 22314.

m. For Office of Inspector General, Chief Information Officer, Chief Information Officer, 1401 Constitution Avenue NW., Washington, DC 20230.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Individuals who have requested and/or are registered to participate in an agency-sponsored activity, event, or program.

CATEGORIES OF RECORDS IN THE SYSTEM:

Name, organization affiliation, title, address, email, and telephone number; credit card information; Web site URL; organization category and description; business function; objectives for matchmaking; sponsorship information; exhibition booth preferences; and special requirements for exhibition needs; and all other information submitted to participate in an agency-sponsored activity, program, or event.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

5 U.S.C. App.—Inspector General Act of 1978, § 2; 5 U.S.C. App.—Reorganization Plan of 1970, § 2; 13 U.S.C. § 2; 13 U.S.C. § 131; 15 U.S.C. § 272; 15 U.S.C. § 1151; 15 U.S.C. § 1501; 15 U.S.C. § 1512; 15 U.S.C. § 1516; 15 U.S.C. § 3704b; 16 U.S.C. § 1431; 35 U.S.C. § 2; 42 U.S.C. § 3121 *et seq.;* 47 U.S.C. § 902; 50 U.S.C. App. § 2401 *et seq.;* E.O. 11625; 77 FR 49699 (Aug. 16, 1012).

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

1. A record from this system of records may be disclosed, as a routine use, to other registrants to facilitate company/organization matchmaking. Once registered for an agency activity, event, or program, one would be able to access the following information fields: name; title; address; email address; telephone number; Web site URL; organization category and description; business function, product, or service description; and other fields capturing information related to the agency-sponsored activity, event, or program.

2. In the event that a system of records maintained by the Department to carry out its functions indicates a violation or potential violation of law or contract, whether civil, criminal or regulatory in nature, and whether arising by general statute or particular program statute or contract, or rule, regulation, or order issued pursuant thereto, or the necessity to protect an interest of the Department, the relevant records in the system of records may be referred to the appropriate agency, whether Federal, State, local or foreign, charged with the responsibility of investigating or prosecuting such violation or charged with enforcing or implementing the

statute or contract, or rule, regulation or order issued pursuant thereto, or protecting the interest of the Department.

3. A record from this system of records may be disclosed in the course of presenting evidence to a court, magistrate or administrative tribunal, including disclosures to opposing counsel in the course of settlement negotiations.

4. A record in this system of records may be disclosed, as a routine use, to a Member of Congress submitting a request involving an individual when the individual has requested assistance from the Member with respect to the subject matter of the record.

5. A record in this system of records may be disclosed, as a routine use, to the Office of Management and Budget in connection with the review of private relief legislation as set forth in OMB Circular No. A–19 at any stage of the legislative coordination and clearance process as set forth in that Circular.

6. A record in this system of records may be disclosed, as routine use, to the Department of Justice in connection with determining whether disclosure thereof is required by the Freedom of Information Act (5 U.S.C. § 552).

7. A record in this system of records may be disclosed, as routine use, to a contractor of the Department having need for the information in the performance of the contract, but not operating a system of records within the meaning of 5 U.S.C. § 552a(m).

8. A record from this system of records may be disclosed, as routine use, to the Administrator, General Services, or his designee, during an inspection of records conducted by GSA as part of that agency's responsibility to recommend improvements in records management practices and programs, under authority of 44 U.S.C. § 2904 and 2906. Such disclosure shall be made in accordance with the GSA regulations governing inspection of records for this purpose, and any other relevant (*i.e.* GSA or Commerce) directive. Such disclosure shall not be used to make determinations about individuals.

9. A record in this system of records may be disclosed, as a routine use, to appropriate agencies, entities, and persons when (1) it is suspected or determined that the security or confidentiality of information in the system of records has been compromised; (2) the Department has determined that as a result of the suspected or confirmed compromise there is a risk of harm to economic or property interests, identify theft or fraud, or harm to the security or integrity of this system or other systems or programs (whether maintained by the Department or another agency or entity) that rely upon the compromised information; and (3) the disclosure made to such agencies, entities, and persons is reasonably necessary to assist in connection with the Department's efforts to respond to the suspected or confirmed compromise and to prevent, minimize, or remedy such harm.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Electronic media, backed up to tape media, using backup software with encryption enabled, and in paper.

RETRIEVABILITY:

Name, confirmation number, affiliated organization, mailing address, email address, telephone number, or Web site URL.

SAFEGUARDS:

Records and servers are located in a locked, climate controlled data centers with physical security and electronic badge access for authorized administrators.

RETENTION AND DISPOSAL:

All records shall be retained and disposed of in accordance with National Archives and Records Administration regulations (36 CFR Subchapter B—Records Retention); Departmental directives and comprehensive records schedules.

SYSTEM MANAGER(S) AND ADDRESS:

System managers are the same as stated in the System Location section above.

NOTIFICATION PROCEDURE:

Information may be obtained from: Departmental Privacy Act Officer, Office of the Secretary, U.S. Department of Commerce, 1401 Constitution Avenue NW., Suite A300, Room A326, Washington, DC 20230.

RECORD ACCESS PROCEDURES:

Requests from individuals should be addressed to the same address as stated in the Notification section above.

CONTESTING RECORD PROCEDURES:

The Department's rules for contesting the contents of records, and appealing initial determinations by the individual concerned appear in 15 CFR subpart 4B. Use address contained in the Notification section above.

RECORD SOURCE CATEGORIES:

Information in this system is provided by the individual on whom the record is maintained.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

Dated: May 31, 2013.

Brenda Dolan,

Departmental Freedom of Information and Privacy Act Officer.

[FR Doc. 2013–13330 Filed 6–4–13; 8:45 am]

BILLING CODE 3510–25–P

DEPARTMENT OF COMMERCE

Foreign-Trade Zones Board

[B–13–2013]

Foreign-Trade Zone 50—Long Beach, California; Authorization of Production Activity; Panasonic Corporation of North America (Kitting of Consumer Electronics); Anaheim, California

On January 29, 2013, the Board of Harbor Commissioners of the Port of Long Beach, grantee of FTZ 50, submitted a notification of proposed production activity to the Foreign-Trade Zones (FTZ) Board on behalf of Panasonic Corporation of North America, within Site 31 of FTZ 50, in Anaheim, California.

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 (78 FR 9667, 2–11–2013). 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: May 30, 2013.

Andrew McGilvray,

Executive Secretary.

[FR Doc. 2013–13314 Filed 6–4–13; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

Foreign-Trade Zones Board

[B–54–2013]

Foreign-Trade Zone (FTZ) 39—Dallas-Fort Worth, Texas; Notification of Proposed Production Activity; Lasko Products, Inc. (Household Electric Fans); Fort Worth, Texas

Lasko Products, Inc. (Lasko), an operator of FTZ 39, submitted a notification of proposed production activity for its facilities located in Fort Worth, Texas. The notification conforming to the requirements of the regulations of the FTZ Board (15 CFR 400.22) was received on May 21, 2013.

The Lasko facilities are located at 1700 Meacham Boulevard, 4925–4933 Pylon Street, and 4600 Blue Mound Road, Fort Worth (Tarrant County), Texas. A separate application for ''usage-driven'' site designation at the Lasko facilities is planned and will be processed under Section 400.24 of the FTZ Board's regulations. The facilities are used for the production of household electric fans. Pursuant to 15 CFR 400.14(b), FTZ activity would be limited to the specific foreign-status materials and components and specific finished products described in the submitted notification (as described below) and subsequently authorized by the FTZ Board.

Production under FTZ procedures could exempt Lasko from customs duty payments on the foreign status materials and components used in export production. On its domestic sales, Lasko would be able to choose the duty rates during customs entry procedures that apply to household electric fans (2.3, 4.7%) for the foreign status inputs noted below. Customs duties also could possibly be deferred or reduced on foreign status production equipment.

The components and materials sourced from abroad include: plastic labels; parts of fans (housings, grills, pedestal assemblies, blades); electric motors; electronic transmitters; electrical cords and switches; fasteners; metal name plates; paper manuals; and, paperboard cartons (duty rate ranges from free to 6.2%).

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 July 15, 2013.

A copy of the notification 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 Pierre Duy at *Pierre.Duy@trade.gov* or (202) 482–1378.

Dated: May 30, 2013.

Andrew McGilvray,

Executive Secretary.

[FR Doc. 2013–13319 Filed 6–4–13; 8:45 am]

BILLING CODE P

DEPARTMENT OF COMMERCE

Foreign-Trade Zones Board

[B–55–2013]

Notification of Proposed Production Activity; Roper Corporation; Subzone 26G (Kitchen Ranges); Lafayette, Georgia

Roper Corporation (Roper), operator of Subzone 26G, submitted a notification of proposed production activity to the Foreign-Trade Zones (FTZ) Board for its facility in Lafayette, Georgia. The notification conforming to the requirements of the regulations of the FTZ Board (15 CFR 400.22) was received on May 21, 2013.

The subzone currently has authority to produce various types of kitchen ranges using certain imported components. The current request would add imported components to the scope of authority. Pursuant to 15 CFR 400.14(b), additional FTZ authority would be limited to the specific foreign-status materials and components and specific finished products described in the submitted notification (as described below) and subsequently authorized by the FTZ Board.

Production under FTZ procedures could exempt Roper from customs duty payments on the foreign status components used in export production. On its domestic sales, Roper would be able to choose the duty rates during customs entry procedures that apply to gas and electric kitchen ranges (duty rate ranges from duty-free to 5.7%) for the foreign status inputs noted below and in the existing scope of authority. Customs duties also could possibly be deferred or reduced on foreign status production equipment.

The components and materials sourced from abroad include: bezels, glass oven doors, glass cooktops, screws, clip rings, springs, brass orifice spuds, base burner assemblies, head burners, burner injet assemblies, vent caps, blowers, valves, gas valves, motors, fans, control boards, light indicator assemblies, timers, light indicators, capacitors, thermistors, sensors, lamps, encoder assemblies, lenses, thermostats, and lamp assemblies (duty rate ranges from duty-free to 8.6%).

Public comment is invited from interested parties. Submissions shall be addressed to the Board's Executive Secretary at the address below. The closing period for their receipt is July 15, 2013.

A copy of the notification will be available for public inspection at the Office of the Executive Secretary, Foreign-Trade Zones Board, Room 21013, U.S. Department of Commerce, 1401 Constitution Avenue NW., Washington, DC 20230–0002, and in the ''Reading Room'' section of the Board's Web site, which is accessible via *www.trade.gov/ftz.*

For further information, contact Elizabeth Whiteman at *Elizabeth.Whiteman@trade.gov* or (202) 482–0473.

Dated: May 30, 2013.

Andrew McGilvray,

Executive Secretary.

[FR Doc. 2013–13320 Filed 6–4–13; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–570–956]

Seamless Carbon and Alloy Steel Standard, Line, and Pressure Pipe From the People's Republic of China: Rescission of Antidumping Duty Administrative Review; 2011–2012

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

SUMMARY: In response to a request from an interested party, United States Steel Corporation (''U.S. Steel''), the Department of Commerce (''the Department'') initiated an administrative review of the antidumping duty order on seamless carbon and alloy steel standard, line, and pressure pipe from the People's Republic of China. The period of review is November 1, 2011, through October 31, 2012. Based on the timely withdrawal of the request for review submitted by U.S. Steel, we are now rescinding this administrative review.

DATES: *Effective Date:* June 5, 2013.

FOR FURTHER INFORMATION CONTACT: Magd Zalok or Charles Riggle, AD/CVD Operations, Office 4, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue NW., Washington, DC 20230; telephone: (202) 482–4162 or (202) 482–0650, respectively.

SUPPLEMENTARY INFORMATION:

Background

On December 31, 2012, based on a timely request for review by U.S. Steel, the Department published in the **Federal Register** a notice of initiation of an administrative review of the antidumping duty order on seamless carbon and alloy steel standard, line, and pressure pipe from the People's Republic of China covering the period

November 1, 2011, through October 31, 2012. *See Initiation of Antidumping and Countervailing Duty Administrative Reviews and Request for Revocation in Part,* 77 FR 77017 (December 31, 2012) (''*Initiation Notice''*). The review covers 203 companies. *See Initiation Notice.* No other party requested a review.

On March 27, 2013, U.S. Steel withdrew its request for an administrative review in its entirety.

Rescission of Review

Pursuant to 19 CFR 351.213(d)(1), the Department will rescind an administrative review if the party that requested the review withdraws its request within 90 days of the publication of the notice of initiation of the requested review. In this case, U.S. Steel withdrew its request within the 90-day deadline and no other party requested an administrative review of the antidumping duty order. Therefore, we are rescinding the administrative review of seamless carbon and alloy steel standard, line, and pressure pipe from the People's Republic of China for the period November 1, 2011, through October 31, 2012.

Assessment

The Department will instruct U.S. Customs and Border Protection (''CBP'') to assess antidumping duties on all appropriate entries. Antidumping duties shall be assessed at rates equal to the cash deposit or bonding rate of estimated antidumping duties required at the time of entry, or withdrawal from warehouse, for consumption, in accordance with 19 CFR 351.212(c)(1)(i). The Department intends to issue appropriate assessment instructions directly to CBP 15 days after publication of this notice.

Notifications

This notice serves as a final reminder to importers for whom this review is being rescinded of their responsibility under 19 CFR 351.402(f)(2) to file a certificate regarding the reimbursement of antidumping duties prior to liquidation of the relevant entries during this review period. Failure to comply with this requirement could result in the Secretary's presumption that reimbursement of the antidumping duties occurred and the subsequent assessment of double antidumping duties.

This notice also serves as a reminder to parties subject to administrative protective order (''APO'') of their responsibility concerning the return or destruction of proprietary information disclosed under APO in accordance with 19 CFR 351.305, which continues to govern business proprietary information in this segment of the proceeding. Timely written notification of the return/destruction of APO materials or conversion to judicial protective order is hereby requested. Failure to comply with the regulations and terms of an APO is a violation which is subject to sanction.

This notice is issued and published in accordance with section 777(i)(1) of the Tariff Act of 1930, as amended, and 19 CFR 351.213(d)(4).

Dated: May 30, 2013.

Christian Marsh,

Deputy Assistant Secretary for Antidumping and Countervailing Duty Operations.

[FR Doc. 2013–13321 Filed 6–4–13; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

RIN 0648–XC701

Fishing Capacity Reduction Program for the Southeast Alaska Purse Seine Salmon Fishery

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration, Commerce.

ACTION: Notice of fee rate adjustment.

SUMMARY: NMFS issues this notice to decrease the fee rate to repay the $13,133,030 reduction loan for the fishing capacity reduction program in the Southeast Alaska purse seine salmon fishery.

DATES: The fee rate decrease is effective June 1, 2013.

ADDRESSES: Send questions about this notice to Paul Marx, Chief, Financial Services Division, National Marine Fisheries Service, 1315 East-West Highway, Silver Spring, MD 20910–3282.

FOR FURTHER INFORMATION CONTACT: Paul Marx, (301) 427–8799.

SUPPLEMENTARY INFORMATION:

I. Background

NMFS' authority to make the loan resides in sections 1111 and 1112 of the Merchant Marine Act, 1936 (46 App. U.S.C. 1279(f) and 1279(g) (MMA) (title XI)).

The Program was authorized in the Consolidated Appropriations Act of 2005 (Section 209 of Title II of Division B of Pub. L. 108–447) and waives all of the fishing capacity reduction program requirements of the Magnuson-Stevens Act (Sections 312(b)–(e)) codified at 16 U.S.C. 1801 et seq. except for Sections (b)(1)(C) and (d) which state: (1) It must be cost-effective; and (2) it is subject to a referendum approved by a majority of permit holders.

NMFS published proposed program regulations on May 23, 2011 (76 FR 29707), and final program regulations on October 6, 2011 (76 FR 61985), to implement the reduction program. Subsequently, the Southeast Revitalization Association submitted a capacity reduction plan to NMFS. NMFS approved the plan on February 24, 2012. NMFS published the list of eligible voters on March 1, 2012 (77 FR 12568) and the notice of referendum period on March 29, 2012 (77 FR 19004). Interested persons should review these for further program details.

NMFS conducted a referendum where the majority of permit holders voted to repay a fishing capacity reduction loan to purchase the permits identified in the reduction plan.

On May 7, 2012, NMFS published another **Federal Register** document (77 FR 26744) advising the public that NMFS would tender the program's reduction payments to the 64 selected bidders who would permanently stop fishing with the permits they had relinquished in return for reduction payments. Subsequently, NMFS disbursed $13,133,030 in reduction payments to the 64 selected bidders.

NMFS published a **Federal Register** notice on July 16, 2012 (77 FR 41754), informing the public that fee collection would begin on July 22, 2012. Since then, all harvesters of Southeast Alaska purse seine salmon must pay the fee and all fish buyers of Southeast Alaska purse seine salmon must collect the fee in accordance with the applicable regulations.

II. Purpose

The purpose of this notice is to adjust the fee rate for the reduction fishery in accordance with the framework rule's 50 CFR 600.1013(b). Section 600.1013(b) directs NMFS to recalculate the fee to a rate that will be reasonably necessary to ensure reduction loan repayment within the specified 40 year term.

The initial fee applicable to the Southeast Alaska purse seine salmon program's reduction fishery was 3.00% of landed value and any subsequent bonus payments. NMFS has determined that this is more than is needed to service the loan. Therefore, NMFS is decreasing the fee rate to 1.50% of landed value and any subsequent bonus payments which NMFS has determined is sufficient to ensure timely loan repayment. Fish buyers may continue to use *Pay.gov* to disburse collected fee

deposits at: *http://www.pay.gov/paygov/.*

Please visit the NMFS Web site for additional information at: *http://www.nmfs.noaa.gov/mb/financial_services/buyback.htm.*

III. Notice

The new fee rate for the Southeast Alaska purse seine salmon fishery is effective June 1, 2013.

Fish sellers and fish buyers must pay and collect the fee in the manner set out in 50 CFR 600.1107 and the framework rule. Consequently, all harvesters and fish buyers should read 50 CFR Subpart L § 600.1013 to understand how fish harvesters must pay and fish buyers must collect the fee.

Dated: May 31, 2013.

Gary Reisner,

Director, Office of Management and Budget, National Marine Fisheries Service.

[FR Doc. 2013–13316 Filed 6–4–13; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

RIN 0648–XC544

Marine Mammals; File No. 17941

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Notice; issuance of permit.

SUMMARY: Notice is hereby given that a permit has been issued to Brian Skerry, 285 High Street, Uxbridge, MA 01569, to conduct commercial or educational photography on bottlenose (*Tursiops truncatus*) and spinner *(Stenella longirostris*) dolphins.

ADDRESSES: The permit and related documents are available for review upon written request or by appointment in the following offices:

Permits and Conservation Division, Office of Protected Resources, NMFS, 1315 East-West Highway, Room 13705, Silver Spring, MD 20910; phone (301) 427–8401; fax (301) 713–0376;

Pacific Islands Region, NMFS, 1601 Kapiolani Blvd., Rm 1110, Honolulu, HI 96814–4700; phone (808) 944–2200; fax (808) 973–2941; and

Southeast Region, NMFS, 263 13th Avenue South, Saint Petersburg, FL 33701; phone (727) 824–5312; fax (727) 824–5309.

FOR FURTHER INFORMATION CONTACT: Carrie Hubard or Kristy Beard, (301) 427–8401.

SUPPLEMENTARY INFORMATION: On March 22, 2013, notice was published in the **Federal Register** (78 FR 17639) that a request for a permit to conduct commercial/educational photography had been submitted by the above-named applicant. The requested permit has been issued under the authority of the Marine Mammal Protection Act of 1972, as amended (16 U.S.C. 1361 *et seq.*) and the regulations governing the taking and importing of marine mammals (50 CFR part 216).

Permit No. 17941 authorizes two photography/filming projects. The first consists of helicopter flights over Florida Bay to film bottlenose dolphins mud-ring feeding. A maximum of 400 dolphins may be harassed during the filming. The second project focuses on areas where spinner dolphins and humans interact in Hawaii. Locations include the west side of Oahu and four bays on the Kona coast of Hawaii Island. Methods include both vessel-based and underwater photography. Up to 75 spinner dolphins may be approached within 50 yards during the filming. Four pantropical spotted dolphins (*Stenella attenuata*) may also be approached if they are associated with spinner dolphins. Images and video from both locations will be used for a feature story in *National Geographic Magazine* on dolphin cognition and intelligence. The permit expires on March 31, 2014.

In compliance with the National Environmental Policy Act of 1969 (42 U.S.C. 4321 *et seq.*), a final determination has been made that the activity proposed is categorically excluded from the requirement to prepare an environmental assessment or environmental impact statement.

Dated: May 31, 2013.

P. Michael Payne,

Chief, Permits and Conservation Division, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. 2013–13289 Filed 6–4–13; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

RIN 0648–XC624

Takes of Marine Mammals Incidental to Specified Activities; Low-Energy Marine Geophysical Survey in the Tropical Western Pacific Ocean, September to October 2013

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Notice; proposed Incidental Harassment Authorization; request for comments.

SUMMARY: NMFS has received an application from the Scripps Institution of Oceanography (SIO), a part of the University of California at San Diego, for an Incidental Harassment Authorization (IHA) to take marine mammals, by harassment, incidental to conducting a low-energy marine geophysical (seismic) survey in the tropical western Pacific Ocean, September to October 2013. Pursuant to the Marine Mammal Protection Act (MMPA), NMFS is requesting comments on its proposal to issue an IHA to SIO to incidentally harass, by Level B harassment only, 26 species of marine mammals during the specified activity.

DATES: Comments and information must be received no later than July 5, 2013.

ADDRESSES: Comments on the application should be addressed to P. Michael Payne, 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.Goldstein@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.

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#applications* without change. All Personal Identifying Information (for example, name, address, etc.) voluntarily submitted by the commenter may be publicly accessible. Do not submit confidential business information or otherwise sensitive or protected information.

A copy of the application containing a list of the references used in this document may be obtained by writing to the above address, telephoning the contact listed here (see **FOR FURTHER INFORMATION CONTACT**) or visiting the internet at: *http://www.nmfs.noaa.gov/pr/permits/incidental.htm#applications.*

The National Science Foundation (NSF) and SIO have provided a ''Draft Environmental Analysis of a Low-Energy Marine Geophysical Survey by the R/V Roger Revelle in the Tropical Western Pacific Ocean, September-October 2013'' (EA), prepared by LGL Ltd., Environmental Research Associates, on behalf of NSF and SIO, which is also available at the same Internet address. Documents cited in this notice may be viewed, by

appointment, during regular business hours, at the aforementioned address.

FOR FURTHER INFORMATION CONTACT: Howard Goldstein or Jolie Harrison, Office of Protected Resources, NMFS, 301–427–8401.

SUPPLEMENTARY INFORMATION:

Background

Section 101(a)(5)(D) of the MMPA, as amended (16 U.S.C. 1371 (a)(5)(D)), directs the Secretary of Commerce (Secretary) to authorize, upon request, the incidental, but not intentional, taking of small numbers of marine mammals of a species or population stock, by United States citizens who engage in a specified activity (other than commercial fishing) within a specified geographical region if certain findings are made and, if the taking is limited to harassment, a notice of a proposed authorization is provided to the public for review.

Authorization for the incidental taking of small numbers of marine mammals shall be granted if NMFS finds that the taking will have a negligible impact on the species or stock(s), and will not have an unmitigable adverse impact on the availability of the species or stock(s) for subsistence uses (where relevant). The authorization must set forth the permissible methods of taking, other means of effecting the least practicable adverse impact on the species or stock and its habitat, and requirements pertaining to the mitigation, monitoring and reporting of such takings. 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 United States can apply for an authorization to incidentally take small numbers of marine mammals by harassment. Section 101(a)(5)(D) of the MMPA establishes a 45-day time limit for NMFS's review of an application followed by a 30-day public notice and comment period on any proposed authorizations for the incidental harassment of small numbers of marine mammals. Within 45 days of the close of the public comment period, NMFS must either issue or deny the authorization.

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 April 5, 2013, NMFS received an application from the SIO requesting that NMFS issue an IHA for the take, by Level B harassment only, of small numbers of marine mammals incidental to conducting a low-energy marine seismic survey in International Waters (i.e., high seas) and in the Exclusive Economic Zone of the Federated States of Micronesia (Micronesia), the Independent State of Papua New Guinea (Papua New Guinea), the Republic of Indonesia (Indonesia), and the Republic of the Philippines (Philippines) during September to October 2013. The SIO plans to use one source vessel, the R/V *Roger* REVELLE (REVELLE), and a seismic airgun array to collect seismic data in the tropical western Pacific Ocean. The SIO plans to use conventional low-energy, seismic methodology to fill gaps in equatorial Pacific data sets, namely the lack of high-resolution records from the eastern part of the Western Pacific Warm Pool to better assess controls on the hydrologic cycle in the Western Pacific Warm Pool, and a limited meridional coverage to test hypotheses related to the Plio-Pleistocene evolution of the Western Pacific Warm Pool. In addition to the proposed operations of the seismic airgun array and hydrophone streamer, SIO intends to operate a multibeam and sub-bottom profiler continuously throughout the survey.

Acoustic stimuli (i.e., increased underwater sound) generated during the operation of the seismic airgun array may have the potential to cause a behavioral disturbance for marine mammals in the survey area. This is the principal means of marine mammal taking associated with these activities, and SIO has requested an authorization to take 26 species of marine mammals by Level B harassment. Take is not expected to result from the use of the multibeam and sub-bottom profiler, for reasons discussed in this notice; nor is take expected to result from collision with the source vessel because it is a single vessel moving at a relatively slow speed 5 knots [kts]; 11.1 kilometers per hour [km/hr]; 6.9 miles per hour [mph]) during seismic acquisition within the survey, for a relatively short period of time (approximately 26 operational days). It is likely that any marine mammal would be able to avoid the vessel.

Description of the Proposed Specified Activity

SIO proposes to conduct low-energy seismic and sediment coring surveys at 10 sites in the tropical western Pacific Ocean in September to October 2013. The study sites are located between approximately 4° South to 8° North and approximately 126.5 to 144.5° East in international waters (i.e., high seas) and in the Exclusive Economic Zones (EEZ) of the Federated States of Micronesia (Micronesia), the Independent State of Papua New Guinea (Papua New Guinea), the Republic of Indonesia (Indonesia), and the Republic of the Philippines (Philippines) (see Figure 1 of the IHA application). Water depths in the survey area range from 450 to 3,000 meters (m) (1,476.4 to 9,842.5 feet [ft]). The seismic surveys are scheduled to occur for 14 to 20 hours at each of the 10 sites for approximately 26 operational days in September to October 2013. Some minor deviation from these dates would be possible, depending on logistics and weather.

The proposed surveys would fill gaps in equatorial Pacific data sets, namely the lack of high-resolution records from the eastern part of the Western Pacific Warm Pool to better assess the controls on the hydrologic cycle in the Western Pacific Warm Pool, and a limited meridional coverage to test hypotheses related to the Plio-Pleistocene evolution of the Western Pacific Warm Pool. To achieve the project's goals, the Principal Investigators, Drs. Y. Rosenthal and G. Mountain of Rutgers University propose to collect low-energy, high-resolution multi-channel seismic profiles and sediment cores in the heart of the Western Pacific Warm Pool. Survey data would also be included in a research proposal submitted to the Integrated Ocean Drilling Program (IODP) for funding consideration to extend the record of millennial climate variability in the western equatorial Pacific Ocean back to the mid-Miocene. Survey and site characterization data would assist the IODP in determining the viability of the sites for potential future drilling.

The procedures to be used for the surveys would be similar to those used during previous seismic surveys by SIO and would use conventional seismic methodology. The proposed survey will involve one source vessel, the R/V *Roger* REVELLE (REVELLE). SIO will deploy two (each with a discharge volume of 45 cubic inch [in^3] with a total volume of 90 in^3) Generator Injector (GI) airgun

array as an energy source at a tow depth of 2 m (6.6 ft). The receiving system will consist of one 600 m (1,968.5 ft) long hydrophone streamer. As the GI airguns are towed along the survey lines, the hydrophone streamer will receive the returning acoustic signals and transfer the data to the onboard processing system.

Straight survey lines would be collected in a grid of intersecting lines. Seven sites would be centered in small 9 x 9 km (4.9 x 4.9 nmi) grids of six intersecting lines (see Figure 1 of the IHA application). One site warrants slightly longer lines and would be surveyed in a large 18 x 18 km (9.7 x 9.7 nmi) grid of six intersection lines (see Figure 1 of the IHA application). Finally, sites S–1a and S–1b are close enough that efficiency in ship use would be achieved by covering both with a single grid of intersecting lines in a 30 x 26 km (16.2 x 14 nmi). Individual survey lines in this grid would be approximately 5 to 10 km (2.7 to 5.4 nmi) apart. The total track distance of survey data, including turns, would be approximately 1,033 km (557.8 nmi). Barring re-organization because of weather considerations or results that develop from data analyzed as sites are completed, sites would be surveyed in the order summarized in Table 1 (Table 1 of the IHA application).

All planned seismic data acquisition activities will be conducted by technicians provided by SIO with onboard assistance by the scientists who have proposed the study. The vessel will be self-contained, and the crew will live aboard the vessel for the entire cruise.

The planned seismic survey (e.g., equipment testing, startup, line changes, repeat coverage of any areas, and equipment recovery) will consist of approximately 1,032.9 kilometer (km) (557.7 nautical miles [nmi]) of transect lines (including turns) in the survey area in the tropical western Pacific Ocean (see Figure 1 of the IHA application). In addition to the operation of the airgun array, a multibeam echosounder and a sub-bottom profiler will also likely be operated from the REVELLE continuously throughout the cruise between the first and last survey sites. There will be additional seismic operations associated with equipment testing, ramp-up, and possible line changes or repeat coverage of any areas where initial data quality is sub-standard. In SIO's estimated take calculations, 25% has been added for those additional operations.

TABLE 1—SURVEY PATTERNS AND LENGTHS AT EACH PROPOSED SURVEY SITE IN THE TROPICAL WESTERN PACIFIC OCEAN DURING SEPTEMBER TO OCTOBER 2013

Survey site	Survey pattern (km)	Survey length (km)
WP–5	9 x 9 (4.9 x 4.9 nmi)	82.2 (44.4 nmi)
WP–6	9 x 9 (4.9 x 4.9 nmi)	82.2 (44.4 nmi)
S–1a, S–1b	30 x 26 (16.2 x 14)	349.5 (188.7)
WP–3	9 x 9 (4.9 x 4.9 nmi)	82.2 (44.4 nmi)
WP–4	9 x 9 (4.9 x 4.9 nmi)	82.2 (44.4 nmi)
WP–2	9 x 9 (4.9 x 4.9 nmi)	82.2 (44.4 nmi)
WP–1	9 x 9 (4.9 x 4.9 nmi)	82.2 (44.4 nmi)
WP–7	9 x 9 (4.9 x 4.9 nmi)	82.2 (44.4 nmi)
WP–8	18 x 18 (9.7 x 9.7 nmi)	108 (58.3 nmi)
Total		1,032.9 (557.7 nmi)

[1] Sites are listed in the intended order in which surveys would be conducted.

Vessel Specifications

The REVELLE, a research vessel owned by the U.S. Navy and operated by SIO of the University of California San Diego, will tow the two GI airgun array, as well as the hydrophone streamer, along predetermined lines (see Figure 1 of the IHA application). When the REVELLE is towing the airgun array and the relatively short hydrophone streamer, the turning rate of the vessel while the gear is deployed is much higher than the limit of 5 degrees per minute for a seismic vessel towing a streamer of more typical length (much greater than 1 km [0.5 nmi]), which is approximately 20 degrees. Thus, the maneuverability of the vessel is not limited much during operations with the streamer.

The vessel has a length of 83 m (272.3 ft); a beam of 16.0 m (52.5 ft); a maximum draft of 5.2 m (9.5 ft); and a gross tonnage of 3,180. The ship is powered by two 3,000 horsepower (hp) Propulsion General Electric motors and a 1,180 hp azimuthing jet bowthruster. The REVELLE's operation speed during seismic acquisition is typically approximately 9.3 km per hour (hr) (km/hr) (5 knots [kts]). When not towing seismic survey gear, the REVELLE typically cruises at 22.2 to 23.1 km/hr (12 to 12.5 kts) and has a maximum speed of 27.8 km/hr (15 kts). The REVELLE has an operating range of approximately 27,780 km (15,000 nmi) (the distance the vessel can travel without refueling).

The vessel also has two locations as likely observation stations from which Protected Species Observers (PSO) will watch for marine mammals before and during the proposed airgun operations on the REVELLE. Observing stations will be at the 02 level with PSO's eye level approximately 10.4 m (34 ft) above sea level—one forward on the 02 deck commanding a forward-centered, approximately 240° view around the vessel, and one atop the aft hangar, with an aft-centered view that includes the radii around the airguns. The eyes on the bridge watch will be at a height of approximately 15 m (49 ft); PSOs will work on the enclosed bridge and adjoining aft steering station during any inclement weather. More details of the REVELLE can be found in the IHA application.

Acoustic Source Specifications

Seismic Airguns

The REVELLE will deploy an airgun array, consisting of two 45 in^3 GI airguns as the primary energy source and a 600 m streamer containing hydrophones along predetermined lines. The airgun array will have a firing pressure of 1,750 pounds per square inch (psi). Discharge intervals depend on both the ship's speed and Two Way Travel Time recording intervals. Seismic pulses for the GI airguns will be emitted at intervals of approximately 10 seconds (25 m [82 ft]). At speeds of approximately 11.1 km/hr, the shot intervals correspond to spacing of approximately will be 18.5 to 31 m (60.7

to 101.7 ft) during the study. During firing, a brief (approximately 0.03 second) pulse sound is emitted; the airguns will be silent during the intervening periods. The dominant frequency components range from zero to 188 Hertz (Hz).

The generator chamber of each GI airgun in the primary source, the one responsible for introducing the sound pulse into the ocean, is 45 in^3. The injector chamber injects air into the previously-generated bubble to maintain its shape, and does not introduce more sound into the water. The two GI airguns will be towed 8 m (26.2 ft) apart, side-by-side, 21 m (68.9 ft) behind the REVELLE, at a depth of 2 m (6.6 ft) during the surveys. The total effective volume will be 90 in^3.

Metrics Used in This Document

This section includes a brief explanation of the sound measurements frequently used in the discussions of acoustic effects in this document. Sound pressure is the sound force per unit area, and is usually measured in micropascals (μPa), where 1 pascal (Pa) is the pressure resulting from a force of one newton exerted over an area of one square meter. Sound pressure level (SPL) is expressed as the ratio of a measured sound pressure and a reference level. The commonly used reference pressure level in underwater acoustics is 1 μPa, and the units for SPLs are dB re: 1 μPa. SPL (in decibels [dB]) = 20 log (pressure/reference pressure).

SPL is an instantaneous measurement and can be expressed as the peak, the peak-peak (p-p), or the root mean square (rms). Root mean square, which is the square root of the arithmetic average of the squared instantaneous pressure values, is typically used in discussions of the effects of sounds on vertebrates and all references to SPL in this document refer to the root mean square unless otherwise noted. SPL does not take the duration of a sound into account.

Characteristics of the Airgun Pulses

Airguns function by venting high-pressure air into the water which creates an air bubble. The pressure signature of an individual airgun consists of a sharp rise and then fall in pressure, followed by several positive and negative pressure excursions caused by the oscillation of the resulting air bubble. The oscillation of the air bubble transmits sounds downward through the seafloor and the amount of sound transmitted in the near horizontal directions is reduced. However, the airgun array also emits sounds that travel horizontally toward non-target areas.

The nominal downward-directed source levels of the airgun arrays used by SIO on the REVELLE do not represent actual sound levels that can be measured at any location in the water. Rather they represent the level that would be found 1 m (3.3 ft) from a hypothetical point source emitting the same total amount of sound as is emitted by the combined GI airguns. The actual received level at any location in the water near the GI airguns will not exceed the source level of the strongest individual source. In this case, that will be about 224.6 dB re 1 μPam peak, or 229.8 dB re 1 μPam peak-to-peak. However, the difference between rms and peak or peak-to-peak values for a given pulse depends on the frequency content and duration of the pulse, among other factors. Actual levels experienced by any organism more than 1 m from either GI airgun will be significantly lower.

Accordingly, Lamont-Doherty Earth Observatory of Columbia University (L–DEO) has predicted and modeled the received sound levels in relation to distance and direction from the two GI airgun array. A detailed description of L–DEO's modeling for this survey's marine seismic source arrays for protected species mitigation is provided in the NSF/USGS PEIS. These are the nominal source levels applicable to downward propagation. The NSF/USGS PEIS discusses the characteristics of the airgun pulses. NMFS refers the reviewers to that document for additional information.

Predicted Sound Levels for the Airguns

To determine exclusion zones for the airgun array to be used in the intermediate and deep water of the Gulf of Mexico (GOM), received sound levels have been modeled by L–DEO for a number of airgun configurations, including two 45 in^3 GI airguns, in relation to distance and direction from the airguns (see Figure 2 of the IHA application). The model does not allow for bottom interactions, and is most directly applicable to deep water. Based on the modeling, estimates of the maximum distances from the GI airguns where sound levels of 180 and 160 dB re 1 μPa (rms) are predicted to be received in intermediate and deep water are shown in Table 2 (see Table 2 of the IHA application).

Empirical data concerning the 180 and 160 dB (rms) distances were acquired for various airgun arrays based on measurements during the acoustic verification studies conducted by L–DEO in the northern GOM in 2003 (Tolstoy *et al.*, 2004) and 2007 to 2008 (Tolstoy *et al.*, 2009; Diebold *et al.*, 2010). Results of the 18 and 36 airgun array are not relevant for the two GI airguns to be used in the proposed survey. The empirical data for the 6, 10, 12, and 20 airgun arrays indicate that, for deep water, the L–DEO model tends to overestimate the received sound levels at a given distance (Tolstoy *et al.*, 2004). Measurements were not made for the two GI airgun array in deep water; however, SIO proposes to use the buffer and exclusion zones predicted by L–DEO's model for the proposed GI airgun operations in deep water, although they are likely conservative given the empirical results for the other arrays. Using the L–DEO model, Table 1 (below) shows the distances at which two rms sound levels are expected to be received from the two GI airguns. The 180 dB re 1 μPam (rms) distances are the safety criteria for potential Level A harassment as specified by NMFS (2000) and are applicable to cetaceans. If marine mammals are detected within or about to enter the appropriate exclusion zone, the airguns will be shut-down immediately.

Table 2 summarizes the predicted distances at which sound levels (160 and 180 dB [rms]) are expected to be received from the two airgun array operating in intermediate (100 to 1,000 m [328 to 3,280 ft]) and deep water (greater than 1,000 m [3,280 ft]) depths.

TABLE 2—PREDICTED AND MODELED (TWO 45 IN³ GI AIRGUN ARRAY) DISTANCES TO WHICH SOUND LEVELS ≥ 180 AND 160 DB RE: 1 μPA (RMS) COULD BE RECEIVED IN INTERMEDIATE AND DEEP WATER DURING THE PROPOSED SURVEY IN THE TROPICAL WESTERN PACIFIC OCEAN, SEPTEMBER TO OCTOBER, 2013

Source and total volume	Tow depth (m)	Water depth (m)	Predicted RMS radii distances (m) for 2 GI airgun array	
			160 dB	180 dB
Two GI Airguns (90 in³)	2	Intermediate (100 to 1,000)	600 (1,968.5 ft)	100 (328 ft).
Two GI Airguns (90 in³)	2	Deep (> 1,000)	400 (1,312.3 ft)	100 (328 ft).

Along with the airgun operations, two additional acoustical data acquisition systems may be operated from the REVELLE continuously during the survey. The ocean floor will be mapped with the Kongsberg EM 122 multibeam echosounder and a Knudsen Chirp 3260 sub-bottom profiler. This sound source would be operated continuously from the REVELLE throughout the cruise between the first and last survey sites.

Multibeam Echosounder

The Revelle will operate a Kongsberg EM 122 multibeam echosounder to map the ocean floor. The multibeam echosounder operates at 10.5 to 13 (usually 12) kilohertz (kHz) and is hull-mounted. The transmitting beamwidth is 1 or 2° fore-aft and 150° athwartship. The maximum source level is 242 dB (rms). Each 'ping' consists of eight (in water greater than 1,000 m [3,281 ft]) or four (in water less than 1,000 m) successive fan-shaped transmissions, each ensonifying a sector that extends 1° fore-aft. Continuous-wave signals increase from 2 to 15 milliseconds (ms) in water depths up to 2,600 m (8,530 ft), and FM chirp signals up to 100 ms long are used in water greater than 2,600 m (8,530 ft). The successive transmission span an overall cross-track angular extent of about 150°, with 2 ms gaps between the pings for successive sectors.

Sub-Bottom Profiler

The REVELLE will operate a Knudsen 3260 sub-bottom profiler continuously throughout the cruise simultaneously to map and provide information about the seafloor sedimentary features and bottom topography that is mapped simultaneously with the multibeam echosounder. The beam of the sub-bottom profiler is transmitted as a 27° cone, which is directed downward by a 3.5 kHz transducer in the hull of the REVELLE. The nominal power output is 10 kilowatt (kW), but the actual maximum radiated power is 3 kW or 222 dB (rms). The ping duration is up to 64 ms, and the ping interval is 1 second. A common mode of operation is a broadcast five pulses at 1 second intervals followed by a 5 second pause. The sub-bottom profiler is capable of reaching depths of 10,000 m (32,808.4 ft).

NMFS expects that acoustic stimuli resulting from the proposed operation of the two GI airgun array has the potential to harass marine mammals. NMFS does not expect that the movement of the REVELLE, during the conduct of the seismic survey, has the potential to harass marine mammals because of the relatively slow operation speed of the vessel (approximately 5 kts; 9.3 km/hr; 5.8 mph) during seismic acquisition.

Piston Core, Gravity Core, and Multicore Description and Deployment

The piston corer to be used on the REVELLE consists of a piston core with a 10 cm (in) diameter steel barrel up to approximately 18 m (59.1 ft) long with a 2,300 kilogram (kg) (5,070.6 pounds [lb]) weight and a trigger core with a 10 cm (3.9 inches [in]) diameter PVC plastic barrel 3 m (9.8 ft) long with a 230 kg (507.1 lb) weight, which are lowered concurrently into the ocean floor with 1.4 cm (0.6 in) diameter steel cables.

The gravity core consists of a 6 m (19.7 ft) long core pipe that takes a core sample approximately 10 cm in diameter, a head weight approximately 45 cm (17.7 in) in diameter, and a stabilizing fin. It is lowered to the ocean floor with a 1.4 cm diameter steel cable at 100 m/minute (328.1 ft/min) speed.

The multicore consists of an outer 8-legged cone shaped frame and a weighted inner frame that holds up to 8 plastic core sampling tubes 80 cm (31.5 in) long and approximately 10 cm in diameter. The outer frame is lowered to the bottom, and inner frame is then released to allow the sampling tubes to penetrate the sediment. At each of the 10 sites, one of each type of core would be collected.

Dates, Duration, and Specified Geographic Region

The proposed project and survey sites are located between approximately 4° South to 8° North and approximately 126.5 to 144.5° East in International Waters and in the EEZs of Micronesia, Papua New Guinea, Indonesia, and the Philippines (see Figure 1 of the IHA application). Water depths in the survey area range from approximately 450 to 3,000 m (1,476.4 to 9,842.5 ft). The REVELLE is expected to depart from Lae, Papua New Guinea on September 6, 2013 and arrive at Manila, Philippines on October 1, 2013 (see Table 1 of the IHA application for the proposed order of survey sites. Seismic operations would take approximately 14 to 20 hours at each of the 10 sites, and total transit time to the first site, between all sites, and from the last site would be approximately 13 days. The remainder of the time, approximately 6 days, would be spent collecting sediment cores at the 10 sites, for a total of 26 operational days. Some minor deviation from this schedule is possible, depending on logistics and weather (i.e., the cruise may depart earlier or be extended due to poor weather; there could be additional days of seismic operations if collected data are deemed to be of substandard quality).

Description of the Marine Mammals in the Area of the Proposed Specified Activity

The marine mammal species that potentially occur within the tropical western Pacific Ocean include 26 species of cetaceans and one sirenian. In addition to the 26 species known to occur in the tropical western Pacific Ocean, there are three species known to occur in coastal waters of the study area, these include the Australian snubfin dolphin (*Orcaella heinsohni*), Indo-Pacific humpback dolphin (*Sousa chinensis*), and the Indo-Pacific bottlenose dolphin (*Tursiops aduncus*). However, these species do not occur in in slope or deep, offshore waters where the proposed activities would take place. Those three species are not considered further in this document. No pinnipeds are known to occur in the proposed study area.

The marine mammals that generally occur in the proposed action area belong to three taxonomic groups: mysticetes (baleen whales), odontocetes (toothed whales), and sirenians (the dugong).

Marine mammal species listed as endangered under the U.S. Endangered Species Act of 1973 (ESA; 16 U.S.C. 1531 *et seq.*), includes the humpback (*Megaptera novaeangliae*), sei (*Balaenoptera borealis*), fin (*Balaenoptera physalus*), blue (*Balaenoptera musculus*), and sperm (*Physeter macrocephalus*) whale, as well as the dugong. Of those endangered species, the humpback, sei, fin, blue, and sperm whale is likely to be encountered in the proposed survey area. The dugong (*Dugong dugon*) is the one marine mammal species mentioned in this document that is managed by the U.S. Fish and Wildlife Service (USFWS) and is not considered further in this analysis; all others are managed by NMFS.

Few systematic surveys have been conducted in the tropical western Pacific Ocean, and none have taken place during September to October. Borsa and Nugroho (2010) conducted 1,561 km (842.9 nmi) of surveys of Raja Ampat waters, including the Halmahera Sea, in West Papua during November to December 2007. Visser (2002 in Visser and Bonoccorso, 2003) conducted preliminary surveys in Kimbe Bay, New Britain, Papua New Guinea. Miyazaki and Wada (1978) surveyed 11,249 km (6,074 nmi) in the wider tropical Pacific, including Micronesia, and the waters off Papua New Guinea and the Solomon Islands during January to March 1976. Shimada and Miyashita (2001) conducted 8,721 km (4,709 nmi) of surveys in Micronesia, the Solomon Islands, and north of Papua New Guinea during February to March from 1999 to 2001. Oremus (2011) described 4,523 km (2,442.2 nmi) of surveys in the Solomon Islands during November of 2009 and 2010. Dolar *et al.* (2006) surveyed the waters of the central Philippines, including the Sulu Sea, during May to June 1994 and 1995; 2,747 km (1,483.3 nmi) were covered. In May 1996, Dolar *et al.* (1997) surveyed 825 km (445.5 nmi) in the southern Sulu Sea. Another survey of relevance to the proposed survey area is one that took place during January to April 2007 in the waters of Guam and the Commonwealth of the Northern Mariana Islands; a total of 11,033 km (5,957.3 nmi) were surveyed in the area 10 to 18° North and 142 to 148° East (SRS-Parsons, 2007; Fulling *et al.,* 2011). The aforementioned surveys took place in shallow coastal waters as well as deeper offshore waters. Records from the Ocean Biogeographic Information System (OBIS) database hosted by Rutgers and Duke University (Read *et al.,* 2009) were also considered. Table 3 (below) presents information on the abundance, distribution, population status, conservation status, and population trend of the species of marine mammals that may occur in the proposed study area during September to October, 2013.

TABLE 3—THE HABITAT, REGIONAL ABUNDANCE, AND CONSERVATION STATUS OF MARINE MAMMALS THAT MAY OCCUR IN OR NEAR THE PROPOSED SEISMIC SURVEY AREA IN THE TROPICAL WESTERN PACIFIC OCEAN

[See text and Table 3 in SIO's application for further details]

Species	Habitat	Population estimate	ESA [1]	MMPA [2]
Mysticetes:				
Humpback whale (*Megaptera novaeangliae*).	Pelagic, nearshore waters, and banks	3,520 [3]	EN	D
Minke whale (*Balaenoptera acutorostrata*)	Pelagic and coastal	25,000 [4]	NL	NC
Bryde's whale (*Balaenoptera edeni*)	Pelagic and coastal	21,000 [5]	NL	NC
Omura's whale (*Balaenoptera omurai*)	Pelagic and coastal	NA	NL	NC
Sei whale (*Balaenoptera borealis*)	Primarily offshore, pelagic	7,260 to 12,620 [6]	EN	D
Fin whale (*Balaenoptera physalus*)	Continental slope, pelagic	13,620 to 18,680 [7]	EN	D
Blue whale (*Balaenoptera musculus*)	Pelagic, shelf, coastal	NA	EN	D
Odontocetes:				
Sperm whale (*Physeter macrocephalus*)	Pelagic, deep sea	29,674 [8]	EN	D
Pygmy sperm whale (*Kogia breviceps*)	Deep waters off the shelf	NA	NL	NC
Dwarf sperm whale (*Kogia sima*)	Deep waters off the shelf	11,200 [9]	NL	NC
Cuvier's beaked whale (*Ziphius cavirostris*).	Pelagic	20,000 [9]	NL	NC
Longman's beaked whale (*Indopacetus pacificus*).	Pelagic	NA	NL	NC
Ginkgo-toothed beaked whale (*Mesoplodon ginkgodens*).	Pelagic	25,300 [10]	NL	NC
Blainville's beaked whale (*Mesopldon densirostris*).	Pelagic	25,300 [10]	NL	NC
Killer whale (*Orcinus orca*)	Pelagic, shelf, coastal	8,500 [9]	NL	NC
Short-finned pilot whale (*Globicephala macrorhynchus*)	Pelagic, shelf coastal	53,608 [12]	NL	NC
False killer whale (*Pseudorca crassidens*)	Pelagic	16,668 [12]	NL	NC
Melon-headed whale (*Peponocephala electra*).	Pelagic	45,400 [9]	NL	NC
Pygmy killer whale (*Feresa attenuata*)	Pelagic	38,900 [9]	NL	NC
Risso's dolphin (*Grampus griseus*)	Deep water, seamounts	83,289 [12]	NL	NC
Bottlenose dolphin (*Tursiops truncatus*)	Offshore, inshore, coastal, estuaries	168,792 [12]	NL	NC
Rough-toothed dolphin (*Steno bredanensis*).	Pelagic	107,633 [11]	NL	NC
Fraser's dolphin (*Lagenodelphis hosei*)	Pelagic	289,300 [9]	NL	NC
Striped dolphin (*Stenella coeruleoalba*)	Pelagic	570,038 [13]	NL	NC
Pantropical spotted dolphin (*Stenella attenuata*).	Coastal, pelagic	438,064 [11]	NL	NC
Spinner dolphin (*Stenella longirostris*)	Coastal, pelagic	734,837 [13]	NL	NC
Sirenians:				
Dugong (*Dugong dugon*)	Coastal	NA	EN	D

NA = Not available or not assessed.

[1] U.S. Endangered Species Act: EN = Endangered, T = Threatened, DL = Delisted, NL = Not listed.
[2] U.S. Marine Mammal Protection Act: D = Depleted, S = Strategic, NC = Not Classified.
[3] Oceania (Constantine *et al.*, 2010).
[4] Northwest Pacific and Okhotsk Sea (IWC, 2013).
[5] Western North Pacific (IWC, 2013).
[6] North Pacific (Tillman, 1977).
[7] North Pacific (Ohsumi and Wada, 1974).
[8] Western North Pacific (Whitehead, 2002).
[9] Eastern Tropical Pacific (Wade and Gerrodette, 1993).
[10] Eastern Tropical Pacific, all Mesoplodon spp. (Wade and Gerrodette, 1993)
[11] Eastern Tropical Pacific (Gerrodette *et al.*, 2008).
[12] Western North Pacific (Miyashita, 1993).
[13] Whitebelly stock in Eastern Tropical Pacific (Gerrodette *et al.*, 2008).

Refer to sections 3 and 4 of SIO's application for detailed information regarding the abundance and distribution, population status, and life history and behavior of these other marine mammal species and their occurrence in the proposed project area. The application also presents how SIO calculated the estimated densities for the marine mammals in the proposed survey area. NMFS has reviewed these data and determined them to be the best available scientific information for the purposes of the proposed IHA.

Potential Effects on Marine Mammals

Acoustic stimuli generated by the operation of the airguns, which introduce sound into the marine environment, may have the potential to cause Level B harassment of marine mammals in the proposed survey area. The effects of sounds from airgun operations might include one or more of the following: tolerance, masking of natural sounds, behavioral disturbance, temporary or permanent hearing impairment, or non-auditory physical or physiological effects (Richardson *et al.,* 1995; Gordon *et al.,* 2004; Nowacek *et al.,* 2007; Southall *et al.,* 2007). Permanent hearing impairment, in the unlikely event that it occurred, would constitute injury, but temporary threshold shift (TTS) is not an injury (Southall *et al.,* 2007). Although the possibility cannot be entirely excluded, it is unlikely that the proposed project would result in any cases of temporary or permanent hearing impairment, or any significant non-auditory physical or physiological effects. Based on the available data and studies described here, some behavioral disturbance is expected. A more comprehensive review of these issues can be found in the ''Programmatic Environmental Impact Statement/Overseas Environmental Impact Statement prepared for Marine Seismic Research that is funded by the National Science Foundation and conducted by the U.S. Geological Survey'' (NSF/USGS, 2011).

Tolerance

Richardson *et al.* (1995) defines tolerance as the occurrence of marine mammals in areas where they are exposed to human activities or man-made noise. In many cases, tolerance develops by the animal habituating to the stimulus (i.e., the gradual waning of responses to a repeated or ongoing stimulus) (Richardson, *et al.,* 1995; Thorpe, 1963), but because of ecological or physiological requirements, many marine animals may need to remain in areas where they are exposed to chronic stimuli (Richardson, *et al.,* 1995).

Numerous studies have shown that pulsed sounds from airguns are often readily detectable in the water at distances of many kilometers. Several studies have shown that marine mammals at distances more than a few kilometers from operating seismic vessels often show no apparent response. That is often true even in cases when the pulsed sounds must be readily audible to the animals based on measured received levels and the hearing sensitivity of the marine mammal group. Although various baleen whales and toothed whales, and (less frequently) pinnipeds have been shown to react behaviorally to airgun pulses under some conditions, at other times marine mammals of all three types have shown no overt reactions. The relative responsiveness of baleen and toothed whales are quite variable.

Masking

The term masking refers to the inability of a subject to recognize the occurrence of an acoustic stimulus as a result of the interference of another acoustic stimulus (Clark *et al.,* 2009). Introduced underwater sound may, through masking, reduce the effective communication distance of a marine mammal species if the frequency of the source is close to that used as a signal by the marine mammal, and if the anthropogenic sound is present for a significant fraction of the time (Richardson *et al.,* 1995).

Masking effects of pulsed sounds (even from large arrays of airguns) on marine mammal calls and other natural sounds are expected to be limited. Because of the intermittent nature and low duty cycle of seismic airgun pulses, animals can emit and receive sounds in the relatively quiet intervals between pulses. However, in some situations, reverberation occurs for much or the entire interval between pulses (e.g., Simard *et al.,* 2005; Clark and Gagnon, 2006) which could mask calls. Some baleen and toothed whales are known to continue calling in the presence of seismic pulses, and their calls can usually be heard between the seismic pulses (e.g., Richardson *et al.,* 1986; McDonald *et al.,* 1995; Greene *et al.,* 1999; Nieukirk *et al.,* 2004; Smultea *et al.,* 2004; Holst *et al.,* 2005a,b, 2006; and Dunn and Hernandez, 2009). However, Clark and Gagnon (2006) reported that fin whales in the North Atlantic Ocean went silent for an extended period starting soon after the onset of a seismic survey in the area. Similarly, there has been one report that sperm whales ceased calling when exposed to pulses from a very distant seismic ship (Bowles *et al.,* 1994). However, more recent studies found that they continued calling in the presence of seismic pulses (Madsen *et al.,* 2002; Tyack *et al.,* 2003; Smultea *et al.,* 2004; Holst *et al.,* 2006; and Jochens *et al.,* 2008). Dilorio and Clark (2009) found evidence of increased calling by blue whales during operations by a lower-energy seismic source (i.e., sparker). Dolphins and porpoises commonly are heard calling while airguns are operating (e.g., Gordon *et al.,* 2004; Smultea *et al.,* 2004; Holst *et al.,* 2005a, b; and Potter *et al.,* 2007). The sounds important to small odontocetes are predominantly at much higher frequencies than are the dominant components of airgun sounds, thus limiting the potential for masking. In general, NMFS expects the masking effects of seismic pulses to be minor, given the normally intermittent nature of seismic pulses.

Behavioral Disturbance

Marine mammals may behaviorally react to sound when exposed to anthropogenic noise. Disturbance includes a variety of effects, including

subtle to conspicuous changes in behavior, movement, and displacement. Reactions to sound, if any, depend on species, state of maturity, experience, current activity, reproductive state, time of day, and many other factors (Richardson *et al.,* 1995; Wartzok *et al.,* 2004; Southall *et al.,* 2007; Weilgart, 2007). These behavioral reactions are often shown as: changing durations of surfacing and dives, number of blows per surfacing, or moving direction and/or speed; reduced/increased vocal activities; changing/cessation of certain behavioral activities (such as socializing or feeding); visible startle response or aggressive behavior (such as tail/fluke slapping or jaw clapping); avoidance of areas where noise sources are located; and/or flight responses. If a marine mammal does react briefly to an underwater sound by changing its behavior or moving a small distance, the impacts of the change are unlikely to be significant to the individual, let alone the stock or population. However, if a sound source displaces marine mammals from an important feeding or breeding area for a prolonged period, impacts on individuals and populations could be significant (e.g., Lusseau and Bejder, 2007; Weilgart, 2007).

The biological significance of many of these behavioral disturbances is difficult to predict, especially if the detected disturbances appear minor. However, the consequences of behavioral modification could be expected to be biologically significant if the change affects growth, survival, and/or reproduction. Some of these significant behavioral modifications include:

- Change in diving/surfacing patterns (such as those thought to be causing beaked whale stranding due to exposure to military mid-frequency tactical sonar);
- Habitat abandonment due to loss of desirable acoustic environment; and
- Cessation of feeding or social interaction.

The onset of behavioral disturbance from anthropogenic noise depends on both external factors (characteristics of noise sources and their paths) and the receiving animals (hearing, motivation, experience, demography) and is also difficult to predict (Richardson *et al.,* 1995; Southall *et al.,* 2007). Given the many uncertainties in predicting the quantity and types of impacts of noise on marine mammals, it is common practice to estimate how many mammals would be present within a particular distance of industrial activities and/or exposed to a particular level of sound. In most cases, this approach likely overestimates the numbers of marine mammals that would be affected in some biologically-important manner.

Baleen Whales—Baleen whales generally tend to avoid operating airguns, but avoidance radii are quite variable (reviewed in Richardson *et al.,* 1995; Gordon *et al.,* 2004). Whales are often reported to show no overt reactions to pulses from large arrays of airguns at distances beyond a few kilometers, even though the airgun pulses remain well above ambient noise levels out to much longer distances. However, baleen whales exposed to strong noise pulses from airguns often react by deviating from their normal migration route and/or interrupting their feeding and moving away. In the cases of migrating gray and bowhead whales, the observed changes in behavior appeared to be of little or no biological consequence to the animals (Richardson, *et al.,* 1995). They simply avoided the sound source by displacing their migration route to varying degrees, but within the natural boundaries of the migration corridors.

Studies of gray, bowhead, and humpback whales have shown that seismic pulses with received levels of 160 to 170 dB re 1 μPa (rms) seem to cause obvious avoidance behavior in a substantial fraction of the animals exposed (Malme *et al.,* 1986, 1988; Richardson *et al.,* 1995). In many areas, seismic pulses from large arrays of airguns diminish to those levels at distances ranging from 4 to 15 km (2.2 to 8.1 nmi) from the source. A substantial proportion of the baleen whales within those distances may show avoidance or other strong behavioral reactions to the airgun array. Subtle behavioral changes sometimes become evident at somewhat lower received levels, and studies have shown that some species of baleen whales, notably bowhead, gray, and humpback whales, at times, show strong avoidance at received levels lower than 160 to 170 dB re 1 μPa (rms).

Researchers have studied the responses of humpback whales to seismic surveys during migration, feeding during the summer months, breeding while offshore from Angola, and wintering offshore from Brazil. McCauley *et al.* (1998, 2000a) studied the responses of humpback whales off western Australia to a full-scale seismic survey with a 16 airgun array (2,678 in^3) and to a single airgun (20 in^3) with source level of 227 dB re 1 μPa (p-p). In the 1998 study, they documented that avoidance reactions began at 5 to 8 km (2.7 to 4.3 nmi) from the array, and that those reactions kept most pods approximately 3 to 4 km (1.6 to 2.2 nmi) from the operating seismic boat. In the 2000 study, they noted localized displacement during migration of 4 to 5 km (2.2 to 2.7 nmi) by traveling pods and 7 to 12 km (3.8 to 6.5 nmi) by more sensitive resting pods of cow-calf pairs. Avoidance distances with respect to the single airgun were smaller but consistent with the results from the full array in terms of the received sound levels. The mean received level for initial avoidance of an approaching airgun was 140 dB re 1 μPa (rms) for humpback pods containing females, and at the mean closest point of approach distance the received level was 143 dB re 1 μPa (rms). The initial avoidance response generally occurred at distances of 5 to 8 km (2.7 to 4.3 nmi) from the airgun array and 2 km (1.1 nmi) from the single airgun. However, some individual humpback whales, especially males, approached within distances of 100 to 400 m (328 to 1,312 ft), where the maximum received level was 179 dB re 1 μPa (rms).

Data collected by observers during several seismic surveys in the Northwest Atlantic showed that sighting rates of humpback whales were significantly greater during non-seismic periods compared with periods when a full array was operating (Moulton and Holst, 2010). In addition, humpback whales were more likely to swim away and less likely to swim towards a vessel during seismic vs. non-seismic periods (Moulton and Holst, 2010).

Humpback whales on their summer feeding grounds in southeast Alaska did not exhibit persistent avoidance when exposed to seismic pulses from a 1.64-L (100 in^3) airgun (Malme *et al.,* 1985). Some humpbacks seemed ''startled'' at received levels of 150 to 169 dB re 1 μPa. Malme *et al.* (1985) concluded that there was no clear evidence of avoidance, despite the possibility of subtle effects, at received levels up to 172 dB re 1 μPa (rms). However, Moulton and Holst (2010) reported that humpback whales monitored during seismic surveys in the Northwest Atlantic had lower sighting rates and were most often seen swimming away from the vessel during seismic periods compared with periods when airguns were silent.

Studies have suggested that South Atlantic humpback whales wintering off Brazil may be displaced or even strand upon exposure to seismic surveys (Engel *et al.,* 2004). The evidence for this was circumstantial and subject to alternative explanations (IAGC, 2004). Also, the evidence was not consistent with subsequent results from the same area of Brazil (Parente *et al.,* 2006), or with direct studies of humpbacks exposed to seismic surveys in other areas and

seasons. After allowance for data from subsequent years, there was ''no observable direct correlation'' between strandings and seismic surveys (IWC, 2007: 236).

Reactions of migrating and feeding (but not wintering) gray whales to seismic surveys have been studied. Malme *et al.* (1986, 1988) studied the responses of feeding eastern Pacific gray whales to pulses from a single 100 in^3 airgun off St. Lawrence Island in the northern Bering Sea. They estimated, based on small sample sizes, that 50 percent of feeding gray whales stopped feeding at an average received pressure level of 173 dB re 1 μPa on an (approximate) rms basis, and that 10 percent of feeding whales interrupted feeding at received levels of 163 dB re 1 μPa (rms). Those findings were generally consistent with the results of experiments conducted on larger numbers of gray whales that were migrating along the California coast (Malme *et al.,* 1984; Malme and Miles, 1985), and western Pacific gray whales feeding off Sakhalin Island, Russia (Wursig *et al.,* 1999; Gailey *et al.,* 2007; Johnson *et al.,* 2007; Yazvenko *et al.,* 2007a, b), along with data on gray whales off British Columbia (Bain and Williams, 2006).

Various species of *Balaenoptera* (blue, sei, fin, and minke whales) have occasionally been seen in areas ensonified by airgun pulses (Stone, 2003; MacLean and Haley, 2004; Stone and Tasker, 2006), and calls from blue and fin whales have been localized in areas with airgun operations (e.g., McDonald *et al.,* 1995; Dunn and Hernandez, 2009; Castellote *et al.,* 2010). Sightings by observers on seismic vessels off the United Kingdom from 1997 to 2000 suggest that, during times of good sightability, sighting rates for mysticetes (mainly fin and sei whales) were similar when large arrays of airguns were shooting vs. silent (Stone, 2003; Stone and Tasker, 2006). However, these whales tended to exhibit localized avoidance, remaining significantly further (on average) from the airgun array during seismic operations compared with non-seismic periods (Stone and Tasker, 2006). Castellote *et al.* (2010) reported that singing fin whales in the Mediterranean moved away from an operating airgun array.

Ship-based monitoring studies of baleen whales (including blue, fin, sei, minke, and humpback whales) in the Northwest Atlantic found that overall, this group had lower sighting rates during seismic vs. non-seismic periods (Moulton and Holst, 2010). Baleen whales as a group were also seen significantly farther from the vessel during seismic compared with non-seismic periods, and they were more often seen to be swimming away from the operating seismic vessel (Moulton and Holst, 2010). Blue and minke whales were initially sighted significantly farther from the vessel during seismic operations compared to non-seismic periods; the same trend was observed for fin whales (Moulton and Holst, 2010). Minke whales were most often observed to be swimming away from the vessel when seismic operations were underway (Moulton and Holst, 2010).

Data on short-term reactions by cetaceans to impulsive noises are not necessarily indicative of long-term or biologically significant effects. It is not known whether impulsive sounds affect reproductive rate or distribution and habitat use in subsequent days or years. However, gray whales have continued to migrate annually along the west coast of North America with substantial increases in the population over recent years, despite intermittent seismic exploration (and much ship traffic) in that area for decades (Appendix A in Malme *et al.,* 1984; Richardson *et al.,* 1995; Allen and Angliss, 2010). The western Pacific gray whale population did not seem affected by a seismic survey in its feeding ground during a previous year (Johnson *et al.,* 2007). Similarly, bowhead whales have continued to travel to the eastern Beaufort Sea each summer, and their numbers have increased notably, despite seismic exploration in their summer and autumn range for many years (Richardson *et al.,* 1987; Allen and Angliss, 2010). The history of coexistence between seismic surveys and baleen whales suggests that brief exposures to sound pulses from any single seismic survey are unlikely to result in prolonged effects.

Toothed Whales—Little systematic information is available about reactions of toothed whales to noise pulses. Few studies similar to the more extensive baleen whale/seismic pulse work summarized above have been reported for toothed whales. However, there are recent systematic studies on sperm whales (e.g., Gordon *et al.,* 2006; Madsen *et al.,* 2006; Winsor and Mate, 2006; Jochens *et al.,* 2008; Miller *et al.,* 2009). There is an increasing amount of information about responses of various odontocetes to seismic surveys based on monitoring studies (e.g., Stone, 2003; Smultea *et al.,* 2004; Moulton and Miller, 2005; Bain and Williams, 2006; Holst *et al.,* 2006; Stone and Tasker, 2006; Potter *et al.,* 2007; Hauser *et al.,* 2008; Holst and Smultea, 2008; Weir, 2008; Barkaszi *et al.,* 2009; Richardson *et al.,* 2009; Moulton and Holst, 2010).

Seismic operators and PSOs on seismic vessels regularly see dolphins and other small toothed whales near operating airgun arrays, but in general there is a tendency for most delphinids to show some avoidance of operating seismic vessels (e.g., Goold, 1996a,b,c; Calambokidis and Osmek, 1998; Stone, 2003; Moulton and Miller, 2005; Holst *et al.,* 2006; Stone and Tasker, 2006; Weir, 2008; Richardson *et al.,* 2009; Barkaszi *et al.,* 2009; Moulton and Holst, 2010). Some dolphins seem to be attracted to the seismic vessel and floats, and some ride the bow wave of the seismic vessel even when large arrays of airguns are firing (e.g., Moulton and Miller, 2005). Nonetheless, small toothed whales more often tend to head away, or to maintain a somewhat greater distance from the vessel, when a large array of airguns is operating than when it is silent (e.g., Stone and Tasker, 2006; Weir, 2008; Barry *et al.,* 2010; Moulton and Holst, 2010). In most cases, the avoidance radii for delphinids appear to be small, on the order of one km or less, and some individuals show no apparent avoidance.

Captive bottlenose dolphins and beluga whales exhibited changes in behavior when exposed to strong pulsed sounds similar in duration to those typically used in seismic surveys (Finneran *et al.,* 2000, 2002, 2005). However, the animals tolerated high received levels of sound before exhibiting aversive behaviors.

Most studies of sperm whales exposed to airgun sounds indicate that the sperm whale shows considerable tolerance of airgun pulses (e.g., Stone, 2003; Moulton *et al.,* 2005, 2006a; Stone and Tasker, 2006; Weir, 2008). In most cases the whales do not show strong avoidance, and they continue to call. However, controlled exposure experiments in the Gulf of Mexico indicate that foraging behavior was altered upon exposure to airgun sound (Jochens *et al.,* 2008; Miller *et al.,* 2009; Tyack, 2009).

There are almost no specific data on the behavioral reactions of beaked whales to seismic surveys. However, some northern bottlenose whales (*Hyperoodon ampullatus*) remained in the general area and continued to produce high-frequency clicks when exposed to sound pulses from distant seismic surveys (Gosselin and Lawson, 2004; Laurinolli and Cochrane, 2005; Simard *et al.,* 2005). Most beaked whales tend to avoid approaching vessels of other types (e.g., Wursig *et al.,* 1998). They may also dive for an extended period when approached by a

vessel (e.g., Kasuya, 1986), although it is uncertain how much longer such dives may be as compared to dives by undisturbed beaked whales, which also are often quite long (Baird *et al.,* 2006; Tyack *et al.,* 2006). Based on a single observation, Aguilar-Soto *et al.* (2006) suggested that foraging efficiency of Cuvier's beaked whales may be reduced by close approach of vessels. In any event, it is likely that most beaked whales would also show strong avoidance of an approaching seismic vessel, although this has not been documented explicitly. In fact, Moulton and Holst (2010) reported 15 sightings of beaked whales during seismic studies in the Northwest Atlantic; seven of those sightings were made at times when at least one airgun was operating. There was little evidence to indicate that beaked whale behavior was affected by airgun operations; sighting rates and distances were similar during seismic and non-seismic periods (Moulton and Holst, 2010).

There are increasing indications that some beaked whales tend to strand when naval exercises involving mid-frequency sonar operation are ongoing nearby (e.g., Simmonds and Lopez-Jurado, 1991; Frantzis, 1998; NOAA and USN, 2001; Jepson *et al.,* 2003; Hildebrand, 2005; Barlow and Gisiner, 2006; see also the ''Stranding and Mortality'' section in this notice). These strandings are apparently a disturbance response, although auditory or other injuries or other physiological effects may also be involved. Whether beaked whales would ever react similarly to seismic surveys is unknown. Seismic survey sounds are quite different from those of the sonar in operation during the above-cited incidents.

Odontocete reactions to large arrays of airguns are variable and, at least for delphinids and Dall's porpoises, seem to be confined to a smaller radius than has been observed for the more responsive of some mysticetes. However, other data suggest that some odontocete species, including harbor porpoises, may be more responsive than might be expected given their poor low-frequency hearing. Reactions at longer distances may be particularly likely when sound propagation conditions are conducive to transmission of the higher frequency components of airgun sound to the animals' location (DeRuiter *et al.,* 2006; Goold and Coates, 2006; Tyack *et al.,* 2006; Potter *et al.,* 2007).

Hearing Impairment and Other Physical Effects

Exposure to high intensity sound for a sufficient duration may result in auditory effects such as a noise-induced threshold shift—an increase in the auditory threshold after exposure to noise (Finneran, Carder, Schlundt, and Ridgway, 2005). Factors that influence the amount of threshold shift include the amplitude, duration, frequency content, temporal pattern, and energy distribution of noise exposure. The magnitude of hearing threshold shift normally decreases over time following cessation of the noise exposure. The amount of threshold shift just after exposure is called the initial threshold shift. If the threshold shift eventually returns to zero (i.e., the threshold returns to the pre-exposure value), it is called temporary threshold shift (TTS) (Southall *et al.,* 2007).

Researchers have studied TTS in certain captive odontocetes and pinnipeds exposed to strong sounds (reviewed in Southall *et al.,* 2007). However, there has been no specific documentation of TTS let alone permanent hearing damage, i.e., permanent threshold shift (PTS), in free-ranging marine mammals exposed to sequences of airgun pulses during realistic field conditions.

Temporary Threshold Shift—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. 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. Available data on TTS in marine mammals are summarized in Southall *et al.* (2007). Table 2 (above) presents the estimated distances from the REVELLE's airguns at which the received energy level (per pulse, flat-weighted) would be expected to be greater than or equal to 180 dB re 1 μPa (rms).

To avoid the potential for injury, NMFS (1995, 2000) concluded that cetaceans should not be exposed to pulsed underwater noise at received levels exceeding 180 dB re 1 μPa (rms). NMFS believes that to avoid the potential for Level A harassment, cetaceans should not be exposed to pulsed underwater noise at received levels exceeding 180 dB re 1 μPa (rms), respectively. The established 180 dB (rms) criteria are not considered to be the levels above which TTS might occur. Rather, they are the received levels above which, in the view of a panel of bioacoustics specialists convened by NMFS before TTS measurements for marine mammals started to become available, one could not be certain that there would be no injurious effects, auditory or otherwise, to marine mammals.

For toothed whales, researchers have derived TTS information for odontocetes from studies on the bottlenose dolphin and beluga. The experiments show that exposure to a single impulse at a received level of 207 kPa (or 30 psi, p–p), which is equivalent to 228 dB re 1 Pa (p–p), 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). 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). From this, it is suspected that received levels causing TTS onset may also be higher in baleen whales than those of odontocetes (Southall *et al.,* 2007).

Permanent Threshold Shift—When PTS occurs, there is physical damage to the sound receptors in the ear. In severe 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 pulses of airgun sound can cause PTS in any marine mammal, even with large arrays of airguns. However, given the possibility that mammals close to an airgun array might incur at least mild TTS, there has been further speculation about the possibility that some

individuals occurring very close to airguns 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, but repeated or (in some cases) single exposures to a level well above that causing TTS onset might elicit PTS.

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). PTS might occur at a received sound level at least several dBs above that inducing mild TTS if the animal were exposed to strong sound pulses with rapid rise times. 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).

Given the higher level of sound necessary to cause PTS as compared with TTS, it is considerably less likely that PTS would occur. Baleen whales generally avoid the immediate area around operating seismic vessels, as do some other marine mammals.

Stranding and Mortality—When a living or dead marine mammal swims or floats onto shore and becomes ''beached'' or incapable of returning to sea, the event is termed a ''stranding'' (Geraci *et al.,* 1999; Perrin and Geraci, 2002; Geraci and Lounsbury, 2005; NMFS, 2007). The legal definition for a stranding under the MMPA is that ''(A) a marine mammal is dead and is (i) on a beach or shore of the United States; or (ii) in waters under the jurisdiction of the United States (including any navigable waters); or (B) a marine mammal is alive and is (i) on a beach or shore of the United States and is unable to return to the water; (ii) on a beach or shore of the United States and, although able to return to the water is in need of apparent medical attention; or (iii) in the waters under the jurisdiction of the United States (including any navigable waters), but is unable to return to its natural habitat under its own power or without assistance.''

Marine mammals are known to strand for a variety of reasons, such as infectious agents, biotoxicosis, starvation, fishery interaction, ship strike, unusual oceanographic or weather events, sound exposure, or combinations of these stressors sustained concurrently or in series. However, the cause or causes of most strandings are unknown (Geraci *et al.,* 1976; Eaton, 1979; Odell *et al.,* 1980; Best, 1982). Numerous studies suggest that the physiology, behavior, habitat relationships, age, or condition of cetaceans may cause them to strand or might pre-dispose them to strand when exposed to another phenomenon. These suggestions are consistent with the conclusions of numerous other studies that have demonstrated that combinations of dissimilar stressors commonly combine to kill an animal or dramatically reduce its fitness, even though one exposure without the other does not produce the same result (Chroussos, 2000; Creel, 2005; DeVries *et al.,* 2003; Fair and Becker, 2000; Foley *et al.,* 2001; Moberg, 2000; Relyea, 2005a, 2005b; Romero, 2004; Sih *et al.,* 2004).

Strandings Associated with Military Active Sonar—Several sources have published lists of mass stranding events of cetaceans in an attempt to identify relationships between those stranding events and military active sonar (Hildebrand, 2004; IWC, 2005; Taylor et al., 2004). For example, based on a review of stranding records between 1960 and 1995, the International Whaling Commission (2005) identified ten mass stranding events and concluded that, out of eight stranding events reported from the mid-1980s to the summer of 2003, seven had been coincident with the use of mid-frequency active sonar and most involved beaked whales.

Over the past 12 years, there have been five stranding events coincident with military mid-frequency active sonar use in which exposure to sonar is believed to have been a contributing factor to strandings: Greece (1996); the Bahamas (2000); Madeira (2000); Canary Islands (2002); and Spain (2006). Refer to Cox *et al.* (2006) for a summary of common features shared by the strandings events in Greece (1996), Bahamas (2000), Madeira (2000), and Canary Islands (2002); and Fernandez *et al.,* (2005) for an additional summary of the Canary Islands 2002 stranding event.

Potential for Stranding from Seismic Surveys—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 in marine waters for commercial seismic surveys or (with rare exceptions) for seismic research. These methods have been replaced entirely by airguns or related non-explosive pulse generators. Airgun pulses are less energetic and have slower rise times, and there is no specific evidence that they can cause serious injury, death, or stranding even in the case of large airgun arrays. However, the association of strandings of beaked whales with naval exercises involving mid-frequency active sonar (non-pulse sound) and, in one case, the co-occurrence of an L–DEO seismic survey (Malakoff, 2002; Cox *et al.,* 2006), has raised the possibility that beaked whales exposed to strong ''pulsed'' sounds could also be 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. The evidence for this remains circumstantial and associated with exposure to naval mid-frequency sonar, not seismic surveys (Cox *et al.,* 2006; Southall *et al.,* 2007).

Seismic pulses and mid-frequency sonar signals are quite different, and some mechanisms by which sonar sounds have been hypothesized to affect beaked whales are unlikely to apply to airgun pulses. Sounds produced by airgun arrays are broadband impulses with most of the energy below one kHz. Typical military mid-frequency sonar emits non-impulse sounds at frequencies of 2 to 10 kHz, generally with a relatively narrow bandwidth at any one time. A further difference between seismic surveys and naval exercises is that naval exercises can involve sound sources on more than one vessel. Thus, it is not appropriate to expect that the same to marine mammals will result from military sonar and seismic surveys. 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 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 study because of:

(1) The high likelihood that any beaked whales nearby would avoid the approaching vessel before being exposed to high sound levels, and

(2) Differences between the sound sources operated by L–DEO and those involved in the naval exercises associated with strandings.

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, resonance, and other types of organ or tissue damage (Cox *et al.,* 2006; Southall *et al.,* 2007). Studies examining such effects are limited. However, 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 perhaps result in bubble formation and a form of the bends, as speculated to occur in beaked whales exposed to sonar. However, there is no specific evidence of this upon exposure to airgun pulses.

In general, very little is known about the potential for seismic survey sounds (or other types of strong 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. Marine mammals that show behavioral avoidance of seismic vessels, including most baleen whales, some odontocetes, and some pinnipeds, are especially unlikely to incur non-auditory physical effects.

Potential Effects of Other Acoustic Devices

Multibeam Echosounder

SIO will operate the Kongsberg EM 122 multibeam echosounder from the source vessel during the planned study. Sounds from the multibeam echosounder are very short pulses, occurring for 2 to 15 ms once every 5 to 20 seconds, depending on water depth. Most of the energy in the sound pulses emitted by the multibeam echosounder is at frequencies near 12 kHz, and the maximum source level is 242 dB re 242 dB re 1 μPa (rms). The beam is narrow (1 to 2°) in fore-aft extent and wide (150°) in the cross-track extent. Each ping consists of eight (in water greater than 1,000 m deep) or four (in water less than 1,000 m deep) successive fan-shaped transmissions (segments) at different cross-track angles. Any given mammal at depth near the trackline would be in the main beam for only one or two of the nine segments. Also, marine mammals that encounter the Kongsberg EM 122 are unlikely to be subjected to repeated pulses because of the narrow fore–aft width of the beam and will receive only limited amounts of pulse energy because of the short pulses. Animals close to the ship (where the beam is narrowest) are especially unlikely to be ensonified for more than one 2 to 15 ms pulse (or two pulses if in the overlap area). Similarly, Kremser *et al.* (2005) noted that the probability of a cetacean swimming through the area of exposure when a multibeam echosounder emits a pulse is small. The animal would have to pass the transducer at close range and be swimming at speeds similar to the vessel in order to receive the multiple pulses that might result in sufficient exposure to cause TTS.

Navy sonars that have been linked to avoidance reactions and stranding of cetaceans: (1) Generally have longer pulse duration than the Kongsberg EM 122; and (2) are often directed close to horizontally versus more downward for the multibeam echosounder. The area of possible influence of the multibeam echosounder is much smaller—a narrow band below the source vessel. Also, the duration of exposure for a given marine mammal can be much longer for naval sonar. During SIO's operations, the individual pulses will be very short, and a given mammal would not receive many of the downward-directed pulses as the vessel passes by. Possible effects of a multibeam echosounder on marine mammals are described below.

Masking—Marine mammal communications will not be masked appreciably by the multibeam echosounder signals given the low duty cycle of the echosounder and the brief period when an individual mammal is likely to be within its beam. Furthermore, in the case of baleen whales, the multibeam echosounder signals (12 kHz) do not overlap with the predominant frequencies in the calls, which would avoid any significant masking.

Behavioral Responses—Behavioral reactions of free-ranging marine mammals to sonars, echosounders, and other sound sources appear to vary by species and circumstance. Observed reactions have included silencing and dispersal by sperm whales (Watkins *et al.,* 1985), increased vocalizations and no dispersal by pilot whales (Rendell and Gordon, 1999), and the previously-mentioned beachings by beaked whales. During exposure to a 21 to 25 kHz ''whale-finding'' sonar with a source level of 215 dB re 1 μPa, gray whales reacted by orienting slightly away from the source and being deflected from their course by approximately 200 m (656.2 ft) (Frankel, 2005). When a 38 kHz echosounder and a 150 kHz acoustic Doppler current profiler were transmitting during studies in the Eastern Tropical Pacific, baleen whales showed no significant responses, while spotted and spinner dolphins were detected slightly more often and beaked whales less often during visual surveys (Gerrodette and Pettis, 2005).

Captive bottlenose dolphins and a beluga whale exhibited changes in behavior when exposed to 1 second tonal signals at frequencies similar to

those that will be emitted by the multibeam echosounder used by SIO, and to shorter broadband pulsed signals. Behavioral changes typically involved what appeared to be deliberate attempts to avoid the sound exposure (Schlundt *et al.,* 2000; Finneran *et al.,* 2002; Finneran and Schlundt, 2004). The relevance of those data to free-ranging odontocetes is uncertain, and in any case, the test sounds were quite different in duration as compared with those from a multibeam echosounder.

Hearing Impairment and Other Physical Effects—Given recent stranding events that have been associated with the operation of naval sonar, there is concern that mid-frequency sonar sounds can cause serious impacts to marine mammals (see above). However, the multibeam echosounder proposed for use by SIO is quite different than sonar used for Navy operations. Pulse duration of the multibeam echosounder is very short relative to the naval sonar. Also, at any given location, an individual marine mammal would be in the beam of the multibeam echosounder for much less time given the generally downward orientation of the beam and its narrow fore-aft beamwidth; Navy sonar often uses near-horizontally-directed sound. Those factors would all reduce the sound energy received from the multibeam echosounder rather drastically relative to that from naval sonar.

NMFS believes that the brief exposure of marine mammals to one pulse, or small numbers of signals, from the multibeam echosounder is not likely to result in the harassment of marine mammals.

Sub-Bottom Profiler

SIO will also operate a sub-bottom profiler from the source vessel during the proposed survey. Sounds from the sub-bottom profiler are very short pulses, occurring for 1 to 4 ms once every second. Most of the energy in the sound pulses emitted by the sub-bottom profiler is at 3.5 kHz, and the beam is directed downward. The sub-bottom profiler that may be used on the REVELLE has a maximum source level of 204 dB re 1 μPa. Kremser *et al.* (2005) noted that the probability of a cetacean swimming through the area of exposure when a bottom profiler emits a pulse is small—even for a sub-bottom profiler more powerful than that that may be on the REVELLE. If the animal was in the area, it would have to pass the transducer at close range in order to be subjected to sound levels that could cause TTS.

Masking—Marine mammal communications will not be masked appreciably by the sub-bottom profiler signals given the directionality of the signal and the brief period when an individual mammal is likely to be within its beam. Furthermore, in the case of most baleen whales, the sub-bottom profiler signals do not overlap with the predominant frequencies in the calls, which would avoid significant masking.

Behavioral Responses—Marine mammal behavioral reactions to other pulsed sound sources are discussed above, and responses to the sub-bottom profiler are likely to be similar to those for other pulsed sources if received at the same levels. However, the pulsed signals from the sub-bottom profiler are considerably weaker than those from the multibeam echosounder. Therefore, behavioral responses are not expected unless marine mammals are very close to the source.

Hearing Impairment and Other Physical Effects—It is unlikely that the sub-bottom profiler produces pulse levels strong enough to cause hearing impairment or other physical injuries even in an animal that is (briefly) in a position near the source. The sub-bottom profiler is usually operated simultaneously with other higher-power acoustic sources, including airguns. Many marine mammals will move away in response to the approaching higher-power sources or the vessel itself before the mammals would be close enough for there to be any possibility of effects from the less intense sounds from the sub-bottom profiler.

Vessel Movement and Collisions

Vessel movement in the vicinity of marine mammals has the potential to result in either a behavioral response or a direct physical interaction. Both scenarios are discussed below in this section.

Behavioral Responses to Vessel Movement—There are limited data concerning marine mammal behavioral responses to vessel traffic and vessel noise, and a lack of consensus among scientists with respect to what these responses mean or whether they result in short-term or long-term adverse effects. In those cases where there is a busy shipping lane or where there is a large amount of vessel traffic, marine mammals (especially low frequency specialists) may experience acoustic masking (Hildebrand, 2005) if they are present in the area (e.g., killer whales in Puget Sound; Foote *et al.,* 2004; Holt *et al.,* 2008). In cases where vessels actively approach marine mammals (e.g., whale watching or dolphin watching boats), scientists have documented that animals exhibit altered behavior such as increased swimming speed, erratic movement, and active avoidance behavior (Bursk, 1983; Acevedo, 1991; Baker and MacGibbon, 1991; Trites and Bain, 2000; Williams *et al.,* 2002; Constantine *et al.,* 2003), reduced blow interval (Ritcher *et al.,* 2003), disruption of normal social behaviors (Lusseau, 2003, 2006), and the shift of behavioral activities which may increase energetic costs (Constantine et al., 2003, 2004). A detailed review of marine mammal reactions to ships and boats is available in Richardson *et al.,* (1995). For each of the marine mammal taxonomy groups, Richardson *et al.,* (1995) provides the following assessment regarding reactions to vessel traffic:

Toothed whales—''In summary, toothed whales sometimes show no avoidance reaction to vessels, or even approach them. However, avoidance can occur, especially in response to vessels of types used to chase or hunt the animals. This may cause temporary displacement, but we know of no clear evidence that toothed whales have abandoned significant parts of their range because of vessel traffic.''

Baleen whales—''When baleen whales receive low-level sounds from distant or stationary vessels, the sounds often seem to be ignored. Some whales approach the sources of these sounds. When vessels approach whales slowly and non-aggressively, whales often exhibit slow and inconspicuous avoidance maneuvers. In response to strong or rapidly changing vessel noise, baleen whales often interrupt their normal behavior and swim rapidly away. Avoidance is especially strong when a boat heads directly toward the whale.''

Behavioral responses to stimuli are complex and influenced to varying degrees by a number of factors, such as species, behavioral contexts, geographical regions, source characteristics (moving or stationary, speed, direction, etc.), prior experience of the animal and physical status of the animal. For example, studies have shown that beluga whales' reaction varied when exposed to vessel noise and traffic. In some cases, beluga whales exhibited rapid swimming from ice-breaking vessels up to 80 km (43.2 nmi) away and showed changes in surfacing, breathing, diving, and group composition in the Canadian high Arctic where vessel traffic is rare (Finley *et al.,* 1990). In other cases, beluga whales were more tolerant of vessels, but responded differentially to certain vessels and operating characteristics by reducing their calling rates (especially older animals) in the St. Lawrence River

where vessel traffic is common (Blane and Jaakson, 1994). In Bristol Bay, Alaska, beluga whales continued to feed when surrounded by fishing vessels and resisted dispersal even when purposefully harassed (Fish and Vania, 1971).

In reviewing more than 25 years of whale observation data, Watkins (1986) concluded that whale reactions to vessel traffic were ''modified by their previous experience and current activity: habituation often occurred rapidly, attention to other stimuli or preoccupation with other activities sometimes overcame their interest or wariness of stimuli.'' Watkins noticed that over the years of exposure to ships in the Cape Cod area, minke whales changed from frequent positive interest (e.g., approaching vessels) to generally uninterested reactions; fin whales changed from mostly negative (e.g., avoidance) to uninterested reactions; fin whales changed from mostly negative (e.g., avoidance) to uninterested reactions; right whales apparently continued the same variety of responses (negative, uninterested, and positive responses) with little change; and humpbacks dramatically changed from mixed responses that were often negative to reactions that were often strongly positive. Watkins (1986) summarized that ''whales near shore, even in regions with low vessel traffic, generally have become less wary of boats and their noises, and they have appeared to be less easily disturbed than previously. In particular locations with intense shipping and repeated approaches by boats (such as the whale-watching areas of Stellwagen Bank), more and more whales had positive reactions to familiar vessels, and they also occasionally approached other boats and yachts in the same ways.''

Although the radiated sound from the REVELLE will be audible to marine mammals over a large distance, it is unlikely that marine mammals will respond behaviorally (in a manner that NMFS would consider harassment under the MMPA) to low-level distant shipping noise as the animals in the area are likely to be habituated to such noises (Nowacek *et al.,* 2004). In light of these facts, NMFS does not expect the REVELLE's movements to result in Level B harassment.

Vessel Strike—Ship strikes of cetaceans can cause major wounds, which may lead to the death of the animal. An animal at the surface could be struck directly by a vessel, a surfacing animal could hit the bottom of a vessel, or an animal just below the surface could be cut by a vessel's propeller. The severity of injuries typically depends on the size and speed of the vessel (Knowlton and Kraus, 2001; Laist *et al.,* 2001; Vanderlaan and Taggart, 2007).

The most vulnerable marine mammals are those that spend extended periods of time at the surface in order to restore oxygen levels within their tissues after deep dives (e.g., the sperm whale). In addition, some baleen whales, such as the North Atlantic right whale, seem generally unresponsive to vessel sound, making them more susceptible to vessel collisions (Nowacek *et al.,* 2004). These species are primarily large, slow moving whales. Smaller marine mammals (e.g., bottlenose dolphin) move quickly through the water column and are often seen riding the bow wave of large ships. Marine mammal responses to vessels may include avoidance and changes in dive pattern (NRC, 2003).

An examination of all known ship strikes from all shipping sources (civilian and military) indicates vessel speed is a principal factor in whether a vessel strike results in death (Knowlton and Kraus, 2001; Laist *et al.,* 2001; Jensen and Silber, 2003; Vanderlaan and Taggart, 2007). In assessing records in which vessel speed was known, Laist *et al.* (2001) found a direct relationship between the occurrence of a whale strike and the speed of the vessel involved in the collision. The authors concluded that most deaths occurred when a vessel was traveling in excess of 13 kts (24.1 km/hr, 14.9 mph).

SIO's proposed operation of one source vessel for the proposed survey is relatively small in scale compared to the number of commercial ships transiting at higher speeds in the same areas on an annual basis. The probability of vessel and marine mammal interactions occurring during the proposed survey is unlikely due to the REVELLE's slow operational speed, which is typically 5 kts. Outside of seismic operations, the REVELLE's cruising speed would be approximately 12 to 12.5 kts, which is generally below the speed at which studies have noted reported increases of marine mammal injury or death (Laist *et al.,* 2001).

As a final point, the REVELLE has a number of other advantages for avoiding ship strikes as compared to most commercial merchant vessels, including the following: the REVELLE's bridge offers good visibility to visually monitor for marine mammal presence; PSOs posted during operations scan the ocean for marine mammals and must report visual alerts of marine mammal presence to crew; and the PSOs receive extensive training that covers the fundamentals of visual observing for marine mammals and information about marine mammals and their identification at sea.

Entanglement

Entanglement can occur if wildlife becomes immobilized in survey lines, cables, nets, or other equipment that is moving through the water column. The proposed seismic survey would require towing approximately a single 600 m cable streamer. This large of an array carries the risk of entanglement for marine mammals. Wildlife, especially slow moving individuals, such as large whales, have a low probability of becoming entangled due to slow speed of the survey vessel and onboard monitoring efforts. In May 2011, there was one recorded entanglement of an olive ridley sea turtle (*Lepidochelys olivacea*) in the R/V *Marcus G. Langseth's* barovanes after the conclusion of a seismic survey off Costa Rica. There have been cases of baleen whales, mostly gray whales (Heyning, 1990), becoming entangled in fishing lines. The probability for entanglement of marine mammals is considered not significant because of the vessel speed and the monitoring efforts onboard the survey vessel.

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) which, as noted are designed to effect the least practicable impact on affected marine mammal species and stocks.

Anticipated Effects on Marine Mammal Habitat

The proposed seismic survey is not anticipated to have any permanent impact on habitats used by the marine mammals in the proposed survey area, including the food sources they use (i.e. fish and invertebrates). Additionally, no physical damage to any habitat is anticipated as a result of conducting the proposed seismic survey. While it is anticipated that the specified activity may result in marine mammals avoiding certain areas due to temporary ensonification, this impact to habitat is temporary and was considered in further detail earlier in this document, as behavioral modification. The main impact associated with the proposed activity will be temporarily elevated noise levels and the associated direct effects on marine mammals in any particular area of the approximately 851 km^2 proposed project area, previously discussed in this notice. The next section discusses the potential impacts

of anthropogenic sound sources on common marine mammal prey in the proposed survey area (i.e., fish and invertebrates).

Anticipated Effects on Fish

One reason for the adoption of airguns as the standard energy source for marine seismic surveys is that, unlike explosives, they have not been associated with large-scale fish kills. However, existing information on the impacts of seismic surveys on marine fish and invertebrate populations is limited. There are three types of potential effects of exposure to seismic surveys: (1) Pathological, (2) physiological, and (3) behavioral. Pathological effects involve lethal and temporary or permanent sub-lethal injury. Physiological effects involve temporary and permanent primary and secondary stress responses, such as changes in levels of enzymes and proteins. Behavioral effects refer to temporary and (if they occur) permanent changes in exhibited behavior (e.g., startle and avoidance behavior). The three categories are interrelated in complex ways. For example, it is possible that certain physiological and behavioral changes could potentially lead to an ultimate pathological effect on individuals (i.e., mortality).

The specific received sound levels at which permanent adverse effects to fish potentially could occur are little studied and largely unknown. Furthermore, the available information on the impacts of seismic surveys on marine fish is from studies of individuals or portions of a population; there have been no studies at the population scale. The studies of individual fish have often been on caged fish that were exposed to airgun pulses in situations not representative of an actual seismic survey. Thus, available information provides limited insight on possible real-world effects at the ocean or population scale. This makes drawing conclusions about impacts on fish problematic because, ultimately, the most important issues concern effects on marine fish populations, their viability, and their availability to fisheries.

Hastings and Popper (2005), Popper (2009), and Popper and Hastings (2009a,b) provided recent critical reviews of the known effects of sound on fish. The following sections provide a general synopsis of the available information on the effects of exposure to seismic and other anthropogenic sound as relevant to fish. The information comprises results from scientific studies of varying degrees of rigor plus some anecdotal information. Some of the data sources may have serious shortcomings in methods, analysis, interpretation, and reproducibility that must be considered when interpreting their results (see Hastings and Popper, 2005). Potential adverse effects of the program's sound sources on marine fish are noted.

Pathological Effects—The potential for pathological damage to hearing structures in fish depends on the energy level of the received sound and the physiology and hearing capability of the species in question. For a given sound to result in hearing loss, the sound must exceed, by some substantial amount, the hearing threshold of the fish for that sound (Popper, 2005). The consequences of temporary or permanent hearing loss in individual fish on a fish population are unknown; however, they likely depend on the number of individuals affected and whether critical behaviors involving sound (e.g., predator avoidance, prey capture, orientation and navigation, reproduction, etc.) are adversely affected.

Little is known about the mechanisms and characteristics of damage to fish that may be inflicted by exposure to seismic survey sounds. Few data have been presented in the peer-reviewed scientific literature. As far as SIO and NMFS know, there are only two papers with proper experimental methods, controls, and careful pathological investigation implicating sounds produced by actual seismic survey airguns in causing adverse anatomical effects. One such study indicated anatomical damage, and the second indicated TTS in fish hearing. The anatomical case is McCauley *et al.* (2003), who found that exposure to airgun sound caused observable anatomical damage to the auditory maculae of pink snapper (*Pagrus auratus*). This damage in the ears had not been repaired in fish sacrificed and examined almost two months after exposure. On the other hand, Popper *et al.* (2005) documented only TTS (as determined by auditory brainstem response) in two of three fish species from the Mackenzie River Delta. This study found that broad whitefish (*Coregonus nasus*) exposed to five airgun shots were not significantly different from those of controls. During both studies, the repetitive exposure to sound was greater than would have occurred during a typical seismic survey. However, the substantial low-frequency energy produced by the airguns (less than 400 Hz in the study by McCauley *et al.* [2003] and less than approximately 200 Hz in Popper *et al.* [2005]) likely did not propagate to the fish because the water in the study areas was very shallow (approximately nine m in the former case and less than two m in the latter). Water depth sets a lower limit on the lowest sound frequency that will propagate (the ''cutoff frequency'') at about one-quarter wavelength (Urick, 1983; Rogers and Cox, 1988).

Wardle *et al.* (2001) suggested that in water, acute injury and death of organisms exposed to seismic energy depends primarily on two features of the sound source: (1) The received peak pressure, and (2) the time required for the pressure to rise and decay. Generally, as received pressure increases, the period for the pressure to rise and decay decreases, and the chance of acute pathological effects increases. According to Buchanan *et al.* (2004), for the types of seismic airguns and arrays involved with the proposed program, the pathological (mortality) zone for fish would be expected to be within a few meters of the seismic source. Numerous other studies provide examples of no fish mortality upon exposure to seismic sources (Falk and Lawrence, 1973; Holliday *et al.,* 1987; La Bella *et al.,* 1996; Santulli *et al.,* 1999; McCauley *et al.,* 2000a,b, 2003; Bjarti, 2002; Thomsen, 2002; Hassel *et al.,* 2003; Popper *et al.,* 2005; Boeger *et al.,* 2006).

An experiment of the effects of a single 700 in^3 airgun was conducted in Lake Meade, Nevada (USGS, 1999). The data were used in an Environmental Assessment of the effects of a marine reflection survey of the Lake Meade fault system by the National Park Service (Paulson *et al.,* 1993, in USGS, 1999). The airgun was suspended 3.5 m (11.5 ft) above a school of threadfin shad in Lake Meade and was fired three successive times at a 30 second interval. Neither surface inspection nor diver observations of the water column and bottom found any dead fish.

For a proposed seismic survey in Southern California, USGS (1999) conducted a review of the literature on the effects of airguns on fish and fisheries. They reported a 1991 study of the Bay Area Fault system from the continental shelf to the Sacramento River, using a 10 airgun (5,828 in^3) array. Brezzina and Associates were hired by USGS to monitor the effects of the surveys and concluded that airgun operations were not responsible for the death of any of the fish carcasses observed. They also concluded that the airgun profiling did not appear to alter the feeding behavior of sea lions, seals, or pelicans observed feeding during the seismic surveys.

Some studies have reported, some equivocally, that mortality of fish, fish eggs, or larvae can occur close to

seismic sources (Kostyuchenko, 1973; Dalen and Knutsen, 1986; Booman *et al.,* 1996; Dalen *et al.,* 1996). Some of the reports claimed seismic effects from treatments quite different from actual seismic survey sounds or even reasonable surrogates. However, Payne *et al.* (2009) reported no statistical differences in mortality/morbidity between control and exposed groups of capelin eggs or monkfish larvae. Saetre and Ona (1996) applied a 'worst-case scenario' mathematical model to investigate the effects of seismic energy on fish eggs and larvae. They concluded that mortality rates caused by exposure to seismic surveys are so low, as compared to natural mortality rates, that the impact of seismic surveying on recruitment to a fish stock must be regarded as insignificant.

Physiological Effects—Physiological effects refer to cellular and/or biochemical responses of fish to acoustic stress. Such stress potentially could affect fish populations by increasing mortality or reducing reproductive success. Primary and secondary stress responses of fish after exposure to seismic survey sound appear to be temporary in all studies done to date (Sverdrup *et al.,* 1994; Santulli *et al.,* 1999; McCauley *et al.,* 2000a,b). The periods necessary for the biochemical changes to return to normal are variable and depend on numerous aspects of the biology of the species and of the sound stimulus.

Behavioral Effects—Behavioral effects include changes in the distribution, migration, mating, and catchability of fish populations. Studies investigating the possible effects of sound (including seismic survey sound) on fish behavior have been conducted on both uncaged and caged individuals (e.g., Chapman and Hawkins, 1969; Pearson *et al.,* 1992; Santulli *et al.,* 1999; Wardle *et al.,* 2001; Hassel *et al.,* 2003). Typically, in these studies fish exhibited a sharp startle response at the onset of a sound followed by habituation and a return to normal behavior after the sound ceased.

The Minerals Management Service (MMS, 2005) assessed the effects of a proposed seismic survey in Cook Inlet. The seismic survey proposed using three vessels, each towing two, four-airgun arrays ranging from 1,500 to 2,500 in^3. MMS noted that the impact to fish populations in the survey area and adjacent waters would likely be very low and temporary. MMS also concluded that seismic surveys may displace the pelagic fishes from the area temporarily when airguns are in use. However, fishes displaced and avoiding the airgun noise are likely to backfill the survey area in minutes to hours after cessation of seismic testing. Fishes not dispersing from the airgun noise (e.g., demersal species) may startle and move short distances to avoid airgun emissions.

In general, any adverse effects on fish behavior or fisheries attributable to seismic testing may depend on the species in question and the nature of the fishery (season, duration, fishing method). They may also depend on the age of the fish, its motivational state, its size, and numerous other factors that are difficult, if not impossible, to quantify at this point, given such limited data on effects of airguns on fish, particularly under realistic at-sea conditions.

Anticipated Effects on Invertebrates

The existing body of information on the impacts of seismic survey sound on marine invertebrates is very limited. However, there is some unpublished and very limited evidence of the potential for adverse effects on invertebrates, thereby justifying further discussion and analysis of this issue. The three types of potential effects of exposure to seismic surveys on marine invertebrates are pathological, physiological, and behavioral. Based on the physical structure of their sensory organs, marine invertebrates appear to be specialized to respond to particle displacement components of an impinging sound field and not to the pressure component (Popper *et al.,* 2001).

The only information available on the impacts of seismic surveys on marine invertebrates involves studies of individuals; there have been no studies at the population scale. Thus, available information provides limited insight on possible real-world effects at the regional or ocean scale. The most important aspect of potential impacts concerns how exposure to seismic survey sound ultimately affects invertebrate populations and their viability, including availability to fisheries.

Literature reviews of the effects of seismic and other underwater sound on invertebrates were provided by Moriyasu *et al.* (2004) and Payne *et al.* (2008). The following sections provide a synopsis of available information on the effects of exposure to seismic survey sound on species of decapod crustaceans and cephalopods, the two taxonomic groups of invertebrates on which most such studies have been conducted. The available information is from studies with variable degrees of scientific soundness and from anecdotal information. A more detailed review of the literature on the effects of seismic survey sound on invertebrates is provided in Appendix D of NSF/USGS's PEIS.

Pathological Effects—In water, lethal and sub-lethal injury to organisms exposed to seismic survey sound appears to depend on at least two features of the sound source: (1) The received peak pressure; and (2) the time required for the pressure to rise and decay. Generally, as received pressure increases, the period for the pressure to rise and decay decreases, and the chance of acute pathological effects increases. For the type of airgun array planned for the proposed program, the pathological (mortality) zone for crustaceans and cephalopods is expected to be within a few meters of the seismic source, at most; however, very few specific data are available on levels of seismic signals that might damage these animals. This premise is based on the peak pressure and rise/decay time characteristics of seismic airgun arrays currently in use around the world.

Some studies have suggested that seismic survey sound has a limited pathological impact on early developmental stages of crustaceans (Pearson *et al.,* 1994; Christian *et al.,* 2003; DFO, 2004). However, the impacts appear to be either temporary or insignificant compared to what occurs under natural conditions. Controlled field experiments on adult crustaceans (Christian *et al.,* 2003, 2004; DFO, 2004) and adult cephalopods (McCauley *et al.,* 2000a,b) exposed to seismic survey sound have not resulted in any significant pathological impacts on the animals. It has been suggested that exposure to commercial seismic survey activities has injured giant squid (Guerra *et al.,* 2004), but the article provides little evidence to support this claim. Tenera Environmental (2011b) reported that Norris and Mohl (1983, summarized in Mariyasu *et al.,* 2004) observed lethal effects in squid (*Loligo vulgaris*) at levels of 246 to 252 dB after 3 to 11 minutes.

Andre *et al.* (2011) exposed four species of cephalopods (*Loligo vulgaris, Sepia officinalis, Octopus vulgaris,* and *Ilex coindetii*), primarily cuttlefish, to two hours of continuous 50 to 400 Hz sinusoidal wave sweeps at 157+/−5 dB re 1 μPa while captive in relatively small tanks. They reported morphological and ultrastructural evidence of massive acoustic trauma (i.e., permanent and substantial alterations [lesions] of statocyst sensory hair cells) to the exposed animals that increased in severity with time, suggesting that cephalopods are particularly sensitive to low frequency sound. The received SPL was reported

as 157+/−5 dB re 1 μPa, with peak levels at 175 dB re 1 μPa. As in the McCauley *et al.* (2003) paper on sensory hair cell damage in pink snapper as a result of exposure to seismic sound, the cephalopods were subjected to higher sound levels than they would be under natural conditions, and they were unable to swim away from the sound source.

Physiological Effects—Physiological effects refer mainly to biochemical responses by marine invertebrates to acoustic stress. Such stress potentially could affect invertebrate populations by increasing mortality or reducing reproductive success. Primary and secondary stress responses (i.e., changes in haemolymph levels of enzymes, proteins, etc.) of crustaceans have been noted several days or months after exposure to seismic survey sounds (Payne *et al.,* 2007). It was noted however, than no behavioral impacts were exhibited by crustaceans (Christian *et al.,* 2003, 2004; DFO, 2004). The periods necessary for these biochemical changes to return to normal are variable and depend on numerous aspects of the biology of the species and of the sound stimulus.

Behavioral Effects—There is increasing interest in assessing the possible direct and indirect effects of seismic and other sounds on invertebrate behavior, particularly in relation to the consequences for fisheries. Changes in behavior could potentially affect such aspects as reproductive success, distribution, susceptibility to predation, and catchability by fisheries. Studies investigating the possible behavioral effects of exposure to seismic survey sound on crustaceans and cephalopods have been conducted on both uncaged and caged animals. In some cases, invertebrates exhibited startle responses (e.g., squid in McCauley *et al.,* 2000a,b). In other cases, no behavioral impacts were noted (e.g., crustaceans in Christian *et al.,* 2003, 2004; DFO 2004). There have been anecdotal reports of reduced catch rates of shrimp shortly after exposure to seismic surveys; however, other studies have not observed any significant changes in shrimp catch rate (Andriguetto-Filho *et al.,* 2005). Similarly, Parry and Gason (2006) did not find any evidence that lobster catch rates were affected by seismic surveys. Any adverse effects on crustacean and cephalopod behavior or fisheries attributable to seismic survey sound depend on the species in question and the nature of the fishery (season, duration, fishing method).

Proposed Mitigation

In order to issue an Incidental Take Authorization (ITA) 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 impact on such species or stock and its habitat, paying particular attention to rookeries, mating grounds, and areas of similar significance, and the availability of such species or stock for taking for certain subsistence uses.

SIO reviewed the following source documents and have incorporated a suite of appropriate mitigation measures into their project description.

(1) Protocols used during previous NSF and USGS-funded seismic research cruises as approved by NMFS and detailed in the recently completed ''Final Programmatic Environmental Impact Statement/Overseas Environmental Impact Statement for Marine Seismic Research Funded by the National Science Foundation or Conducted by the U.S. Geological Survey;''

(2) Previous IHA applications and IHAs approved and authorized by NMFS; and

(3) Recommended best practices in Richardson *et al.* (1995), Pierson *et al.* (1998), and Weir and Dolman, (2007).

To reduce the potential for disturbance from acoustic stimuli associated with the activities, SIO and/or its designees have proposed to implement the following mitigation measures for marine mammals:

(1) Proposed exclusion zones around the sound source;

(2) Speed and course alterations;

(3) Shut-down procedures; and

(4) Ramp-up procedures.

Proposed Exclusion Zones—SIO use radii to designate exclusion and buffer zones and to estimate take for marine mammals. Table 2 (presented earlier in this document) shows the distances at which one would expect to receive three sound levels (160, 180, and 190 dB) from the two GI airgun array. The 180 dB level shut-down criteria are applicable to cetaceans, as specified by NMFS (2000). SIO used these levels to establish the exclusion and buffer zones.

Received sound levels have been modeled by L–DEO for a number of airgun configurations, including two 45 in^3 Nucleus G airguns, in relation to distance and direction from the airguns (see Figure 2 of the IHA application). In addition, propagation measurements of pulses from two GI airguns have been reported for shallow water (approximately 30 m [98.4 ft] depth in the GOM (Tolstoy *et al.,* 2004). However, measurements were not made for the two GI airguns in deep water. The model does not allow for bottom interactions, and is most directly applicable to deep water. Based on the modeling, estimates of the maximum distances from the GI airguns where sound levels are predicted to be 180 and 160 dB re 1 μPa (rms) in deep water were determined (see Table 2 above).

Empirical data concerning the 180 and 160 dB (rms) distances were acquired for various airgun arrays based on measurements during the acoustic verification studies conducted by L–DEO in the northern GOM in 2003 (Tolstoy *et al.,* 2004) and 2007 to 2008 (Tolstoy *et al.,* 2009). Results of the 36 airgun array are not relevant for the two GI airguns to be used in the proposed survey. The empirical data for the 6, 10, 12, and 20 airgun arrays indicate that, for deep water, the L–DEO model tends to overestimate the received sound levels at a given distance (Tolstoy *et al.,* 2004). Measurements were not made for the two GI airgun array in deep water; however, SIO propose to use the safety radii predicted by L–DEO's model for the proposed GI airgun operations in deep water, although they are likely conservative given the empirical results for the other arrays. The 180 dB (rms) radii are shut-down criteria applicable to cetaceans and pinnipeds, respectively, as specified by NMFS (2000); these levels were used to establish exclusion zones. Therefore, the assumed 180 dB radii are 100 m for intermediate and deep water, respectively. If the PSO detects a marine mammal(s) within or about to enter the appropriate exclusion zone, the airguns will be shut-down immediately.

Speed and Course Alterations—If a marine mammal is detected outside the exclusion zone and, based on its position and direction of travel (relative motion), is likely to enter the exclusion zone, changes of the vessel's speed and/or direct course will be considered if this does not compromise operational safety. This would be done if operationally practicable while minimizing the effect on the planned science objectives. For marine seismic surveys towing large streamer arrays, however, course alterations are not typically implemented due to the vessel's limited maneuverability. After any such speed and/or course alteration is begun, the marine mammal activities and movements relative to the seismic vessel will be closely monitored to ensure that the marine mammal does not approach within the exclusion zone. If the marine mammal appears likely to enter the exclusion zone, further mitigation actions will be taken,

including further course alterations and/or shut-down of the airgun(s). Typically, during seismic operations, the source vessel is unable to change speed or course, and one or more alternative mitigation measures will need to be implemented.

Shut-down Procedures—SIO will shut-down the operating airgun(s) if a marine mammal is detected outside the exclusion zone for the airgun(s), and if the vessel's speed and/or course cannot be changed to avoid having the animal enter the exclusion zone, the seismic source will be shut-down before the animal is within the exclusion zone. Likewise, if a marine mammal is already within the exclusion zone when first detected, the seismic source will be shut down immediately.

Following a shut-down, SIO will not resume airgun activity until the marine mammal has cleared the exclusion zone. SIO will consider the animal to have cleared the exclusion zone if:

- A PSO has visually observed the animal leave the exclusion zone, or
- A PSO has not sighted the animal within the exclusion zone for 15 minutes for species with shorter dive durations (i.e., small odontocetes), or 30 minutes for species with longer dive durations (i.e., mysticetes and large odontocetes, including sperm, pygmy and dwarf sperm, killer, and beaked whales).

Although power-down procedures are often standard operating practice for seismic surveys, they are not proposed to be used during this planned seismic survey because powering-down from two airguns to one airgun would make only a small difference in the exclusion zone(s)—but probably not enough to allow continued one-airgun operations if a marine mammal came within the exclusion zone for two airguns.

Ramp-up Procedures—Ramp-up of an airgun array provides a gradual increase in sound levels, and involves a step-wise increase in the number and total volume of airguns firing until the full volume of the airgun array is achieved. The purpose of a ramp-up is to ''warn'' marine mammals in the vicinity of the airguns and to provide the time for them to leave the area avoiding any potential injury or impairment of their hearing abilities. SIO will follow a ramp-up procedure when the airgun array begins operating after a specified period without airgun operations or when a shut-down shut down has exceeded that period. SIO proposes that, for the present cruise, this period would be approximately 15 minutes. L–DEO and USGS has used similar periods (approximately 15 minutes) during previous low-energy seismic surveys.

Ramp-up will begin with a single GI airgun (45 in^3). The second GI airgun (45 in^3) will be added after 5 minutes. During ramp-up, the PSOs will monitor the exclusion zone, and if marine mammals are sighted, a shut-down will be implemented as though both GI airguns were operational.

If the complete exclusion zone has not been visible for at least 30 minutes prior to the start of operations in either daylight or nighttime, SIO will not commence the ramp-up. Given these provisions, it is likely that the airgun array will not be ramped-up from a complete shut-down at night or in thick fog, because the outer part of the exclusion zone for that array will not be visible during those conditions. If one airgun has operated, ramp-up to full power will be permissible at night or in poor visibility, on the assumption that marine mammals will be alerted to the approaching seismic vessel by the sounds from the single airgun and could move away if they choose. A ramp-up from a shut-down may occur at night, but only where the exclusion zone is small enough to be visible. SIO will not initiate a ramp-up of the airguns if a marine mammal is sighted within or near the applicable exclusion zones during the day or close to the vessel at night.

NMFS has carefully evaluated the applicant's proposed mitigation measures and has considered a range of other measures in the context of ensuring that NMFS prescribes the means of effecting the least practicable adverse impact on the affected marine mammal species and stocks and their habitat. NMFS's evaluation of potential measures included consideration of the following factors in relation to one another:

(1) The manner in which, and the degree to which, the successful implementation of the measure is expected to minimize adverse impacts to marine mammals;

(2) The proven or likely efficacy of the specific measure to minimize adverse impacts as planned; and

(3) The practicability of the measure for applicant implementation.

Based on NMFS's evaluation of the applicant's proposed measures, as well as other measures considered by NMFS or recommended by the public, NMFS has preliminarily determined that the proposed mitigation measures provide the means of effecting the least practicable adverse impacts on marine mammal 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 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 IHAs must include the suggested means of accomplishing the necessary monitoring and reporting that will result in increased knowledge of the species and of the level of taking or impacts on populations of marine mammals that are expected to be present in the action area.

Proposed Monitoring

SIO proposes to sponsor marine mammal monitoring during the proposed project, in order to implement the proposed mitigation measures that require real-time monitoring, and to satisfy the anticipated monitoring requirements of the IHA. SIO's proposed ''Monitoring Plan'' is described below this section. SIO understand that this monitoring plan will be subject to review by NMFS and that refinements may be required. The monitoring work described here has been planned as a self-contained project independent of any other related monitoring projects that may be occurring simultaneously in the same regions. SIO is prepared to discuss coordination of their monitoring program with any related work that might be done by other groups insofar as this is practical and desirable.

Vessel-Based Visual Monitoring

PSOs will be based aboard the seismic source vessel and will watch for marine mammals near the vessel during daytime airgun operations and during any ramp-ups of the airguns at night. PSOs will also watch for marine mammals near the seismic vessel for at least 30 minutes prior to the start of airgun operations after an extended shut-down (i.e., greater than approximately 15 minutes for this proposed cruise). When feasible, PSOs will conduct observations during daytime periods when the seismic system is not operating for comparison of sighting rates and behavior with and without airgun operations and between acquisition periods. Based on PSO observations, the airguns will be shut-down when marine mammals are observed within or about to enter a designated exclusion zone. The exclusion zone is a region in which a possibility exists of adverse effects on animal hearing or other physical effects.

During seismic operations in the tropical western Pacific Ocean, at least three PSOs will be based aboard the REVELLE. SIO will appoint the PSOs with NMFS's concurrence. Observations will take place during ongoing daytime operations and nighttime ramp-ups of the airguns. During the majority of seismic operations, at least one PSO will be on duty from observation platforms (i.e., the best available vantage point on the source vessel) to monitor marine mammals near the seismic vessel. PSO(s) will be on duty in shifts no longer than 4 hours in duration. Other crew will also be instructed to assist in detecting marine mammals and implementing mitigation requirements (if practical). Before the start of the seismic survey, the crew will be given additional instruction on how to do so.

The REVELLE is a suitable platform for marine mammal observations and will serve as the platform from which PSOs will watch for marine mammals before and during seismic operations. The REVELLE has been used for that purpose during the routine California Cooperative Oceanic Fisheries Investigations (CalCOFI). Two locations are likely as observation stations onboard the REVELLE. Observing stations are located on the 02 level, with the PSO eye level at approximately 10.4 m (34.1 ft) above the waterline. At a forwarded-centered position on the 02 deck, the view is approximately 240°; an aft-centered view includes the 100 m (328.1 ft) radius area around the GI airguns. The PSO eye level on the bridge is approximately 15 m (49.2 ft) above sea level. Standard equipment for PSOs will be reticule binoculars and optical range finders. At night, night-vision equipment will be available. The PSOs will be in communication with ship's officers on the bridge and scientists in the vessel's operations laboratory, so they can advise promptly of the need for avoidance maneuvers or seismic source shut-down. Observing stations will be at the 02 level with PSO's eye level approximately 10.4 m (34 ft) above sea level—one forward on the 02 deck commanding a forward-centered, approximately 240° view around the vessel, and one atop the aft hangar, with an aft-centered view that includes the radii around the airguns. The eyes on the bridge watch will be at a height of approximately 15 m (49 ft); PSOs will work on the enclosed bridge and adjoining aft steering station during any inclement weather. During daytime, the PSO(s) will scan the area around the vessel systematically with reticle binoculars (e.g., 7 x 50 Fujinon), Big-eye binoculars (e.g., 25 x 150), optical range-finders (to assist with distance estimation), and the naked eye. At night, night-vision equipment will be available. The optical range-finders are useful in training observers to estimate distances visually, but are generally not useful in measuring distances to animals directly. Estimating distances is done primarily with the reticles in the binoculars. The PSO(s) will be in wireless communication with ship's officers on the bridge and scientists in the vessel's operations laboratory, so they can advise promptly of the need for avoidance maneuvers or a shut-down of the seismic source.

When marine mammals are detected within or about to enter the designated exclusion zone, the airguns will immediately be shut-down if necessary. The PSO(s) will continue to maintain watch to determine when the animal(s) are outside the exclusion zone by visual confirmation. Airgun operations will not resume until the animal is confirmed to have left the exclusion zone, or if not observed after 15 minutes for species with shorter dive durations (small odontocetes) or 30 minutes for species with longer dive durations (mysticetes and large odontocetes, including sperm, pygmy sperm, dwarf sperm, killer, and beaked whales).

PSO Data and Documentation

PSOs will record data to estimate the numbers of marine mammals exposed to various received sound levels and to document apparent disturbance reactions or lack thereof. Data will be used to estimate numbers of animals potentially ''taken'' by harassment (as defined in the MMPA). They will also provide information needed to order a shut-down of the airguns when a marine mammal is within or near the exclusion zone. Observations will also be made during daytime periods when the REVELLE is underway without seismic operations (i.e., transits, to, from, and through the study area) to collect baseline biological data.

When a sighting is made, the following information about the sighting will be recorded:

1. Species, group size, age/size/sex categories (if determinable), behavior when first sighted and after initial sighting, heading (if consistent), bearing and distance from seismic vessel, sighting cue, apparent reaction to the seismic source or vessel (e.g., none, avoidance, approach, paralleling, etc.), and behavioral pace.

2. Time, location, heading, speed, activity of the vessel, sea state, wind force, visibility, and sun glare.

The data listed under (2) will also be recorded at the start and end of each observation watch, and during a watch whenever there is a change in one or more of the variables.

All observations, as well as information regarding ramp-ups or shut-downs will be recorded in a standardized format. Data will be entered into an electronic database. The data accuracy will be verified by computerized data validity checks as the data are entered and by subsequent manual checking of the database by the PSOs at sea. These procedures will allow initial summaries of data to be prepared during and shortly after the field program, and will facilitate transfer of the data to statistical, graphical, and other programs for further processing and archiving.

Results from the vessel-based observations will provide the following information:

1. The basis for real-time mitigation (airgun shut-down).

2. Information needed to estimate the number of marine mammals potentially taken by harassment, which must be reported to NMFS.

3. Data on the occurrence, distribution, and activities of marine mammals in the area where the seismic study is conducted.

4. Information to compare the distance and distribution of marine mammals relative to the source vessel at times with and without seismic activity.

5. Data on the behavior and movement patterns of marine mammals seen at times with and without seismic activity.

SIO will submit a comprehensive report to NMFS within 90 days after the end of the cruise. The report will describe the operations that were conducted and sightings of marine mammals near the operations. The report submitted to NMFS will provide full documentation of methods, results, and interpretation pertaining to all monitoring. The 90-day report will summarize the dates and locations of seismic operations and all marine mammal sightings (i.e., dates, times, locations, activities, and associated seismic survey activities). The report will minimally include:

- Summaries of monitoring effort—total hours, total distances, and distribution of marine mammals through the study period accounting for sea state and other factors affecting visibility and detectability of marine mammals;
- Analyses of the effects of various factors influencing detectability of marine mammals including sea state, number of PSOs, and fog/glare;
- Species composition, occurrence, and distribution of marine mammals

sightings including date, water depth, numbers, age/size/gender, and group sizes; and analyses of the effects of seismic operations;

- Sighting rates of marine mammals during periods with and without airgun activities (and other variables that could affect detectability);
- Initial sighting distances versus airgun activity state;
- Closest point of approach versus airgun activity state;
- Observed behaviors and types of movements versus airgun activity state;
- Numbers of sightings/individuals seen versus airgun activity state; and
- Distribution around the source vessel versus airgun activity state.

The report will also include estimates of the number and nature of exposures that could result in ''takes'' of marine mammals by harassment or in other ways. After the report is considered final, it will be publicly available on the NMFS Web site at: *http://www.nmfs.noaa.gov/pr/permits/incidental.htm#iha.*

In the unanticipated event that the specified activity clearly causes the take of a marine mammal in a manner prohibited by this IHA, such as an injury (Level A harassment), serious injury or mortality (e.g., ship-strike, gear interaction, and/or entanglement), SIO will immediately cease the specified activities and immediately report the incident to the Chief of the Permits and Conservation Division, Office of Protected Resources, NMFS at 301–427–8401 and/or by email to *Jolie.Harrison@noaa.gov* and *Howard.Goldstein@noaa.gov,* and the NMFS Pacific Islands Region Marine Mammal Stranding and Entanglement Hotline at 1–888–256–9840 (*David.Schofield@noaa.gov*). The report must include the following information:

- Time, date, and location (latitude/longitude) of the incident;
- Name and type of vessel involved;
- Vessel's speed during and leading up to the incident;
- Description of the incident;
- Status of all sound source use in the 24 hours preceding the incident;
- Water depth;
- Environmental conditions (e.g., wind speed and direction, Beaufort sea state, cloud cover, and visibility);
- Description of all marine mammal observations in the 24 hours preceding the incident;
- Species identification or description of the animal(s) involved;
- Fate of the animal(s); and
- Photographs or video footage of the animal(s) (if equipment is available).

Activities shall not resume until NMFS is able to review the circumstances of the prohibited take. NMFS shall work with SIO to determine what is necessary to minimize the likelihood of further prohibited take and ensure MMPA compliance. SIO may not resume their activities until notified by NMFS via letter or email, or telephone.

In the event that SIO 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), SIO will immediately report the incident to the Chief of the Permits and Conservation Division, Office of Protected Resources, NMFS, at 301–427–8401, and/or by email to *Jolie.Harrison@noaa.gov* and *Howard.Goldstein@noaa.gov,* and the NMFS Pacific Islands Region Marine Mammal Stranding and Entanglement Hotline (1–888–256–9840) and/or by email to the Pacific Islands Regional Stranding Coordinator (*David.Schofield@noaa.gov*). The report must include the same information identified in the paragraph above. Activities may continue while NMFS reviews the circumstances of the incident. NMFS will work with SIO to determine whether modifications in the activities are appropriate.

In the event that SIO 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 or advanced decomposition, or scavenger damage), SIO will report the incident to the Chief of the Permits and Conservation Division, Office of Protected Resources, NMFS, at 301–427–8401, and/or by email to *Jolie.Harrison@noaa.gov* and *Howard.Goldstein@noaa.gov*, and the NMFS Pacific Islands Regional Marine Mammal Stranding and Entanglement Hotline (1–888–256–9840), and/or by email to the Pacific Islands Regional Stranding Coordinator (*David.Schofield@noaa.gov*), within 24 hours of discovery. SIO will provide photographs or video footage (if available) or other documentation of the stranded animal sighting to NMFS and the Marine Mammal Stranding Network. Activities may continue while NMFS reviews the circumstances of the incident.

Estimated Take 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].

Level B harassment is anticipated and proposed to be authorized as a result of the proposed low-energy marine seismic survey in the tropical western Pacific Ocean. Acoustic stimuli (i.e., increased underwater sound) generated during the operation of the seismic airgun array are expected to result in the behavioral disturbance of some marine mammals. There is no evidence that the planned activities could result in injury, serious injury, or mortality for which SIO seeks the IHA. The required mitigation and monitoring measures will minimize any potential risk for injury, serious injury, or mortality.

The following sections describe SIO's methods to estimate take by incidental harassment and present the applicant's estimates of the numbers of marine mammals that could be affected during the proposed seismic program in the tropical western Pacific Ocean. The estimates are based on a consideration of the number of marine mammals that could be harassed by approximately 1,033 km (557.8 nmi) of seismic operations with the two GI airgun array to be used as depicted in Figure 1 of the IHA application.

SIO assumes that, during simultaneous operations of the airgun array and the other sources, any marine mammals close enough to be affected by the multibeam echosounder and sub-bottom profiler would already be affected by the airguns. However, whether or not the airguns are operating simultaneously with the other sources, marine mammals are expected to exhibit no more than short-term and inconsequential responses to the multibeam echosounder and sub-bottom profiler given their characteristics (e.g., narrow, downward-directed beam) and other considerations described previously. Such reactions are not considered to constitute ''taking'' (NMFS, 2001). Therefore, SIO provides no additional allowance for animals that could be affected by sound sources other than airguns.

The only densities reported for the overall proposed survey area are for eight species sighted during vessel-based surveys in coastal and oceanic waters of the Sulu Sea, Philippines, covering an area of approximately 23,000 km^2 (6,705.7 nmi^2), during May

to June 1994 and 1995 (Dolar *et al.,* 2006). To supplement those density data, SIO used densities for seven other species expected to occur in the proposed survey area that were sighted during a systematic vessel-based marine mammal survey in Guam and the southern Commonwealth of the Northern Mariana Islands (CNMI) during January to April 2007 (Fulling *et al.,* 2011). The cruise area was defined by the boundaries 10 to 18° North and 142 to 148° East, encompassing an area of approximately 585,000 km² (170,558.7 nmi²). For five species not sighted in either survey, but expected to occur in the proposed survey area, SIO also used densities for the ''outer EEZ stratum'' of Hawaiian waters, covering approximately 2,240,000 km² (653,079.5 nmi²), based on a survey conducted in August to November 2002 (Barlow, 2006). All three surveys used standard line-transect protocols developed by NMFS Southwest Fisheries Science Center. Survey effort was 2,313 km (1,248.9 nmi) in the Sulu Sea, 11,033 km (5,957.3 nmi) in the CNMI, and 13,500 km (7,289.4 nmi) in Hawaii.

The densities mentioned above have been corrected, by the original authors, for trackline detection probability bias, and in one of the three areas, for availability bias. Trackline detection probability bias is associated with diminishing sightability with increasing lateral distance from the trackline f(0). Availability bias refers to the fact that there is less than 100% probability of sighting an animal that is present along the survey trackline, and it is measured by g(0). Dolar *et al.* (2006) and Fulling *et al.* (2011) did not correct the CNMI densities for g(0), which for all but large (greater than 20) groups of dolphins (where g(0) = 1), resulted in underestimates of density. Although there is some uncertainty about the representatives of the data and the assumptions used in the calculations below, the approach used here is believed to be the best available approach.

TABLE 4—ESTIMATED DENSITIES AND POSSIBLE NUMBER OF MARINE MAMMAL SPECIES THAT MIGHT BE EXPOSED TO GREATER THAN OR EQUAL TO 160 dB DURING SIO'S PROPOSED SEISMIC SURVEY (ENSONIFIED AREA 1,063.8 KM²) IN THE TROPICAL WESTERN PACIFIC OCEAN, SEPTEMBER TO OCTOBER 2013

Species	Density (#/1,000 km²)[1 2]	Calculated take (i.e., estimated number of individuals exposed to sound levels ≥ 160 dB re 1 μPa)[3]	Approximate percentage of best population estimate of stock (calculated take)[4]	Requested take authorization[5]
Mysticetes:				
Humpback whale	NA	0	0.03	1
Minke whale	NA	0	0.01	3
Bryde's whale	0.41	0	0.01	2
Omura's whale	NA	0	NA	2
Sei whale	0.29	0	0.03 to 0.02	2
Fin whale	NA	0	0.05 to 0.04	7
Blue whale	NA	0	NA	2
Odontocetes:				
Sperm whale	1.23	1	0.02 (<0.01)	5
Pygmy sperm whale	3.19	3	NA (NA)	3
Dwarf sperm whale	5	5	0.05 (0.05)	5
Cuvier's beaked whale	6.8	7	0.04 (0.04)	7
Longman's beaked whale	0.45	0	NA (NA)	18
Ginkgo-toothed beaked whale	0	0	<0.01 (0)	2
Blainville's beaked whale	1.28	1	<0.01 (<0.01)	2
Killer whale	0.16	0	0.08	7
Short-finned pilot whale	160.0	170	0.32 (0.32)	170
False killer whale	1.11	1	0.06 (<0.01)	10
Melon-headed whale	20.0	21	0.07 (0.05)	31
Pygmy killer whale	0.14	0	0.02 (0)	6
Risso's dolphin	15.0	16	0.02 (0.02)	16
Bottlenose dolphin	55.0	59	0.04 (0.04)	59
Rough-toothed dolphin	0.29	0	0.01 (0)	9
Fraser's dolphin	215.0	229	0.08 (0.08)	229
Striped dolphin	6.16	7	<0.01 (<0.01)	27
Pantropical spotted dolphin	325.0	346	0.08 (0.08)	346
Spinner dolphin	685.0	729	0.1 (0.1)	729

NA = Not available or not assessed.

[1] Densities calculated from Table 4 of Barlow (2006) using the abundance in the outer EEZ stratum and the surface area of the stratum give on p. 452 of Barlow (2006).

[2] A correction factor of 0.5 was applied to the densities of Dolar *et al.* (2006) because those densities were from surveys that included coastal waters, and approximately 50% of the total ensonified area for the proposed survey is in deep water, far offshore, where marine mammal densities are expected to be lower; see densities in Fulling *et al.* (2011) and Barlow (2006).

[3] Calculated take is estimated density (reported density times correction factor) multiplied by the area ensonified to 160 dB (rms) around the planned seismic lines, increased by 25% for contingency.

[4] Requested (and calculated) takes expressed as percentages of the regional populations.

[5] Requested Take Authorization increased to mean group size for species for which densities were not available but that have been sighted in the proposed survey area and for species whose calculated takes were less than group size.

SIO estimated the number of different individuals that may be exposed to airgun sounds with received levels greater than or equal to 160 dB re 1 μPa (rms) on one or more occasions by considering the total marine area that would be within the 160 dB radius around the operating airgun array on at least one occasion and the expected density of marine mammals in the area (in the absence of a seismic survey). The number of possible exposures (including repeat exposures of the same individuals) can be estimated by considering the total marine area that would be within the 160 dB radius around the operating airguns, excluding areas of overlap. During the proposed survey, the transect lines are widely spaced relative to the 160 dB (rms) distance (600 m for intermediate water depths and 400 m for deep water depths). Thus, the area including overlap is 1.07 times the area excluding overlap, so a marine mammal that stayed in the survey areas during the entire survey could be exposed slightly more than once, on average. However, it is unlikely that a particular animal would stay in the area during the entire survey.

The number of different individuals potentially exposed to received levels greater than or equal to 160 re 1 μPa (rms) was calculated by multiplying:

(1) The expected species density (in number/km^2), times

(2) The anticipated area to be ensonified to that level during airgun operations excluding overlap.

The area expected to be ensonified was determined by entering the planned survey lines into a MapInfo GIS, using the GIS to identify the relevant areas by ''drawing'' the applicable 160 dB buffer (see Table 1 of the IHA application) around each seismic line, and then calculating the total area within the buffers.

Applying the approach described above, approximately 851 km^2 (approximately 1,063.8 km^2 including the 25% contingency) would be within the 160 dB isopleth on one or more occasions during the proposed survey. The take calculations within the study sites do not explicitly add animals to account for the fact that new animals (i.e., turnover) are not accounted for in the initial density snapshot and animals could also approach and enter the area ensonified above 160 dB; however, studies suggest that many marine mammals will avoid exposing themselves to sounds at this level, which suggests that there would not necessarily be a large number of new animals entering the area once the seismic survey started. Because this approach for calculating take estimates does not allow for turnover in the marine mammal populations in the area during the course of the survey, the actual number of individuals exposed may be underestimated, although the conservative (i.e., probably overestimated) line-kilometer distances used to calculate the area may offset this. Also, the approach assumes that no cetaceans will move away or toward the tracklines as the REVELLE approaches in response to increasing sound levels before the levels reach 160 dB. Another way of interpreting the estimates that follow is that they represent the number of individuals that are expected (in absence of a seismic program) to occur in the waters that will be exposed to greater than or equal to 160 dB (rms).

SIO's estimates of exposures to various sound levels assume that the proposed surveys will be carried out in full; however, the ensonified areas calculated using the planned number of line-kilometers has been increased by 25% to accommodate lines that may need to be repeated, equipment testing, etc. As is typical during offshore ship surveys, inclement weather and equipment malfunctions are likely to cause delays and may limit the number of useful line-kilometers of seismic operations that can be undertaken. The estimates of the numbers of marine mammals potentially exposed to 160 dB (rms) received levels are precautionary and probably overestimate the actual numbers of marine mammals that could be involved. These estimates assume that there will be no weather, equipment, or mitigation delays, which is highly unlikely.

Table 4 (Table 4 of the IHA application) shows the estimates of the number of different individual marine mammals anticipated to be exposed to greater than or equal to 160 dB re 1 μPa (rms) during the seismic survey if no animals moved away from the survey vessel. The requested take authorization is given in the far right column of Table 4 (Table 4 of the IHA application). The requested take authorization has been increased to the average mean group sizes from the surveys whose densities were used in the calculations, or from Jefferson *et al.* (2008) for species not sighted during the surveys.

The estimate of the number of individual cetaceans that could be exposed to seismic sounds with received levels greater than or equal to 160 dB re 1 μPa (rms) during the proposed survey is (with 25% contingency) in Table 4 of this document (see Table 4 of the IHA application). That total (with 25% contingency) includes 0 baleen whales, 1 sperm whale, 3 pygmy sperm whales, 5 dwarf sperm whale, 7 Cuvier's beaked whales, and 1 Blainville's beaked whales could be taken by Level B harassment during the proposed seismic survey, which would represent 0, <0.01, NA, 0.05, 0.04, 0.01% of the regional populations, respectively. Most of the cetaceans potentially taken by Level B harassment are delphinids: bottlenose, Fraser's, pantropical spotted, and spinner dolphins as well as short-finned pilot whales are estimated to be the most common delphinid species in the area, with estimates of 59, 229, 346, 729, and 170, which would represent 0.04, 0.08, 0.08, 0.01, and 0.32% of the affected regional populations, respectively.

Encouraging and Coordinating Research

SIO and NSF will coordinate the planned marine mammal monitoring program associated with the proposed seismic survey with other parties that express interest in this activity and area. SIO and NSF will coordinate with applicable U.S. agencies (e.g., NMFS), and will comply with their requirements.

Negligible Impact and Small Numbers Analysis Determination

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.'' In making a negligible impact determination, NMFS evaluated factors such as:

(1) The number of anticipated injuries, serious injuries, or mortalities;

(2) The number, nature, and intensity, and duration of Level B harassment (all relatively limited); and

(3) The context in which the takes occur (i.e., impacts to areas of significance, impacts to local populations, and cumulative impacts when taking into account successive/contemporaneous actions when added to baseline data);

(4) The status of stock or species of marine mammals (i.e., depleted, not depleted, decreasing, increasing, stable, impact relative to the size of the population);

(5) Impacts on habitat affecting rates of recruitment/survival; and

(6) The effectiveness of monitoring and mitigation measures.

As described above and based on the following factors, the specified activities associated with the marine seismic survey are not likely to cause PTS, or

other non-auditory injury, serious injury, or death. The factors include:

(1) The likelihood that, given sufficient notice through relatively slow ship speed, marine mammals are expected to move away from a noise source that is annoying prior to its becoming potentially injurious;

(2) The potential for temporary or permanent hearing impairment is relatively low and would likely be avoided through the implementation of the shut-down measures;

No injuries, serious injuries, or mortalities are anticipated to occur as a result of the SIO's planned marine seismic surveys, and none are proposed to be authorized by NMFS. Table 3 of this document outlines the number of requested Level B harassment takes that are anticipated as a result of these activities. Due to the nature, degree, and context of Level B (behavioral) harassment anticipated and described (see ''Potential Effects on Marine Mammals'' section above) in this notice, the activity is not expected to impact rates of annual recruitment or survival for any affected species or stock, particularly given NMFS's and the applicant's proposal to implement mitigation, monitoring, and reporting measures to minimize impacts to marine mammals. Additionally, the seismic survey will not adversely impact marine mammal habitat.

For the other marine mammal species that may occur within the proposed action area, there are no known designated or important feeding and/or reproductive areas. Many animals perform vital functions, such as feeding, resting, traveling, and socializing, on a diel cycle (i.e., 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). Additionally, the seismic survey will be increasing sound levels in the marine environment in a relatively small area surrounding the vessel (compared to the range of the animals), which is constantly travelling over distances, and some animals may only be exposed to and harassed by sound for less than a day.

Of the 26 marine mammal species under NMFS jurisdiction that may or are known to likely to occur in the study area, five are listed as threatened or endangered under the ESA: humpback, sei, fin, blue, and sperm whales. These species are also considered depleted under the MMPA. Of these ESA-listed species, incidental take has been requested to be authorized for humpback, sei, fin, blue, and sperm whales. There is generally insufficient data to determine population trends for the other depleted species in the study area. To protect these animals (and other marine mammals in the study area), SIO must cease or reduce airgun operations if any marine mammal enters designated zones. No injury, serious injury, or mortality is expected to occur and due to the nature, degree, and context of the Level B harassment anticipated, and the activity is not expected to impact rates of recruitment or survival.

As mentioned previously, NMFS estimates that 26 species of marine mammals under its jurisdiction could be potentially affected by Level B harassment over the course of the IHA. The population estimates for the marine mammal species that may be taken by Level B harassment were provided in Table 3 of this document.

NMFS's practice has been to apply the 160 dB re 1 μPa (rms) received level threshold for underwater impulse sound levels to determine whether take by Level B harassment occurs. Southall *et al.* (2007) provide a severity scale for ranking observed behavioral responses of both free-ranging marine mammals and laboratory subjects to various types of anthropogenic sound (see Table 4 in Southall *et al.* [2007]).

NMFS has preliminarily determined, provided that the aforementioned mitigation and monitoring measures are implemented, the impact of conducting a low-energy marine seismic survey in the tropical western Pacific Ocean, September to October, 2013, may result, at worst, in a modification in behavior and/or low-level physiological effects (Level B harassment) of certain species of marine mammals.

While behavioral modifications, including temporarily vacating the area during the operation of the airgun(s), may be made by these species to avoid the resultant acoustic disturbance, the availability of alternate areas within these areas for species and the short and sporadic duration of the research activities, have led NMFS to preliminary determine that the taking by Level B harassment from the specified activity will have a negligible impact on the affected species in the specified geographic region. NMFS believes that the length of the seismic survey, the requirement to implement mitigation measures (e.g., shut-down of seismic operations), and the inclusion of the monitoring and reporting measures, will reduce the amount and severity of the potential impacts from the activity to the degree that it will have a negligible impact on the species or stocks in the action area.

NMFS has preliminary determined, provided that the aforementioned mitigation and monitoring measures are implemented, that the impact of conducting a marine seismic survey in the tropical western Pacific Ocean, September to October, 2013, may result, at worst, in a temporary modification in behavior and/or low-level physiological effects (Level B harassment) of small numbers of certain species of marine mammals. See Table 3 for the requested authorized take numbers of marine mammals.

Impact on Availability of Affected Species or Stock for Taking for Subsistence Uses

Section 101(a)(5)(D) of the MMPA also requires NMFS to determine that the authorization will not have an unmitigable adverse effect on the availability of marine mammal species or stocks for subsistence use. There is subsistence hunting for sperm whales, as well as other cetaceans and dugongs in Indonesia (Reeves, 2002; Marsh *et al.,* n.d.). The hunting of Bryde's whales in the Philippines appears to be prohibited now, but dugongs are still taken there, as well as in Papua New Guinea (Marsh *et al.,* n.d.). SIO and NMFS do not expect the proposed activities to have any impact on the availability of species or stocks of marine mammals in the study area for subsistence users that implicate MMPA section 101(a)(5)(D).

Endangered Species Act

Of the species of marine mammals that may occur in the proposed survey area, several are listed as endangered under the ESA, including the humpback, sei, fin, blue, and sperm whales. SIO did not request take of endangered North Pacific right whales due to the low likelihood of encountering this species during the cruise. Under section 7 of the ESA, NSF, on behalf of SIO, has initiated formal consultation with the NMFS, Office of Protected Resources, Endangered Species Act Interagency Cooperation Division, on this proposed seismic survey. NMFS's Office of Protected Resources, Permits and Conservation Division, has initiated formal consultation under section 7 of the ESA with NMFS's Office of Protected Resources, Endangered Species Act Interagency Cooperation Division, to obtain a Biological Opinion evaluating the effects of issuing the IHA on threatened and endangered marine mammals and, if appropriate, authorizing incidental take. NMFS will conclude formal section 7 consultation

prior to making a determination on whether or not to issue the IHA. If the IHA is issued, NSF and SIO, in addition to the mitigation and monitoring requirements included in the IHA, will be required to comply with the Terms and Conditions of the Incidental Take Statement corresponding to NMFS's Biological Opinion issued to both NSF and SIO, and NMFS's Office of Protected Resources.

National Environmental Policy Act

With SIO's complete application, SIO and NSF provided NMFS a ''Draft Environmental Analysis of a Low-Energy Marine Geophysical Survey by the R/V Roger Revelle in the Tropical Western Pacific Ocean, September–October 2013,'' prepared by LGL Ltd., Environmental Research Associates on behalf of SIO and NSF. The EA analyzes the direct, indirect, and cumulative environmental impacts of the proposed specified activities on marine mammals including those listed as threatened or endangered under the ESA. Prior to making a final decision on the IHA application, NMFS will either prepare an independent EA, or, after review and evaluation of the NSF and SIO EA for consistency with the regulations published by the Council of Environmental Quality (CEQ) and NOAA Administrative Order 216–6, Environmental Review Procedures for Implementing the National Environmental Policy Act, adopt the NSF and SIO EA and make a decision of whether or not to issue a Finding of No Significant Impact (FONSI).

Proposed Authorization

As a result of these preliminary determinations, NMFS propose to issue an IHA to SIO for conducting the low-energy seismic survey in the tropical western Pacific Ocean, provided the previously mentioned mitigation, monitoring, and reporting requirements are incorporated. The proposed IHA language is provided below:

Scripps Institution of Oceanography, 8602 La Jolla Shores Drive, La Jolla, California 92037, is hereby authorized under section 101(a)(5)(D) of the Marine Mammal Protection Act (MMPA) (16 U.S.C. 1371(a)(5)(D)), to harass small numbers of marine mammals incidental to a low-energy marine geophysical (seismic) survey conducted by the R/V *Roger* REVELLE (REVELLE) in the tropical western Pacific Ocean, September to October 2013:

1. This Authorization is valid from September 6 through November 12, 2013.

2. This Authorization is valid only for the REVELLE's activities associated with low-energy seismic and sediment coring survey operations that shall occur in the following specified geographic area:

In the 10 sites in the tropical western Pacific Ocean located between approximately 4 to 8° South and approximately 126.5 to 144.5° East. Water depths in the survey area generally range from approximately 450 to 3,000 meters (m) (1,476.4 to 9,842.5 feet [ft]). The low-energy seismic survey will be conducted in international waters (i.e., high seas) and in the Exclusive Economic Zones (EEZ) of the Federated States of Micronesia (Micronesia), the Independent State of Papua New Guinea (Papua New Guinea), the Republic of Indonesia (Indonesia), and the Republic of the Philippines (Philippines), as specified in Scripps Institution of Oceanography's (SIO) Incidental Harassment Authorization application and the associated National Science Foundation (NSF) and SIO Environmental Analysis.

3. *Species Authorized and Level of Takes*.

(a) The incidental taking of marine mammals, by Level B harassment only, is limited to the following species in the waters of the tropical western Pacific Ocean:

(i) *Mysticetes*—see Table 2 (attached) for authorized species and take numbers.

(ii) *Odontocetes*—see Table 2 (attached) for authorized species and take numbers.

(iii) If any marine mammal species are encountered during seismic activities that are not listed in Table 2 (attached) for authorized taking and are likely to be exposed to sound pressure levels (SPLs) greater than or equal to 160 dB re 1 μPa (rms), then the Holder of this Authorization must alter speed or course or shut-down the airguns to avoid take.

(b) The taking by injury (Level A harassment), serious injury, or death of any of the species listed in Condition 3(a) above or the taking of any kind of any other species of marine mammal is prohibited and may result in the modification, suspension or revocation of this Authorization.

4. The methods authorized for taking by Level B harassment are limited to the following acoustic sources without an amendment to this Authorization:

(a) A two Generator Injector (GI) airgun array (each with a discharge volume of 45 cubic inches [in^3]) with a total volume of 90 in^3 (or smaller);

(b) A multibeam echosounder; and

(c) A sub-bottom profiler.

5. The taking of any marine mammal in a manner prohibited under this Authorization must be reported immediately to the Office of Protected Resources, National Marine Fisheries Service (NMFS), at 301–427–8401.

6. *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 adverse impact on affected marine mammal species or stocks:

(a) Utilize one, NMFS-qualified, vessel-based Protected Species Observer (PSO) to visually watch for and monitor marine mammals near the seismic source vessel during daytime airgun operations (from nautical twilight-dawn to nautical twilight-dusk) and before and during ramp-ups of airguns day or night. The REVELLE's vessel crew shall also assist in detecting marine mammals, when practicable. PSOs shall have access to reticle binoculars (7 x 50 Fujinon), big-eye binoculars (25 x 150), optical range finders, and night vision devices. PSO shifts shall last no longer than 4 hours at a time. PSOs shall also make observations during daytime periods when the seismic system is not operating for comparison of animal abundance and behavior, when feasible.

(b) PSOs shall conduct monitoring while the airgun array and streamer(s) are being deployed or recovered from the water.

(c) Record the following information when a marine mammal is sighted:

(i) Species, group size, age/size/sex categories (if determinable), behavior when first sighted and after initial sighting, heading (if consistent), bearing and distance from seismic vessel, sighting cue, apparent reaction to the airguns or vessel (e.g., none, avoidance, approach, paralleling, etc., and including responses to ramp-up), and behavioral pace; and

(ii) Time, location, heading, speed, activity of the vessel (including number of airguns operating and whether in state of ramp-up or shut-down), Beaufort sea state and wind force, visibility, and sun glare; and

(iii) The data listed under Condition 6(c)(ii) shall also be recorded at the start and end of each observation watch and during a watch whenever there is a change in one or more of the variables.

(d) Visually observe the entire extent of the exclusion zone (180 dB re 1 μPa [rms] for cetaceans; see Table 1 [attached] for distances) using NMFS-qualified PSOs, for at least 30 minutes prior to starting the airgun array (day or night). If the PSO finds a marine mammal within the exclusion zone, SIO 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 wait 30 minutes. If the PSO sees no marine mammals during that time, they should assume that the animal has moved beyond the exclusion zone. If for any reason the entire radius cannot be seen for the entire 30 minutes (i.e., rough seas, fog, darkness), or if marine mammals are near, approaching, or in the exclusion zone, 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), SIO may start the second airgun without observing the entire exclusion zone for 30 minutes prior, provided no marine mammals are known to be near the exclusion zone (in accordance with Condition 6[f] below).

(e) Establish a 180 dB re 1 μPa (rms) exclusion zone for cetaceans before the two GI airgun array (90 in^3 total) is in operation. See Table 1 (attached) for distances and exclusion zones.

(f) Implement a ''ramp-up'' procedure when starting up at the beginning of seismic operations or anytime after the entire array has been shut-down for more than 15 minutes, which means starting with a single GI airgun and adding a second GI airgun after five minutes. During ramp-up, the PSOs shall monitor the exclusion zone, and if marine mammals are sighted, a shut-down shall be implemented as though the full array (both GI airguns) were operational. Therefore, initiation of ramp-up procedures from shut-down requires that the PSOs be able to view the full exclusion zone as described in Condition 6(d) (above).

(g) Alter speed or course during seismic operations if a marine mammal, based on its position and relative motion, appears likely to enter the relevant exclusion zone. If speed or course alteration is not safe or practicable, or if after alteration the marine mammal still appears likely to enter the exclusion zone, further mitigation measures, such as a shut-down, shall be taken.

(h) Shut-down the airgun(s) if a marine mammal is detected within, approaches, or enters the relevant exclusion zone (as defined in Table 1, attached). A shut-down means all operating airguns are shut-down (i.e., turned off).

(i) Following a shut-down, the airgun activity shall not resume until the PSO has visually observed the marine mammal(s) exiting the exclusion zone and is not likely to return, or has not been seen within the exclusion zone for 15 minutes for species with shorter dive durations (small odontocetes) or 30 minutes for species with longer dive durations (mysticetes and large odontocetes, including sperm, pygmy sperm, dwarf sperm, killer, and beaked whales).

(j) Following a shut-down and subsequent animal departure, airgun operations may resume following ramp-up procedures described in Condition 6(f).

(k) Marine seismic surveys may continue into night and low-light hours if such segment(s) of the survey is initiated when the entire relevant exclusion zones are visible and can be effectively monitored.

(l) No initiation of airgun array operations is permitted from a shut-down position at night or during low-light hours (such as in dense fog or heavy rain) when the entire relevant exclusion zone cannot be effectively monitored by the PSO(s) on duty.

7. *Reporting Requirements*.

The Holder of this Authorization is required to:

(a) 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 REVELLE's tropical western Pacific Ocean cruise. This report must contain and summarize the following information:

(i) Dates, times, locations, heading, speed, weather, sea conditions (including Beaufort sea state and wind force), and associated activities during all seismic operations and marine mammal sightings;

(ii) Species, number, location, distance from the vessel, and behavior of any marine mammals, as well as associated seismic activity (number of shut-downs), observed throughout all monitoring activities.

(iii) An estimate of the number (by species) of marine mammals that: (A) Are known to have been exposed to the seismic activity (based on visual observation) at received levels greater than or equal to 160 dB re 1 μPa (rms) and/or 180 dB re 1 μPa (rms) for cetaceans with a discussion of any specific behaviors those individuals exhibited; and (B) may have been exposed (based on modeled values for the two GI airgun array) to the seismic activity at received levels greater than or equal to 160 dB re 1 μPa (rms) and/or 180 dB re 1 μPa (rms) for cetaceans with a discussion of the nature of the probable consequences of that exposure on the individuals that have been exposed.

(iv) A description of the implementation and effectiveness of the: (A) Terms and Conditions of the Biological Opinion's Incidental Take Statement (ITS) (attached); and (B) mitigation measures of the Incidental Harassment Authorization. For the Biological Opinion, the report shall confirm the implementation of each Term and Condition, as well as any conservation recommendations, and describe their effectiveness, for minimizing the adverse effects of the action on Endangered Species Act-listed marine mammals.

(b) Submit a final report to the Chief, Permits and Conservation Division, Office of Protected Resources, NMFS, within 30 days after receiving comments from NMFS on the draft report. If NMFS decides that the draft report needs no comments, the draft report shall be considered to be the final report.

8. In the unanticipated event that the specified activity 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), SIO shall immediately cease the specified activities and immediately report the incident to the Chief of the Permits and Conservation Division, Office of Protected Resources, NMFS, at 301–427–8401 and/or by email to *Jolie.Harrison@noaa.gov* and *Howard.Goldstein@noaa.gov* and the NMFS Pacific Islands Region Marine Mammal Stranding and Entanglement Hotline at 1–888–256–9840 (*David.Schofield@noaa.gov*). The report must include the following information:

(a) Time, date, and location (latitude/longitude) of the incident; the name and type of vessel involved; the vessel's speed during and leading up to the incident; description of the incident; status of all sound source use in the 24 hours preceding the incident; water depth; environmental conditions (e.g., wind speed and direction, Beaufort sea state, cloud cover, and visibility); description of marine mammal observations in the 24 hours preceding the incident; species identification or description of the animal(s) involved; the fate of the animal(s); 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 SIO to determine what is necessary to minimize the likelihood of further prohibited take and ensure MMPA compliance. SIO may not resume their activities until notified by NMFS via letter, email, or telephone.

In the event that SIO 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), SIO will immediately report the incident to the Chief of the Permits and Conservation Division, Office of Protected Resources, NMFS, at 301–427–8401, and/or by email to *Jolie.Harrison@noaa.gov* and *Howard.Goldstein@noaa.gov*, and the NMFS Pacific Islands Marine Mammal Stranding and Entanglement Hotline (1–888–256–9840) and/or by email to the NMFS Pacific Islands Regional Stranding Coordinator (*David.Schofield@noaa.gov*). The report must include the same information identified in Condition 8(a) above. Activities may continue while NMFS reviews the circumstances of the incident. NMFS will work with SIO to determine whether modifications in the activities are appropriate.

In the event that SIO 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), SIO shall report the incident to the Chief of the Permits and Conservation Division, Office of Protected Resources, NMFS, at 301–427–8401, and/or by email to *Jolie.Harrison@noaa.gov* and *Howard.Goldstein@noaa.gov*, and the NMFS Pacific Islands Marine Mammal Stranding and Entanglement Hotline (1–888–256–9840) and/or by email to the Pacific Islands Regional Stranding Coordinator (*David.Schofield@noaa.gov*), within 24 hours of the discovery. SIO 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.

9. SIO is required to comply with the Terms and Conditions of the ITS corresponding to NMFS's Biological Opinion issued to both SIO, NSF, and NMFS's Office of Protected Resources (attached).

10. 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.

Information Solicited

NMFS requests interested persons to submit comments and information concerning this proposed project and NMFS's preliminary determination of issuing an IHA (see **ADDRESSES**). Concurrent with the publication of this notice in the **Federal Register**, NMFS is forwarding copies of this application to the Marine Mammal Commission and its Committee of Scientific Advisors.

Dated: May 31, 2013.

Helen M. Golde,

Deputy Director, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. 2013–13280 Filed 6–4–13; 8:45 am]

BILLING CODE 3510–22–P

CONSUMER PRODUCT SAFETY COMMISSION

CPSC Safety Academy

AGENCY: Consumer Product Safety Commission.

ACTION: Notice.

SUMMARY: The Consumer Product Safety Commission (CPSC, Commission, or we) is announcing its intent to hold a one-day CPSC Safety Academy to discuss current regulatory requirements, including testing and certification, the mandatory toy standard, and compliance processes. We invite interested parties to participate in or attend the CPSC Safety Academy.

DATES: The CPSC Safety Academy will be held from 8:00 a.m. to 4:00 p.m. on September 18, 2013. Individuals interested in serving on panels or presenting information relevant to the agenda at the CPSC Safety Academy should advise the CPSC via email by June 10, 2013. All other individuals who wish to attend in person should register by September 9, 2013.

ADDRESSES: The CPSC Safety Academy will be held in Seattle, WA, at the Henry M. Jackson Federal Building on September 18, 2013. The Jackson Federal Building is located at the Seattle Metro Service Center, 915 2nd Avenue, in Seattle, WA 98174. Persons interested in serving on a panel or attending the CPSC Safety Academy should register online at *http://www.cpsc.gov/meetingsignup*, click on the link titled, ''CPSC Seattle Safety Academy,'' and follow applicable instructions.

FOR FURTHER INFORMATION CONTACT: Dean W. Woodard, Director, Office of Education, Global Outreach, and Small Business Ombudsman, 4330 East West Highway, Bethesda, MD 20814, 301–504–7651, *dwoodard@cpsc.gov*. To be considered for a panel, please email your information to: *business@cpsc.gov*.

SUPPLEMENTARY INFORMATION: The CPSC Safety Academy intends to bring together CPSC staff and stakeholders, including manufacturers, consumer advocates, academic researchers, and others, to disseminate and share information on areas of particular interest to all parties, including testing and certification of children's products, the mandatory toy standard, navigating compliance issues, and the fast track recall program. The Safety Academy is structured such that the morning programs are more basic in nature and are designed for those who may be unfamiliar with the CPSC and the agency's regulations. The afternoon session is designed for more complex issues. Regardless of any person's level of familiarity with the CPSC, the Safety Academy is an opportunity to ask questions about these regulations and meet with specialists and field staff.

Panels currently planned are: (Panel 1) CPSC Basics: Reporting Requirements, Processes, and Basic Regulations; (Panel 2) CPSC Processes continued, including Fast Track and Section 15; and (Panel 3) Flammable Fabrics, Drawstrings, and Sleepwear. The afternoon session will consist of these three panels: (Panel 4) Testing, Mandatory Testing, Component Parts Testing, and Certificates of Conformity; (Panel 5) Navigating the CPSC Import Process; and (Panel 6) F963–11 Toy Standards. The CPSC Safety Academy will be held from 8:00 a.m. to 4:00 p.m. on September 18, 2013, at the Henry M. Jackson Federal Building, North Auditorium, 915 2nd Avenue, Seattle, WA 98174.

If you would like to be a panel member for a specific session of the CPSC Safety Academy, you should register by June 10, 2013. (See the **ADDRESSES** portion of this document for the Web site link and instructions on where to register.) Prospective panelists will be asked to submit a brief (less than 200 word) abstract of your topic, area of expertise, and desired panel. If more individuals seek to be panelists for a particular session than time will allow, the CPSC Safety Academy planning committee will select panelists based on considerations such as: the individual's familiarity or expertise with the topic to be discussed; the practical utility of the information to be presented (such as a discussion of a specific topic or research area), the topic's relevance to the identified theme and topic area, and the individual's viewpoint or ability to represent certain interests (*e.g.,* such as large manufacturers, small manufacturers, academic researchers, consumer organization). Although an effort will be made to accommodate all persons who wish to be panelists, we expect to limit each panel session to no more than five panelists. Therefore, the final number of panelists may be

limited. We recommend that individuals and organizations with common interests consolidate or coordinate their panel requests. To assist in making final panelist selections, the CPSC Safety Academy planning committee may request potential panelists to submit presentations in addition to the initial abstract. We anticipate that we will notify those who are selected as panelists before August 15, 2013.

If you wish to attend and participate in the CPSC Safety Academy as a panelist or attendee you should register by September 9, 2013. The Safety Academy will *not* be available via webcast.

Dated: May 30, 2013.

Todd A. Stevenson,

Secretary, Consumer Product Safety Commission.

[FR Doc. 2013–13165 Filed 6–4–13; 8:45 am]

BILLING CODE 6355–01–P

CORPORATION FOR NATIONAL AND COMMUNITY SERVICE

Information Collection; Submission for OMB Review, Comment Request

AGENCY: Corporation for National and Community Service.

ACTION: Notice.

SUMMARY: The Corporation for National and Community Service (CNCS) has submitted a public information collection request (ICR) entitled [Title] for review and approval in accordance with the Paperwork Reduction Act of 1995, Public Law 104–13, (44 U.S.C. Chapter 35). Copies of this ICR, with applicable supporting documentation, may be obtained by calling the Corporation for National and Community Service, Wanda Carney, at (202) 606–6934 or email to *wcarney@cns.gov*. Individuals who use a telecommunications device for the deaf (TTY–TDD) may call 1–800–833–3722 between 8:00 a.m. and 8:00 p.m. Eastern Time, Monday through Friday.

ADDRESSES: Comments may be submitted, identified by the title of the information collection activity, to the Office of Information and Regulatory Affairs, Attn: Ms. Sharon Mar, OMB Desk Officer for the Corporation for National and Community Service, by any of the following two methods within 30 days from the date of publication in the **Federal Register**:

(1) *By fax to:* (202) 395–6974, Attention: Ms. Sharon Mar, OMB Desk Officer for the Corporation for National and Community Service; or

(2) *By email to: smar@omb.eop.gov*.

SUPPLEMENTARY INFORMATION: The OMB is particularly interested in comments which:

- Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of CNCS, including whether the information will have practical utility;
- Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;
- Propose ways to enhance the quality, utility, and clarity of the information to be collected; and
- Propose ways to minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology.

Comments

A 60-day public comment Notice was published in the **Federal Register** on February 6, 2013. This comment period ended April 16, 2013. No public comments were received from this Notice.

Description: CNCS is seeking approval of the Independent Living Performance Measures Aggregation Tool, which is used by existing Senior Companion Program grantees to aggregate individual SCP client and SCP caregiver survey responses.

Type of Review: New.

Agency: Corporation for National and Community Service.

Title: Independent Living Performance Measures Aggregation Tool.

OMB Number: None.

Agency Number: None.

Affected Public: Senior Companion Program Grantees (mandatory) and RSVP Program Grantees (optional).

Total Respondents: 350.

Frequency: Annual.

Average Time per Response: 7 hours.

Estimated Total Burden Hours: 2,450.

Total Burden Cost (capital/startup): None.

Total Burden Cost (operating/maintenance): None.

Dated: May 30, 2013.

Erwin Tan,

Director, Senior Corps.

[FR Doc. 2013–13204 Filed 6–4–13; 8:45 am]

BILLING CODE 6050–28–P

DEPARTMENT OF EDUCATION

[Docket No. ED–2013–ICCD–0038]

Agency Information Collection Activities; Submission to the Office of Management and Budget for Review and Approval; Comment Request; Experimental Sites Data Collection Instrument

AGENCY: Federal Student Aid (FSA), Department of Education (ED).

ACTION: Notice.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. chapter 3501 *et seq.*), ED is proposing a new information collection.

DATES: Interested persons are invited to submit comments on or before July 5, 2013.

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–2013–ICCD–0038 or via postal mail, commercial delivery, or hand delivery. Please note that comments submitted by fax or email and those submitted after the comment period will not be accepted. 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, Room 2E105,Washington, DC 20202–4537.

FOR FURTHER INFORMATION CONTACT: Electronically mail *ICDocketMgr@ed.gov*. Please do not send comments here.

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: Experimental Sites Data Collection Instrument.

OMB Control Number: 1845–NEW.

Type of Review: A new information collection.

Respondents/Affected Public: Private Sector.

Total Estimated Number of Annual Responses: 25.

Total Estimated Number of Annual Burden Hours: 275.

Abstract: This data collection instrument will be used to collect specific information/performance data for analysis of the experiments. This effort will assist the Department in obtaining and compiling information to help determine change in the administration and delivery of Title IV programs. Institutions volunteer to become an experimental site to provide recommendations on the impact and effectiveness of proposed regulations or new management initiatives.

Dated: May 30, 2013.

Stephanie Valentine,

Acting Director, Information Collection Clearance Division, Privacy, Information and Records Management Services, Office of Management.

[FR Doc. 2013–13242 Filed 6–4–13; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF ENERGY

Office of Energy Efficiency and Renewable Energy

[Docket No. EERE–2012–BT–BC–0030]

DOE Participation in Development of the International Energy Conservation Code

AGENCY: Office of Energy Efficiency and Renewable Energy, Department of Energy.

ACTION: Notice and request for comment.

SUMMARY: The U.S. Department of Energy (DOE) participates in the process administered by the International Code Council (ICC) to develop the International Energy Conservation Code (IECC). DOE's participation in this process was outlined in a previous **Federal Register** notice published on April 19, 2013. As a participant in the IECC development process, DOE intends to submit public comments on actions taken on DOE's code change proposals and technical analysis at the ICC Committee Action Hearings held in Dallas, Texas in April 2013. DOE is requesting stakeholder feedback on its draft public comments prior to submission to the ICC. This notice outlines the process by which DOE will seek stakeholder feedback and submit public comments to the ICC.

DATES: Comments on DOE's draft public comments to the ICC must be provided by June 30, 2013.

ADDRESSES: You may submit comments, identified by any of the following methods:

- *Email: EnergyCodeDevelopment 2012BC0030@ee.doe.gov*. Include ''IECC public comment'' in the subject line of the message.
- *Postal Mail:* Mr. Jeremiah Williams, U.S. Department of Energy, Office of Energy Efficiency and Renewable Energy, Building Technologies Office, Mailstop EE–2J, 1000 Independence Avenue SW., Washington, DC 20585–0121, Please submit one signed paper original.
- *Hand Delivery/Courier:* Mr. Jeremiah Williams, U.S. Department of Energy, Office of Energy Efficiency and Renewable Energy, 950 L'Enfant Building, Room 6052, 950 L'Enfant Plaza, Washington, DC 20024
- *Instructions:* All submissions must include the agency name, Department of Energy, and ''IECC public comments'' for these draft public comments.

FOR FURTHER INFORMATION CONTACT: Jeremiah Williams, U.S. Department of Energy, Office of Energy Efficiency and Renewable Energy, Building Technologies Office, Mailstop EE–2J, 1000 Independence Avenue SW., Washington, DC 20585–0121, Telephone: (202) 287–1941, Email: *jeremiah.williams@ee.doe.gov*.

For legal issues contact Kavita Vaidyanathan, U.S. Department of Energy, Office of the General Counsel, Forrestal Building, Mailstop GC–71, 1000 Independence Ave. SW., Washington, DC 20585, Telephone: (202) 586–0669, Email: *kavita.vaidyanathan@hq.doe.gov*.

SUPPLEMENTARY INFORMATION:

I. Introduction

The U.S. Department of Energy (DOE) supports the International Energy Conservation Code (IECC) by participating in the code development administered by the International Code Council (ICC). DOE's participation in this process was outlined in a previous **Federal Register** notice published on April 19, 2013 (78 FR 23550). As a participant in the IECC development process, DOE submitted code change proposals for the IECC, and recently defended its proposals at the April 2013 ICC Committee Action Hearings (results are available at *http://www.iccsafe.org/cs/codes/Pages/Dallas-B-Results.aspx*). The next step in the current IECC development cycle is for participants to submit public comments on actions taken at the recent ICC Committee Action Hearings in anticipation of the ICC Public Comment Hearings to be held in October 2013.

A. Statutory Requirements

Title III of the Energy Conservation and Production Act, as amended (ECPA), establishes requirements related to energy conservation standards for new buildings (42 U.S.C. 6831–6837). Section 307(b) of ECPA directs DOE to support voluntary building energy codes by periodically reviewing the technical and economic basis of the voluntary building codes, recommending amendments to such codes, seeking adoption of all technologically feasible and economically justified energy efficiency measures, and otherwise participate in any industry process for review and modification of such codes (42 U.S.C. 6836(b)).

B. Background

The IECC serves as a model building energy code and is adopted by many U.S. states, territories, the District of Columbia, and localities across the nation. Development of the IECC is administered by the ICC, with revisions taking place every three years under the ICC governmental consensus process. Any party can propose changes to the IECC with proposed code changes subject to the bylaws, policies and procedures as defined by the ICC. Code change proposals are discussed and voted on at the ICC Committee Action Hearings. The next step in the IECC development cycle is for stakeholders to submit public comments on actions taken at the recent ICC Committee Action Hearings in anticipation of the ICC Public Comment Hearings.

ICC's code development process is described at *http://www.iccsafe.org/cs/codes/pages/default.aspx*.

II. DOE Public Comments for the IECC

Code change proposals for the IECC were heard at the ICC Committee Action Hearings conducted April 21–30, 2013 in Dallas, Texas. Continuing its participation in the IECC development process, DOE has drafted public comments on its code change proposals

and technical analysis for submission to the ICC. DOE is requesting stakeholder feedback on its draft public comments prior to submission to the ICC. The process by which DOE developed its draft public comments, as well as instructions for how to submit feedback, is described in the following sections.

DOE Development of Public Comments

Based on actions taken at the ICC Committee Action Hearings, DOE has identified actions where DOE believes a committee action should be reconsidered for its code change proposals and technical analysis, and drafted associated comments. DOE comments are currently available for public review at *http://www.energycodes.gov/development*. DOE will not provide responses to individual comments, but will consider any and all comments timely submitted in developing final public comments prior to submission to the ICC. Stakeholder feedback received will be available at *http://www.regulations.gov/#!docketDetail;D=EERE-2012-BT-BC-0030*. DOE will submit final public comments to ICC on or before the ICC July 15, 2013 deadline.

DOE's Participation at the IECC Public Comment Hearings

At ICC hearings, DOE communicates its position on code change proposals and associated public comments as follows: DOE will defend its proposals and public comments. While DOE cannot enter into joint code change proposals or public comments (outside of proposals or public comments submitted jointly with another federal agency), DOE intends to support efficiency concepts from the perspective of its own analysis. DOE may also recognize a code change proposal or public comment to the extent that the code change proposal or provisions within the proposal are the same as a DOE code change proposal or provisions within a DOE code change proposal. Again, however, such an indication would not constitute an endorsement of a proposal or associated public comment.

Ex Parte Communications

DOE anticipates that it or its contractors may be contacted regarding its code change proposals and associated public comments prior to or during the IECC Public Comment Hearings. While DOE code change proposals and public comments for the IECC are not regulations, DOE will follow ex parte communication policy for such communications. Guidance on ex parte communications was published on January 21, 2009 (74 FR 4685) and can be found at *http://energy.gov/gc/downloads/guidance-ex-parte-communications*. Note that such communications will be reflected in the public docket consistent with the ex parte guidance.

DOE maintains an organizational membership with the ICC. As an ICC governmental member, DOE will exercise voting privileges as defined by the guiding ICC rules and procedures.

III. Public Participation in the Development of DOE Public Comments

The public is invited to submit comments on DOE's draft public comments. Comments must be provided by the date specified in the **DATES** section of this notice using any of the methods described in the **ADDRESSES** section of this notice. If you submit information that you believe to be exempt by law from public disclosure, you should submit one complete copy, as well as one copy from which the information claimed to be exempt by law from public disclosure has been deleted. DOE is responsible for the final determination with regard to disclosure or nondisclosure of the information and for treating it accordingly under the DOE Freedom of Information regulations at 10 CFR 1004.11.

Issued in Washington, DC, on May 30, 2013.

Roland Risser,

Director, Building Technologies Office, Energy Efficiency and Renewable Energy.

[FR Doc. 2013–13308 Filed 6–4–13; 8:45 am]

BILLING CODE 6450–01–P

ENVIRONMENTAL PROTECTION AGENCY

[EPA HQ–OECA–2012–0978; FRL–9820–2]

Access by United States Environmental Protection Agency (EPA) Contractors to Information Claimed as Confidential Business Information (CBI) Submitted under Clean Air Act (CAA), Title I, Programs and Activities Air, and Title II Emission Standards for Moving Sources, and Act To Prevent Pollution From Ships (APPS)

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: The United States Environmental Protection Agency's (EPA's) Office of Enforcement and Compliance Assurance (OECA) plans to authorize various contractors to access information that will be submitted to EPA under the Clean Air Act (CAA) Titles I and II and the Act to Prevent Pollution from Ships (APPS) that may be claimed as, or may be determined to be, confidential business information (CBI). Access to this information, which is collected under the CAA Titles I and II and APPS, will begin on June 10, 2013.

DATES: EPA will accept comments on this Notice through June 10, 2013.

FOR FURTHER INFORMATION CONTACT: Jeffrey Kimes, Environmental Protection Agency, 1595 Wynkoop St., 8MSU, Denver, CO 80202; telephone number: (303) 312–6445; fax number (303) 312–6003; email address: *kimes.jeffrey@epa.gov.*

SUPPLEMENTARY INFORMATION:

I. Does this notice apply to me?

This action is directed to the general public. However, this action may be of particular interest to certain parties, including: motor vehicle manufacturers and importers; engine manufacturers and importers; motor vehicle fuel and fuel additive producers and importers; manufacturers, importers and distributors of motor vehicle and engine emission control equipment and parts; and any other parties subject to the regulations found in 40 CFR Parts 79, 80, 85, 86, 89–92, 94, 1033, 1039, 1042, 1043, 1045, 1048, 1051, 1054, 1060, 1065, and 1068.

This **Federal Register** notice may be of particular relevance to parties that have submitted data to EPA under the above-listed regulations. Because other parties may also be interested, EPA has not attempted to describe all the specific parties that may be affected by this action. If you have further questions regarding the applicability of this action to a particular party, please contact the person listed in **FOR FURTHER INFORMATION CONTACT**.

II. How can I get copies of this document and other related information?

A. Electronically

EPA has established a public docket for this **Federal Register** notice under Docket EPA HQ–OECA–2012–0978.

All documents in the docket are identified in the docket index available at *http://www.regulations.gov.* Although listed in the index, some information is not publicly available, such as CBI or other information for which disclosure is restricted by statute. Certain materials, such as copyrighted material, will only be available in hard copy at the EPA Docket Center.

B. EPA Docket Center

Materials listed under Docket EPA HQ–OECA–2012–0978 will be available for public viewing at the EPA Docket

Center (EPA/DC), EPA West, Room 3334, 1301 Constitution Avenue NW., Washington, DC 20460. The EPA Docket Center Public Reading Room is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Reading Room is (202) 566–1744, and the telephone number for the Air Docket is (202) 566–1742.

III. Description of Programs and Potential Disclosure of Information Claimed as CBI to Contractors

EPA's OECA has responsibility for protecting public health and the environment by regulating air pollution from motor vehicles, engines, and the fuels used to operate them, and by encouraging travel choices that minimize emissions. In order to implement various Clean Air Act programs, and to give regulated entities flexibility in meeting regulatory requirements (e.g., compliance on average), OECA collects compliance reports and other information from the regulated industry. Occasionally, the information submitted is claimed to be CBI by persons submitting data to EPA. Information submitted under such a claim is handled in accordance with EPA's regulations at 40 CFR Part 2, Subpart B, and in accordance with EPA procedures that are consistent with those regulations. When EPA has determined that disclosure of information claimed as CBI to EPA contractors is necessary, the corresponding contract must address the appropriate use and handling of the information by the EPA contractor and the EPA contractor must require its personnel who require access to information claimed as CBI to sign written non-disclosure agreements before they are granted access to data.

In accordance with 40 CFR 2.301(h), we have determined that the contractors listed below require access to CBI submitted to EPA under Section 114 of the CAA, Section 208 of the CAA, and APPS, and we are providing notice and an opportunity to comment on EPA contractors' access to information claimed as confidential business information. OECA collects this data in order to monitor compliance with regulations promulgated under the Clean Air Act Title II Emission Standards for Moving Sources, APPS, and the International Convention for the Prevention of Pollution from Ships (MARPOL), Annex VI. We are issuing this **Federal Register** notice to inform all affected submitters of information that we plan to grant access to material that may be claimed as confidential business information to the contractors identified below on a need-to-know basis.

Under Contract Number EP–W–12–007, Eastern Research Group, Incorporated, 14555 Avion Parkway, Suite 200, Chantilly, VA, 20151 provides enforcement support for EPA's CAA mobile source regulatory and enforcement activities including field inspections, investigations, and audits that involve access to information claimed as confidential business information. Access to data, including information claimed as confidential business information, will commence on June 10, 2013, and will continue until March 5, 2017. If the contract is extended, this access will continue for the remainder of the contract without further notice.

Parties who wish to obtain further information about this **Federal Register** notice, or about OECA's disclosure of information claimed as confidential business information to contactors, may contact the person listed under **FOR FURTHER INFORMATION CONTACT**.

List of Subjects

Environmental protection; Confidential business information.

Dated: May 23, 2013.

Phillip A. Brooks,

Director, Air Enforcement Division, Office of Enforcement and Compliance Assurance, Office of Civil Enforcement.

[FR Doc. 2013–13343 Filed 6–4–13; 8:45 am]

BILLING CODE 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 ten 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.: 012037–005.

Title: Maersk Line/CMA CGM Transatlantic Space Charter Agreement.

Parties: A.P. Moller-Maersk A/S and CMA CGM S.A.

Filing Party: Wayne R. Rohde, Esq.; Cozen O'Connor; 1627 I Street NW., Suite 1100; Washington, DC 20006–4007.

Synopsis: The amendment reflects the termination of the chartering of space from within Maersk's allocation on one service and revises the amount of space to be chartered on two other Maersk services.

Agreement No.: 012108–003.

Title: The World Liner Data Agreement.

Parties: ANL Container Line Pty Ltd.; A.P. Moller-Maersk A/S; CMA CGM S.A.; Compania Chilena de Navegacion Interoceanica S.A.; Compania Sud Americana de Vapores S.A.; Evergreen Line Joint Service Agreement; Hamburg-Sud; Hapag-Lloyd AG; Hanjin Shipping Company, Ltd; Hyundai Merchant Marine Co., Ltd.; Independent Container Line Ltd.; Mediterranean Shipping Company S.A.; Orient Overseas Container Line Ltd.; Turkon Konteyner Tasimacilik ve Denizcilik A.S.; and United Arab Shipping Company S.A.G.

Filing Party: Wayne Rohde, Esq.; Cozen O'Connor; 627 I Street NW.; Suite 1100; Washington, DC 20006.

Synopsis: The amendment would add Zim Integrated Shipping Services Limited as a party to the Agreement.

Agreement No.: 012208.

Title: Hoegh/Inarme Space Charter Agreement.

Parties: Hoegh Autoliners AS and Industria Armamento Meridionale S.P.A. (Inarme)

Filing Party: Wayne R. Rohde, Esq.; Cozen O'Connor; 1627 I Street NW. Suite 1100; Washington, DC 20006.

Synopsis: The agreement authorizes Hoegh to charter space to Inarme in the trade from Spain to the U.S. East and Gulf Coasts.

Agreement No.: 012209.

Title: APL/Maersk Line Slot Charter Agreement.

Parties: American President Lines, Ltd. and APL Co. Pte, Ltd.; and A.P. Moller-Maersk A/S trading under the name Maersk Line

Filing Party: Eric. C. Jeffrey, Esq.; Goodwin Procter LLP; 901 New York Avenue NW.; Washington, DC 20001.

Synopsis: The agreement authorizes APL to charter space to Maersk in the trade between the U.S. East Coast, on the one hand, and North Europe and Central America, on the other hand.

By Order of the Federal Maritime Commission.

Dated: May 31, 2013.

Rachel E. Dickon,

Assistant Secretary.

[FR Doc. 2013–13328 Filed 6–4–13; 8:45 am]

BILLING CODE P

FEDERAL MARITIME COMMISSION

Ocean Transportation Intermediary License Applicants

The Commission gives notice that the following applicants have filed an application for an Ocean Transportation Intermediary (OTI) license as a Non-Vessel-Operating Common Carrier (NVO) and/or Ocean Freight Forwarder (OFF) pursuant to section 19 of the Shipping Act of 1984 (46 U.S.C. 40101). Notice is also given of the filing of applications to amend an existing OTI license or the Qualifying Individual (QI) for a licensee.

Interested persons may contact the Office of Ocean Transportation Intermediaries, Federal Maritime Commission, Washington, DC 20573, by telephone at (202) 523–5843 or by email at *OTI@fmc.gov.*

CFR Rinkens, LLC dba Rinkens International dba CFR Line (NVO), 15501 Texaco Avenue, Paramount, CA 90723, Officers: Maximiliaan Hoes, Manager (QI), Michele Blackmore, Vice President, Application Type: Add NVO Service.

Javelin Logistics Corporation (NVO & OFF), 7447A Morton Avenue, Newark, CA 94560, Officers: Susan M. Foster, International Services (QI), Malcolm Winspear, President, Application Type: QI Change.

Sig Global, Inc. (NVO & OFF), 16012 S. Western Avenue, Suite 300, Gardena, CA 90247, Officers: James J. Oh, President (QI), Chung Kwon Kim, Secretary, Application Type: New NVO & OFF License.

Super You Global (NVO & OFF), 391 Curtner Avenue, Suite 1, Palo Alto, CA 94306, Officers: Hu Wang, CEO (QI), Xin You, President, Application Type: New NVO & OFF License.

Windstream International Inc. (NVO & OFF), 2001 Santa Anita Avenue, Suite 203A, South El Monte, CA 91733, Officer: Jeff C. Chang, CEO (QI), Application Type: New NVO & OFF License.

By the Commission.
Dated: May 31, 2013.

Rachel E. Dickon,

Assistant Secretary.

[FR Doc. 2013–13325 Filed 6–4–13; 8:45 am]

BILLING CODE 6730–01–P

FEDERAL MARITIME COMMISSION

Ocean Transportation Intermediary License Revocations

The Commission gives notice that the following Ocean Transportation Intermediary licenses have been revoked pursuant to section 19 of the Shipping Act of 1984 (46 U.S.C. 40101) effective on the date shown.

License No.: 3642F.
Name: Honeybee International Forwarding.
Address: 2301 S. Tubeway Avenue, Commerce, CA 90040.
Date Revoked: May 16, 2013.
Reason: Voluntary Surrender of License.

License No.: 015890NF.
Name: OEC Freight Chicago, Inc.
Address: 501 Frontier Way, Bensenville, IL 60106.
Date Revoked: May 6, 2013.
Reason: Voluntary Surrender of License.

License No.: 021796NF.
Name: Keith Phillips Transportation, LLC.
Address: 124 Garden Gate Drive, Ponte Vedra Beach, FL 32082.
Date Revoked: May 15, 2013.
Reason: Voluntary Surrender of License.

License No.: 021952NF.
Name: Streamline Trade Management Inc. dba Teamwork Logistic.
Address: 177–25 Rockaway Blvd. Suite 213, Jamaica, NY 11434.
Date Revoked: May 9, 2013.
Reason: Voluntary Surrender of License.

License No.: 023793NF.
Name: Interlink Cargo Logistics, LLC.
Address: 76 Loy Avenue, Riverdale, NJ 07457.
Date Revoked: May 14, 2013.
Reason: Voluntary Surrender of License.

James A. Nussbaumer,

Deputy Director, Bureau of Certification and Licensing.

[FR Doc. 2013–13327 Filed 6–4–13; 8:45 am]

BILLING CODE 6730–01–P

FEDERAL RESERVE SYSTEM

Federal Open Market Committee; Domestic Policy Directive of April 30–May 1, 2013

In accordance with Section 271.25 of its rules regarding availability of information (12 CFR part 271), there is set forth below the domestic policy directive issued by the Federal Open Market Committee at its meeting held on April 30–May 1, 2013.[1]

Consistent with its statutory mandate, the Federal Open Market Committee seeks monetary and financial conditions that will foster maximum employment and price stability. In particular, the Committee seeks conditions in reserve markets consistent with federal funds trading in a range from 0 to ¼ percent. The Committee directs the Desk to undertake open market operations as necessary to maintain such conditions. The Desk is directed to continue purchasing longer-term Treasury securities at a pace of about $45 billion per month and to continue purchasing agency mortgage-backed securities at a pace of about $40 billion per month. The Committee also directs the Desk to engage in dollar roll and coupon swap transactions as necessary to facilitate settlement of the Federal Reserve's agency mortgage-backed securities transactions. The Committee directs the Desk to maintain its policy of rolling over maturing Treasury securities into new issues and its policy of reinvesting principal payments on all agency debt and agency mortgage-backed securities in agency mortgage-backed securities. The System Open Market Account Manager and the Secretary will keep the Committee informed of ongoing developments regarding the System's balance sheet that could affect the attainment over time of the Committee's objectives of maximum employment and price stability.

By order of the Federal Open Market Committee, May 23, 2013.

William B. English,

Secretary, Federal Open Market Committee.

[FR Doc. 2013–13271 Filed 6–4–13; 8:45 am]

BILLING CODE 6210–01–P

[1] Copies of the Minutes of the Federal Open Market Committee at its meeting held on April 30–May 1, 2013, which includes the domestic policy directive issued at the meeting, are available upon request to the Board of Governors of the Federal Reserve System, Washington, DC 20551. The minutes are published in the Federal Reserve Bulletin and in the Board's Annual Report.

FEDERAL RESERVE SYSTEM

Formations of, Acquisitions by, and Mergers of Bank Holding Companies

The companies listed in this notice have applied to the Board for approval, pursuant to the Bank Holding Company Act of 1956 (12 U.S.C. 1841 *et seq.*) (BHC Act), Regulation Y (12 CFR Part 225), and all other applicable statutes and regulations to become a bank holding company and/or to acquire the assets or the ownership of, control of, or the power to vote shares of a bank or bank holding company and all of the banks and nonbanking companies owned by the bank holding company, including the companies listed below.

The applications listed below, as well as other related filings required by the

Board, are available for immediate inspection at the Federal Reserve Bank indicated. The applications will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the standards enumerated in the BHC Act (12 U.S.C. 1842(c)). If the proposal also involves the acquisition of a nonbanking company, the review also includes whether the acquisition of the nonbanking company complies with the standards in section 4 of the BHC Act (12 U.S.C. 1843). Unless otherwise noted, nonbanking activities will be conducted throughout the United States.

Unless otherwise noted, comments regarding each of these applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than July 1, 2013.

A. Federal Reserve Bank of Boston (Richard Walker, Community Affairs Officer) 600 Atlantic Avenue, Boston, Massachusetts 02210–2204:

1. *Hometown Community Bancorp, MHC,* Oxford, Massachusetts; to acquire 100 percent of the voting shares of Hometown Community Bancorp, Inc., Oxford, Massachusetts, which will acquire Hometown Bank, A Cooperative Bank, Webster, Massachusetts.

In addition, Hometown Community Bancorp, Inc., Oxford, Massachusetts, also has applied to become a bank holding company, by acquiring Hometown Bank, A Cooperative Bank, Webster, Massachusetts.

Board of Governors of the Federal Reserve System, May 31, 2013.

Margaret McCloskey Shanks,

Deputy Secretary of the Board.

[FR Doc. 2013–13284 Filed 6–4–13; 8:45 am]

BILLING CODE 6210–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Determination and Declaration Regarding Emergency Use of In Vitro Diagnostics for Detection of Middle East Respiratory Syndrome Coronavirus (MERS-CoV)

AGENCY: Office of the Secretary, Department of Health and Human Services.

ACTION: Notice.

SUMMARY: The Secretary of Health and Human Services (HHS) is issuing this notice pursuant to section 564 of the Federal Food, Drug, and Cosmetic (FD&C) Act, 21 U.S.C. 360bbb–3. On May 29, 2013, the Secretary determined that there is a significant potential for a public health emergency that has a significant potential to affect national security or the health and security of United States citizens living abroad and that involves Middle East respiratory syndrome coronavirus (MERS-CoV).

On the basis of this determination, she also declared that circumstances exist justifying the authorization of emergency use of in vitro diagnostics for detection of Middle East respiratory syndrome coronavirus (MERS-CoV) pursuant to section 564 of the FD&C Act, subject to the terms of any authorization issued under that section.

DATES: The determination and declaration are effective May 29, 2013.

FOR FURTHER INFORMATION CONTACT: Nicole Lurie, M.D., MSPH, Assistant Secretary for Preparedness and Response, Office of the Secretary, Department of Health and Human Services, 200 Independence Avenue SW., Washington, DC 20201, Telephone (202) 205–2882 (this is not a toll free number).

SUPPLEMENTARY INFORMATION:

I. Background

Under Section 564 of the FD&C Act, the Commissioner of the Food and Drug Administration (FDA), acting under delegated authority from the Secretary of HHS, may issue an Emergency Use Authorization (EUA) authorizing (1) the emergency use of an unapproved drug, an unapproved or uncleared device, or an unlicensed biological product; or (2) an unapproved use of an approved drug, approved or cleared device, or licensed biological product. Before an EUA may be issued, the Secretary of HHS must declare that circumstances exist justifying the authorization based on one of four determinations: (1) A determination by the Secretary of Homeland Security that there is a domestic emergency, or a significant potential for a domestic emergency, involving a heightened risk of attack with a, chemical, biological, radiological, or nuclear (''CBRN'') agent or agents; (2) the identification of a material threat by the Secretary of Homeland Security pursuant to section 319F–2 of the Public Health Service (PHS) Act [1] sufficient to affect national security or the health and security of United States citizens living abroad; (3) a determination by the Secretary of Defense that there is a military emergency, or a significant potential for a military emergency, involving a heightened risk to United States military forces of attack with a CBRN agent or agents; or (4) a determination by the Secretary that there is a public health emergency, or a significant potential for a public health emergency, that affects, or has a significant potential to affect, national security or the health and security of United States citizens living abroad, and that involves a CBRN agent or agents, or a disease or condition that may be attributable to such agent or agents.[2]

Based on any of these four determinations, the Secretary of HHS may then declare that circumstances exist that justify the EUA, at which point the FDA Commissioner may issue an EUA if the criteria for issuance of an authorization under section 564 of the FD&C Act are met.

The Centers for Disease Control and Prevention (CDC), HHS, requested that the FDA, HHS, issue an EUA for in vitro diagnostics for detection of Middle East respiratory syndrome coronavirus (MERS-CoV) to allow the Department to take preparedness measures based on information currently available about the Middle East respiratory syndrome coronavirus (MERS-CoV). The determination of a significant potential for a public health emergency, and the declaration that circumstances exist justifying emergency use of in vitro diagnostics for detection of Middle East respiratory syndrome coronavirus (MERS-CoV) by the Secretary of HHS, as described below, enable the FDA Commissioner to issue an EUA for certain in vitro diagnostics for emergency use under section 564 of the FD&C Act.

II. Determination by the Secretary of Health and Human Services

On May 29, 2013, pursuant to section 564 of the FD&C Act, I determined that there is a significant potential for a public health emergency that has a significant potential to affect national security or the health and security of United States citizens living abroad and that involves Middle East respiratory syndrome coronavirus (MERS-CoV).

III. Declaration of the Secretary of Health and Human Services

Also on May 29, 2013, on the basis of my determination of a significant potential for a public health emergency that has a significant potential to affect national security or the health and security of United States citizens living

[1] 42 U.S.C. 247d–6b

[2] As amended by the Pandemic and All-Hazards Preparedness Reauthorization Act, Public Law 113–5, the Secretary may make determination of a public health emergency, or a significant potential for a public health emergency, under section 564 of the FD&C Act. The Secretary is no longer required to make a determination of a public health emergency in accordance with section 319 of the PHS Act, 42 U.S.C. 247d to support a determination or declaration made under section 564 of the FD&C Act.

abroad and that involves Middle East respiratory syndrome coronavirus (MERS-CoV), I declared that circumstances exist justifying the authorization of emergency use of in vitro diagnostics for detection of Middle East respiratory syndrome coronavirus (MERS-CoV) pursuant to section 564 of the FD&C Act, subject to the terms of any authorization issued under that section.

Notice of the EUAs issued by the FDA Commissioner pursuant to this determination and declaration will be provided promptly in the **Federal Register** as required under section 564 of the FD&C Act.

Dated May 29, 2013.

Kathleen Sebelius,

Secretary.

[FR Doc. 2013–13333 Filed 6–4–13; 8:45 am]

BILLING CODE 4150–37–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Request for Comments on Issues Related to Incidental Findings That Arise in the Clinical, Research, and Direct-To-Consumer Contexts

AGENCY: Presidential Commission for the Study of Bioethical Issues, Office of the Secretary, Department of Health and Human Services.

ACTION: Notice.

SUMMARY: The Presidential Commission for the Study of Bioethical Issues is requesting public comment on the ethical, legal, and social issues raised by incidental findings that arise from genetic and genomic testing, imaging, and testing of biological specimens conducted in the clinical, research, and direct-to-consumer contexts.

DATES: To ensure consideration, comments must be received by July 5, 2013. Comments received after this date will be considered only as time permits.

ADDRESSES: Individuals, groups, and organizations interested in commenting on this topic may submit comments by email to *info@bioethics.gov* or by mail to the following address: Public Commentary, Presidential Commission for the Study of Bioethical Issues, 1425 New York Ave. NW., Suite C–100, Washington, DC 20005.

FOR FURTHER INFORMATION CONTACT: Hillary Wicai Viers, Communications Director, Presidential Commission for the Study of Bioethical Issues. Telephone: 202–233–3960. E-Mail: *hillary.viers@bioethics.gov*. Additional information may be obtained at *http://www.bioethics.gov*.

SUPPLEMENTARY INFORMATION: On November 24, 2009, the President established the Presidential Commission for the Study of Bioethical Issues (the Bioethics Commission) to advise him on bioethical issues generated by novel and emerging research in biomedicine and related areas of science and technology. The Bioethics Commission is charged with identifying and promoting policies and practices that ensure ethically responsible conduct of scientific research and healthcare delivery. Undertaking these duties, the Bioethics Commission seeks to identify and examine specific bioethical, legal, and social issues related to potential scientific and technological advances; examine diverse perspectives and possibilities for international collaboration on these issues; and recommend legal, regulatory, or policy actions as appropriate.

The Bioethics Commission is considering the distinct ethical issues raised by incidental findings in the contexts of clinical care, research, and direct-to-consumer testing. Emerging medical technologies, changing cost structures, and evolving medical practice make the likelihood of discovering incidental findings in the clinical, research, and direct-to-consumer contexts a growing certainty. At its meeting on April 30, 2013, the Bioethics Commission heard from ethicists, practitioners, and recipients of incidental findings in each of these contexts, and began its consideration of the ethical obligations that clinicians, researchers, and providers of direct-to-consumer testing owe to patients, participants, and consumers.

The Bioethics Commission is interested in receiving views of individuals, groups, and professional communities regarding the ethics surrounding incidental findings resulting from large-scale genetic testing, imaging, and testing of biological specimens in the clinical, research, and/or direct-to-consumer contexts. The Bioethics Commission is particularly interested in receiving public commentary regarding:

- Information about the likelihood of incidental findings arising in large-scale genetic testing, imaging, and testing of biological specimens in the clinic, research, and/or direct-to-consumer contexts and any case studies of such;
- What, if anything, patients, participants, and/or consumers should be told about incidental findings resulting from large-scale genetic testing, imaging, and testing of biological specimens *before* tests are conducted;
- Any duties or ethical obligations that clinicians, researchers, and direct-to-consumer companies might have to actively look for certain incidental findings;
- Best practices, methods, and mechanisms for determining *when* incidental findings ought to be returned to patients, participants, and/or consumers and *how* the return of these findings should occur;
- The acceptability of holding back information—such as establishing ''no return'' policies, or stipulations in advance of clinical intervention, research, and/or consumer interactions that no incidental findings will be returned; and,
- Any best practices or recommendations regarding incidental findings that apply no matter the type of test or context.

To this end, the Commission is inviting interested parties to provide input and advice through written comments.

Comments will be publicly available, including any personally identifiable or confidential business information that they contain. Trade secrets should not be submitted.

Dated: May 22, 2013.

Lisa M. Lee,

Executive Director, Presidential Commission for the Study of Bioethical Issues.

[FR Doc. 2013–13329 Filed 6–4–13; 8:45 am]

BILLING CODE 4154–06–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Request for Information: Solicits Public Input on the Renewal of ''Combating the Silent Epidemic of Viral Hepatitis, Action Plan for the Prevention, Care, and Treatment of Viral Hepatitis''

AGENCY: Office of the Assistant Secretary for Health, Office of the Secretary, Department of Health and Human Services.

ACTION: Notice.

SUMMARY: The Department of Health and Human Services (HHS) is seeking broad public input as it begins efforts to renew the 2011 Action Plan for the Prevention, Care, and Treatment of Viral Hepatitis to include actions which can be undertaken over the course of the next three years, 2014–2016.

DATES: To be assured consideration, comments must be received at one of the addresses provided below, no later than 5:00 p.m. EST on July 5, 2013.

ADDRESSES: Electronic responses are strongly preferred and may be addressed

to *Corinna.Dan@hhs.gov.* Written responses should be addressed to: U.S. Department of Health and Human Services, 200 Independence Ave. SW., Room 443–H, Washington, DC 20201. Attention: 2014 Viral Hepatitis Action Plan.

FOR FURTHER INFORMATION CONTACT: Corinna Dan, RN, MPH, Office of HIV/AIDS and Infectious Disease Policy, (202) 401–9581.

SUPPLEMENTARY INFORMATION: On May 12, 2011, the U.S. Department of Health and Human Services (HHS) issued *Combating the Silent Epidemic of Viral Hepatitis: Action Plan for the Prevention, Care, and Treatment of Viral Hepatitis* (Action Plan). The Action Plan details more than 150 actions to be undertaken over the course of three years by agencies and offices across HHS and partners at the Federal Bureau of Prisons, the U.S. Department of Veterans Affairs, and the U.S. Department of Housing and Urban Development that will improve the prevention, diagnosis, and treatment of viral hepatitis in the United States. A copy of the Action Plan and the Viral Hepatitis Action Plan Interagency Implementation Progress Report—Year 1 are available at *http://www.aids.gov/news-and-events/hepatitis/*.

The Action Plan put a spotlight on this silent epidemic and its growing impact in the United States, where as many as 5.3 million persons are living with chronic hepatitis B or C infection and millions more are at risk of infection. While viral hepatitis has been addressed by various federal research, prevention, care, and treatment programs, much of this work has been conducted independently, sometimes in isolation from other related efforts. Following the Institute of Medicine's (IOM) 2010 report, *Hepatitis and Liver Cancer,* which recommended steps to reduce the threats posed by hepatitis B and hepatitis C, Dr. Howard K. Koh, Assistant Secretary for Health, convened an interagency workgroup composed of subject matter experts from various HHS agencies to review the IOM recommendations and develop a comprehensive strategic viral hepatitis action plan that would:

- Address IOM recommendations for viral hepatitis prevention, care, and treatment;
- set forth actions to improve viral hepatitis prevention and ensure that infected persons are identified and provided care and treatment; and,
- improve coordination of all activities related to viral hepatitis across HHS and promote collaborations with other government agencies and nongovernmental organizations.

Critical input into the Action Plan was also provided by stakeholders from other federal agencies, professional societies, and state, local, and community partners. The actions presented in the Action Plan represent efforts to be undertaken in calendar year 2011, 2012, or 2013. Some of the actions outlined in the Action Plan can be accomplished by using existing resources through improved coordination and integration, while others are subject to the availability of funds.

The Action Plan is organized into six priority areas which correspond to the 2010 IOM recommendations:

Priority 1—Educating Providers and Communities To Reduce Health Disparities

GOAL 1.1 Build a U.S. health care workforce prepared to prevent and diagnose viral hepatitis and provide care and treatment to infected persons.
GOAL 1.2 Decrease health disparities by educating communities about the benefits of viral hepatitis prevention, care, and treatment.

Priority 2—Improving Testing, Care, and Treatment to Prevent Liver Disease and Cancer

GOAL 2.1 Identify persons infected with viral hepatitis early in the course of their disease.
GOAL 2.2 Link and refer persons infected with viral hepatitis to care and treatment.
GOAL 2.3 Improve access to and quality of care and treatment for persons infected with viral hepatitis.
GOAL 2.4 Advance research to facilitate viral hepatitis prevention and enhance care and treatment for infected persons.

Priority 3—Strengthening Surveillance to Detect Viral Hepatitis Transmission and Disease

GOAL 3.1 Build a network of state and local surveillance systems with sufficient capacity to monitor viral hepatitis transmission and disease.
GOAL 3.2 Monitor viral-hepatitis-associated health disparities.
GOAL 3.3 Monitor provision and impact of viral hepatitis prevention, care, and treatment services.
GOAL 3.4 Develop and implement new technologies and laboratory procedures to improve viral hepatitis surveillance.

Priority 4—Eliminating Transmission of Vaccine-Preventable Viral Hepatitis

GOAL 4.1 Eliminate mother-to-child transmission of hepatitis B.
GOAL 4.2 Achieve universal hepatitis A and B vaccination for vulnerable adults.
GOAL 4.3 Design and test new or improved viral hepatitis vaccines and determine the indications for their optimal use.

Priority 5—Reducing Viral Hepatitis Caused by Drug Use Behaviors

GOAL 5.1 Ensure that persons who inject drugs have access to viral hepatitis prevention, care, and treatment services.
GOAL 5.2 Mobilize community resources to prevent viral hepatitis caused by injection drug use.
GOAL 5.3 Provide persons who inject drugs with access to care and substance abuse treatment to prevent transmission and progression of disease.
GOAL 5.4 Expand access to and delivery of hepatitis prevention, care, and treatment services in correctional settings.
GOAL 5.5 Advance research to improve prevention of viral hepatitis among persons who use drugs.

Priority 6—Protecting Patients and Workers From Health Care-Associated Viral Hepatitis

GOAL 6.1 Reduce transmission of viral hepatitis to patients resulting from misuse of medical devices and drugs.
GOAL 6.2 Reduce iatrogenic transmission of viral hepatitis associated with blood, organs, and tissues.
GOAL 6.3 Reduce occupational transmission of viral hepatitis.
GOAL 6.4 Enhance understanding of the preventable causes of viral hepatitis transmission in health care settings.

Following the Action Plan's release, agencies and offices across HHS began working to implement the actions assigned to them in the Action Plan. To support these efforts, HHS convened a Viral Hepatitis Action Plan Implementation Group (VHIG) and charged it with coordinating, supporting, and overseeing activities related to the Action Plan. The VHIG comprises representatives from across HHS and other federal agencies and is chaired by Dr. Ronald Valdiserri, Deputy Assistant Secretary for Health, Infectious Diseases.

The opportunity provided by the renewal of the Action Plan for the Prevention, Care, and Treatment of Viral Hepatitis for 2014, 2015, 2016 offers many benefits such as:

- Identification of measures to assess progress on addressing viral hepatitis in the U.S.;
- identification of gaps in viral hepatitis services and data;
- inclusion of new input from stakeholders;
- recommendations for effective viral hepatitis program models; and,
- application of lessons learned since the release of the 2011 Action Plan.

Accordingly, this request for information seeks public comment on several key dimensions of a renewed Action Plan for the Prevention, Care, and Treatment of Viral Hepatitis, including but not limited to the following:

1. Considering the six priority areas and related goals, please respond to the following questions:

a. Are there critical gaps in viral hepatitis activities which should be given a major focus in a renewed Action Plan? Provide background and rationale for their inclusion. These gaps may have been included in the 2011 Viral Hepatitis Action Plan or they may be new.

b. Are there effective models and best practices that should be considered for replication? Please include rationale for their use in the field/area of viral hepatitis.

2. What are the specific measures that should be used to track progress of implementation of the Viral Hepatitis Action Plan and/or the progress of addressing the epidemics of viral hepatitis? Provide background and rationale for the use of these measures.

3. What specific activities within and/or components of the Affordable Care Act offer substantial opportunities to support improved viral hepatitis health care services and data? Describe how this might evolve.

4. How can government better engage with non-governmental stakeholders around the implementation of the National Viral Hepatitis Action Plan? Provide examples/suggestions of how this could be integrated into a renewed Action Plan and its implementation.

5. What additional information not specifically addressed elsewhere in this RFI that would be important for the government to bear in mind in developing a renewed National Viral Hepatitis Action Plan?

Dated: May 21, 2013.

Ronald O. Valdiserri,

Deputy Assistant Secretary for Health, Infectious Diseases, Office of the Assistant Secretary for Health.

[FR Doc. 2013–13332 Filed 6–4–13; 8:45 am]

BILLING CODE 4150–28–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2010–N–0099]

Agency Information Collection Activities; Submission for Office of Management and Budget Review; Comment Request; Revision of the Requirements for Constituent Materials

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing that a proposed collection of information has been submitted to the Office of Management and Budget (OMB) for review and clearance under the Paperwork Reduction Act of 1995.

DATES: Fax written comments on the collection of information by July 5, 2013.

ADDRESSES: To ensure that comments on the information collection are received, OMB recommends that written comments be faxed to the Office of Information and Regulatory Affairs, OMB, Attn: FDA Desk Officer, FAX: 202–395–7285, or emailed to *oira_submission@omb.eop.gov.* All comments should be identified with the OMB control number 0910–0666. Also include the FDA docket number found in brackets in the heading of this document.

FOR FURTHER INFORMATION CONTACT: Ila S. Mizrachi, Office of Information Management, Food and Drug Administration, 1350 Piccard Dr., PI50–400B, Rockville, MD 20850, 301–796–7726, *Ila.Mizrachi@fda.hhs.gov.*

SUPPLEMENTARY INFORMATION: In compliance with 44 U.S.C. 3507, FDA has submitted the following proposed collection of information to OMB for review and clearance.

Revision of the Requirements for Constituent Materials—(OMB Control Number 0910–0666)—Extension

In the **Federal Register** of April 13, 2011 (76 FR 20513), FDA issued a final rule amending the regulation for the use of constituent materials in licensed biological products. Under 21 CFR 610.15(d), the Director of the Center for Biologics Evaluation and Research (CBER) or the Director of the Center for Drugs Evaluation and Research (CDER) may approve, as appropriate, a manufacturer's request for exceptions or alternatives to the regulation for constituent materials. Thus, the provision provides manufacturers of biological products with flexibility, as appropriate, to employ advances in science and technology as they become available, without diminishing public health protections. Manufacturers seeking approval of an exception or alternative must submit a request in writing. The request must be clearly identified with a brief statement describing the basis for the request and the supporting data. The request may be submitted as part of the original biologics application, as an amendment to the original, pending application or as a prior approval supplement to an approved application. The information to be collected assists FDA in identifying and reviewing requests for an exception or alternative to the requirements for constituent materials.

Respondents to this information collection provision are manufacturers of biological products. Since implementation of the final rule, FDA has received no submissions of requests for an exception or alternative for constituent materials. Therefore, FDA is estimating one respondent and annual response annually to account for a possible submission to CBER or CDER of a request for an exception or alternative for constituent materials. The average burden per response is based on FDA experience with similar information collection requirements.

In the **Federal Register** of November 29, 2012 (77 FR 71193), FDA published a 60-day notice requesting public comment on the proposed collection of information. No comments were received.

FDA estimates the burden of this collection of information as follows:

TABLE 1—ESTIMATED ANNUAL REPORTING BURDEN [1]

21 CFR Section	Number of respondents	Number of responses per respondent	Total annual responses	Average burden per response	Total hours
610.15	1	1	1	1	1

[1] There are no capital costs or operating and maintenance costs associated with this collection of information.

Dated: May 30, 2013.

Leslie Kux,

Assistant Commissioner for Policy.

[FR Doc. 2013–13247 Filed 6–4–13; 8:45 am]

BILLING CODE 4160–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2013–N–0579]

Agency Information Collection Activities; Proposed Collection; Comment Request; Biological Products: Reporting of Biological Product Deviations and Human Cells, Tissues, and Cellular and Tissue-Based Product Deviations in Manufacturing; Forms FDA 3486 and 3486A

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing an opportunity for public comment on the proposed collection of certain information by the Agency. Under the Paperwork Reduction Act of 1995 (the PRA), Federal Agencies are required to publish notice in the **Federal Register** concerning each proposed collection of information, including each proposed extension of an existing collection of information, and to allow 60 days for public comment in response to the notice. This notice solicits comments on the information collection requirements relating to the reporting of biological product deviations in manufacturing and human cells, tissues, and cellular and tissue-based product (HCT/P) deviations, and Forms FDA 3486 and 3486A.

DATES: Submit electronic or written comments on the collection of information by August 5, 2013.

ADDRESSES: Submit electronic comments on the collection of information to: *http://www.regulations.gov.* Submit written comments on the collection of information to the Division of Dockets Management (HFA–305), Food and Drug Administration, 5630 Fishers Lane, Rm. 1061, Rockville, MD 20852. All comments should be identified with the docket number found in brackets in the heading of this document.

FOR FURTHER INFORMATION CONTACT: Ila Mizrachi, Office of Information Management, Food and Drug Administration, 1350 Piccard Dr., PI50–400B, Rockville, MD 20850, 301–796–7726, *Ila.Mizrachi@fda.hhs.gov.*

SUPPLEMENTARY INFORMATION: Under the PRA (44 U.S.C. 3501–3520), Federal Agencies must obtain approval from the Office of Management and Budget (OMB) for each collection of information they conduct or sponsor. ''Collection of information'' is defined in 44 U.S.C. 3502(3) and 5 CFR 1320.3(c) and includes Agency requests or requirements that members of the public submit reports, keep records, or provide information to a third party. Section 3506(c)(2)(A) of the PRA (44 U.S.C. 3506(c)(2)(A)) requires Federal Agencies to provide a 60-day notice in the **Federal Register** concerning each proposed collection of information, including each proposed extension of an existing collection of information, before submitting the collection to OMB for approval. To comply with this requirement, FDA is publishing notice of the proposed collection of information set forth in this document.

With respect to the following collection of information, FDA invites comments on these topics: (1) Whether the proposed collection of information is necessary for the proper performance of FDA's functions, including whether the information will have practical utility; (2) the accuracy of FDA's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques, when appropriate, and other forms of information technology.

Biological Products: Reporting of Biological Product Deviations and Human Cells, Tissues, and Cellular and Tissue-Based Product Deviations in Manufacturing; Forms FDA 3486 and 3486A (OMB Control Number 0910–0458)—Extension

Under section 351 of the Public Health Service Act (PHS Act) (42 U.S.C. 262), all biological products, including human blood and blood components, offered for sale in interstate commerce must be licensed and meet standards, including those prescribed in the FDA regulations, designed to ensure the continued safety, purity, and potency of such products. In addition under section 361 of the PHS Act (42 U.S.C. 264), FDA may issue and enforce regulations necessary to prevent the introduction, transmission, or spread of communicable diseases between the States or possessions or from foreign countries into the States or possessions. Further, the Federal Food, Drug, and Cosmetic Act (the FD&C Act) (21 U.S.C. 351) provides that drugs and devices (including human blood and blood components) are adulterated if they do not conform with current good manufacturing practice (CGMP) assuring that they meet the requirements of the FD&C Act. Establishments manufacturing biological products, including human blood and blood components, must comply with the applicable CGMP regulations (parts 211, 606, and 820 (21 CFR parts 211, 606, and 820)) and current good tissue practice (CGTP) regulations (part 1271 (21 CFR part 1271)) as appropriate. FDA regards biological product deviation (BPD) reporting and HCT/P deviation reporting to be an essential tool in its directive to protect public health by establishing and maintaining surveillance programs that provide timely and useful information.

Section 600.14 (21 CFR 600.14), in brief, requires the manufacturer who holds the biological product license, for other than human blood and blood components, and who had control over a distributed product when the deviation occurred, to report to the Center for Biologics Evaluation and Research (CBER) or to the Center for Drugs Evaluation and Research (CDER) as soon as possible but at a date not to exceed 45 calendar days after acquiring information reasonably suggesting that a reportable event has occurred. Section 606.171, in brief, requires licensed manufacturers of human blood and blood components, including Source Plasma, unlicensed registered blood establishments, and transfusion services, who had control over a distributed product when the deviation occurred, to report to CBER as soon as possible but at a date not to exceed 45 calendar days after acquiring information reasonably suggesting that a reportable event has occurred. Similarly, § 1271.350(b), in brief, requires HCT/P establishments that manufacture non-reproductive HCT/Ps described in § 1271.10 to investigate and report to CBER all HCT/P deviations relating to a distributed HCT/P that relates to the core CGTP requirements, if the deviation occurred in the establishment's facility or in a facility that performed a manufacturing step for the establishment under contract, agreement or other arrangement. Form FDA 3486 is used to submit BPD reports and HCT/P deviation reports.

Respondents to this collection of information are the licensed

manufacturers of biological products other than human blood and blood components, licensed manufacturers of blood and blood components including Source Plasma, unlicensed registered blood establishments, transfusion services, and establishments that manufacture non-reproductive HCT/Ps regulated solely under section 361 of the PHS Act as described in § 1271.10. The number of respondents and total annual responses are based on the BPD reports and HCT/P deviation reports FDA received in fiscal year 2012. The number of licensed manufacturers and total annual responses under § 600.14 include the estimates for BPD reports submitted to both CBER and CDER. Based on the information from industry, the estimated average time to complete a deviation report is 2 hours. The availability of the standardized report form, Form FDA 3486, and the ability to submit this report electronically to CBER (CDER does not currently accept electronic filings) further streamlines the report submission process.

CBER has developed an addendum to Form FDA 3486. The Web-based addendum (Form FDA 3486A) provides additional information when a BPD report has been reviewed by FDA and evaluated as a possible recall. The additional information requested includes information not contained in the Form FDA 3486 such as: (1) Distribution pattern; (2) method of consignee notification; (3) consignee(s) of products for further manufacture; (4) additional product information; (5) updated product disposition; and (6) industry recall contacts. This information is requested by CBER through email notification to the submitter of the BPD report. This information is used by CBER for recall classification purposes. At this time, Addendum 3486A is being used only for those BPD reports submitted under § 606.171. CBER estimates that 5 percent of the total BPD reports submitted to CBER under § 606.171 would need additional information submitted in the addendum. CBER further estimates that it would take between 10 to 20 minutes to complete the addendum. For calculation purposes, CBER is using 15 minutes.

Activities such as investigating, changing standard operating procedures or processes, and followup are currently required under 21 CFR parts 211, (approved under OMB control number 0910–0139), part 606 (approved under OMB control number 0910–0116), part 820 (approved under OMB control number 0910–0073) and part 1271 (approved under OMB control number 0910–0543) and, therefore, are not included in the burden calculation for the separate requirement of submitting a deviation report to FDA.

FDA estimates the burden of this collection of information as follows:

ESTIMATED ANNUAL REPORTING BURDEN[1]

21 CFR section	Form FDA No.	Number of respondents	Number of responses per respondent	Total annual responses	Average burden per response	Total hours
600.14	3486	91	7.71	702	2.0	1,404
606.171	3486	1,679	32.73	54,954	2.0	109,908
1271.350(b)	3486	94	2.66	250	2.0	500
	[2] 3486A	84	32.70	2,747	0.25	687
Total						112,499

[1] There are no capital costs or operating and maintenance costs associated with this collection of information.
[2] Five percent of the number of respondents (1,679 × 0.05 = 84) and total annual responses to CBER (54,954 × 0.05 = 2,748).

Dated: May 30, 2013.

Leslie Kux,

Assistant Commissioner for Policy.

[FR Doc. 2013–13279 Filed 6–4–13; 8:45 am]

BILLING CODE 4160–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2013–N–0172]

Agency Information Collection Activities; Submission for Office of Management and Budget Review; Comment Request; Foreign Clinical Studies Not Conducted Under an Investigational New Drug Application

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing that a proposed collection of information has been submitted to the Office of Management and Budget (OMB) for review and clearance under the Paperwork Reduction Act of 1995.

DATES: Fax written comments on the collection of information by July 5, 2013.

ADDRESSES: To ensure that comments on the information collection are received, OMB recommends that written comments be faxed to the Office of Information and Regulatory Affairs, OMB, Attn: FDA Desk Officer, FAX: 202–395–7285, or emailed to *oira_submission@omb.eop.gov.* All comments should be identified with the OMB control number 0910–0622. Also include the FDA docket number found in brackets in the heading of this document.

FOR FURTHER INFORMATION CONTACT: Ila S. Mizrachi, Office of Information Management, Food and Drug Administration, 1350 Piccard Dr., PI50–400B, Rockville, MD 20850, 301–796–7726, *Ila.Mizrachi@fda.hhs.gov.*

SUPPLEMENTARY INFORMATION: In compliance with 44 U.S.C. 3507, FDA has submitted the following proposed collection of information to OMB for review and clearance.

Foreign Clinical Studies Not Conducted Under an Investigational New Drug Application—(OMB Control Number 0910–0622)—Reinstatement

Under § 312.120 (21 CFR 312.120), FDA accepts foreign clinical studies not conducted under an investigational new drug application (IND) as support for an IND or application for marketing approval for a drug or biological product if the studies are conducted in accordance with good clinical practices (GCP), including review and approval by an independent ethics committee (IEC).

Under § 312.120(a), FDA accepts as support for an IND or application for marketing approval a well-designed and well-conducted foreign clinical study not conducted under an IND if the study is conducted in accordance with GCP, and we are able to validate the data from the study through an onsite inspection if necessary. GCP includes review and

approval by an IEC before initiating a study, continuing review of an ongoing study by an IEC, and obtaining and documenting the freely given informed consent of the subject before initiating a study. Under § 312.120(b), a sponsor of a non-IND foreign study who wants to rely on that study as support for an IND or application for marketing approval must provide the following information to FDA: (1) The investigator's qualifications; (2) a description of the research facilities; (3) a detailed summary of the protocol and results of the study and, should FDA request, case records maintained by the investigator or additional background data such as hospital or other institutional records; (4) a description of the drug substance and drug product used in the study, including a description of the components, formulation, specifications, and, if available, bioavailability of the specific drug product used in the clinical study; (5) if the study is intended to support the effectiveness of a drug product, information showing that the study is adequate and well controlled under § 314.126; (6) the name and address of the IEC that reviewed the study and a statement that the IEC meets the definition in § 312.3; (7) a summary of the IEC's decision to approve or modify and approve the study, or to provide a favorable opinion; (8) a description of how informed consent was obtained; (9) a description of what incentives, if any, were provided to subjects to participate in the study; (10) a description of how the sponsor(s) monitored the study and ensured that the study was carried out consistently with the study protocol; and (11) a description of how investigators were trained to comply with GCP and to conduct the study in accordance with the study protocol, and a statement on whether written commitments by investigators to comply with GCP and the protocol were obtained.

Section 312.120(c) specifies how sponsors or applicants can request a waiver for any of the requirements under § 312.120(a)(1) and (b). Under § 312.120(c)(1), a waiver request must contain at least one of the following: (1) An explanation why the sponsor's or applicant's compliance with the requirement is unnecessary or cannot be achieved, (2) a description of an alternative submission or course of action that satisfies the purpose of the requirement, or (3) other information justifying a waiver. A waiver request may be submitted in an IND or in an information amendment to an IND, or in an application or in an amendment or supplement to an application submitted under 21 CFR part 314 or 601. Section 312.10 sets forth requirements for sponsors who request waivers from FDA for compliance with any of the provisions in part 312, and § 314.90 sets forth requirements for applicants who request waivers from FDA for compliance with §§ 314.50 through 314.81.

FDA has approval for the submission of these waiver requests under OMB control numbers 0910–0014 for part 312 and 0910–0001 for part 314. In addition to the reporting requirements set forth in table 1 of this document, there is also a recordkeeping provision in § 312.120(d) stating how long sponsors and applicants must retain records required by § 312.120. In addition, § 312.120(b) states that any signed written commitments by investigators must be maintained by the sponsor or applicant and made available for Agency review upon request, and also specifies sponsor recordkeeping of IEC-related information. Under § 312.120(d), if a study is submitted in support of an application for marketing approval, records must be retained for 2 years after an Agency decision on that application; if a study is submitted in support of an IND but not an application for marketing approval, records must be retained for 2 years after the submission of the IND. The retention requirements in § 312.57(c) for records and reports required under part 312 apply to these provisions, and are approved under OMB control number 0910–0014.

We estimate that 237 companies will submit a total of approximately 1,185 non-IND foreign clinical studies in support of an IND or application for marketing approval for a drug or biological product. Hour burden estimates vary due to differences in size, complexity, and duration across studies, and we estimate that complying with § 312.120 would take sponsors between 18 and 32 hours annually for each non-IND foreign clinical trial, totaling 37,920 hours (32 × 1,185).

In the **Federal Register** of February 26, 2013 (78 FR 13067), FDA published a 60-day notice requesting public comment on the proposed collection of information. No comments were received that pertained to the collection of information.

FDA estimates the burden for this collection of information as follows:

TABLE 1.—ESTIMATED ANNUAL REPORTING BURDEN[1]

21 CFR Section	Number of respondents	Number of responses per respondent	Total annual responses	Average burden per response	Total hours
312.120	237	5	1,185	32	37,920

[1] There are no capital costs or operating and maintenance costs associated with this collection of information.

Dated: May 30, 2013.

Leslie Kux,

Assistant Commissioner for Policy.

[FR Doc. 2013–13246 Filed 6–4–13; 8:45 am]

BILLING CODE 4160–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2013–D–0589]

Draft Guidance for Industry on Human Immunodeficiency Virus-1 Infection: Developing Antiretroviral Drugs for Treatment; Availability

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing the availability of a draft guidance for industry entitled ''Human Immunodeficiency Virus-1 Infection: Developing Antiretroviral Drugs for Treatment.'' The purpose of this guidance is to assist sponsors in all phases of development of antiretroviral drugs for the treatment of HIV. This draft guidance revises the guidance for industry entitled ''Antiretroviral Drugs Using Plasma HIV RNA Measurements—Clinical Considerations

for Accelerated and Traditional Approval'' issued in October 2002.

DATES: Although you can comment on any guidance at any time (see 21 CFR 10.115(g)(5)), to ensure that the Agency considers your comment on this draft guidance before it begins work on the final version of the guidance, submit either electronic or written comments on the draft guidance by August 5, 2013.

ADDRESSES: Submit written requests for single copies of the draft guidance to the Division of Drug Information, Center for Drug Evaluation and Research, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 51, Rm. 2201, Silver Spring, MD 20993–0002. Send one self-addressed adhesive label to assist that office in processing your requests. See the **SUPPLEMENTARY INFORMATION** section for electronic access to the draft guidance document.

Submit electronic comments on the draft guidance to *http://www.regulations.gov*. Submit written comments to the Division of Dockets Management (HFA–305), Food and Drug Administration, 5630 Fishers Lane, Rm. 1061, Rockville, MD 20852.

FOR FURTHER INFORMATION CONTACT: Jeffrey Murray, Center for Drug Evaluation and Research, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 22, Rm. 6370, Silver Spring, MD 20993–0002, 301–796–1500.

SUPPLEMENTARY INFORMATION:

I. Background

FDA is announcing the availability of a draft guidance for industry entitled ''Human Immunodeficiency Virus-1 Infection: Developing Antiretroviral Drugs for Treatment.'' This guidance revises the guidance for industry entitled ''Antiretroviral Drugs Using Plasma HIV–RNA Measurements—Clinical Considerations for Accelerated and Traditional Approval'' issued in October 2002. Significant changes from the 2002 version include: (1) More details on nonclinical development of antiretroviral drugs; (2) a greater emphasis on recommended trial designs for HIV–1 infected heavily treatment-experienced patients (those with multiple-drug, resistant virus and few remaining therapeutic options); (3) use of a primary endpoint evaluating early virologic changes for studies in heavily treatment-experienced patients; and (4) use of the traditional approval pathway for initial approval of all antiretrovirals with primary analysis time points dependent on the indication sought instead of an accelerated approval pathway followed by traditional approval. Longer term trials may be appropriate for patients who are treatment-naïve or have limited prior experience, whereas shorter term trials may be appropriate for patients with limited treatment options.

This draft guidance is being issued consistent with FDA's good guidance practices regulation (21 CFR 10.115). The draft guidance, when finalized, will represent the Agency's current thinking on developing antiretroviral drugs for the treatment of HIV–1 infection. It does not create or confer any rights for or on any person and does not operate to bind FDA or the public. An alternative approach may be used if such approach satisfies the requirements of the applicable statutes and regulations.

II. The Paperwork Reduction Act of 1995

This guidance refers to previously approved collections of information that are subject to review by the Office of Management and Budget under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520). The collections of information in 21 CFR part 312 have been approved under 0910–0014, the collections of information in 21 CFR part 314 have been approved under 0910–0001, and the collections of information referred to in the guidance for industry entitled ''Establishment and Operation of Clinical Trial Data Monitoring Committees'' have been approved under 0910–0581.

III. Comments

Interested persons may submit either written comments regarding this document to the Division of Dockets Management (see **ADDRESSES**) or electronic comments to *http://www.regulations.gov*. It is only necessary to send one set of comments. Identify comments with the docket number found in brackets in the heading of this document. Received comments may be seen in the Division of Dockets Management between 9 a.m. and 4 p.m., Monday through Friday, and will be posted to the docket at *http://www.regulations.gov*.

IV. Electronic Access

Persons with access to the Internet may obtain the document at either *http://www.fda.gov/Drugs/GuidanceComplianceRegulatoryInformation/Guidances/default.htm* or *http://www.regulations.gov*.

Dated: May 30, 2013.

Leslie Kux,

Assistant Commissioner for Policy.

[FR Doc. 2013–13288 Filed 6–4–13; 8:45 am]

BILLING CODE 4160–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2013–N–0580]

Battery-Powered Medical Devices Workshop: Challenges and Opportunities; Public Workshop; Request for Comments

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice of public workshop; request for comments.

The Food and Drug Administration (FDA) is announcing the following public workshop entitled ''Battery-Powered Medical Devices Workshop: Challenges and Opportunities''. The purpose of this workshop is to create awareness of the challenges related to battery-powered medical devices and collaboratively develop solutions and best practices to improve the performance and reliability of these devices.

Date and Time: The public workshop will be held on July 30 and 31, 2013, from 8 a.m. to 5 p.m.

Location: The public workshop will be held at FDA's White Oak Campus, 10903 New Hampshire Ave., Bldg. 31 Conference Center, the Great Room (Rm. 1503A), Silver Spring, MD 20993–0002. All visiting public workshop participants (non-FDA employees) must enter through Building 1 for routine security check procedures. For parking and security information, please visit the following Web site: *http://www.fda.gov/AboutFDA/WorkingatFDA/BuildingsandFacilities/WhiteOakCampusInformation/ucm241740.htm*.

Contact: Iacovos Kyprianou, Center for Devices and Radiological Health, Food and Drug Administration, 10903 New Hampshire Ave. Bldg. 66, Rm. 3609, Silver Spring, MD 20993–0002, 301–796–2601, email: *iacovos.kyprianou@fda.hhs.gov.*

Registration: Registration is free and available on a first-come, first-served basis. Persons interested in attending this public workshop must register online by 5 p.m., July 19, 2013. Early registration is recommended because facilities are limited and, therefore, FDA may limit the number of participants from each organization. If time and space permit, onsite registration on the day of the workshop will be available beginning at 7 a.m.

To register for the public workshop, please visit FDA's Medical Devices News & Events—Workshops & Conferences calendar at *http://*

www.fda.gov/MedicalDevices/NewsEvents/WorkshopsConferences/default.htm. (Select this meeting/public workshop from the posted events list.) Please provide complete contact information for each attendee, including name, title, and affiliation, address, email, and telephone number. Those without Internet access should contact Susan Monahan, *susan.monahan@fda.hhs.gov* or 301–796–5661, to register. Registrants will receive confirmation after they have been accepted. You will be notified if you are on a waiting list.

If you need special accommodations due to a disability, please contact Susan Monahan (*susan.monahan@fda.hhs.gov* or 301–796–5661) no later than 5 p.m. on July 17, 2013.

Streaming Webcast of the Public Workshop: This public workshop will also be Webcast. Persons interested in viewing the Webcast must register online by 5 p.m., July 19, 2013. Early registration is recommended because Webcast connections are limited. Organizations are requested to register all participants, but to view using one connection per location. Webcast participants will be sent technical system requirements after registration and will be sent connection access information after July 24, 2013. If you have never attended an Adobe Connect Pro event before, test your connection at *https://collaboration.fda.gov/common/help/en/support/meeting_test.htm*. To get a quick overview of the Connect Pro program, visit *http://www.adobe.com/go/connectpro_overview*. (FDA has verified the Web site addresses in this document, but FDA is not responsible for any subsequent changes to the Web sites after this document publishes in the **Federal Register**.)

Requests for Oral Presentations: This public workshop includes public comment and topic-focused sessions. If you wish to present, please so indicate at time of registration. Please indicate whether you wish to present during a public comment session, or participate in a specific session. Please submit the topic and a short abstract of your presentation. FDA will do its best to accommodate requests to make public comment and participate in specific sessions. Individuals and organizations with common interests are urged to consolidate or coordinate their presentations, and request time for a joint presentation, or submit requests for designated representatives to participate in specific sessions. Following the close of registration, FDA will determine the amount of time allotted to each presenter and the approximate time each oral presentation is to begin, and will select and notify participants by July 22, 2013. All requests to make oral presentations must be received by the close of registration at 5 p.m., July 19, 2013. If selected for presentation, any presentation materials must be emailed to Iacovos Kyprianou (see *Contact*) no later than July 24, 2013. No commercial promotional material will be permitted to be presented or distributed at the public workshop.

Comments: FDA is holding this public workshop to obtain information on battery-powered medical devices. In order to permit the widest possible opportunity to obtain public comment, FDA is soliciting either electronic or written comments on all aspects of the public workshop topics. The deadline for submitting comments related to this public workshop and the issues discussed during the meeting is August 30, 2013.

Regardless of attendance at the public workshop, interested persons may submit either electronic or written comments. Submit electronic comments to *http://www.regulations.gov*. Submit written comments to the Division of Dockets Management (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852. It is only necessary to send one set of comments. Please identify comments with the docket number found in brackets in the heading of this document. In addition, when commenting on specific topics as outlined in section II of this document, please identify the topics you are addressing. Received comments may be seen in the Division of Dockets Management between 9 a.m. and 4 p.m., Monday through Friday, and will be posted to the docket at *http://www.regulations.gov*.

Transcripts: Please be advised that as soon as a transcript is available, it will be accessible at *http://www.regulations.gov*. It may be viewed at the Division of Dockets Management (see *Comments*). A transcript will also be available in either hardcopy or on CD–ROM, after submission of a Freedom of Information request. Written requests are to be sent to the Division of Freedom of Information (ELEM–1029), Food and Drug Administration, 12420 Parklawn Dr., Element Bldg., Rockville, MD 20857. A link to the transcripts will also be available approximately 45 days after the public workshop on the Internet at *http://www.fda.gov/MedicalDevices/NewsEvents/WorkshopsConferences/default.htm*. (Select this public workshop from the posted events list).

SUPPLEMENTARY INFORMATION:

I. Background

Batteries play a significant role in the overall safety, performance, and reliability of many life-saving and life-sustaining medical devices. As more medical devices become computerized, compact, and mobile, the number of battery-powered medical devices will continue to increase. While many different components can potentially impact the safety and effectiveness of medical devices, the battery can be one of the most critical components. Unexpected depletion or failure of the battery can cause the device to stop functioning properly, preventing the device from delivering life-sustaining or life-saving therapy. The Association for the Advancement of Medical Instrumentation has identified battery management as one of the top 10 challenges for hospitals' biomedical departments. In addition, the way that the battery is integrated into the overall device plays a critical role in the performance of the device. In many cases, the cause of the problem is identified as ''battery failure'' even when the battery is not the root cause of the problem. Improper charging of rechargeable batteries and inconsistent maintenance of batteries in general can adversely impact the effectiveness of the device, causing unexpected failure of devices at critical times, such as emergency situations where electrical power is unavailable or intermittent. While FDA has confidence that medical devices currently being marketed will continue to function as intended, there are opportunities to further improve their overall performance and safety. Therefore, FDA is organizing a Battery-Powered Medical Devices Workshop on July 30 and 31, 2013, to create awareness of the challenges related to battery-powered medical devices and collaboratively develop solutions and best practices to improve the performance and reliability of these devices. The forum will be held at the FDA's White Oak campus in Silver Spring, MD from 8 a.m. to 5 p.m. The participants would include a broad group of stakeholders that are responsible for the design, testing, manufacturing, integration, regulation, selection, purchase, storage, maintenance, and use of batteries throughout the total product life cycle of battery-powered medical devices.

II. Topics for Discussion

At this meeting, participants will engage in open dialogue and discuss the following factors that contribute to battery-powered medical device performance and reliability:

- Identification of challenges,
- Battery/device design and system integration,
- Battery/device manufacturing process,
- Battery/device maintenance,
- Human factors,
- Consistent labeling,
- User training,
- Special considerations under extreme conditions,
- Standardization,
- Emerging technology and innovation, and
- Mitigation of challenges.

Goals

1. Create awareness of the challenges related to battery-powered medical devices and collaboratively develop solutions and best practices to improve the performance and reliability of these devices.
2. Create a forum for open dialogue among stakeholders to share lessons learned and best practices for overcoming battery-powered medical device challenges.
3. Promote better design, manufacturing, testing, system integration, maintenance and standardization of battery-powered medical devices.
4. Understand the challenges of hospitals, health care providers, and patients in selection, purchase, use, and maintenance of battery-powered medical devices.
5. Promote innovation in technology and processes to improve device performance and reliability.
6. Coordinate future collaboration in the development of educational materials, standards, and guidance.

Dated: May 30, 2013.

Leslie Kux,

Assistant Commissioner for Policy.

[FR Doc. 2013–13244 Filed 6–4–13; 8:45 am]

BILLING CODE 4160–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2013–N–0596]

Lung Cancer Patient-Focused Drug Development; Public Meeting

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice of public meeting; request for comments.

SUMMARY: The Food and Drug Administration (FDA) is announcing a public meeting and an opportunity for public comment on Patient-Focused Drug Development for lung cancer. Patient-Focused Drug Development is part of FDA's performance commitments made as part of the fifth authorization of the Prescription Drug User Fee Act (PDUFA V). The public meeting is intended to allow FDA to obtain patients' perspectives on the impact of lung cancer on daily life as well as the available therapies for lung cancer.

DATES: The public meeting will be held on June 28, 2013, from 8:30 a.m. to 12:30 p.m. Registration to attend the meeting must be received by June 19, 2013 (see **SUPPLEMENTARY INFORMATION** for instructions). Submit electronic or written comments by July 29, 2013.

ADDRESSES: The public meeting will be held at the FDA White Oak Campus, 10903 New Hampshire Ave., Building 31 Conference Center, the Great Room (Rm. 1503), Silver Spring, MD 20993. Entrance for the public meeting participants is through Building 1, where routine security checks will be performed. For parking and security information, please refer to *http://www.fda.gov/AboutFDA/WorkingatFDA/BuildingsandFacilities/WhiteOakCampusInformation/ucm241740.htm.*

Submit electronic comments to *www.regulations.gov.* Submit written comments to the Division of Dockets Management (HFA–305), Food and Drug Administration, 5630 Fishers Lane, Rm. 1061, Rockville, MD 20852. All comments should be identified with the docket number found in brackets in the heading of this document.

FDA will post the complete agenda and additional meeting background material approximately 5 days before the meeting at *http://www.fda.gov/Forindustry/UserFees/PrescriptionDrugUserFee/ucm353273.htm.*

FOR FURTHER INFORMATION CONTACT: Graham Thompson, Center for Drug Evaluation and Research, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 51, Rm. 1199, Silver Spring, MD 20993, 301–796–0684, FAX: 301–847–8443, email: *graham.thompson@fda.hhs.gov.*

SUPPLEMENTARY INFORMATION:

I. Background on Patient-Focused Drug Development

FDA has selected lung cancer to be the focus of a public meeting under Patient-Focused Drug Development, an initiative that involves obtaining a better understanding of patients' perspectives on the severity of the disease and the available therapies for the condition. Patient-Focused Drug Development is being conducted to fulfill FDA performance commitments made as part of the reauthorization of PDUFA V under Title I of the Food and Drug Safety and Innovation Act (FDASIA) (Pub. L. 112–144). The full set of performance commitments is available on the FDA Web site at *http://www.fda.gov/downloads/ForIndustry/UserFees/PrescriptionDrugUserFee/UCM270412.pdf.*

FDA has committed to obtaining the patient perspective in 20 disease areas during the course of PDUFA V. For each disease area, the Agency will conduct a public meeting to discuss the disease and its impact on patients' daily lives, the types of treatment benefit that matter most to patients, and patients' perspectives on the adequacy of the available therapies. These meetings will include participation of FDA review divisions, the relevant patient community, and other interested stakeholders.

On April 11, 2013, FDA published a document (78 FR 21613) in the **Federal Register** that announced the disease areas for meetings in fiscal years (FY) 2013 to 2015, the first 3 years of the 5-year PDUFA V timeframe. The Agency used several criteria outlined in the April 11, 2013, document to develop the list of disease areas. Public comment on the Agency's proposed criteria and potential disease areas was gathered through a **Federal Register** document for public comment that was published on September 24, 2012 (77 FR 58849), and a public meeting that was convened on October 25, 2012. In selecting the set of disease areas, FDA carefully considered the public comments received and the perspectives of review divisions at FDA. By the end of FY 2015, FDA will initiate a public process for determining the disease areas for FY 2016 and 2017. More information, including the list of disease areas and a general schedule of meetings, is posted on FDA's Web site at *http://www.fda.gov/ForIndustry/UserFees/PrescriptionDrugUserFee/ucm326192.htm.*

II. Public Meeting Information

A. Purpose and Scope of the Meeting

As part of Patient-Focused Drug Development, FDA will gather patient and patient stakeholder input on symptoms of lung cancer that matter most to patients and on current approaches to treating lung cancer. Lung cancer is a disease caused by uncontrolled growth of abnormal cells in the tissues of the lung, usually in the cells lining air passages. Lung cancer cells can spread (metastasize) to almost

any other part of the body, such as to the brain or to bones. Available therapies for management of lung cancer falls into two main categories: therapies to reduce or control the spread of disease (including surgery, radiation therapy, conventional chemotherapy, and targeted therapies), and supportive care therapies to improve or manage symptoms of the underlying condition (lung cancer) or the side effects of cancer treatments. FDA is interested in patients' perspectives for the two main types of lung cancer (small-cell and non-small cell lung cancer) on the importance of disease symptoms, benefits of treatment approaches, and possible cancer treatment side effects.

The draft questions that will be asked of patients and patient stakeholders at the meeting are provided in the paragraphs that follow. For each of these topics, a brief initial patient panel discussion will begin the dialogue and will be followed by a facilitated discussion inviting comments from other patient and patient stakeholder participants. In addition to input generated through this public meeting, FDA is interested in receiving patient input addressing these questions through the public docket (see **ADDRESSES**).

Topic 1: Disease Symptoms and Daily Impacts That Matter Most to Patients

1. For context, how long ago was your diagnosis of lung cancer? Is your cancer currently in only one area of the lung or has it spread to other parts of the lung or outside of the lungs?

2. Of all the symptoms that you experience because of your lung cancer, which one to three symptoms have the most significant impact on your daily life? (Examples may include pain, cough, shortness of breath, fatigue, voice hoarseness.)

3. Are there specific activities that are important to you but that you cannot do at all, or as fully as you would like, because of lung cancer? (Examples may include sleeping through the night, climbing stairs, household activities.)

Topic 2: Patients' Perspectives on Current Approaches To Treating Lung Cancer

1. Are you currently undergoing any cancer treatments to help reduce or control the spread of your lung cancer? Please describe.

1.1 What do you consider to be the most significant downsides of these treatments? (Examples of downsides may include side effects, going to the hospital for treatment, frequent blood tests, etc.)

1.2 How do these downsides affect your daily life?

2. What supportive care treatments, if any, are you taking to help improve or manage the symptoms you experience because of your lung cancer? Please include any prescription medicines, over-the-counter products, and other therapies including non-drug therapies (such as breathing techniques).

2.1 What specific symptoms do your treatments address?

2.2 How well do these treatments manage these symptoms?

2.3 Are there symptoms that your current treatment regimen does not address at all, or does not treat as well as you would like?

3. When thinking about your overall goals for treatment, how do you weigh the importance of prolonging your life versus improving the symptoms you experience because of your lung cancer?

4. What factors do you take into account when making decisions about using treatments to help reduce or control the spread of your lung cancer? In particular:

4.1 What information on the potential benefits of these treatments factors most into your decision? (Examples of potential benefits from treatments may include shrinking the tumor, delaying the growth of the tumor, prolonging life, etc.)

4.2 How do you weigh the potential benefits of these treatments versus the common side effects of the treatments? (Common side effects could include nausea, loss of appetite fatigue, diarrhea, rash.)

4.3 How do you weigh potential benefits of these treatments versus the less common but serious risks associated with the treatments? (Examples of less common but serious risks are developing a hole in the stomach or intestine, liver failure, kidney failure, lung inflammation, blood clot, stroke, heart attack, serious infections, etc.)

B. Attendance and/or Participation in the Meeting

If you wish to attend this meeting, visit *http://patientfocusedlungcancer.eventbrite.com.* Please register by June 19, 2013. Those who are unable to attend the meeting in person can register to view a live Web cast of the meeting. You will be asked to indicate in your registration if you plan to attend in person or via the Web cast. Your registration will also contain your complete contact information, including name, title, affiliation, address, email address, and phone number. Seating will be limited, so early registration is recommended. Registration is free and will be on a first-come, first-served basis. However, FDA may limit the number of participants from each organization based on space limitations. Registrants will receive confirmation once they have been accepted. Onsite registration on the day of the meeting will be based on space availability. If you need special accommodations because of disability, please contact Graham Thompson (see **FOR FURTHER INFORMATION CONTACT**) at least 7 days before the meeting. More information will be posted on the meeting Web site at least 5 days before the meeting date.

Patients who are interested in presenting comments as part of the initial panel discussions should indicate in their registration which topic(s) they wish to address. They will be asked to send a brief summary of responses to the topic(s) questions via email to *PatientFocused@fda.hhs.gov.* Panelists will be notified of their selection soon after the close of registration on June 19, 2013. FDA will try to accommodate all patients and patient advocate participants who wish to speak, either through the panel discussion or audience participation; however, the duration of comments may be limited by time constraints.

Interested members of the public, including those who attend the meeting in person or through the Web cast, are invited to provide electronic or written responses to any or all of the questions pertaining to Topics 1 and 2 to the Division of Dockets Management (see **ADDRESSES**). Comments may be submitted until July 29, 2013.

Dated: May 30, 2013.

Leslie Kux,

Assistant Commissioner for Policy.

[FR Doc. 2013–13243 Filed 6–4–13; 8:45 am]

BILLING CODE 4160–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Heart, Lung, and Blood Institute; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. App.), notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning

individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Heart, Lung, and Blood Institute Special Emphasis Panel; Trauma and Hemostasis.

Date: June 25, 2013.

Time: 7:30 a.m. to 5:00 p.m.

Agenda: To review and evaluate grant applications.

Place: Crystal Gateway Marriott, 1700 Jefferson Davis Highway, Arlington, VA 22202.

Contact Person: Michael P Reilly, Ph.D., Scientific Review Officer, Office of Scientific Review/DERA, National Heart, Lung, and Blood Institute, 6701 Rockledge Drive, Room 7200, Bethesda, MD 20892, 301–496–9659, *reillymp@nhlbi.nih.gov*.

Name of Committee: National Heart, Lung, and Blood Institute Special Emphasis Panel; Short-term Training to Promote Diversity in Health Research.

Date: June 27, 2013.

Time: 12:00 p.m. to 4:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Room 7189, Bethesda, MD 20892, (Telephone Conference Call).

Contact Person: Stephanie L Constant, Ph.D., Scientific Review Officer, Office of Scientific Review/DERA, National Heart, Lung, and Blood Institute, 6701 Rockledge Drive, Room 7189, Bethesda, MD 20892, 301–443–8784, *constantsl@nhlbi.nih.gov*.

(Catalogue of Federal Domestic Assistance Program Nos. 93.233, National Center for Sleep Disorders Research; 93.837, Heart and Vascular Diseases Research; 93.838, Lung Diseases Research; 93.839, Blood Diseases and Resources Research, National Institutes of Health, HHS)

Dated: May 30, 2013.

Michelle Trout,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2013–13264 Filed 6–4–13; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Center for Scientific Review; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. App.), notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: Center for Scientific Review Special Emphasis Panel; Spinal cord biology and bone implants.

Date: June 27, 2013.

Time: 10:00 a.m. to 1:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892, (Telephone Conference Call).

Contact Person: Priscilla B. Chen, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4104, MSC 7814, Bethesda, MD 20892, (301) 435–1787, *chenp@csr.nih.gov*.

Name of Committee: Center for Scientific Review Special Emphasis Panel; Member Conflict: Molecular Genetic Mechanisms.

Date: July 3, 2013.

Time: 1:00 p.m. to 3:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892.

Contact Person: Dominique Lorang-Leins, Ph.D., Scientific Review Officer, National Institutes of Health, Center for Scientific Review, 6701 Rockledge Drive, Room 5108, MSC 7766, Bethesda, MD 20892, 301.326.9721, *Lorangd@mail.nih.gov*.

(Catalogue of Federal Domestic Assistance Program Nos. 93.306, Comparative Medicine; 93.333, Clinical Research, 93.306, 93.333, 93.337, 93.393–93.396, 93.837–93.844, 93.846–93.878, 93.892, 93.893, National Institutes of Health, HHS)

Dated: May 30, 2013.

Carolyn A. Baum,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2013–13263 Filed 6–4–13; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute on Drug Abuse; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. App), notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 USC, as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable materials, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute on Drug Abuse Special Emphasis Panel; PAR 11–109 Grand Opportunity in Medications Development for Substance-Related Disorders.

Date: June 20, 2013.

Time: 2:00 p.m. to 4:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Neuroscience Center, 6001 Executive Boulevard, Rockville, MD 20852, (Telephone Conference Call).

Contact Person: Jose F. Ruiz, Ph.D., Scientific Review Officer, Office of Extramural Affairs, National Institute on Drug Abuse, NIH, Room 4228, MSC 9550, 6001 Executive Blvd., Bethesda, MD 20892–9550, (301) 451–3086, *ruizjf@nida.nih.gov*.

Name of Committee: National Institute on Drug Abuse Special Emphasis Panel; Exceptional Unconventional Research Enabling Knowledge Acceleration (EUREKA) for Neuroscience and Disorders of the Nervous System (R01).

Date: July 22, 2013.

Time: 8:00 a.m. to 4:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Neuroscience Center, 6001 Executive Boulevard, Rockville, MD 20852, (Telephone Conference Call).

Contact Person: Minna Liang, Ph.D., Scientific Review Officer, Grants Review Branch, Office of Extramural Affairs, National Institute on Drug Abuse, NIH, DHHS, 6001 Executive Blvd., Room 4226, MSC 9550, Bethesda, MD 20892–9550, 301–435–1432, *liangm@nida.nih.gov*.

(Catalogue of Federal Domestic Assistance Program Nos.: 93.279, Drug Abuse and Addiction Research Programs, National Institutes of Health, HHS)

Dated: May 30, 2013.

Michelle Trout,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2013–13265 Filed 6–4–13; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Substance Abuse and Mental Health Services Administration (SAMHSA)

Announcement for the National Registry of Evidence-Based Programs and Practices (NREPP): Open Submission Period for Fiscal Year 2014

AGENCY: SAMHSA, Health and Human Services.

ACTION: Announcement.

SUMMARY: The mission of SAMHSA is to reduce the impact of substance abuse

and mental illness on America's communities. Established in 1992, the Agency was directed by Congress to target effective substance abuse and mental health services to the people most in need and to translate research in these areas more effectively and more rapidly into the general health care system. NREPP is a key public resource SAMHSA has developed to help meet this directive. As of June 2013, approximately 290 interventions developed in the U.S. and abroad have been reviewed and added to the registry. This notice announces NREPP's open submission period for fiscal year 2014, during which program developers may submit a request to have their intervention reviewed. The notice provides information about the documentation that submissions must include to demonstrate that an intervention meets NREPP's minimum requirements; the responsibilities of the Principal during the review process; and the process for submitting materials for review during the open submission period.

FOR FURTHER INFORMATION CONTACT: Alyson Essex, Ph.D., MHS, Social Science Analyst, SAMHSA, 1 Choke Cherry Road, Room 2–1002, Rockville, MD 20857, telephone 240–276–0529.

Substance Abuse and Mental Health Services Administration's National Registry of Evidence-Based Programs and Practices (NREPP): Open Submission Period for Fiscal Year 2014

Background

The Substance Abuse and Mental Health Services Administration's (SAMHSA) National Registry of Evidence-based Programs and Practices (NREPP) is a searchable online database of interventions that have been shown to produce significant behavioral outcomes in substance abuse prevention, mental health promotion, or the treatment of mental or substance abuse disorders and that are ready to be implemented by the public. Interventions that are accepted for review by NREPP undergo an independent review process in which (1) up to three studies are assessed and rated for Quality of Research and (2) the intervention's implementation, training, and quality assurance materials and processes are assessed and rated for Readiness for Dissemination. The results of these reviews are published on the NREPP Web site, *http://nrepp.samhsa.gov.* NREPP is designed as a decision-support tool for providers responsible for selecting and implementing interventions. The acceptance of interventions for review and the inclusion of interventions on the NREPP Web site are not intended to convey endorsement, recommendation, or approval of these interventions by SAMHSA. Policymakers and funders, in particular, are discouraged from requiring contracted providers or grantees to use specific interventions based on their inclusion in the registry.

This notice announces the next open submission period during which SAMHSA will consider and accept requests for review, describes the requirements for submission, and provides information about the review process.

Open Submission Period

SAMHSA has established a 2-month period for receipt of requests for NREPP reviews for fiscal year 2014 that will begin January 2, 2014, and end February 28, 2014. Submitters are encouraged to visit the NREPP Web site to learn more about the review process. The Reviews & Submissions page (*http://nrepp.samhsa.gov/Reviews.aspx*) provides an overview of the steps involved in reviews, the rating criteria used to assess Quality of Research and Readiness for Dissemination, and how reviewers are selected and trained. Examples of published intervention summaries, the end product of each review, can be viewed at *http://nrepp.samhsa.gov/ViewAll.aspx.*

Minimum Requirements

For an intervention to be eligible for review, the submitter must provide written documentation that demonstrates the following minimum requirements have been met:

1. The intervention has produced one or more positive behavioral outcomes ($p \leq .05$) in mental health or substance abuse among individuals, communities, or populations. Significant differences between groups over time must be demonstrated for each outcome.

2. Evidence of the positive behavioral outcome(s) has been demonstrated in at least one study using an experimental or quasi-experimental design. Experimental designs include random assignment of participants, a control or comparison group in addition to the intervention group, and pre- and posttest assessments. Quasi-experimental designs include a control or comparison group and pre-and posttest assessments but do not use random assignment. Studies with single-group, pretest/posttest designs do not meet this requirement.

3. The results of these studies have been published in a peer-reviewed journal or other professional publication (e.g., a book volume) or documented in a comprehensive evaluation report. Comprehensive evaluation reports must include the following sections or their equivalent: a review of the literature, theoretical framework, purpose, methodology, findings/results (with statistical analysis and p values for significant outcomes), discussion, and conclusions. Information must be included to enable rating of the six Quality of Research criteria: (1) Reliability of measures, (2) validity of measures, (3) intervention fidelity, (4) missing data and attrition, (5) potential confounding variables, and (6) appropriateness of analysis.

4. Implementation materials, training and support resources, and quality assurance procedures have been developed and are ready for use by the public.

The documentation demonstrating these minimum requirements must be provided at the time of submission. Table 1 lists examples of appropriate supporting documentation.

TABLE 1—DOCUMENTATION FOR DEMONSTRATING SATISFACTION OF MINIMUM REQUIREMENTS

Minimum requirement	Documentation
Quality of Research:	
1. Intervention has produced one or more positive behavioral outcomes ($p \leq .05$) in mental health or substance abuse among individuals, communities, or populations. Significant differences between groups over time must be demonstrated for each outcome.	A list of significant behavioral outcomes that includes supporting citations (document/page number) for the location of each outcome showing p values and
2. Evidence of these outcomes has been demonstrated in at least one study using an experimental or quasi-experimental design.	A full-text copy of each article/report cited in the list of outcomes. Other research articles, published or unpublished evaluation reports, grant final reports, and replication studies may be submitted as additional supporting documentation.

TABLE 1—DOCUMENTATION FOR DEMONSTRATING SATISFACTION OF MINIMUM REQUIREMENTS—Continued

Minimum requirement	Documentation
3. Results of these studies have been published in a peer-reviewed journal or other professional publication (e.g. book volume) or documented in a comprehensive evaluation report.	Documentation must be provided to enable the rating of the six Quality of Research criteria (i.e., reliability of measures, validity of measures, intervention fidelity, missing data and attrition, potential confounding variables, and appropriateness of analysis). NOTE: Abstracts or URLs to partial articles are regarded as incomplete documentation and will not be considered. Meta-analyses will not be considered for review.
Readiness for Dissemination:	
4. Implementation materials, training and support resources, and quality assurance procedures have been developed and are ready for use by the public.	A brief narrative description and list of available materials, resources, and systems to support implementation (e.g., treatment manuals, information for administrators, tested training curricula, mechanisms for ongoing supervision and consultation, protocols for gathering process and outcome data, ongoing monitoring of intervention fidelity, processes for gathering feedback) and A brief description of the method through which new implementation sites acquire the above materials.

Ineligible Interventions

The following types of interventions are not eligible for review:

1. Stand-alone pharmacologic treatments. The evidence base for pharmacologic treatments is reviewed and approved through the U.S. Food and Drug Administration (FDA). FDA-approved pharmacotherapy interventions (on-label use) are considered for NREPP review only when combined with one or more behavioral or psychosocial treatments.

2. Interventions that have been developed or evaluated with funds or other support, either partially or wholly, from organizations whose goals or activities are determined to be inconsistent with SAMHSA's mission.

Acceptance of Interventions

Submissions that meet the four minimum requirements (excluding ineligible interventions previously noted) will be considered for review. The number of interventions selected by SAMHSA for review and the timing of these reviews depend on the availability of funds and will be determined at SAMHSA's discretion. Interventions not selected for review during this fiscal year may be resubmitted during a future open submission period.

Role of the Principal

Before an intervention can be formally accepted for review and added to the Accepted for Review list on the NREPP Web site, there must be agreement upon and designation by the submitting organization of a Principal to oversee the review. The designation of the Principal role must be agreed to by those who have had a major role in the development and/or evaluation of the intervention. The Principal is typically a principal investigator who has conducted research on the intervention, a program developer who has collaborated with an evaluator of the intervention, or an official of the organization requesting the review.

The Principal is responsible for ensuring provision of all materials and documentation to be used in the review. This includes full-text copies of articles and reports that provide evidence of significant outcomes as well as copies of dissemination materials in the format they are provided to the public (e.g., hard copies or electronic versions of manuals, training presentations, tools, quality assurance protocols, URLs for interactive Web-based resources). The Principal is required to participate in a kickoff call at the commencement of review and may be asked to answer questions about the intervention, the articles, or the intervention materials for clarification at various points throughout the review process.

At the end of the review, the Principal receives a draft intervention summary presenting the results of the review and is asked to provide corrections and comments. The results of NREPP reviews are considered public, and after having the opportunity to comment on the summary, the Principal is expected to authorize publication of the summary on the NREPP Web site. If the Principal does not provide that authorization, the intervention will be identified on the NREPP Web site as having undergone review, with a statement indicating the Principal did not authorize publication of the summary.

Instructions for Submitting an Intervention

Submissions must include (1) a letter formally requesting a review and (2) documentation demonstrating that the minimum requirements described above have been met. NREPP prefers letters of interest and supporting materials to be submitted electronically using an online submission tool that will be made available during the open submission period. On January 2, 2014, NREPP will post a link to the online submission tool and instructions for how to obtain a username and password at *http://www.nrepp.samhsa.gov/ReviewSubmission.aspx*. Please call 1–866–436–7377 for technical assistance on the electronic submission process or to arrange for submission by hard copy or fax if electronic submission is not possible. To be eligible for consideration, a complete submission including both the letter of request and supporting documents must be received no later than 11:59 p.m. E.S.T. on February 28, 2014; materials received before January 2, 2014, will be disregarded.

FOR FURTHER INFORMATION CONTACT: Individuals who have specific questions about the information contained in this notice may write to NREPP staff at *nrepp@samhsa.hhs.gov* or call 1–866–436–7377.

Summer King,

Statistician.

[FR Doc. 2013–13223 Filed 6–4–13; 8:45 am]

BILLING CODE 4162–20–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

[Docket No. USCG–2011–0138]

Merchant Mariner Medical Advisory Committee: Intercessional Meeting

AGENCY: Coast Guard, DHS.

ACTION: Notice of Federal Advisory Committee Working Group Meeting.

SUMMARY: Two working groups of the Merchant Mariner Medical Advisory

Committee (MEDMAC) will meet to discuss Task Statement 1, ''Revision of Navigation and Vessel Inspection Circular (NVIC) 04–08'' and Task Statement 4, ''Revision of CG–719K, Merchant Mariner Credential Medical Evaluation Report and CG–719K/E, Merchant Mariner Evaluation of Fitness for Entry Level Ratings.'' The meeting will be open to the public.

DATES: The working groups will meet Tuesday, June 18 and Wednesday, June 19, 2013, from 8:00 a.m. to 5:00 p.m. Please note that the working groups may end early if they have completed their business. Written comments to be distributed to working group members are due by June 10, 2013.

ADDRESSES: The working groups will meet at the Paul Hall Center for Maritime Training and Education, 2nd floor conference room (Maryland Room), 45353 St. Georges Avenue, Piney Point, Maryland 20674–0075. For further information about the Paul Hall Center hotel facilities or services for individuals with disabilities or to request special assistance, contact Mr. Howard Thompson at (301) 994–0010 Ext. 0. Please be advised that in order to gain access to the Paul Hall Center, you must provide identification in the form of a government-issued picture identification card. If you plan to attend, please notify the individual listed in **FOR FURTHER INFORMATION CONTACT**, no later than June 10, 2013, so that administrative access into the Paul Hall Center can be processed prior to arrival.

To facilitate public participation, we are inviting public comment on the issues to be considered by the working groups as listed in the ''Agenda'' section below. Comments must be submitted in writing to the Coast Guard on or before June 10, 2013, and must be identified by USCG–2011–0138 and may be submitted by one of the following methods:

- *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the instructions for submitting comments (preferred method to avoid delays in processing).
- *Fax:* 202–493–2251.
- *Mail:* Docket Management Facility (M–30), U.S. Department of Transportation, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE., Washington, DC 20590–0001.
- *Hand delivery:* Same as mail address above, between 9 a.m. and 5 p.m., Monday through Friday, except Federal Holidays. The telephone number is 202–366–9329.

Instructions: All submissions received must include the words ''Department of Homeland Security'' and the docket number for this action. Comments received will be posted without alteration at *http://www.regulations.gov,* including any personal information provided. You may review a Privacy Act notice regarding our public dockets in the January 17, 2008, issue of the **Federal Register** (73 FR 3316). Please provide an electronic copy to the contact listed in **FOR FURTHER INFORMATION CONTACT** below no later than June 10, 2013. Your material will be placed on the MEDMAC Web site *https://homeport.uscg.mil* to be made available to the members of the working group and the public.

Docket: For access to the docket to read background documents or comments related to this notice, go to *http://www.regulations.gov* and search the docket number.

A public comment period will be held on June 18, 2013, approximately 8:15 a.m. to 8:30 a.m., and on June 19, 2013, from approximately 8:15 a.m. to 8:30 a.m. Speakers are requested to limit their comments to 5 minutes. Please note that the public comment period may end before the time indicated, following the last call for comments. Additionally, public comment will be sought throughout the meeting as specific issues are discussed by the working groups.

FOR FURTHER INFORMATION CONTACT: Lieutenant Ashley Holm, the MEDMAC Alternate Designated Federal Officer (ADFO), at telephone 202–372–1128 or email Ashley.e.holm@uscg.mil. If you have any questions on viewing or submitting material to the docket, call Barbara Hairston, Program Manager, Docket Operations, telephone 202–366–9826.

SUPPLEMENTARY INFORMATION: Notice of this meeting is given under the *Federal Advisory Committee Act,* 5 U.S.C. App. (Pub. L. 92–463). The MEDMAC is authorized by 46 U.S.C. 7115 as amended by section 210 of the *Coast Guard Authorization Act of 2010* (Pub. L. 111–281) and advises the Secretary on matters related to (a) Medical certification determinations for issuance of licenses, certificates of registry, and merchant mariners' documents; (b) medical standards and guidelines for the physical qualifications of operators of commercial vessels; (c) medical examiner education; and (d) medical research.

Agenda

Day 1

The agenda for the June 18, 2013, working group meeting is as follows:

(1) Opening comments by Working Group Chairman.

(2) Public Comment Period.

(3) Working Groups address the following task statements:

(a) Task Statement 1, Revision of Navigation and Vessel Inspection Circular (NVIC) 04–08. The NVIC can be found at *http://www.uscg.mil/hq/cg5/nvic/* Medical and Physical Guidelines for Merchant Mariner Credentials.

(b) Task Statement 4, Revision of CG–719K, Merchant Mariner Credential Medical Evaluation Report and CG–719K/E, Merchant Mariner Evaluation of Fitness for Entry Level Ratings.

(4) Closing remarks.

Day 2

The agenda for the June 19, 2013, working groups meeting is as follows:

(1) Public comment period.

(2) Continue work on Task Statement 1 and Task Statement 4.

(3) Working Groups will discuss and prepare final draft recommendations for the full committee to consider for presentation to the Coast Guard. The public will have an opportunity to speak after Working Group's discussion.

(4) Closing remarks/plans for next meeting.

Dated: May 30, 2013.

P.F. Thomas,

Captain, U.S. Coast Guard, Director of Inspections and Compliance.

[FR Doc. 2013–13404 Filed 6–3–13; 4:15 pm]

BILLING CODE 9110–04–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

[FWS–HQ–EA–2013–N126; FF09X60000–FVWF97920900000–XXX]

Sport Fishing and Boating Partnership Council

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of teleconference.

SUMMARY: We, the U.S. Fish and Wildlife Service (Service), announce a public teleconference of the Sport Fishing and Boating Partnership Council (Council).

DATES: *Teleconference:* Tuesday, June 25, 2013, 2:30 p.m. to 4 p.m. (Eastern daylight time). For deadlines and directions on registering to listen to the teleconference, submitting written material, and giving an oral presentation, please see ''Public Input'' under **SUPPLEMENTARY INFORMATION.**

FOR FURTHER INFORMATION CONTACT: Douglas Hobbs, Council Coordinator,

4401 North Fairfax Drive, Mailstop 3103–AEA, Arlington, VA 22203; telephone (703) 358–2336; fax (703) 358–2548; or email *doug_hobbs@fws.gov.*

SUPPLEMENTARY INFORMATION: In accordance with the requirements of the Federal Advisory Committee Act, 5 U.S.C. App., we announce that Sport Fishing and Boating Partnership Council will hold a teleconference.

Background

The Council was formed in January 1993 to advise the Secretary of the Interior, through the Director of the Service, on nationally significant recreational fishing, boating, and aquatic resource conservation issues. The Council represents the interests of the public and private sectors of the sport fishing, boating, and conservation communities and is organized to enhance partnerships among industry, constituency groups, and government. The 18-member Council, appointed by the Secretary of the Interior, includes the Service Director and the president of the Association of Fish and Wildlife Agencies, who both serve in ex officio capacities. Other Council members are directors from State agencies responsible for managing recreational fish and wildlife resources and individuals who represent the interests of saltwater and freshwater recreational fishing, recreational boating, the recreational fishing and boating industries, recreational fisheries resource conservation, Native American tribes, aquatic resource outreach and education, and tourism. Background information on the Council is available at *http://www.fws.gov/sfbpc.*

Meeting Agenda

The Council will hold a teleconference to:

- Consider and approve recommendations to the Director of the Fish and Wildlife Service for funding Round 2 of Fiscal Year 2013 Boating Infrastructure Grant Program project proposals,
- Consider the transmittal of Council recommendations regarding a vision for fish and aquatic resource conservation in the Service.

The final agenda will be posted on the Internet at *http://www.fws.gov/sfbpc.*

Public Input

If you wish to	You must contact the Council Coordinator (see **FOR FURTHER INFORMATION CONTACT**) no later than
Listen to the teleconference	Tuesday, June 18, 2013.
Submit written information or questions before the teleconference for the council to consider during the teleconference.	Tuesday, June 18, 2013.
Give an oral presentation during the teleconference	Tuesday, June 18, 2013.

Submitting Written Information or Questions

Interested members of the public may submit relevant information or questions for the Council to consider during the teleconference. Written statements must be received by the date listed in ''Public Input'' under **SUPPLEMENTARY INFORMATION**, so that the information may be made available to the Council for their consideration prior to this teleconference. Written statements must be supplied to the Council Coordinator in one of the following formats: One hard copy with original signature, and one electronic copy via email (acceptable file formats are Adobe Acrobat PDF, MS Word, MS PowerPoint, or rich text file).

Giving an Oral Presentation

Individuals or groups requesting to make an oral presentation during the teleconference will be limited to 2 minutes per speaker, with no more than a total of 15 minutes for all speakers. Interested parties should contact the Council Coordinator, in writing (preferably via email; see **FOR FURTHER INFORMATION CONTACT**), to be placed on the public speaker list for this teleconference. To ensure an opportunity to speak during the public comment period of the teleconference, members of the public must register with the Council Coordinator. Registered speakers who wish to expand upon their oral statements, or those who had wished to speak but could not be accommodated on the agenda, may submit written statements to the Council Coordinator up to 30 days subsequent to the teleconference.

Meeting Minutes

Summary minutes of the teleconference will be maintained by the Council Coordinator (see **FOR FURTHER INFORMATION CONTACT**) and will be available for public inspection within 90 days of the meeting and will be posted on the Council's Web site at *http://www.fws.gov/sfbpc.*

Stephen Guertin,

Director.

[FR Doc. 2013–13292 Filed 6–4–13; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

[FWS–R9–HQ–2013–N125; 91100–3740–GRNT 7C]

Meeting Announcements: North American Wetlands Conservation Council; Neotropical Migratory Bird Conservation Advisory Group

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of meetings.

SUMMARY: The North American Wetlands Conservation Council (Council) will meet to select North American Wetlands Conservation Act (NAWCA) grant proposals for recommendation to the Migratory Bird Conservation Commission (Commission). This meeting is open to the public. The Advisory Group for the Neotropical Migratory Bird Conservation Act (NMBCA) grants program (Advisory Group) will also meet. This meeting is also open to the public, and interested persons may present oral or written statements.

DATES: *Council:* Meeting is July 9, 2013, 2:30–4:30 p.m., and July 10, 2013, 8:30 a.m.–12 p.m. and 1–4:30 p.m. If you are interested in presenting information at this public meeting, contact the Council Coordinator no later than June 24, 2013.

Advisory Group: Meeting is July 9, 2013, 8 a.m.–2 p.m. If you are interested in presenting information at this public meeting, contact the Council Coordinator no later than June 24, 2013.

ADDRESSES: The Council meeting and the Advisory Group meeting will be held at Lord Elgin Hotel, 100 Elgin Street, Ottawa, ON K1P 5K8, Canada.

FOR FURTHER INFORMATION CONTACT: Cyndi Perry, Council Coordinator, by phone at (703) 358–1784; by email at *cyndi_perry@fws.gov;* or by U.S. mail at

U.S. Fish and Wildlife Service, Division of Bird Habitat Conservation, 4401 N. Fairfax Drive, MBSP 4075, Arlington, VA 22203.

SUPPLEMENTARY INFORMATION: In accordance with NAWCA (Pub. L. 101–233, 103 Stat. 1968, December 13, 1989, as amended), the State-private-Federal Council meets to consider wetland acquisition, restoration, enhancement, and management projects for recommendation to, and final funding approval by, the Commission. Project proposal due dates, application instructions, and eligibility requirements are available on the NAWCA Web site at *http://www.fws.gov/birdhabitat/Grants/NAWCA.* Proposals require a minimum of 50 percent non-Federal matching funds. The Council will consider U.S. standard grant proposals at the meeting. The Commission will consider the Council's recommendations at its meeting tentatively scheduled for September 11, 2013.

The Advisory Group, named by the Secretary of the Interior under NMBCA (Pub. L. 106–247, 114 Stat. 593, July 20, 2000), will hold its meeting to discuss the strategic direction and management of the NMBCA program and provide advice to the Director of the Fish and Wildlife Service. If you are interested in presenting information at either of these public meetings, contact the Council Coordinator no later than the date under **DATES**.

Dated: May 29, 2013.

George Allen,

Acting Assistant Director, Migratory Birds.

[FR Doc. 2013–13295 Filed 6–4–13; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[LLWO3200000–L19900000.PP0000]

Renewal of Approved Information Collection

AGENCY: Bureau of Land Management, Interior.

ACTION: 60-Day notice and request for comments.

SUMMARY: In compliance with the Paperwork Reduction Act, the Bureau of Land Management (BLM) invites public comments on, and plans to request approval to continue, the collection of information for the regulations at 43 CFR Parts 3832 through 3838. These regulations pertain to the location, recording, and maintenance of mining claims and sites. The Office of Management and Budget (OMB) has assigned control number 1004–0114 to this information collection.

DATES: Please submit comments on the proposed information collection by August 5, 2013.

ADDRESSES: Comments may be submitted by mail, fax, or electronic mail.

Mail: U.S. Department of the Interior, Bureau of Land Management, 1849 C Street NW., Room 2134LM, *Attention:* Jean Sonneman, Washington, DC 20240.

Fax: to Jean Sonneman at 202–245–0050.

Electronic mail: Jean_Sonneman@blm.gov.

Please indicate ''Attn: 1004–0114'' regardless of the form of your comments.

FOR FURTHER INFORMATION CONTACT: Sonia Santillan, at 202–912–7123. Persons who use a telecommunication device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339, to leave a message for Ms. Santillan.

SUPPLEMENTARY INFORMATION: OMB regulations at 5 CFR 1320, which implement provisions of the Paperwork Reduction Act, 44 U.S.C. 3501–3521, require that interested members of the public and affected agencies be given an opportunity to comment on information collection and recordkeeping activities (see 5 CFR 1320.8 (d) and 1320.12(a)). This notice identifies an information collection that the BLM plans to submit to OMB for approval. The Paperwork Reduction Act provides that an agency may not conduct or sponsor a collection of information unless it displays a currently valid OMB control number. Until OMB approves a collection of information, you are not obligated to respond.

The BLM will request a 3-year term of approval for this information collection activity. Comments are invited on: (1) The need for the collection of information for the performance of the functions of the agency; (2) The accuracy of the agency's burden estimates; (3) Ways to enhance the quality, utility and clarity of the information collection; and (4) Ways to minimize the information collection burden on respondents, such as use of automated means of collection of the information. A summary of the public comments will accompany our submission of the information collection requests to OMB.

Before including your address, phone number, email address, or other personal identifying information in your comment, you should be aware that your entire comment—including your personal identifying information—may be made publicly available at any time. While you can ask us in your comment to withhold your personal identifying information from public review, we cannot guarantee that we will be able to do so.

The following information is provided for the information collection:

Title: Recordation of Location Notices and Mining Claims; Payment of Fees (43 CFR Parts 3832–3838).

OMB Control Number: 1004–0114.

Summary: The Bureau of Land Management (BLM) seeks to renew the previously approved information collection for the regulations at 43 CFR Parts 3832 through 3838. These regulations pertain to the location, recording, and maintenance of mining claims and sites, in accordance with the General Mining Law (30 U.S.C. 22–54), Section 314 of the Federal Land Policy and Management Act (FLPMA) (43 U.S.C. 1744), and certain other statutes pertaining to specific Federal lands, and the Stock Raising Homestead Act (43 U.S.C. 299 and 301).

Frequency of Collection: On occasion, except Form 3830–2 (which may be filed annually) and annual FLPMA documents (which are required to be filed annually).

Forms: Form 3830–2, Maintenance Fee Waiver Certification; and Form 3830–3, Notice of Intent to Locate a Lode or Placer Mining Claim(s) and/or a Tunnel Site(s) on Lands Patented under the Stock Raising Homestead Act of 1916, As Amended by the Act of April 16, 1993.

Description of Respondents: Mining claimants.

Estimated Annual Responses: 121,019.

Estimated Annual Burden Hours: 59,896.

Estimated Annual Non-Hour Costs: $922,720.

The estimated annual burdens are itemized in the following table:

Type of response A.	Number of responses B.	Time per response (minutes) C.	Total hours (column B × column C) D.
Notice of Intent to Locate Under the Stock Raising Homestead Act (43 CFR Part 3838) Form 3830–3	2	30	1
Locating Mining Claims or Sites (43 CFR Part 3832)	50,330	30	25,165
Recording a New Location Notice (43 CFR Part 3833, Subpart A)	50,330	30	25,165
Amending a Location Notice (43 CFR Part 3833, Subpart B)	3,678	30	1,839
Transfers of Interest (43 CFR Part 3833, Subpart C) and Acquiring a Delinquent Co-Claimant's Interests in a Mining Claim or Site (43 CFR Part 3837)	1,572	30	786
Waiver from Annual Maintenance Fee (43 CFR Part 3835, Subpart A) Form 3830–2 and/or nonform data	3,681	20	1,227
Annual FLPMA Documents (43 CFR part 3835, subpart C) Form 3830–4	11,416	20	5,708
Deferring Assessment Work (43 CFR Part 3836, Subpart B)	10	30	5
Totals	121,019		59,896

Jean Sonneman,

Information Collection Clearance Officer, Bureau of Land Management.

[FR Doc. 2013–13305 Filed 6–4–13; 8:45 am]

BILLING CODE 4310–84–P

DEPARTMENT OF THE INTERIOR

Bureau of Ocean Energy Management

[MMAA104000]

Outer Continental Shelf (OCS) Geological and Geophysical Exploration Activities in the Gulf of Mexico; Correction

AGENCY: Bureau of Ocean Energy Management (BOEM), Interior.

ACTION: Notice of Intent; Notice of Scoping Meetings; and Request for Scoping Comments; Correction.

SUMMARY: On May 10, 2013, BOEM published a document in the **Federal Register** (78 FR 27427) entitled ''Outer Continental Shelf Geological and Geophysical Exploration Activities in the Gulf of Mexico.'' This notice corrects the date for closing of the public comment period, as previously published.

DATES: Effective immediately, comments should be submitted no later than July 9, 2013.

FOR FURTHER INFORMATION CONTACT: For information on this notice or the public scoping meetings, contact Ms. Beth Nord, BOEM, Gulf of Mexico OCS Region, 1201 Elmwood Park Boulevard (GM 623E), New Orleans, Louisiana 70123–2394, telephone (504) 736–2995. For information on BOEM's policies associated with this notice, contact Mr. Gary Goeke, Section Chief, Regional Assessment Section, Office of Environment (GM 623E), BOEM, Gulf of Mexico OCS Region, 1201 Elmwood Park Boulevard, New Orleans, Louisiana 70123–2394, telephone (504) 736–3233. For information on the National Marine Fisheries Service (NMFS) policies associated with this notice, contact Mr. Howard Goldstein, Office of Protected Resources, NMFS, National Oceanic and Atmospheric Administration, 1315 East-West Highway, Silver Spring, Maryland 20910, telephone (301) 427–8401.

Dated: May 28, 2013.

Tommy P. Beaudreau,

Director, Bureau of Ocean Energy Management.

[FR Doc. 2013–13248 Filed 6–4–13; 8:45 am]

BILLING CODE 4310–MR–P

DEPARTMENT OF JUSTICE

Antitrust Division

Notice Pursuant to the National Cooperative Research and Production Act of 1993—DIE Products Consortium

Notice is hereby given that, on May 15, 2013, pursuant to Section 6(a) of the National Cooperative Research and Production Act of 1993, 15 U.S.C. 4301 *et seq.* (''the Act''), Die Products Consortium (''DPC'') has filed written notifications simultaneously with the Attorney General and the Federal Trade Commission disclosing changes in its membership. The notifications were filed for the purpose of extending the Act's provisions limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances. Specifically, Agilent Technologies, Palo Alto, CA; AMI Semiconductor, Oudenaarrde, Belgium; Avago Technologies, Singapore, Singapore; Infineon Technologies, AG, Munich, Germany; Freescale Semiconductor, Inc., Austin, TX; Philips Semiconductors, Inc., San Jose, CA; and ST Microelectronics, Amsterdam, The Netherlands, have withdrawn as parties to this venture.

No other changes have been made in either the membership or planned activity of the group research project. Membership in this group research project remains open, and DPC intends to file additional written notifications disclosing all changes in membership.

On November 15, 1999, DPC filed its original notification pursuant to Section 6(a) of the Act. The Department of Justice published a notice in the **Federal Register** pursuant to Section 6(b) of the Act on June 26, 2000 (65 FR 39429).

The last notification was filed with the Department on May 2, 2006. A notice was published in the **Federal Register** pursuant to Section 6(b) of the Act on May 31, 2006 (71 FR 30960).

Patricia A. Brink,

Director of Civil Enforcement, Antitrust Division.

[FR Doc. 2013–13299 Filed 6–4–13; 8:45 am]

BILLING CODE P

DEPARTMENT OF JUSTICE

Antitrust Division

Notice Pursuant to the National Cooperative Research and Production Act of 1993—Pxi Systems Alliance, Inc.

Notice is hereby given that, on May 8, 2013, pursuant to Section 6(a) of the National Cooperative Research and Production Act of 1993, 15 U.S.C. 4301 *et seq.* (''the Act''), PXI Systems Alliance, Inc. has filed written notifications simultaneously with the Attorney General and the Federal Trade Commission disclosing changes in its membership. The notifications were filed for the purpose of extending the Act's provisions limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances. Specifically, Aemulus, Penang, Malaysa,

has been added as a party to this venture.

No other changes have been made in either the membership or planned activity of the group research project. Membership in this group research project remains open, and PXI Systems Alliance, Inc. intends to file additional written notifications disclosing all changes in membership.

On November 22, 2000, PXI Systems Alliance, Inc. filed its original notification pursuant to Section 6(a) of the Act. The Department of Justice published a notice in the **Federal Register** pursuant to Section 6(b) of the Act on March 8, 2001 (66 FR 13971).

The last notification was filed with the Department on February 22, 2013. A notice was published in the **Federal Register** pursuant to Section 6(b) of the Act on March 21, 2013 (78 FR 17431).

Patricia A. Brink,

Director of Civil Enforcement, Antitrust Division.

[FR Doc. 2013–13298 Filed 6–4–13; 8:45 am]

BILLING CODE P

DEPARTMENT OF LABOR

Employment and Training Administration

Workforce Investment Act of 1998 (WIA); Notice of Incentive Funding Availability Based on Program Year (PY) 2011 Performance

AGENCY: Employment and Training Administration, Labor.

ACTION: Notice; correction.

SUMMARY: The Employment and Training Administration published a document in the **Federal Register** of May 24, 2013, notifying eligible state grantees of their Workforce Investment Act incentive grant status and total award amount. The document contained one incorrect state; ''Missouri'' should be replaced with ''Mississippi''.

FOR FURTHER INFORMATION CONTACT: Luke Murren, 202–693–3733.

Corrections

In the **Federal Register** of May 24, 2013, in FR Doc. 78 FR 31596, on page 31597, in the first column (''State'') of the first table, replace ''Missouri'' with ''Mississippi''.

In the **Federal Register** of May 24, 2013, in FR Doc. 78 FR 31596, on page 31597, in the first column (''State'') of the Appendix, bold the word ''Mississippi'' and un-bold the word ''Missouri''.

In the **Federal Register** of May 24, 2013, in FR Doc. 78 FR 31596, on page 31597, in the second column (''WIA (Title IB)'') of the Appendix, replace the ''X'' beside Missouri to ''……..'', and replace the ''……..'' beside Mississippi to an ''X''.

Dated: May 30, 2013.

Jane Oates,

Assistant Secretary.

[FR Doc. 2013–13322 Filed 6–4–13; 8:45 am]

BILLING CODE 4510–FN–P

DEPARTMENT OF LABOR

Occupational Safety and Health Administration

[Docket No. OSHA–2010–0015]

Crawler, Locomotive, and Truck Cranes Standard; Extension of the Office of Management and Budget's (OMB) Approval of Information Collection (Paperwork) Requirements

AGENCY: Occupational Safety and Health Administration (OSHA), Labor.

ACTION: Request for public comments.

SUMMARY: OSHA solicits public comments concerning its proposal to extend the Office of Management and Budget's (OMB) approval of the information collection requirements contained in the General Industry Standard on Crawler, Locomotive, and Truck cranes (29 CFR 1910.180).

DATES: Comments must be submitted (postmarked, sent, or received) by August 5, 2013.

ADDRESSES:

Electronically: You may submit comments and attachments electronically at *http://www.regulations.gov,* which is the Federal eRulemaking Portal. Follow the instructions online for submitting comments.

Facsimile: If your comments, including attachments, are not longer than 10 pages you may fax them to the OSHA Docket Office at (202) 693–1648.

Mail, hand delivery, express mail, messenger, or courier service: When using this method, you must submit a copy of your comments and attachments to the OSHA Docket Office, OSHA Docket No. OSHA–2010–0015, U.S. Department of Labor, Room N–2625, 200 Constitution Avenue NW., Washington, DC 20210. Deliveries (hand, express mail, messenger, and courier service) are accepted during the Department of Labor's and Docket Office's normal business hours, 8:15 a.m.–4:45 p.m., e.t.

Instructions: All submissions must include the Agency name and OSHA docket number (OSHA–2010–0015) for the Information Collection Request (ICR). All comments, including any personal information you provide, are placed in the public docket without change, and may be made available online at *http://www.regulations.gov.* For further information on submitting comments, see the ''Public Participation'' heading in the section of this notice titled **SUPPLEMENTARY INFORMATION**.

Docket: To read or download comments or other material in the docket, go to *http://www.regulations.gov* or the OSHA Docket Office at the address above. All documents in the docket (including this **Federal Register** notice) are listed in the *http://www.regulations.gov* index; however, some information (e.g., copyrighted material) is not publicly available to read or download through the Web site. All submissions, including copyrighted material, are available for inspection and copying at the OSHA Docket Office. You also may contact Theda Kenney at the address below to obtain a copy of the ICR.

FOR FURTHER INFORMATION CONTACT: Theda Kenney or Todd Owen, Directorate of Standards and Guidance, OSHA, U.S. Department of Labor, Room N–3609, 200 Constitution Avenue NW., Washington, DC 20210; telephone (202) 693–2222.

SUPPLEMENTARY INFORMATION:

I. Background

The Department of Labor, as part of its continuing effort to reduce paperwork and respondent (i.e., employer) burden, conducts a preclearance consultation program to provide the public with an opportunity to comment on proposed and continuing information collection requirements in accord with the Paperwork Reduction Act of 1995 (PRA–95) (44 U.S.C. 3506(c)(2)(A)). This program ensures that information is in the desired format, reporting burden (time and costs) is minimal, collection instruments are clearly understood, and OSHA's estimate of the information collection burden is accurate. The Occupational Safety and Health Act of 1970 (the OSH Act) (29 USC 651 *et seq.)* authorizes information collection by employers as necessary or appropriate for enforcement of the OSH Act, or for developing information regarding the causes and prevention of occupational injuries, illnesses, and accidents (29 U.S.C. 657).

The Standard specifies several paperwork requirements. The following sections describe who uses the information collected under each

requirement, as well as how they use it. The purpose of each of these requirements is to prevent workers from using unsafe cranes and ropes, thereby reducing their risk of death or serious injury caused by a crane or rope failure during material handling.

(A) Inspection of and Certification Records for Cranes (§ 1910.180(d)(4) and (d)(6))

Paragraph 1910.180(d) specifies that employers must prepare a written record to certify that the monthly inspection of critical items in use on cranes (such as brakes, crane hooks, and ropes) has been performed. The certification record must include the inspection date, the signature of the person who conducted the inspection, and the serial number (or other identifier) of the inspected crane. Employers must keep the certificate readily available. The certification record provides employers, workers, and OSHA compliance officers with assurance that critical items on cranes have been inspected, and that the equipment is in good operating condition so that the crane and rope will not fail during material handling. These records also enable OSHA to determine that an employer is complying with the Standard.

(B) Rated Load Tests (§ 1910.180(e)(2))

This provision requires employers to make available written reports of load-rating tests showing test procedures and confirming the adequacy of repairs or alterations, and to make readily available any rerating test reports. These reports inform the employer, workers, and OSHA compliance officers of a crane's lifting limitations, and provide information to crane operators to prevent them from exceeding these limits and thereby causing crane failure.

(C) Inspection of and Certification Records for Ropes (§ 1910.180(g)(1) and (g)(2)(ii))

Paragraph (g)(1) requires employers to thoroughly inspect any rope in use at least once a month. The authorized person conducting the inspection must observe any deterioration resulting in appreciable loss of original strength and determine whether or not the condition is hazardous. Before reusing a rope that has not been used for at least a month because the crane housing the rope is shut down or in storage, paragraph (g)(2)(ii) specifies that employers must have an appointed or authorized person inspect the rope for all types of deterioration. Employers must prepare a certification record for the inspections required by paragraphs (g)(1) and (g)(2)(ii). These certification records must include the inspection date, the signature of the person conducting the inspection, and the identifier for the inspected rope; paragraph (g)(1) states that employers must keep the certificates ''on file where readily available,'' while paragraph (g)(2)(ii) requires that certificates ''be . . . kept readily available.'' The certification records assure employers, workers, and OSHA that the inspected ropes are in good condition.

(D) Disclosure of Crane and Rope Inspection Certification Records

The disclosure of certification records provides the most efficient means for OSHA compliance officers to determine that an employer is complying with the Standard.

II. Special Issues for Comment

OSHA has a particular interest in comments on the following issues:

- Whether the proposed information collection requirements are necessary for the proper performance of the Agency's functions, including whether the information is useful;
- The accuracy of OSHA's estimate of the burden (time and costs) of the information collection requirements, including the validity of the methodology and assumptions used;
- The quality, utility, and clarity of the information collected; and
- Ways to minimize the burden on employers who must comply; for example, by using automated or other technological information collection and transmission techniques.

III. Proposed Actions

OSHA is requesting that OMB extend its approval of the collection of information requirements contained in the General Industry Standard on Crawler, Locomotive, and Truck Cranes (29 CFR 1910.180). The Agency is not requesting any adjustments in the burden hours of the paperwork requirements contained in 29 CFR 1910.180 for the Crawler, Locomotive, and Truck Cranes Standard, and is requesting that it be allowed to retain its previous estimate of 30,452 burden hours.

Type of Review: Extension of a currently approved information collection.

Title: Crawler, Locomotive, and Truck Cranes (29 CFR 1910.180).

OMB Control Number: 1218–0221.

Affected Public: Business or other for-profits; Federal Government; State, Local, or Tribal government.

Number of Respondents: 3,499.

Frequency of Responses: On occasion; Monthly, Semi-annually.

Average Time per Response: Varies from 5 minutes (.08 hour) to disclose certification records to 1 hour to conduct rated load tests.

Estimated Total Burden Hours: 30,452.

Estimated Cost (Operation and Maintenance): $0.

IV. Public Participation-Submission of Comments on This Notice and Internet Access to Comments and Submissions

You may submit comments in response to this document as follows: (1) Electronically at *http://www.regulations.gov,* which is the Federal eRulemaking Portal; (2) by facsimile (fax); or (3) by hard copy. All comments, attachments, and other material must identify the Agency name and the OSHA docket number for this ICR (Docket No. OSHA–2010–0015). You may supplement electronic submissions by uploading document files electronically. If you wish to mail additional materials in reference to an electronic or facsimile submission, you must submit them to the OSHA Docket Office (see the section of this notice titled **ADDRESSES**). The additional materials must clearly identify your electronic comments by your name, date, and the docket number so the Agency can attach them to your comments.

Because of security procedures, the use of regular mail may cause a significant delay in the receipt of comments. For information about security procedures concerning the delivery of materials by hand, express delivery, messenger, or courier service, please contact the OSHA Docket Office at (202) 693–2350, (TTY (877) 889–5627).

Comments and submissions are posted without change at *http://www.regulations.gov.* Therefore, OSHA cautions commenters about submitting personal information such as social security numbers and dates of birth. Although all submissions are listed in the *http://www.regulations.gov* index, some information (e.g., copyrighted material) is not publicly available to read or download through this Web site.

All submissions, including copyrighted material, are available for inspection and copying at the OSHA Docket Office. Information on using the *http://www.regulations.gov* Web site to submit comments and access the docket is available at the Web site's ''User Tips'' link. Contact the OSHA Docket Office for information about materials not available through the Web site, and for assistance in using the Internet to locate docket submissions.

V. Authority and Signature

David Michaels, Ph.D., MPH, Assistant Secretary of Labor for Occupational Safety and Health, directed the preparation of this notice. The authority for this notice is the Paperwork Reduction Act of 1995 (44 U.S.C. 3506 *et seq.*) and Secretary of Labor's Order No. 1–2012 (77 FR 3912).

Signed at Washington, DC, on May 31, 2013.

David Michaels,

Assistant Secretary of Labor for Occupational Safety and Health.

[FR Doc. 2013–13311 Filed 6–4–13; 8:45 am]

BILLING CODE 4510–26–P

LEGAL SERVICES CORPORATION

Sunshine Act Meeting; Notice

DATE AND TIME: The Legal Services Corporation's Institutional Advancement Committee will meet telephonically on June 11, 2013. The meeting will commence at 4:00 p.m., EDT, and will continue until the conclusion of the Committee's agenda.

LOCATION: John N. Erlenborn Conference Room, Legal Services Corporation Headquarters, 3333 K Street NW., Washington DC 20007.

PUBLIC OBSERVATION: Members of the public who are unable to attend in person but wish to listen to the public proceedings may do so by following the telephone call-in directions provided below.

CALL-IN DIRECTIONS FOR OPEN SESSIONS:

- Call toll-free number: 1–866–451–4981;
- When prompted, enter the following numeric pass code: 5907707348;
- When connected to the call, please immediately ''MUTE'' your telephone. Members of the public are asked to keep their telephones muted to eliminate background noises. To avoid disrupting the meeting, please refrain from placing the call on hold if doing so will trigger recorded music or other sound. From time to time, the presiding Chair may solicit comments from the public.

STATUS OF MEETING: Open, except that, upon a vote of the Board of Directors, the meeting may be closed to the public to discuss prospective members for a 40th anniversary honorary committee.

A verbatim transcript will be made of the closed session meeting of the Institutional Advancement Committee. The transcript of any portion of the closed session falling within the relevant provision of the Government in the Sunshine Act, 5 U.S.C. 552b(c)(6), will not be available for public inspection. A copy of the General Counsel's Certification that, in his opinion, the closing is authorized by law will be available upon request.

MATTERS TO BE CONSIDERED:

Open

1. Approval of agenda
2. Consider and act on fundraising policies
3. Public comment
4. Consider and act on other business
5. Consider and act on adjournment of meeting

Closed

6. Discussion of prospective members for a 40th anniversary honorary committee
7. Consider and act on adjournment of meeting

CONTACT PERSON FOR INFORMATION: Katherine Ward, Executive Assistant to the Vice President & General Counsel, at (202) 295–1500. Questions may be sent by electronic mail to *FR_NOTICE_QUESTIONS@lsc.gov.*

ACCESSIBILITY: LSC complies with the Americans with Disabilities Act and Section 504 of the 1973 Rehabilitation Act. Upon request, meeting notices and materials will be made available in alternative formats to accommodate individuals with disabilities. Individuals who need other accommodations due to disability in order to attend the meeting in person or telephonically should contact Katherine Ward, at (202) 295–1500 or *FR_NOTICE_QUESTIONS@lsc.gov,* at least 2 business days in advance of the meeting. If a request is made without advance notice, LSC will make every effort to accommodate the request but cannot guarantee that all requests can be fulfilled.

Dated: June 3, 2013.

Atitaya C. Rok,

Staff Attorney.

[FR Doc. 2013–13485 Filed 6–3–13; 4:15 pm]

BILLING CODE 7050–01–P

NUCLEAR REGULATORY COMMISSION

[NRC–2013–0113]

Draft Emergency Preparedness Frequently Asked Questions

AGENCY: Nuclear Regulatory Commission.

ACTION: Notice of availability and opportunity for public comment.

SUMMARY: The U.S. Nuclear Regulatory Commission (NRC) is making available for comment Emergency Preparedness (EP) frequently asked questions (EPFAQs) No. 2012–007, No. 2013–001, No. 2013–002, No. 2013–003, and No. 2013–005. These EPFAQs will be used to provide clarification of guidance documents related to the development and maintenance of EP program elements. The NRC is publishing these preliminary results to inform the public and solicit comments.

DATES: Submit comments by July 5, 2013. Comments submitted after this date will be considered if it is practical to do so, but assurance of consideration cannot be given except for comments received on or 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–2013–0113. Address questions about NRC dockets to Carol Gallagher; telephone: 301–492–3668; email: *Carol.Gallagher@nrc.gov.* For technical questions, contact the individual(s) listed in the **FOR FURTHER INFORMATION CONTACT** section of this document.
- *Mail comments to:* Cindy Bladey, Chief, Rules, Announcements, and Directives Branch (RADB), Office of Administration, Mail Stop: TWB–05–B01M, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001.

For additional direction on accessing information and submitting comments, see ''Accessing Information and Submitting Comments'' in the **SUPPLEMENTARY INFORMATION** section of this document.

FOR FURTHER INFORMATION CONTACT: Carolyn Kahler, Office of Nuclear Security and Incident Response, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001; telephone: 301–415–0705 or by email at: *carolyn.kahler@nrc.gov.*

SUPPLEMENTARY INFORMATION:

I. Accessing Information and Submitting Comments

A. Accessing Information

Please refer to Docket ID NRC–2013–0113 when contacting the NRC about the availability of information regarding this document. You may access information related to this document, which the NRC possesses and is publicly available, by any of the following methods:

- *Federal Rulemaking Web site:* Go to *http://www.regulations.gov* and search for Docket ID NRC–2013–0113.

• *NRC's Agencywide Documents Access and Management System (ADAMS):* You may access publicly available documents online in the NRC Library at *http://www.nrc.gov/reading-rm/adams.html.* To begin the search, select ''*ADAMS Public Documents*'' and then select ''*Begin Web-based ADAMS Search.*'' For problems with ADAMS, please contact the NRC's Public Document Room (PDR) reference staff at 1–800–397–4209, 301–415–4737, or by email to *pdr.resource@nrc.gov.* The ADAMS accession number for each document referenced in this document (if that document is available in ADAMS) is provided the first time that a document is referenced. The draft EPFAQs are available electronically under ADAMS Accession Number ML13141A641, and are available on the NRC's Web site at *http://www.nrc.gov/about-nrc/emerg-preparedness/faq/faq-contactus.html.*

• *NRC's PDR:* You may examine and purchase copies of public documents at the NRC's PDR, Room O1–F21, One White Flint North, 11555 Rockville Pike, Rockville, Maryland 20852.

B. Submitting Comments

Please include Docket ID NRC–2013–0113 in the subject line of your comment submission, in order to ensure that the NRC is able to make your comment submission available to the public in this docket.

The NRC cautions you not to include identifying or contact information in comment submissions that you do not want to be publicly disclosed. The NRC posts all comment submissions at *http://www.regulations.gov* as well as entering the comment submissions into ADAMS, and the NRC does not 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 in their comment submissions that they do not want to be publicly disclosed. Your request should state that the NRC will not 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

The NRC is requesting comment on these draft EPFAQs. This process is intended to describe the manner in which the NRC may provide interested outside parties an opportunity to share their individual views with NRC staff regarding the appropriate response to questions raised on the interpretation or applicability of EP guidance issued or endorsed by the NRC, before the NRC issues an official response to such questions.

Dated at Rockville, Maryland, on May 24, 2013.

For the Nuclear Regulatory Commission.

William Gott,

Acting Deputy Director for Emergency Preparedness, Division of Preparedness and Response, Office of Nuclear Security and Incident Response.

[FR Doc. 2013–13345 Filed 6–4–13; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[NRC–2012–0179]

Relationship Between General Design Criteria and Technical Specification Operability

AGENCY: Nuclear Regulatory Commission.

ACTION: Regulatory issue summary; issuance.

SUMMARY: The U.S. Nuclear Regulatory Commission (NRC) is issuing Regulatory Issue Summary (RIS) 2013–05, ''NRC Position on the Relationship Between General Design Criteria and Technical Specification Operability.'' This RIS clarifies the NRC staff's position on the relationship between the general design criteria (GDC) for nuclear power plants and technical specification operability. In addition, the RIS clarifies the process for addressing any structure, system, or component nonconforming condition with GDC as incorporated into a plant's current licensing basis.

ADDRESSES: Please refer to Docket ID NRC–2012–0179 when contacting the NRC about the availability of information regarding this document. You may access information related to this document, which the NRC possesses and is publicly available, using any of the following methods:

• *Federal Rulemaking Web site:* Go to *http://www.regulations.gov* and search for Docket ID NRC–2012–0179. Address questions about NRC dockets to Carol Gallagher; telephone: 301–492–3668; email: *Carol.Gallagher@nrc.gov.*

• *NRC's Agencywide Documents Access and Management System (ADAMS):* You may access publicly available documents online in the NRC Library at *http://www.nrc.gov/reading-rm/adams.html.* To begin the search, select ''*ADAMS Public Documents*'' and then select ''*Begin Web-based ADAMS Search.*'' For problems with ADAMS, please contact the NRC's Public Document Room (PDR) reference staff at 1–800–397–4209, 301–415–4737, or by email to *pdr.resource@nrc.gov.* The RIS is available electronically in ADAMS under Accession No. ML13056A077 and on the NRC's public Web site at *http://www.nrc.gov/reading-rm/doc-collections/gen-comm/reg-issues/* (select RIS 2013–05).

• *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: Thomas Alexion, Office of Nuclear Reactor Regulation, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001; telephone: 301–415–1326; email: *Thomas.Alexion@nrc.gov.*

SUPPLEMENTARY INFORMATION: The NRC published a notice of opportunity for public comment on this RIS in the **Federal Register** (77 FR 45282) on July 31, 2012. The agency received comments from two commenters.

The staff considered all comments which resulted in some changes to the RIS, and its evaluation of these comments and the resulting changes to the RIS are discussed in a publicly available memorandum which is in ADAMS under Accession No. ML13085A189.

Dated at Rockville, Maryland, this 24th day of May, 2013.

For the Nuclear Regulatory Commission.

Eric E. Bowman,

Acting Chief, Generic Communications Branch, Division of Policy and Rulemaking, Office of Nuclear Reactor Regulation.

[FR Doc. 2013–13352 Filed 6–4–13; 8:45 am]

BILLING CODE 7590–01–P

OVERSEAS PRIVATE INVESTMENT CORPORATION

Sunshine Act; Public Hearing, June 5, 2013; Cancellation

OPIC's Sunshine Act notice of its Public Hearing in Conjunction with each Board meeting was published in the **Federal Register** (Volume 78, Number 95, Pages 28897 and 28898) on May 16, 2013. No requests were received to provide testimony or submit written statements for the record; therefore, OPIC's public hearing scheduled for 2 p.m., June 5, 2013 in conjunction with OPIC's June 13, 2013 Board of Directors meeting has been cancelled.

CONTACT PERSON FOR INFORMATION: Information on the hearing cancellation may be obtained from Connie M. Downs

at (202) 336–8438, or via email at *Connie.Downs@opic.gov.*

Dated: June 1, 2013.

Connie M. Downs,

OPIC Corporate Secretary.

[FR Doc. 2013–13387 Filed 6–3–13; 11:15 am]

BILLING CODE 3210–01–P

POSTAL REGULATORY COMMISSION

[Docket No. CP2011–49; Order No. 1734]

Negotiated Service Agreement

AGENCY: Postal Regulatory Commission.

ACTION: Notice.

SUMMARY: The Commission is noticing a recent Postal Service filing concerning an amendment to Priority Mail Contract 33. This notice informs the public of the filing, invites public comment, and takes other administrative steps.

DATES: *Comments are due:* June 6, 2013.

ADDRESSES: Submit comments electronically via the Commission's Filing Online system at *http://www.prc.gov.* Those who cannot submit comments electronically should contact the person identified in the **FOR FURTHER INFORMATION CONTACT** section by telephone for advice on filing alternatives.

FOR FURTHER INFORMATION CONTACT: Stephen L. Sharfman, General Counsel, at 202–789–6820.

SUPPLEMENTARY INFORMATION:

Table of Contents

I. Introduction
II. Notice of Filing
III. Ordering Paragraphs

I. Introduction

On May 24, 2013, the Postal Service filed notice that it has agreed to an amendment to the existing Priority Mail Contract 33.[1] The Notice included a redacted version of the amendment to Priority Mail Contract 33 (Amendment). On May 28, 2013, the Postal Service filed the certified statement and supporting financial information required by 39 CFR 3015.5(c) relating to the change in prices.[2] For purposes of 39 CFR 3015.5(a), the Commission considers May 28, 2013 (the day the Postal Service submitted all information required under that section), to be the date of filing of the notice. In the future, the Postal Service should file all of its supporting information contemporaneously with its Notice.

The Amendment changes the prices that apply to packages sent under Priority Mail Contract 33 and provides for an annual adjustment of the new prices. Notice, Attachment A. It is scheduled to take effect on the day that the Commission completes its review of the Amendment. Notice at 1.

The Postal Service's Notice contained the Amendment as Attachment A and sought to incorporate by reference the original application for non-public treatment in this docket. *Id.* The Supplement, filed several days later, contained the supporting financial documentation and certified statement required by 39 CFR 3015.5. The certified statement was designated as Attachment B. Supplement, Attachment B.

In the certified statement required under 39 CFR 3015.5, Steven Phelps, Manager, Regulatory Reporting and Cost Analysis, Finance Department, states that the amended prices and terms are consistent with Governors Decision No. 09–6 and 39 U.S.C. 3633(a) *Id.* He concludes that the contract should cover its attributable costs and will not result in the subsidization of competitive products by market dominant products. *Id.*

II. Notice of Filing

Interested persons may submit comments on whether the changes presented in the Postal Service's Notice and Supplement are consistent with the policies of 39 U.S.C. 3632, 3633, or 3642, 39 CFR part 3015, and 39 CFR 3020 subpart B. Comments are due no later than June 6, 2013. The public portions of these filings can be accessed via the Commission's Web site (*http://www.prc.gov*). Information on how to obtain access to non-public material appears at 39 CFR 3007.40.

The Commission appoints Kenneth R. Moeller to represent the interest of the general public (Public Representative) in this case.

III. Ordering Paragraphs

It is ordered:

1. The Commission reopens Docket No. CP2011–49 for consideration of matters raised by the Postal Service's Notice.

2. Pursuant to 39 U.S.C. 505, the Commission designates Kenneth R. Moeller to serve as an officer of the Commission (Public Representative) to represent the interests of the general public in this proceeding.

3. Comments are due no later than June 6, 2013.

4. The Secretary shall arrange for publication of this order in the **Federal Register**.

By the Commission.

Shoshana M. Grove,

Secretary.

[FR Doc. 2013–13213 Filed 6–4–13; 8:45 am]

BILLING CODE 7710–FW–P

[1] Notice of United States Postal Service of Change in Prices Pursuant to Amendment to Priority Mail Contract 33, May 24, 2013 (Notice).

[2] Notice of the United States Postal Service of Filing Supplemental Materials for Amendment to Priority Mail Contract 33, May 28, 2013 (Supplement).

POSTAL REGULATORY COMMISSION

[Docket No. CP2013–23; Order No. 1736]

Negotiated Service Agreement

AGENCY: Postal Regulatory Commission.

ACTION: Notice.

SUMMARY: The Commission is noticing a recent Postal Service filing concerning an amendment to the 2013 China Post Agreement. This notice informs the public of the filing, invites public comment, and takes other administrative steps.

DATES: *Comments are due:* June 7, 2013.

ADDRESSES: Submit comments electronically via the Commission's Filing Online system at *http://www.prc.gov.* Those who cannot submit comments electronically should contact the person identified in the **FOR FURTHER INFORMATION CONTACT** section by telephone for advice on filing alternatives.

FOR FURTHER INFORMATION CONTACT: Stephen L. Sharfman, General Counsel, at 202–789–6820.

SUPPLEMENTARY INFORMATION:

Table of Contents

I. Introduction
II. Notice of Filing
III. Commission Action

I. Introduction

On May 29, 2013, the Postal Service filed notice, pursuant to 39 CFR 3015.5, that it has signed a written modification (Modification) of the 2013 China Post Agreement (Agreement).[1] The Modification pertains to rates for an inbound product the Agreement referred to as ''yet to be launched.'' Notice at 1. Pursuant to the Agreement, prior to launching the anticipated product, the Postal Service and China Post Group were to enter into a written modification of the Agreement, subject to approval

[1] Notice of the United States Postal Service of Filing Modification to the China Post Group–United States Postal Service Multi-Product Bilateral Negotiated Service Agreement, May 29, 2013 (Notice); *see also* Notice of United States Postal Service of Filing Functionally Equivalent Inbound Competitive Multi-Service Agreement with a Foreign Postal Operator, November 30, 2012 (Initial Notice).

from various entities, including the Postal Regulatory Commission. *Id.*

II. Contents of Filing

The Postal Service's filing consists of the Modification and supporting documents addressing compliance with 39 U.S.C. 3633 and 39 CFR 3015.5 (filed under seal); a public Excel file containing redacted versions of financial workpapers filed under seal; the Notice; and two attachments to the Notice. Attachment 1 is a redacted copy of the Modification. Attachment 2 is the certified statement required by 39 CFR 3015.5(c)(2). Notice at 2. With respect to material filed under seal, the Postal Service incorporates by reference two previous Applications for Non-Public Treatment.[2]

The intended duration of the Modification is co-extensive with that of the Agreement. *Id.* Attachment 1.[3]

III. Commission Action

The Commission reopens Docket No. CP2013–23 for consideration of matters raised by the Notice. The Commission invites comments from interested persons on whether the Modification is consistent with the policies of 39 U.S.C. 3632 and 3633 and the requirements of 39 CFR part 3015. Comments are due no later than June 7, 2013. The public portions of this filing can be accessed via the Commission's Web site (*http://www.prc.gov*). Information on how to obtain access to non-public material appears at 39 CFR part 3007.

The Commission appoints James F. Callow to serve as Public Representative in this docket.

It is ordered:

1. The Commission reopens Docket No. CP2013–23 for consideration of matters raised by the Postal Service's Notice.

2. Pursuant to 39 U.S.C. 505, James F. Callow is appointed to serve as an officer of the Commission (Public Representative) to represent the interests of the general public in this proceeding.

3. Comments by interested persons in this proceeding are due no later than June 7, 2013.

4. The Secretary shall arrange for publication of this order in the **Federal Register**.

By the Commission.

Ruth Ann Abrams,

Acting Secretary.

[FR Doc. 2013–13278 Filed 6–4–13; 8:45 am]

BILLING CODE 7710–FW–P

[2] *See* Initial Notice, Attachment 4 and Response to Postal Regulatory Commission Order Nos. 1591 and 1598 Regarding Annex 6 to the China Post Group—United States Postal Service Multi-Product Bilateral Negotiated Service Agreement, Attachment, January 18, 2013.

[3] *See* Initial Notice at 3 (establishing January 1, 2013 as the effective date of the Agreement).

POSTAL REGULATORY COMMISSION

[Docket No. CP2011–50; Order No. 1735]

Negotiated Service Agreement

AGENCY: Postal Regulatory Commission.

ACTION: Notice.

SUMMARY: The Commission is noticing a recent Postal Service filing concerning an amendment to Express Mail Contract 11. This notice informs the public of the filing, invites public comment, and takes other administrative steps.

DATES: *Comments are due:* June 6, 2013.

ADDRESSES: Submit comments electronically via the Commission's Filing Online system at *http://www.prc.gov.* Those who cannot submit comments electronically should contact the person identified in the **FOR FURTHER INFORMATION CONTACT** section by telephone for advice on filing alternatives.

FOR FURTHER INFORMATION CONTACT: Stephen L. Sharfman, General Counsel, at 202–789–6820.

SUPPLEMENTARY INFORMATION:

Table of Contents

I. Introduction
II. Notice of Filing
III. Ordering Paragraphs

I. Introduction

On May 24, 2013, the Postal Service filed notice that it has agreed to an amendment to the existing Express Mail Contract 11.[1] The Notice included a redacted version of the amendment to Express Mail Contract 11 (Amendment). On May 28, 2013, the Postal Service filed the certified statement and supporting financial information required by 39 CFR 3015.5(c) relating to the change in prices.[2] For purposes of 39 CFR 3015.5(a), the Commission considers May 28, 2013 (the day the Postal Service submitted all information required under that section), to be the date of filing of the notice. In the future, the Postal Service should file all of its supporting information contemporaneously with its Notice.

The Amendment changes the prices that apply to packages sent under Express Mail Contract 11 and provides for an annual adjustment of the new prices. Notice, Attachment A. It is scheduled to take effect on the day that the Commission completes its review of the Amendment. Notice at 1.

The Postal Service's Notice contained the Amendment as Attachment A and sought to incorporate by reference the original application for non-public treatment in this docket. *Id.* The Supplement, filed several days later, contained the supporting financial documentation and certified statement required by 39 CFR 3015.5. The certified statement was designated as Attachment B. Supplement, Attachment B.

In the certified statement required under 39 CFR 3015.5, Steven Phelps, Manager, Regulatory Reporting and Cost Analysis, Finance Department, states that the amended prices and terms are consistent with Governors Decision No. 09–14 and 39 U.S.C. 3633(a) *Id.* He concludes that the contract is expected to cover its attributable costs and will not result in the subsidization of competitive products by market dominant products. *Id.*

II. Notice of Filing

Interested persons may submit comments on whether the changes presented in the Postal Service's Notice and Supplement are consistent with the policies of 39 U.S.C. 3632, 3633, or 3642, 39 CFR part 3015, and 39 CFR 3020 subpart B. Comments are due no later than June 6, 2013. The public portions of these filings can be accessed via the Commission's Web site (*http://www.prc.gov*). Information on how to obtain access to non-public material appears at 39 CFR 3007.40.

The Commission appoints Lawrence Fenster to represent the interest of the general public (Public Representative) in this case.

III. Ordering Paragraphs

It is ordered:

1. The Commission reopens Docket No. CP2011–50 for consideration of matters raised by the Postal Service's Notice.

2. Pursuant to 39 U.S.C. 505, the Commission designates Lawrence Fenster to serve as an officer of the Commission (Public Representative) to represent the interests of the general public in this proceeding.

3. Comments are due no later than June 6, 2013.

[1] Notice of United States Postal Service of Change in Prices Pursuant to Amendment to Express Mail Contract 11, May 24, 2013 (Notice).

[2] Notice of the United States Postal Service of Filing Supplemental Materials for Amendment to Express Mail Contract 11, May 28, 2013 (Supplement).

4. The Secretary shall arrange for publication of this order in the **Federal Register**.

By the Commission.

Shoshana M. Grove,

Secretary.

[FR Doc. 2013–13214 Filed 6–4–13; 8:45 am]

BILLING CODE 7710–FW–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–69673; File No. SR–NYSEMKT–2013–42]

Self-Regulatory Organizations; NYSE MKT LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Amending NYSE MKT Rule 980NY, To Remove Provisions Governing How the Complex Matching Engine Handles Electronic Complex Orders That Contain a Stock Leg

May 30, 2013.

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 May 17, 2013, NYSE MKT LLC (the ''Exchange'' or ''NYSE MKT'') filed with the Securities and Exchange Commission (the ''Commission'') the proposed rule change as described in Items I and II below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of the Substance of the Proposed Rule Change

The Exchange proposes to amend NYSE MKT Rule 980NY, to remove provisions governing how the Complex Matching Engine (''CME'') handles Electronic Complex Orders that contain a stock leg. The text of the proposed rule change is available on the Exchange's Web site at *www.nyse.com,* at the principal office of the Exchange, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of those statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant parts of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange is proposing to amend NYSE MKT Rule 980NY to delete provisions governing CME functionality for Electronic Complex Orders[4] containing a stock leg submitted to the Exchange by ATP Holders. Exchange Rule 980NY provides that Electronic Complex Orders that are entered into the NYSE MKT system are routed to the CME for possible execution. Provisions governing the functioning of the CME were originally incorporated in Rule 980NY in 2009.[5] The Rule, amended in 2010,[6] states that the execution of the stock component of a Complex Order must be executed consistent with the rules of the stock execution venue, and sets out the priority ranking used by Exchange systems to execute Stock/Option Orders,[7] Stock/Complex Orders,[8] and the option components of such orders.

The Exchange is proposing to amend Rule 980NY to delete provisions governing how the CME processes Electronic Complex Orders that contain a stock leg. Two types of Electronic Complex Orders, Stock/Option Orders and Stock/Complex Orders, contain a stock leg. Rule 980NY(c)(i) provides that ''the CME will accept an incoming Electronic Complex Order and will automatically execute it against Electronic Complex Orders in the Consolidated Book, or, if not marketable against another Electronic Complex Order, against individual quotes or orders residing in the Consolidated Book,'' subject to specified conditions. The CME, however, rejects Electronic Complex Orders that contain a stock leg. The development and implementation of the technology supporting the CME's capability to accept Electronic Complex Orders that contain a stock leg has taken longer than anticipated to complete and is not yet available. The Exchange is therefore proposing to delete from the Rule those provisions that permit the CME to accept Electronic Complex Orders that contain a stock leg.

The Exchange expects that this CME functionality will not be ready until the Fall of 2013. The Exchange therefore believes it is appropriate to delete from Rule 980NY provisions governing the described functionality until such time as it is ready to be implemented. In addition, the Exchange is proposing the deletion of Commentary .03 to Rule 980NY to conform the Rule's Commentary to the proposed amendments to the Rule. When the CME functionality to support the acceptance of a Stock/Option Order or Stock/Complex Order is ready to be implemented, the Exchange will file a rule proposal to add back the provisions relating to the functionality, amended as necessary to reflect how such functionality would operate.

The use of Stock/Option and Stock/Complex Orders in open outcry trading on the Exchange Floor remains available to ATP Holders and is not impacted by the proposed amendment to Rule 980NY, which only relates to CME's current inability to accept Electronic Complex Orders that contain a stock leg.

[1] 15 U.S.C.78s(b)(1).

[2] 15 U.S.C. 78a.

[3] 17 CFR 240.19b–4.

[4] An ''Electronic Complex Order'' is any Complex Order, as defined in Exchange Rule 900.3NY(e), or Stock/Option Order or Stock/Complex Order, as defined in Rule 900.3NY(h) (*see, infra,* footnotes 6 and 7). Rule 900.3NY(e) defines a Complex Order as any order involving the simultaneous purchase and/or sale of two or more different option series in the same underlying security, for the same account, in a ratio that is equal to or greater than one-to-three (.333) and less than or equal to three-to-one (3.00) and for the purpose of executing a particular investment strategy. Exchange Rule 900.3NY governs Complex Orders, Stock/Option Orders and Stock/Complex Orders on the Exchange and Rule 990NY lists definitions applicable to intermarket linkage.

[5] *See* Securities Exchange Act Release No. 60554 (Aug. 21, 2009), 74 FR 43737 (Aug. 27, 2009) (SR–NYSEAmex-2009–42) (order granting approval).

[6] *See* Securities Exchange Act Release No. 63558 (Dec. 16, 2010), 75 FR 80553 (Dec. 22, 2010) (SR–NYSEAmex-2010–100) (order granting approval).

[7] A Stock/Option Order is defined in Rule 900.3NY(h)(l) as an order to buy or sell a stated number of units of an underlying stock or a security convertible into the underlying stock coupled with the purchase or sale of options contract(s) on the opposite side of the market representing either (A) the same number of units of the underlying stock or convertible security, or (B) the number of units of the underlying stock necessary to create a delta neutral position, but in no case in a ratio greater than eight options contracts per unit of trading of the underlying stock or convertible security established for that series by the Clearing Corporation.

[8] A Stock/Complex Order is defined in Rule 900.3NY(h)(2) as the purchase or sale of a Complex Order coupled with an order to buy or sell a stated number of units of an underlying stock or a security convertible into the underlying stock (''convertible security'') representing either (A) the same number of units of the underlying stock or convertible security as are represented by the options leg of the Complex Order with the least number of options contracts, or (B) the number of units of the underlying stock necessary to create a delta neutral position, but in no case in a ratio greater than eight-to-one (8.00), where the ratio represents the total number of units of the underlying stock or convertible security in the option leg to the total number of units of the underlying stock or convertible security in the stock leg.

2. Statutory Basis

The proposed rule change is consistent with Section 6(b)[9] of the Act, in general, and furthers the objectives of Section 6(b)(5),[10] in particular, in that it is designed to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market and a national market system and, in general, to protect investors and the public interest. Specifically, the Exchange believes that the removal of unavailable functionality will add transparency and clarity to the Exchange's rules. Additionally, the removal would reduce potential confusion that may result from the Exchange's rulebook referring to order execution functionality that is unavailable. Finally, the proposed amendment would not otherwise affect the operation of any other provision of the Rule on Exchange systems, including the availability of Stock/Option and Stock/Complex Orders in open outcry trading referenced above.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change imposes any burden on competition. The proposed change is not designed to address any competitive issue but rather would delete unavailable functionality in the Exchange's rulebook, thereby reducing confusion and making the Exchange's rules easier to understand and navigate.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No written comments were solicited or received with respect to the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The Exchange has filed the proposed rule change pursuant to Section 19(b)(3)(A)(iii) of the Act[11] and Rule 19b–4(f)(6) thereunder.[12] Because the proposed rule change does not: (i) significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; and (iii) become operative prior to 30 days from the date on which it was filed, or such shorter time as the Commission may designate, if consistent with the protection of investors and the public interest, the proposed rule change has become effective pursuant to Section 19(b)(3)(A) of the Act and Rule 19b–4(f)(6)(iii) thereunder.

A proposed rule change filed under Rule 19b–4(f)(6)[13] normally does not become operative prior to 30 days after the date of the filing. However, pursuant to Rule 19b4(f)(6)(iii),[14] the Commission may designate a shorter time if such action is consistent with the protection of investors and the public interest.

The Exchange has asked the Commission to waive the 30-day operative delay so that the proposal may become operative immediately upon filing. The Exchange believes that the waiver of the operative delay is consistent with the protection of investors and the public interest because the change will provide clarity as to what functionality is offered by the Exchange, and because the CME functionality proposed to be removed from the rule set is not actually available, its removal will not have a negative effect on investors. Furthermore, the Exchange notes that the waiver of the 30-day operative period will enable the Exchange's rules to immediately reflect the functionality available on the Exchange. The Commission believes that waiver of the operative delay is consistent with the protection of investors and the public interest. Therefore, the Commission waives the operative delay and designates the proposal operative upon filing.[15]

At any time within 60 days of the filing of such proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov.* Please include File Number SR–NYSEMKT–2013–42 on the subject line.

Paper Comments

- Send paper comments in triplicate to Elizabeth M. Murphy, Secretary, Securities and Exchange Commission, 100 F Street NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–NYSEMKT–2013–42. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for Web site viewing and printing in the Commission's Public Reference Room at 100 F Street NE., Washington, DC 20549–1090 on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of such filing also will be available for inspection and copying at the principal offices of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–NYSEMKT–2013–42, and should be submitted on or before June 26, 2013.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[16]

Kevin M. O'Neill,

Deputy Secretary.

[FR Doc. 2013–13287 Filed 6–4–13; 8:45 am]

BILLING CODE 8011–01–P

[9] 15 U.S.C. 78f(b).

[10] 15 U.S.C. 78f(b)(5).

[11] 15 U.S.C. 78s(b)(3)(A)(iii).

[12] 17 CFR 240.19b–4(f)(6).

[13] *Id.*

[14] 17 CFR 240.19b–4(f)(6)(iii).

[15] For purposes only of waiving the 30-day operative delay, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. *See* 15 U.S.C. 78c(f).

[16] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–69675; File No. SR–CBOE–2013–041)

Self-Regulatory Organizations; Chicago Board Options Exchange, Incorporated; Notice of Filing of Amendment Nos. 1 and 2 and Designation of Longer Period for Commission Action on Proposed Rule Change, as Modified by Amendment Nos. 1 and 2, To Amend Rule 6.53(u)

May 30, 2013.

On March 28, 2013, Chicago Board Options Exchange, Incorporated (''Exchange'' or ''CBOE'') filed with the Securities and Exchange Commission (''Commission''), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'') [1] and Rule 19b–4 thereunder,[2] a proposed rule change to amend CBOE Rule 6.53(u), which governs Qualified Contingent Cross (''QCC'') Orders. The proposed rule change would allow QCC Orders with more than one option leg to be entered in the increments specified for complex orders under CBOE Rule 6.42. The proposed rule change was published for comment in the **Federal Register** on April 16, 2013.[3] The Commission has received no comment letters on the proposal. On April 18, 2013, CBOE filed Amendment No. 1 to the proposed rule change.[4] On May 29, 2013, CBOE filed Amendment No. 2 to the proposed rule change.[5] The Commission is publishing this notice to solicit comments on the proposed rule change, as modified by Amendment Nos. 1 and 2, from interested persons, and to designate a longer period for Commission action on the proposed rule change, as modified by Amendment Nos. 1 and 2.

I. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change, as modified by Amendment Nos. 1 and 2, is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov.* Please include File Number SR–CBOE–2013–041 on the subject line.

Paper Comments

- Send paper comments in triplicate to Elizabeth M. Murphy, Secretary, Securities and Exchange Commission, 100 F Street NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–CBOE–2013–041. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for Web site viewing and printing in the Commission's Public Reference Room, 100 F Street NE., Washington, DC 20549, on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of such filing also will be available for inspection and copying at the principal offices of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–CBOE–2013–041, and should be submitted on or before June 26, 2013.

II. Designation of a Longer Period for Commission Action

Section 19(b)(2) of the Act [6] provides that within 45 days of the publication of notice of the filing of a proposed rule change, or within such longer period up to 90 days as the Commission may designate if it finds such longer period to be appropriate and publishes its reasons for so finding or as to which the self-regulatory organization consents, the Commission shall either approve the proposed rule change, disapprove the proposed rule change, or institute proceedings to determine whether these proposed rule changes should be disapproved. The 45th day for this filing is May 31, 2013.

The Commission is extending the 45-day time period for Commission action on the proposed rule change, as modified by Amendment Nos. 1 and 2. The Commission finds that it is appropriate to designate a longer period within which to take action on the proposed rule change so that it has sufficient time to consider and take action on the Exchange's proposed rule change, as modified by Amendment Nos. 1 and 2.

Accordingly, pursuant to Section 19(b)(2)(A)(ii)(I) of the Act [7] and for the reasons stated above, the Commission designates July 15, 2013, as the date by which the Commission should either approve or disapprove, or institute proceedings to determine whether to disapprove, the proposed rule change,

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* Securities Exchange Act Release No. 69360 (April 10, 2013), 78 FR 22591 (''Notice'').

[4] In Amendment No. 1, CBOE added an additional paragraph at the end of the purpose section stating that: (1) A QCC Order with multiple legs is a form of a complex order and should be able to be entered in $0.01 increments, as non-QCC complex orders can currently be entered in $0.01 increments; and (2) such orders still cannot trade unless they are at or between the NBBO and the opportunity to trade QCC Orders with multiple legs in $0.01 increments provides an opportunity for price improvement at this smaller increment level. The paragraph added in Amendment No. 1 was deleted and replaced by language added in Amendment No. 2. *See* note 5 *infra.* The text of Amendment No. 1 is available on CBOE's Web site (*http://www.cboe.com/AboutCBOE/CBOELegalRegulatoryHome.aspx*), at CBOE's Office of the Secretary, and at the Commission's Public Reference Room.

[5] In Amendment No. 2, CBOE replaced the paragraph added by Amendment No. 1 with two paragraphs at the end of the purpose section stating that: (1) Were it not for language in CBOE Rule 6.53(u) that limits the entry of QCC Orders to the standard increments applicable to simple orders in the options class of each leg, QCC Orders with multiple legs would be allowed to be traded in $0.01 increments under CBOE Rule 6.42; (2) the nature of the pricing of a complex order, whether a QCC Order or otherwise, is such that the pricing is based on the relative price of one option versus another and thus the standard increment of trading of a complex order's individual options legs is less relevant to the pricing of the complex order; (3) the proposed amendment to permit QCC Orders with more than one option leg to be entered in the increments specified for complex orders under CBOE Rule 6.42 (*i.e.,* $0.01 increments) would put the trading of QCC Orders with multiple legs on the same footing as the trading of other types of complex orders; (4) pursuant to CBOE Rule 6.53(u)(ii), each options leg of a complex QCC Order cannot trade unless each leg provides price improvement over a public customer order resting in the electronic book and is at or between the NBBO, and to date, CBOE has never had to reject a submitted complex QCC Order because it would have violated either of these principles; and (5) permitting the trading of QCC Orders with multiple legs in $0.01 increments would provide an opportunity for price improvement at this smaller increment level. The text of Amendment No. 2 is available on CBOE's Web site (*http://www.cboe.com/AboutCBOE/CBOELegalRegulatoryHome.aspx*), at CBOE's Office of the Secretary, and at the Commission's Public Reference Room.

[6] 15 U.S.C. 78s(b)(2).

[7] 15 U.S.C. 78s(b)(2)(A)(ii)(I).

as modified by Amendment Nos. 1 and 2, File Number SR–CBOE–2013–041.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[8]

Kevin M. O'Neill,

Deputy Secretary.

[FR Doc. 2013–13277 Filed 6–4–13; 8:45 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–69674; File No. SR–NYSEArca–2013–54]

Self-Regulatory Organizations; NYSE Arca, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Amending Exchange Rule 6.91 To Remove Provisions Governing How the Complex Matching Engine Handles Electronic Complex Orders That Contain a Stock Leg

May 30, 2013.

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 May 17, 2013, 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 and II below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of the Substance of the Proposed Rule Change

The Exchange proposes to amend Exchange Rule 6.91 to remove provisions governing how the Complex Matching Engine (''CME'') handles Electronic Complex Orders that contain a stock leg. The text of the proposed rule change is available on the Exchange's Web site at *www.nyse.com,* at the principal office of the Exchange, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of those statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant parts of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange is proposing to amend NYSE Arca Rule 6.91 to delete provisions governing CME functionality for Electronic Complex Orders[4] containing a stock leg submitted to the Exchange by OTP Holders. Exchange Rule 6.91(a) provides that Electronic Complex Orders that are entered into the NYSE Arca system are routed to the CME for possible execution. Provisions governing the functioning of the CME were originally incorporated in Rule 6.91 in 2008.[5] The Rule, amended in 2011,[6] states that the execution of the stock component of a Complex Order must be executed consistent with the rules of the stock execution venue, and sets out the priority ranking used by Exchange systems to execute Stock/Option Orders,[7] Stock/Complex Orders,[8] and the option components of such orders.

The Exchange is proposing to amend Rule 6.91 to delete provisions governing how the CME processes Electronic Complex Orders that contain a stock leg. Two types of Electronic Complex Orders, Stock/Option Orders and Stock/Complex Orders, contain a stock leg. Rule 6.91(a)(2)(i) provides that ''the CME will accept an incoming Electronic Complex Order and will automatically execute it against Electronic Complex Orders in the Consolidated Book.'' Rule 6.91(a)(2)(ii) further provides that ''[i]f an Electronic Complex Order in the CME is not marketable against another Electronic Complex Order it will automatically execute against individual orders or quotes residing in the Consolidated Book,'' subject to specified conditions. The CME, however, rejects Electronic Complex Orders that contain a stock leg. The development and implementation of the technology supporting the CME's capability to accept Electronic Complex Orders that contain a stock leg has taken longer than anticipated to complete and is not yet available. The Exchange is therefore proposing to delete from the Rule those provisions that permit the CME to accept Electronic Complex Orders that contain a stock leg.

The Exchange expects that this CME functionality will not be ready until the Fall of 2013. The Exchange therefore believes it is appropriate to delete from Rule 6.91 provisions governing the described functionality until such time as it is ready to be implemented. In addition, the Exchange is proposing the deletion of Commentary .03 to Rule 6.91 to conform the Rule's Commentary to the proposed amendments to the Rule. When the CME functionality to support the acceptance of a Stock/Option Order or Stock/Complex Order is ready to be implemented, the Exchange will file a rule proposal to add back the provisions relating to the functionality, amended as necessary to reflect how such functionality would operate. The use of Stock/Option and Stock/Complex Orders in open outcry trading on the Exchange Floor remains available to OTP Holders and is not impacted by the proposed amendment to Rule 6.91,

[8] 17 CFR 200.30–3(a)(12) and (31).

[1] 15 U.S.C. 78s(b)(1).

[2] 15 U.S.C. 78a.

[3] 17 CFR 240.19b–4.

[4] An ''Electronic Complex Order'' is any Complex Order, as defined in Exchange Options Rule 6.62(e), or Stock/Option Order or Stock/Complex Order, as defined in Rule 6.62(h) (*see, infra,* footnotes 6 and 7). Rule 6.62(e) defines a Complex Order as any order involving the simultaneous purchase and/or sale of two or more different option series in the same underlying security, for the same account, in a ratio that is equal to or greater than one-to-three (.333) and less than or equal to three-to-one (3.00) and for the purpose of executing a particular investment strategy. Exchange Options Rule 6.62 governs Complex Orders, Stock/Option Orders and Stock/Complex Orders on the Exchange and Rule 6.92 lists definitions applicable to intermarket linkage.

[5] *See* Securities Exchange Act Release No. 58174 (July 16, 2008), 73 FR 42640 (July 22, 2008) (SR–NYSEArca–2008–54) (order granting approval).

[6] *See* Securities Exchange Act Release No. 63660 (Jan. 6. 2011), 76 FR 2183 (Jan. 12, 2011) (SR–NYSEArca–2010–124) (notice of filing and immediate effectiveness).

[7] A Stock/Option Order is defined in Rule 6.62(h)(1) as an order to buy or sell a stated number of units of an underlying stock or a security convertible into the underlying stock coupled with the purchase or sale of options contract(s) on the opposite side of the market representing either (A) the same number of units of the underlying stock or convertible security, or (B) the number of units of the underlying stock necessary to create a delta neutral position, but in no case in a ratio greater than eight options contracts per unit of trading of the underlying stock or convertible security established for that series by the Clearing Corporation.

[8] A Stock/Complex Order is defined in Rule 6.62(h)(2) as the purchase or sale of a Complex Order coupled with an order to buy or sell a stated number of units of an underlying stock or a security convertible into the underlying stock (''convertible security'') representing either (A) the same number of units of the underlying stock or convertible security as are represented by the options leg of the Complex Order with the least number of options contracts, or (B) the number of units of the underlying stock necessary to create a delta neutral position, but in no case in a ratio greater than eight-to-one (8.00), where the ratio represents the total number of units of the underlying stock or convertible security in the option leg to the total number of units of the underlying stock or convertible security in the stock leg.

which only relates to CME's current inability to accept Electronic Complex Orders that contain a stock leg.

2. Statutory Basis

The proposed rule change is consistent with Section 6(b) [9] of the Act, in general, and furthers the objectives of Section 6(b)(5),[10] in particular, in that it is designed to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market and a national market system and, in general, to protect investors and the public interest. Specifically, the Exchange believes that the removal of unavailable functionality would add transparency and clarity to the Exchange's rules. Additionally, the removal would reduce potential confusion that may result from the Exchange's rulebook referring to order execution functionality that is unavailable. Finally, the proposed amendment would not otherwise affect the operation of any other provision of the Rule on Exchange Systems, including the availability of Stock/Option and Stock/Complex Orders in open outcry trading referenced above.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change imposes any burden on competition. The proposed change is not designed to address any competitive issue but rather would delete unavailable functionality in the Exchange's rulebook, thereby reducing confusion and making the Exchange's rules easier to understand and navigate.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No written comments were solicited or received with respect to the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The Exchange has filed the proposed rule change pursuant to Section 19(b)(3)(A)(iii) of the Act [11] and Rule 19b–4(f)(6) thereunder.[12] Because the proposed rule change does not: (i) Significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; and (iii) become operative prior to 30 days from the date on which it was filed, or such shorter time as the Commission may designate, if consistent with the protection of investors and the public interest, the proposed rule change has become effective pursuant to Section 19(b)(3)(A) of the Act and Rule 19b–4(f)(6)(iii) thereunder.

A proposed rule change filed under Rule 19b-4(f)(6) [13] normally does not become operative prior to 30 days after the date of the filing. However, pursuant to Rule 19b4(f)(6)(iii),[14] the Commission may designate a shorter time if such action is consistent with the protection of investors and the public interest.

The Exchange has asked the Commission to waive the 30-day operative delay so that the proposal may become operative immediately upon filing. The Exchange believes that the waiver of the operative delay is consistent with the protection of investors and the public interest because the change will provide clarity as to what functionality is offered by the Exchange, and because the CME functionality proposed to be removed from the rule set is not actually available, its removal will not have a negative effect on investors. Furthermore, the Exchange notes that the waiver of the 30-day operative period will enable the Exchange's rules to immediately reflect the functionality available on the Exchange. The Commission believes that waiver of the operative delay is consistent with the protection of investors and the public interest. Therefore, the Commission waives the operative delay and designates the proposal operative upon filing.[15]

At any time within 60 days of the filing of such proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov.* Please include File Number SR–NYSEArca–2013–54 on the subject line.

Paper Comments

- Send paper comments in triplicate to Elizabeth M. Murphy, Secretary, Securities and Exchange Commission, 100 F Street NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–NYSEArca–2013–54. 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 at 100 F Street NE., Washington, DC 20549–1090 on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of such filing also will be available for inspection and copying at the principal offices of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–NYSEArca–2013–54, and should be submitted on or before June 26, 2013.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[16]

Kevin M. O'Neill,

Deputy Secretary.

[FR Doc. 2013–13276 Filed 6–4–13; 8:45 am]

BILLING CODE 8011–01–P

[9] 15 U.S.C. 78f(b).

[10] 15 U.S.C. 78f(b)(5).

[11] 15 U.S.C. 78s(b)(3)(A)(iii).

[12] 17 CFR 240.19b–4(f)(6).

[13] *Id.*

[14] 17 CFR 240.19b–4(f)(6)(iii).

[15] For purposes only of waiving the 30-day operative delay, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. *See* 15 U.S.C. 78c(f).

[16] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–69670; File No. SR–EDGX–2013–18]

Self-Regulatory Organizations; EDGX Exchange, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Relating to Amendments to the EDGX Exchange, Inc. Fee Schedule

May 30, 2013.

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 May 21, 2013, EDGX Exchange, Inc. (the ''Exchange'' or ''EDGX'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I, II and III below, which items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to amend its fees and rebates applicable to Members [3] and non-Members of the Exchange pursuant to EDGX Rule 15.1(a) and (c). All of the changes described herein are applicable to EDGX Members and non-Members. The text of the proposed rule change is available on the Exchange's Internet Web site at *www.directedge.com*, at the Exchange's principal office, and at the Public Reference Room of the Commission.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The self-regulatory organization has prepared summaries, set forth in sections A, B and C below, of the most significant aspects of such statements.

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] As defined in Exchange Rule 1.5(n).

A. Self-Regulatory Organization's Statement of the Purpose of, and the Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange currently maintains logical ports for order entry (FIX, HP–API), drop copies (DROP), and market data (Data) (collectively, ''Direct Logical Ports'').[4] The Exchange currently offers five (5) free Direct Logical Ports and charges $500 for each additional Direct Logical Port. Currently, Members and non-Members may send live or test symbols through their FIX and/or HP–API logical ports. Members and non-Members may choose to send test symbols via their FIX and/or HP–API logical ports in order to test their software developed to take advantage of newly implemented exchange enhancements or to test their own software updates prior to implementation.

In order to provide dedicated testing ports to Members and non-Members to conduct the testing behavior described above, the Exchange proposes to add EdgeRisk Ports (''Test Ports'') to the list of Direct Logical Ports currently offered by the Exchange. Test Ports would provide Members, and non-Member service bureaus that act as conduits for orders entered by Members that are their customers, access to a System [5] test environment through which they can test their automated systems that integrate with the Exchange. Although Members and non-Members currently have the ability to send live and test symbols via FIX and/or HP–API logical ports, Test Ports are dedicated FIX or HP–API ports that would only allow orders for designated test symbols to flow through the production environment, rejecting any live symbols. This would provide Members and non-Members an opportunity to safely test their software developed to take advantage of newly implemented exchange enhancements or to test their own software updates prior to implementation without the risk of accidentally sending live symbols. The Exchange notes that Members and non-Members that choose not to utilize Test Ports will continue to be able to send live and test symbols via their FIX and/or HP–API logical ports.

Accordingly, the Exchange proposes to amend its fee schedule to include Test Ports in the list of the Direct Logical Ports currently offered by the Exchange. The Exchange notes that Test Ports would be included among the five free Direct Logical Ports currently offered by the Exchange to Members and non-Members. In addition, the Exchange notes that it would continue to assess a monthly fee of $500 for every logical port Members and non-Members maintain in excess of the five free Direct Logical Ports.[6]

Lastly, the Exchange proposes to make a ministerial change to the text of its fee schedule by amending the phrases ''DIRECT Logical Ports'' to ''Direct Logical Ports'' and ''DIRECT Sessions'' to ''Direct Sessions.''

The Exchange proposes to implement this proposal on June 3, 2013. The Exchange, pursuant to an information circular, will communicate to Members and non-Members that the Exchange proposed these changes in a filing with the Securities and Exchange Commission.

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with Section 6 of the Act,[7] in general, and furthers the objectives of Section 6(b)(4),[8] in particular, as it is designed to provide for the equitable allocation of reasonable dues, fees and other charges among its Members and other persons using its facilities.

The Exchange believes that the proposed fee structure will provide incentives to Members and non-Members to make efficient use of Test Ports while also providing market participants with the ability to safely test changes to their systems in a production environment. Recent challenges and industry experiences have highlighted the ongoing need for rigorous testing of trading software and infrastructure modifications.[9] In providing Members and non-Members the option to obtain and use Test Ports, the Exchange can assist market participants by providing effective ways

[4] *See* Securities and Exchange Act Release No. 64963 (July 26, 2011), 76 FR 45895 (August 1, 2011) (SR–EDGX–2011–21) (proposing to include logical ports that receive market data among the types of logical ports that the Exchange assesses a monthly fee to Members and non-Members). *See also* Securities and Exchange Act Release No. 67741 (Aug. 28, 2012), 77 FR 53950 (Sept. 4, 2012) (SR–EDGX–2012–36) (proposing to reduce the quantity of free Direct Logical Ports from ten to five).

[5] As defined in Exchange Rule 1.5(cc).

[6] *See* EDGX, EDGX Exchange Fee Schedule, *https://www.directedge.com/Membership/FeeSchedule/EDGXFeeSchedule.aspx.*

[7] 15 U.S.C. 78f.

[8] 15 U.S.C. 78f(b)(4).

[9] *See, e.g.,* Securities Exchange Act Release No. 69077, 78 FR 18084 (March 25, 2013) (File No. S7–01–13) (proposing release for Regulation SCI stressing the importance of industry-wide testing to determine the behavior of automated systems under a variety of simulated conditions as a way to aid error prevention, including through the use of test facilities and test symbols).

for them to verify the completeness and correctness of their trading system modifications before transitioning those changes to their production trading environment.

The Exchange would use the revenue generated from its proposal to fund its administrative and infrastructure costs associated with allowing Members and non-Members to establish logical ports to connect to the Exchange's systems and continue to maintain and improve its infrastructure, market technology and services. The fees generated by the proposed fee amendment would cover the costs associated with responding to customer requests, configuring the Exchange's systems, programming to user specifications, and administering the testing service, among others. The additional revenue would offset the costs of maintaining a robust environment through which market participants can test their software modifications.

The Exchange also notes that assessing charges for Direct Logical Ports in excess of the five free ports, inclusive of the Test Ports, is reasonable because it is consistent with the practices of other exchanges, such as the BATS Exchange, Inc. and the NASDAQ OMX Group, Inc. that charge customers for logical ports.[10] The Exchange further notes that the purchase of Test Ports is optional as Members and Non-Members may continue to send live and test symbols via their FIX and/or HP–API logical ports without purchasing Test Ports.

Lastly, the Exchange believes that its proposal to add Test Ports to the list of Direct Logical Ports offered by the Exchange is non-discriminatory as it applies uniformly to Members and non-Members.

B. Self-Regulatory Organization's Statement on Burden on Competition

The proposed rule change does not impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act. The Exchange does not believe that the proposed amendment to the fee schedule represents a significant departure from previous Exchange fees or such fees offered by the Exchange's competitors.[11]

The Exchange believes that its proposal would increase competition among trading centers as a robust production testing environment enhances the quality of facilities the Exchange provides. Recent market events underscore the important need for rigorous testing of system modifications, and the Exchange has an opportunity to assist its Members and non-Members by providing effective ways for them to verify the completeness of their modifications. Those exchanges that provide an environment that allows market participants to safely test their system modifications help their market participants to reduce errors, thereby improving the overall quality of the exchange compared to those that do not provide similar capabilities.

Additionally, Members and non-Members may opt to disfavor the Exchange's pricing if they believe that alternative venues offer them better value. Accordingly, if the Exchange is charging excessive fees, the Exchange would stand to lose not only connectivity revenues but also revenues associated with the execution of orders routed to it, and, to the extent applicable, market data revenues. The Exchange believes that this competitive dynamic imposes powerful restraints on the ability of any exchange to charge unreasonable fees for connectivity.

The Exchange believes that the proposed rule change would not burden intramarket competition because the purchase of Test Ports is optional and available to all Members and non-Members at rates that apply on a uniform basis.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

The Exchange has not solicited, and does not intend to solicit, comments on this proposed rule change. The Exchange has not received any unsolicited written comments from Members or other interested parties.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change has become effective pursuant to Section 19(b)(3)(A) of the Act [12] and Rule 19b–4(f)(2) [13] thereunder. At any time within 60 days of the filing of such proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

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–2013–18 on the subject line.

Paper Comments

- Send paper comments in triplicate to Elizabeth M. Murphy, Secretary, Securities and Exchange Commission, 100 F Street NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–EDGX–2013–18. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for Web site viewing and printing in the Commission's Public Reference Room, 100 F Street NE., Washington, DC 20549, on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–EDGX–2013–18 and should be submitted on or before June 26, 2013.

[10] *See* BATS Exchange, Inc., BATS BZX Exchange Fee Schedule, *http://batstrading.com/FeeSchedule. See also* NASDAQ OMX Group, Inc., Price List-Trading & Connectivity, *http://www.nasdaqtrader.com/Trader.aspx?id=PriceListTrading2.*

[11] *Id.*

[12] 15 U.S.C. 78s(b)(3)(A).

[13] 17 CFR 240.19b–4(f)(2).

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[14]

Kevin M. O'Neill,

Deputy Secretary.

[FR Doc. 2013–13286 Filed 6–4–13; 8:45 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–69672; File No. SR–Phlx–2013–58]

Self-Regulatory Organizations; NASDAQ OMX PHLX LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Amend Permit Fees and Other Floor Fees

May 30, 2013.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act''),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on May 21, 2013 NASDAQ OMX PHLX LLC (''Phlx'' or ''Exchange'') filed with the Securities and Exchange Commission (''SEC'' or ''Commission'') the proposed rule change as described in Items I, II, and III, below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to amend the Permit Fee and certain Options Trading Floor Fees, including a technical amendment to the Pricing Schedule.

While changes to the Pricing Schedule pursuant to this proposal are effective upon filing, the Exchange has designated the proposed amendment to be operative on June 3, 2013.

The text of the proposed rule change is available on the Exchange's Web site at *http://nasdaqomxphlx.cchwallstreet.com/*, at the principal office of the Exchange, on the Commission's Web site at *http://www.sec.gov*, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and the Statutory Basis for, the Proposed Rule Change

1. Purpose

The purpose of the proposed rule change is to increase the Permit Fee in Section VI, entitled ''Membership Fees'' at Part A entitled ''Permit and Registration Fees'' of the Pricing Schedule to recoup costs associated with the administration of the Exchange's members. The Exchange also proposes to amend Section VII entitled ''Other Member Fees'' at Part A entitled ''Options Trading Floor Fees'' of the Pricing Schedule to eliminate the Trading/Administrative Booths Fee and the Specialist Post Fee and increase the Floor Facility Fees. The Exchange believes that the increases are necessary to keep pace with escalating technology costs, costs of certain floor-related charges due to a rise in occupancy expenses and rising overhead costs associated with maintaining the trading floor.

The Exchange also proposes to make a technical amendment to the Pricing Schedule to eliminate certain unnecessary text in Chapter VI, Part A.

Permit Fee

The Exchange assesses two different Permit Fees based on whether a member or member organization is transacting business on the Exchange. The Exchange assesses members and member organizations that are transacting business on the Exchange a Permit Fee of $2,100 per month. A member or member organization will be assessed the $2,100 monthly Permit Fee if that member or member organization: (1) Transacts its option orders in its assigned Phlx house account in a particular month; or (2) is a clearing member of The Options Clearing Corporation or a Floor Broker; or (3) for those member organizations which are under common ownership, transacts at least one options trade in a Phlx house account that is assigned to one of the member organizations under common ownership.[3] The Exchange assesses members and member organizations that are not transacting business on the Exchange a Permit Fee of $7,500 per month. A member or member organization is assessed the $7,500 Permit Fee for not transacting business on the Exchange if that member is either: (i) not a PSX Only Participant;[4] or (ii) not engaged in an options business at Phlx in a particular month. In addition, a member or member organization that sponsors an options participant[5] would pay an additional Permit Fee for each sponsored options participant.

The Exchange is proposing to increase the $2,100 Permit Fee for members transacting business on the Exchange to $2,150 per month. The Exchange is seeking to recoup costs incurred from the membership administration function. The Exchange is not amending the Permit Fee for members who are not transacting business on the Exchange. The Exchange proposes to make corresponding amendments to Section VI, Part A where the permit fee is referenced.

Other Member Fees

The Exchange proposes to eliminate the Trading/Administrative Booths fee of $300 per month fee paid by floor brokers and clearing firms[6] and the Specialist Post Fee of $3,000 per month paid by Specialist units. The Trading/Administrative Booth space is physical space on the Exchange's trading floor, which space typically is used by floor brokers. The Specialist Post is physical space on the Exchange's trading floor which is used by Specialist units. The Exchange proposes to amend the Floor Facility fee to cover the costs of operating the trading floor.

The Exchange proposes to increase the Floor Facility fee from $300 to $330 per month. Today, the Floor Facility fee is applicable to Registered Options

[14] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] Common ownership means 75% common ownership or control.

[4] Applicants that apply for membership solely to participate in the NASDAQ OMX PSX equities market are not assessed a Permit Fee, Application Fee, Initiation Fee, or Account Fee. *See* Securities Exchange Act Release No. 61863 (April 7, 2010), 75 FR 20021 (April 16, 2010) (SR–Phlx–2010–54).

[5] *See* Exchange Rule 1094 titled Sponsored Participants. A Sponsored Participant may obtain authorized access to the Exchange only if such access is authorized in advance by one or more Sponsoring Member Organizations. Sponsored Participants must enter into and maintain participant agreements with one or more Sponsoring Member Organizations establishing a proper relationship(s) and account(s) through which the Sponsored Participant may trade on the Exchange.

[6] Today, any floor participant may elect to obtain a booth on the Exchange's trading floor.

Traders,[7] individual Specialists [8] and SQTs.[9] The Floor Facility fee was intended to fairly allocate costs attendant to providing members with services necessary to the conduct of business on the floor of the Exchange. The Exchange proposes to assess the proposed increased Floor Facility fee to Clerks,[10] excluding Inactive Nominees,[11] and Floor Brokers in addition to ROTs (including SQTs) and individual Specialists. The Exchange proposes to increase this fee to offset the increased costs of operating a trading floor facility and the elimination of the Trading/Administrative Booths fee and the Specialist Post fee.

Technical Amendment

The Exchange proposes to amend certain unnecessary language in Chapter VI, Section A that was recently added to the Pricing Schedule to provide a temporary waiver of the Application and Initiation Fees for current Remote Streaming Quote Trader Organizations.[12] The Exchange implemented the waiver for the time period from April 24, 2013 to May 13, 2013.[13] At this time, the Exchange proposes to remove this text from the Pricing Schedule as it is unnecessary.

2. Statutory Basis

The Exchange believes that its proposal to amend its Pricing Schedule is consistent with Section 6(b) of the Act [14] in general, and furthers the objectives of Section 6(b)(4) of the Act [15] in particular, in that it provides for an equitable allocation of reasonable fees and other charges among Exchange members and other persons using its facilities.

Permit Fee

The Exchange believes that the proposed increase to the Permit Fee for members transacting business on the Exchange is reasonable because the Exchange is seeking to recoup costs related to membership administration. The proposed fee is in the range of similar fees at other exchanges and less than other fees.[16] In addition, the Exchange believes that the Permit Fee is equitable and not unfairly discriminatory, because unlike other exchanges, Phlx's Permit Fees are the same for every options permit holder that is conducting business at the Exchange. The Exchange also believes that the increased fee is equitable and not unfairly discriminatory because the Permit Fee for not transacting business on the Exchange remains substantially higher as is the case today.

Other Member Fees

The Exchange believes that it is reasonable to eliminate the Trading/Administrative Booths fee and Specialist Post fee because the Exchange believes those fees no longer adequately cover the costs of operating the trading floor. In addition, the Exchange is seeking to encourage members and member organization to utilize and expand use of the space available on its trading floor. The Exchange believes that it is equitable and not unfairly discriminatory to eliminate the Trading/Administrative Booths fee and Specialist Post fee because no market participant would be assessed these fees.

The Exchange believes that increasing the Floor Facility fee is reasonable because the fee offsets the increased costs of operating a trading floor facility. The increases are necessary to keep pace with technology costs, costs of certain floor-related charges due to a rise in occupancy expenses and rising overhead costs associated with maintaining the trading floor. Further, the proposed modifications to the Floor Facility fee, coupled with the elimination of the Trading/Administrative Booths fee and the Specialist Post fee better recoups the costs of operating a trading floor.

The Exchange believes that increasing the Floor Facility Fee is equitable and not unfairly discriminatory because the fee will be applied uniformly to all members and their respective staff, who operate routinely from the floor of the Exchange. The Exchange believes this fee is indicative of the costs attributable to these categories of floor participants and therefore the fee is being equitable assessed and is not unfairly discriminatory.

The Exchange believes that it is equitable and not unfairly discriminatory to assess Clerks the Floor Facility Fee in addition to the other market participants as discussed above. Clerks are registered on-floor personnel that utilize the Exchange's services and are responsible for the rise in technology and other overheard costs. Inactive Nominees are considered a Clerk, but also pay additional fees associated with being an Inactive Nominee [17] and do not routinely utilize

[7] A Registered Options Trader (''ROT'') includes a Streaming Quote Trader (''SQT''), a Remote Streaming Quote Trader (''RSQT'') and a Non-SQT, which by definition is neither a SQT or a RSQT. An ROT is defined in Exchange Rule 1014(b) as a regular member of the Exchange located on the trading floor who has received permission from the Exchange to trade in options for his own account. *See* Exchange Rule 1014(b)(i) and (ii).

[8] A Specialist is an Exchange member who is registered as an options specialist pursuant to Rule 1020(a). Each individual Specialist is assessed this fee and the Specialist unit is assessed the Specialist Post Fee of $3,000 per month. In the instance that an individual Specialist is also an SQT, that member will only pay a $300 Floor Facility Fee per month; that Specialist would not be assessed the fee for each capacity. *See* Securities Exchange Act Release No. 66086 (January 3, 2012), 77 FR 1111 (January 9, 2012).

[9] An SQT is defined in Exchange Rule 1014(b)(ii)(A) as an ROT who has received permission from the Exchange to generate and submit option quotations electronically in options to which such SQT is assigned. If a ROT or SQT also determined to acquire a Trading/Administrative Booth, they would also be assessed that fee as well.

[10] Pursuant to Exchange Rule 1090, the term ''Clerk'' means any registered on-floor person employed by or associated with a member or member organization who is not a member and is not eligible to effect transactions on the Options Floor as a Specialist, ROT, or Floor Broker. For purposes of this Rule, an Inactive Nominee shall be deemed a Clerk. *See* Rule 1090.

[11] Pursuant to Exchange Rule 925, a member organization may designate an individual as an ''Inactive Nominee.'' To be eligible to be an inactive nominee an individual must be approved as eligible to hold a permit in accordance with the Exchange's By-Laws and Rules. An inactive nominee has no rights and privileges of a permit holder until the inactive nominee becomes an effective permit holder and all applicable Exchange fees are paid. *See* Exchange Rule 925. The Inactive Nominee would be assessed the fee for the 6 months during which the Inactive Nominee maintains its status with the Exchange.

[12] *See* Securities Exchange Act Release No. 69500 (May 2, 2013), 78 FR 26841 (May 8, 2013).

[13] *Id.*

[14] 15 U.S.C. 78f(b).

[15] 15 U.S.C. 78f(b)(4).

[16] *See* the Chicago Board Options Exchange, Incorporated's Fees Schedule. Per month a Market Maker Trading Permit is $5,500, a SPX Tier Appointment is $3,000, a VIX Tier Appointment if $2,000, a Floor Broker Trading Permit is $9,000, an Electronic Access Permit is $1,600 and there is no access fee for a CBSX Trading Permit. *See also* the International Securities Exchange LLC's Schedule of Fees. Per month an Electronic Access Member is assessed $500.00 for membership and a market maker is assessed from $2,000 to $4,000 per membership depending on the type of market maker. *See also* C2 Options Exchange, Incorporated's Fees Schedule. Per month, a market-maker is assessed a $5,000 permit fee, an Electronic Access Permit is assessed a $1,000 permit fee and a SPXM Tier appointment is assessed a $4,000 fee after March 31, 2013. *See also* NYSE Arca, Inc.'s Fee Schedule. Per month, a Floor Broker, Office and Clearing Firm are assessed a $1,000 per month fee for the first Options Trading Permit (''OTP'') and $250 thereafter, and a market maker is assessed a $4,000 per month fee for one to four OTPs and $1,000 thereafter.

[17] Inactive Nominees are assessed an Inactive Nominee Fee of $600 for 6 months of eligibility. The member organization is assessed $100 per month for the applicable six month period unless the member organization provides proper notice of its intent to terminate an inactive nominee prior to the first day of the next billing month. An inactive nominee's status expires after six months unless it has been reaffirmed in writing by the member organization or is sooner terminated. A member organization is assessed the Inactive Nominee Fee every time the status is reaffirmed. An inactive nominee is also assessed Application and Initiation Fees when such person applies to be an inactive nominee. Such fees are reassessed if there is a lapse in their inactive nominee status. However, an inactive nominee would not be assessed

the floor in the manner as other Clerks supporting member's day-to-day operations. The Exchange today assesses floor brokers the Trading/Administrative Booths fee, this fee of $300 per month is being eliminated and instead floor brokers would pay the $330 per month proposed Floor Facility fee. While this results in an increased cost of $300 per month for Floor Brokers, the Exchange believes that the fee is equitable and not unfairly discriminatory because as mentioned above, floor brokers utilize the facilities of the Exchange as do Clerks, individuals Specialists and ROTs. In addition, the Exchange anticipates that most floor brokers will experience an overall reduction in costs due to the elimination of the Trading/Administrative Booths fee. The Exchange's proposal to distribute the cost to each of these market participants applies the fee to the recipients who consume the services offered at the Exchange to conduct trading on the floor. The elimination of the Specialist Post fee will result in the elimination of a $3,000 per month charge for Specialist units. The individual Specialists are assessed the Floor Facility fee today and would experience the increase of $30 per month.

Technical Amendment

The Exchange's proposal to remove text in Chapter VI, Section A related to a waiver of the Application and Initiation Fees for current RSQTOs for the time period from April 24, 2013 to May 13, 2013 is reasonable, equitable and not unfairly discriminatory because the rule text is unnecessary and inapplicable to any market participant at this time.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act.

The Exchange is proposing to increase the Permit Fees which are applicable to members and member organizations transacting business on the Exchange. The increase is attributable to a rise in costs at the Exchange and is assessed to those members and member organizations that are currently transacting business on Phlx. The increase narrows the gap between permit holders transacting business on the Exchange and those members that are not transacting business on the Exchange. This fee does not impose an undue burden on competition.

The Exchange's proposal to eliminate the Trading/Administrative Booths Fee because those booths no longer exist does not impose an undue burden on competition because the Exchange would not assess this fee to any market participant. Increasing the Floor Facility Fees and allocating that fee to Clerks and Floor Brokers does not create an undue burden on competition because the Exchange is allocating its costs among those market participants that benefit from the Exchange's services. The Exchange is also eliminating the Trading/Administrative Booths Fee that is borne today by floor brokers and clearing firms.

The Exchange operates in a highly competitive market, comprised of eleven exchanges, in which market participants can easily and readily direct order flow to competing venues if they deem fee levels at a particular venue to be excessive. Accordingly, the fees that are assessed by the Exchange described in the above proposal are influenced by these robust market forces and therefore must remain competitive with fees charged by other venues and therefore must continue to be reasonable and equitably allocated to those members that opt to direct orders to the Exchange rather than competing venues.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No written comments were either solicited or received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change has become effective pursuant to Section 19(b)(3)(A)(ii) of the Act.[18] At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission shall institute proceedings to determine whether the proposed rule should be approved or disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov.* Please include File No. SR–Phlx–2013–58 on the subject line.

Paper Comments

- Send paper comments in triplicate to Elizabeth M. Murphy, Secretary, Securities and Exchange Commission, 100 F Street NE., Washington, DC 20549–1090.

All submissions should refer to File No. SR–Phlx–2013–58. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for Web site viewing and printing in the Commission's Public Reference Room, 100 F Street NE., Washington, DC 20549, on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of such filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File No. SR–Phlx–2013–58 and should be submitted on or before June 26, 2013.

Application and Initiation Fees if such inactive nominee applied for membership without any lapse in that individual's association with a particular member organization. An Inactive Nominee is also assessed the Trading Floor Personnel Registration Fee.

[18] 15 U.S.C. 78s(b)(3)(A)(ii).

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[19]

Kevin M. O'Neill,

Deputy Secretary.

[FR Doc. 2013–13275 Filed 6–4–13; 8:45 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–69666; File No. SR–DTC–2013–04]

Self-Regulatory Organizations; The Depository Trust Company; Notice of Filing of Proposed Rule Change in Connection With the Modifications to Receiver Authorized Delivery and Reclaim Processing Value Limits by Transaction

May 30, 2013.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'')[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on May 17, 2013, The Depository Trust Company (''DTC'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I, II and III below, which Items have been prepared primarily by DTC. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Clearing Agency's Statement of the Terms of Substance of the Proposed Rule Change

The proposed rule change modifies DTC's Rules & Procedures (''Rules''), as described below, with respect to Receiver Authorized Delivery (''RAD'') and reclaim transactions, to: (i) Lower limits against which valued Deliver Orders (''DO'') and Payment Orders (''PO'') will be required to be accepted for receipt (i.e., ''matched'' for settlement), (ii) lower limits for same day reclaim transactions, and (iii) revise the process for RAD matching of stock loans and returns, each as more fully described below.[3]

II. Clearing Agency's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, DTC 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. DTC has prepared summaries, set forth in sections (A), (B), and (C) below, of the most significant aspects of these statements.[4]

(A) Clearing Agency's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

(i) By this filing, DTC seeks to modify the RAD functionality as more fully described below to reduce the intraday uncertainty that may arise from reclaim transactions and any potential credit and liquidity risk from such reclaims.

All valued DOs and POs valued in amounts above $15 million and $1 million, respectively, are subject to the RAD process, which allows receivers to review and reject transactions that they do not recognize prior to processing for delivery. In contrast, lower value DOs and POs do not require the receiver's acceptance prior to processing in accordance with DTC's Rules; instead, such transactions may be returned by the receiver in a reclaim transaction, if the receiver does not recognize the DO or PO. While both the reclaim and RAD functionalities allow receiving DTC participants (''Participants'') to exercise control over which transactions to accept, reclaims tend to create uncertainty because transactions can be returned late in the day, when the original deliverer may have limited options to respond. Because such reclaims are permitted without regard to risk management controls, the Participant that initiated the original delivery versus payment may then incur a greater settlement obligation, increasing credit and liquidity risk to that Participant and to the Corporation.[5]

For these reasons, DTC states that pre-settlement matching through RAD is a preferable approach, without the uncertainty and credit and liquidity implications of reclaims. Under this proposal, DTC will change RAD to require Participants to match all settlement-related transactions valued greater than $7.5 million for valued DOs and $500,000 for POs, prior to processing. Matched transactions will be processed through DTC subject to risk management controls.[6] Concurrently, the value of reclaims that may bypass risk management controls will be reduced to $7.5 million for valued DOs and $500,000 for POs.

DTC is also proposing a further revision to RAD for stock loan and stock loan return transactions. Currently, Participants may set bilateral and global limits for transactions subject to RAD which allow transactions with settlement values that are greater than DTC's default limits, but less than the Participant's defined bilateral and/or global limits, to be passively approved.[7] Any established limits apply to all transactions with the applicable counterparties (on either a bilateral or global basis) for all transaction types subject to RAD. However, stock loan transactions (and stock loan returns) are often different from ordinary buys and sells, because stock loans are often agreed upon on a same-day basis (as opposed to T+3 settlement of purchases and sales). Taking this difference into account, in addition to the revisions described above, the proposed Rule changes will allow receiving Participants to establish bilateral and global RAD limits for stock loans and stock loan returns that are different from other transaction types.[8]

The DTC Settlement Services Guide will be revised to reflect the changes discussed above.

The effective date of the proposed rule change will be announced via a DTC Important Notice.

(ii) Section 17A(b)(3)(F) of the Act requires that the rules of the clearing agency be designed, *inter alia,* to

[19] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] A Deliver Order is a book-entry movement of a particular security between two DTC participants. A Payment Order is a method for settling funds amounts related to transactions and payments not associated with a Deliver Order. The defined term ''DO'' as used in this proposed rule change filing includes all valued Deliver Orders except for Deliver Orders of: (i) Money Market Instruments and (ii) Institutional Deliveries affirmed through Omgeo, both of which are not impacted by the proposed Rule change.

[4] The Commission has modified the text of the summaries prepared by DTC.

[5] DTC's risk management controls, including Collateral Monitor and Net Debit Cap (as defined in DTC Rule 1), are designed so that DTC can effect system-wide settlement notwithstanding the failure to settle of its largest Participant or affiliated family of Participants. Net Debit Cap limits the net debit balance a Participant can incur so that the unpaid settlement obligation of the Participant, if any, cannot exceed DTC liquidity resources. The Collateral Monitor tests that a receiver has adequate collateral to secure the amount of its net debit balance so that DTC may borrow funds to cover that amount for system-wide settlement if the Participant defaults.

[6] Each reclaim of a matched transaction that is attempted will be processed as an original instruction and be subject to risk management controls and receiver approval (the original deliverer) via RAD.

[7] A bilateral limit established by a Participant applies to transactions from a specified deliverer. A global limit established by a Participant is applied to all valued DOs and POs to the Participant not otherwise subject to a bilateral limit. Transactions passively approved under such limits may not be reclaimed.

[8] The use of a stock lending and return profile will be voluntary and, absent a profile, the Participant's transactions will be subject to RAD as applicable to ordinary DOs, including the established DTC limits as well as Participant established bilateral and global limits as described above.

promote the prompt and accurate clearance and settlement of securities transactions. The proposed rule change is designed to promote the prompt and accurate clearance and settlement of securities transactions by increasing the number of deliveries which will be required to be approved by the receiving Participant prior to DTC processing, which will enhance settlement certainty.

(B) Clearing Agency's Statement on Burden on Competition

DTC does not believe that the proposed rule change will have any impact or impose any burden on competition.

(C) Clearing Agency's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

Written comments relating to the proposed rule change have not been solicited or received. DTC will notify the Commission of any written comments received by DTC.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 45 days of the date of publication of this notice in the **Federal Register** or within such longer period up to 90 days (i) as the Commission may designate if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

(A) by order approve or disapprove the proposed rule change or

(B) institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

• Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*) or send an email to *rule-comments@sec.gov*. Please include File Number SR–DTC–2013–04 on the subject line.

Paper Comments

• Send paper comments in triplicate to Elizabeth M. Murphy, Secretary, Securities and Exchange Commission, 100 F Street NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–DTC–2013–04. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for Web site viewing and printing in the Commission's Public Reference Section, 100 F Street NE., Washington, DC 20549, on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of such filings will also be available for inspection and copying at the principal office of DTC and on DTC's Web site at *http://www.dtcc.com/downloads/legal/rule_filings/2013/dtc/SR-DTC-2013-04.pdf.*

All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–DTC–2013–04 and should be submitted on or before June 26, 2013.

For the Commission by the Division of Trading and Markets, pursuant to delegated authority.[9]

Kevin M. O'Neill,

Deputy Secretary.

[FR Doc. 2013–13273 Filed 6–4–13; 8:45 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–69671; File No. SR–Phlx–2013–59]

Self-Regulatory Organizations; NASDAQ OMX PHLX LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Apply a Strategy Fee Cap to Jelly Rolls

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act''),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on May 21, 2013 NASDAQ OMX PHLX LLC (''Phlx'' or ''Exchange'') filed with the Securities and Exchange Commission (''SEC'' or ''Commission'') the proposed rule change as described in Items I, II, and III, below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to adopt a strategy fee cap applicable to jelly rolls.

While changes to the Pricing Schedule pursuant to this proposal are effective upon filing, the Exchange has designated the proposed amendment to be operative on May 22, 2013.

The text of the proposed rule change is available on the Exchange's Web site at *http://nasdaqomxphlx.cchwallstreet.com/*, at the principal office of the Exchange, on the Commission's Web site at *http://www.sec.gov*, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and the Statutory Basis for, the Proposed Rule Change

1. Purpose

The purpose of this filing is to amend the strategy fee caps which are currently located in Section II, entitled ''Multiply Listed Options''[3] Today, the Exchange caps certain dividend, merger, short stock interest and reversal and conversion floor option transactions. The Exchange is proposing to also cap jelly roll strategies.

A jelly roll strategy is defined as transactions created by entering into two separate positions simultaneously. One position involves buying a put and

[9] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] This includes options overlying equities, ETFs, ETNs and indexes which are Multiply Listed.

selling a call with the same strike price and expiration. The second position involves selling a put and buying a call, with the same strike price, but with a different expiration from the first position. The Exchange proposes to include this definition in Section II of the Pricing Strategy in the section entitled ''Strategies Defined.''

The Exchange proposes to offer a strategy cap for jelly rolls. Today, Specialist,[4] Market Maker,[5] Professional,[6] Firm [7] and Broker-Dealer [8] floor option transaction charges in Multiply Listed Options are capped at $1,250 for dividend, merger and short stock interest strategies executed on the same trading day in the same options class when such members are trading in their own proprietary accounts, and option transaction charges in Multiply Listed Options are capped at $700 for reversal and conversion strategies executed on the same trading day in the same options class. Floor option transaction charges in Multiply Listed Options for dividend, merger, short stock interest and reversal and conversion strategies combined are further capped at $35,000 per member organization, per month when such members are trading in their own proprietary accounts (''Monthly Strategy Cap''). Reversal and conversion strategy executions are not included in the Monthly Strategy Cap for a Firm. Further, to qualify for a strategy fee cap, the buy and sell side of a transaction must originate from the Exchange floor.

The Exchange proposes to cap Specialist, Market Maker, Professional, Firm and Broker-Dealer floor option transaction charges in Multiply Listed Options at $700 for jelly roll strategies executed on the same trading day in the same options class. Further, the Exchange will include jelly rolls in the Monthly Strategy Cap so that floor option transaction charges in Multiply Listed Options for dividend, merger, short stock interest, reversal and conversion *and jelly roll* strategies combined will continue to be capped at $35,000 per member organization, per month when such members are trading in their own proprietary accounts for purposes of the Monthly Strategy Cap, except for a Firm. Similar to reversal and conversion strategy executions, jelly rolls will not be included in the Monthly Strategy Cap for a Firm. The Exchange proposes to note for purposes of clarity in the Pricing Schedule that, as is the case today for reversal and conversion strategy executions, jelly rolls are included in the Monthly Firm Fee Cap.[9] The Exchange proposes to amend the text of the Pricing Schedule describing the applicability of the Monthly Market Maker Cap [10] and the Monthly Firm Fee Cap to clarify how jelly roll strategies will be included or excluded from these caps as defined herein. For purposes of clarity, the Exchange proposes to note in the Pricing Schedule that all strategy executions are excluded from the Monthly Market Maker Cap.

In order to receive the applicable strategy caps today, members are required to designate on the trade ticket whether the trade involves a dividend, merger, short stock interest, or reversal and conversion strategy by entering the proper code on the trading ticket [11] and into the system, or directly into the Floor Broker Management System [12] (''FBMS'').[13] In the alternative, members may request Exchange staff on the trading floor input the code into the system.[14] The Exchange will require members to designate a ''Z4'' on the trading ticket in order to receive the strategy cap for a jelly roll strategy, similar to the manner in which reversal and conversion strategies are designated today. The Exchange will note the required designation in a memorandum to floor members when it announces the availability of the strategy cap for jelly rolls.

2. Statutory Basis

The Exchange believes that its proposal to amend its Pricing Schedule is consistent with Section 6(b) of the Act [15] in general, and furthers the objectives of Section 6(b)(4) of the Act,[16] in particular, in that it is an equitable allocation of reasonable fees and other charges among Exchange members.

The Exchange believes that adopting a strategy cap for jelly rolls is reasonable because it should encourage members and member organizations to transact a greater number of jelly roll strategies on the Exchange's trading floor in order that they may benefit from the fee cap. The Exchange also believes that it is reasonable to permit jelly roll strategy executions to count toward the Monthly Strategy Cap when members are trading in their own proprietary account to receive the benefit of the combined executions, which will include the ability to achieve the Monthly Strategy Cap by transacting jelly rolls as well as

[4] A ''Specialist'' is an Exchange member who is registered as an options specialist pursuant to Rule 1020(a).

[5] A ''market maker'' includes Registered Options Traders (Rule 1014(b)(i) and (ii)), which includes Streaming Quote Traders (*see* Rule 1014(b)(ii)(A)) and Remote Streaming Quote Traders (*see* Rule 1014(b)(ii)(B)). Directed Participants are also market makers.

[6] The term ''Professional'' means any person or entity that (i) is not a broker or dealer in securities, and (ii) places more than 390 orders in listed options per day on average during a calendar month for its own beneficial account(s). *See* Rule 1000(b)(14).

[7] The term ''Firm'' applies to any transaction that is identified by a member or member organization for clearing in the Firm range at OCC.

[8] The term ''Broker-Dealer'' applies to any transaction which is not subject to any of the other transaction fees applicable within a particular category.

[9] Firms are subject to a maximum fee of $75,000 (''Monthly Firm Fee Cap''). Firm Floor Option Transaction Charges and QCC Transaction Fees, as defined in this section above, in the aggregate, for one billing month may not exceed the Monthly Firm Fee Cap per member organization when such members are trading in their own proprietary account. All dividend, merger, and short stock interest strategy executions (as defined in this Section II) are excluded from the Monthly Firm Fee Cap. Reversal and conversion strategy executions (as defined in this Section II) are included in the Monthly Firm Fee Cap. QCC Transaction Fees are included in the calculation of the Monthly Firm Fee Cap.

[10] Specialists and Market Makers are subject to a ''Monthly Market Maker Cap'' of $550,000 for: (i) Electronic and floor Option Transaction Charges; (ii) QCC Transaction Fees (as defined in Exchange Rule 1080(o) and Floor QCC Orders, as defined in 1064(e)); and (iii) fees related to an order or quote that is contra to a PIXL Order or specifically responding to a PIXL auction. The trading activity of separate Specialist and Market Maker member organizations is aggregated in calculating the Monthly Market Maker Cap if there is Common Ownership between the member organizations. All dividend, merger, short stock interest and reversal and conversion strategy executions (as defined in this Section II) are excluded from the Monthly Market Maker Cap.

[11] The Exchange has designated ''Z1'' for dividend strategies, ''Z2'' for merger strategies, ''Z3'' for short stock interest strategies and ''Z4'' for reversal and conversion strategies.

[12] FBMS is designed to enable Floor Brokers and/or their employees to enter, route and report transactions stemming from options orders received on the Exchange. FBMS also is designed to establish an electronic audit trail for options orders represented and executed by Floor Brokers on the Exchange, such that the audit trail provides an accurate, time-sequenced record of electronic and other orders, quotations and transactions on the Exchange, beginning with the receipt of an order by the Exchange, and further documenting the life of the order through the process of execution, partial execution, or cancellation of that order. *See* Exchange Rule 1080, Commentary .06.

[13] *See* Securities Exchange Act Release No. 65228 (August 30, 2011), 76 FR 55453 (September 7, 2011) (SR–Phlx–2012–73) (notice of filing and immediate effectiveness of proposed rule change relating to reversal and conversion strategies).

[14] The system refers to PHLX XL®, the Exchange's automated trading system. The Exchange believes that providing members the ability to request Exchange staff to mark a Strategy Trade on the day the strategy is executed would provide members with a means to ensure the Strategy Trade is properly marked for purposes of pricing in the event that a floor broker inadvertently forgot to mark a trade. Therefore, the Exchange requires that members executing Strategy Trades either: (1) Enter a code on the trading ticket and into the system; (2) enter a code directly into FBMS; or (3) request that the information be inputted into the system by Exchange staff on the trading floor, on the day the order was executed, to take advantage of certain pricing caps for which they may qualify.

[15] 15 U.S.C. 78f(b).

[16] 15 U.S.C. 78f(b)(4).

dividend, merger, short stock interest and reversal and conversion strategies. In addition, other options exchanges offer fee caps for jelly rolls, namely NYSE Arca, Inc. (''NYSE Arca''),[17] NYSE Amex, Inc. (''NYSE Amex'') [18] and the Chicago Board Options Exchange, Incorporated (''CBOE'') [19] for strategies.

The Exchange believes that adopting a strategy cap for jelly rolls is equitable and not unfairly discriminatory because all market participants that are assessed transaction fees will have an opportunity to cap floor option transaction charges in Multiply Listed Options with respect to jelly rolls. In addition, the Exchange believes that it is equitable and not unfairly discriminatory to continue to require that all fee cap strategies, including jelly rolls, which combine executions for purposes of the Monthly Strategy Cap, must be traded in a member's own proprietary account. The Exchange is not amending the calculation of the Monthly Strategy Cap which will continue to impose the same requirements on members for all strategies to qualify for the Monthly Strategy Caps.

The Exchange's proposal to exclude Firm floor options transaction charges related to reversal and conversion strategies, and now jelly rolls, from the Monthly Strategy Cap is reasonable because these fees would be capped as part of the Monthly Firm Fee Cap, which applies only to Firms. The Exchange believes that the exclusion of Firm floor options transaction charges related to reversal and conversion strategies and now jelly rolls from the Monthly Strategy Cap is equitable and not unfairly discriminatory because Firms, unlike other market participants, have the ability to cap transaction fees up to $75,000 per month with the Monthly Firm Fee Cap. The Exchange would include floor option transaction charges related to jelly roll strategies in the Monthly Strategy Cap for Professionals, and Broker Dealers, when such members are trading in their own proprietary accounts, because these market participants are not subject to the Monthly Firm Fee Cap or other similar cap. While Specialists and Market Makers are subject to a Monthly Market Maker Cap on both electronic and floor options transaction charges, jelly rolls would be excluded from the Monthly Market Maker Cap, as all other strategy transactions are excluded from this cap.[20] For the reasons described above, the Exchange believes including jelly roll strategies in the Monthly Firm Fee Cap is reasonable, equitable and not unfairly discriminatory because the cap provides an incentive for Firms to transact floor transactions on the Exchange, which brings increased liquidity and order flow to the floor for the benefit of all market participants.[21]

The Exchange believes that its proposal to apply jelly roll strategy fee caps to orders originating from the Exchange floor is reasonable because members pay floor brokers to execute trades on the Exchange floor. The Exchange believes that offering fee caps to members executing floor transactions defrays brokerage costs associated with executing strategy transactions and continues to incentivize members to utilize the floor for certain executions.[22] The Exchange believes that its proposal to apply jelly roll strategy fee caps to orders originating from the Exchange floor is equitable and not unfairly discriminatory because today all other strategy fee caps are only applicable for floor transactions. The Exchange believes that a requirement that both the buy and sell sides of the order originate from the floor to qualify for the fee cap constitutes equal treatment of members.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act because the proposed changes apply uniformly to all members that incur transaction charges for jelly rolls.[23] Further, other options exchanges today offer fee caps on jelly roll strategies; therefore, the Exchange believes the proposal is consistent with robust competition and does not provide any unnecessary burden on competition. Further, floor members pay floor brokers to execute trades on the Exchange floor. The Exchange believes that offering fee caps on jelly rolls to members executing floor transactions and not electronic executions does not create an unnecessary burden on competition because the fee cap defrays brokerage costs associated with executing jelly roll strategy transactions, similar to other strategies today. Also, requiring that both the buy and sell sides of the order originate from the floor to qualify for the fee cap constitutes equal treatment of members.

The Exchange operates in a highly competitive market, comprised of eleven exchanges, in which market participants can easily and readily direct order flow to competing venues if they deem fee levels at a particular venue to be excessive or rebates to be inadequate. Accordingly, the fee caps that are proposed by the Exchange, as described in the proposal, are influenced by these robust market forces and therefore must remain competitive with fees caps at other venues and therefore must continue to be reasonable and equitably allocated to those members that opt to direct orders to the Exchange rather than competing venues.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No written comments were either solicited or received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change has become effective pursuant to Section 19(b)(3)(A)(ii) of the Act.[24] At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission shall institute proceedings to determine

[17] NYSE Arca offer a $750 cap on transaction fees for Strategy Executions involving (a) reversals and conversions, (b) box spreads, (c) short stock interest spreads, (d) merger spreads, and (e) jelly rolls. The cap applies to each Strategy Execution executed in standard option contracts on the same trading day in the same option class. *See* NYSE Arca General Options and Trading Permit (OTP) Fees.

[18] NYSE Amex offers a $750 cap on transaction fees for Strategy Executions involving (a) reversals and conversions, (b) box spreads, (c) short stock interest spreads, (d) merger spreads, and (e) jelly rolls. The cap applies to all Strategy Executions executed in standard option contracts on the same trading day in the same option class. *See* NYSE Amex Options Fee Schedule.

[19] Market-maker, broker-dealer and non-Trading Permit Holder market-maker transaction fees are capped at $1,000 for all reversals, conversions and jelly roll strategies executed on the same trading day in the same option class, excluding any option class on which the Exchange charges the Index License surcharge fee. *See* CBOE's Fees Schedule.

[20] The reversal and conversion strategy executions are excluded from the Monthly Market Maker Cap. *See* Section II of the Pricing Schedule.

[21] Firms are eligible to cap floor options transactions charges and QCC Transaction Fees as part of the Monthly Firm Fee Cap. QCC Transaction Fees apply to QCC Orders as defined in Exchange Rule 1080(o) and Floor QCC Orders as defined in 1064(e). *See* Section II of the Pricing Schedule.

[22] The Exchange's proposal would only apply the fee cap to options transaction charges where buy and sell sides originate from the Exchange floor. *See* proposed rule text in Section II of the Pricing Schedule.

[23] Customers are not assessed options transaction charges in Section II of the Pricing Schedule.

[24] 15 U.S.C. 78s(b)(3)(A)(ii).

whether the proposed rule should be approved or disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov.* Please include File No. SR–Phlx–2013–59 on the subject line.

Paper Comments

- Send paper comments in triplicate to Elizabeth M. Murphy, Secretary, Securities and Exchange Commission, 100 F Street NE., Washington, DC 20549–1090.

All submissions should refer to File No. SR–Phlx–2013–59. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for Web site viewing and printing in the Commission's Public Reference Room, 100 F Street NE., Washington, DC 20549, on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of such filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File No. SR–Phlx–2013–59 and should be submitted on or before June 26, 2013.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[25]

Kevin M. O'Neill,

Deputy Secretary.

[FR Doc. 2013–13274 Filed 6–4–13; 8:45 am]

BILLING CODE 8011–01–P

[25] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–69669; File No. SR–EDGA–2013–14]

Self-Regulatory Organizations; EDGA Exchange, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Relating to Amendments to the EDGA Exchange, Inc. Fee Schedule

May 30, 2013.

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 May 21, 2013, EDGA Exchange, Inc. (the ''Exchange'' or ''EDGA'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I, II and III below, which items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to amend its fees and rebates applicable to Members [3] and non-Members of the Exchange pursuant to EDGA Rule 15.1(a) and (c). All of the changes described herein are applicable to EDGA Members and non-Members. The text of the proposed rule change is available on the Exchange's Internet Web site at *www.directedge.com,* at the Exchange's principal office, and at the Public Reference Room of the Commission.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The self-regulatory organization has prepared summaries, set forth in sections A, B and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and the Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange currently maintains logical ports for order entry (FIX, HP–API), drop copies (DROP), and market data (Data) (collectively, ''Direct Logical Ports'').[4] The Exchange currently offers five (5) free Direct Logical Ports and charges $500 for each additional Direct Logical Port. Currently, Members and non-Members may send live or test symbols through their FIX and/or HP–API logical ports. Members and non-Members may choose to send test symbols via their FIX and/or HP–API logical ports in order to test their software developed to take advantage of newly implemented exchange enhancements or to test their own software updates prior to implementation.

In order to provide dedicated testing ports to Members and non-Members to conduct the testing behavior described above, the Exchange proposes to add EdgeRisk Ports (''Test Ports'') to the list of Direct Logical Ports currently offered by the Exchange. Test Ports would provide Members, and non-Member service bureaus that act as conduits for orders entered by Members that are their customers, access to a System [5] test environment through which they can test their automated systems that integrate with the Exchange. Although Members and non-Members currently have the ability to send live and test symbols via FIX and/or HP–API logical ports, Test Ports are dedicated FIX or HP–API ports that would only allow orders for designated test symbols to flow through the production environment, rejecting any live symbols. This would provide Members and non-Members an opportunity to safely test their software developed to take advantage of newly implemented exchange enhancements or to test their own software updates prior to

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] As defined in Exchange Rule 1.5(n).

[4] *See* Securities and Exchange Act Release No. 64964 (July 26, 2011), 76 FR 45898 (August 1, 2011) (SR–EDGA–2011–22) (proposing to include logical ports that receive market data among the types of logical ports that the Exchange assesses a monthly fee to Members and non-Members). *See also* Securities and Exchange Act Release No. 67742 (Aug. 28, 2012), 77 FR 53951 (Sept. 4, 2012) (SR–EDGA–2012–37) (proposing to reduce the quantity of free Direct Logical Ports from ten to five).

[5] As defined in Exchange Rule 1.5(cc).

implementation without the risk of accidentally sending live symbols. The Exchange notes that Members and non-Members that choose not to utilize Test Ports will continue to be able to send live and test symbols via their FIX and/or HP–API logical ports.

Accordingly, the Exchange proposes to amend its fee schedule to include Test Ports in the list of the Direct Logical Ports currently offered by the Exchange. The Exchange notes that Test Ports would be included among the five free Direct Logical Ports currently offered by the Exchange to Members and non-Members. In addition, the Exchange notes that it would continue to assess a monthly fee of $500 for every logical port Members and non-Members maintain in excess of the five free Direct Logical Ports.[6]

Lastly, the Exchange proposes to make a ministerial change to the text of its fee schedule by amending the phrases ''DIRECT Logical Ports'' to ''Direct Logical Ports'' and ''DIRECT Sessions'' to ''Direct Sessions.''

The Exchange proposes to implement this proposal on June 3, 2013. The Exchange, pursuant to an information circular, will communicate to Members and non-Members that the Exchange proposed these changes in a filing with the Securities and Exchange Commission.

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with Section 6 of the Act,[7] in general, and furthers the objectives of Section 6(b)(4),[8] in particular, as it is designed to provide for the equitable allocation of reasonable dues, fees and other charges among its Members and other persons using its facilities.

The Exchange believes that the proposed fee structure will provide incentives to Members and non-Members to make efficient use of Test Ports while also providing market participants with the ability to safely test changes to their systems in a production environment. Recent challenges and industry experiences have highlighted the ongoing need for rigorous testing of trading software and infrastructure modifications.[9] In providing Members and non-Members the option to obtain and use Test Ports, the Exchange can assist market participants by providing effective ways for them to verify the completeness and correctness of their trading system modifications before transitioning those changes to their production trading environment.

The Exchange would use the revenue generated from its proposal to fund its administrative and infrastructure costs associated with allowing Members and non-Members to establish logical ports to connect to the Exchange's systems and continue to maintain and improve its infrastructure, market technology and services. The fees generated by the proposed fee amendment would cover the costs associated with responding to customer requests, configuring the Exchange's systems, programming to user specifications, and administering the testing service, among others. The additional revenue would offset the costs of maintaining a robust environment through which market participants can test their software modifications.

The Exchange also notes that assessing charges for Direct Logical Ports in excess of the five free ports, inclusive of the Test Ports, is reasonable because it is consistent with the practices of other exchanges, such as the BATS Exchange, Inc. and the NASDAQ OMX Group, Inc. that charge customers for logical ports.[10] The Exchange further notes that the purchase of Test Ports is optional as Members and Non-Members may continue to send live and test symbols via their FIX and/or HP–API logical ports without purchasing Test Ports.

Lastly, the Exchange believes that its proposal to add Test Ports to the list of Direct Logical Ports offered by the Exchange is non-discriminatory as it applies uniformly to Members and non-Members.

B. Self-Regulatory Organization's Statement on Burden on Competition

The proposed rule change does not impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act. The Exchange does not believe that the proposed amendment to the fee schedule represents a significant departure from previous Exchange fees or such fees offered by the Exchange's competitors.[11]

The Exchange believes that its proposal would increase competition among trading centers as a robust production testing environment enhances the quality of facilities the Exchange provides. Recent market events underscore the important need for rigorous testing of system modifications, and the Exchange has an opportunity to assist its Members and non-Members by providing effective ways for them to verify the completeness of their modifications. Those exchanges that provide an environment that allows market participants to safely test their system modifications help their market participants to reduce errors, thereby improving the overall quality of the exchange compared to those that do not provide similar capabilities.

Additionally, Members and non-Members may opt to disfavor the Exchange's pricing if they believe that alternative venues offer them better value. Accordingly, if the Exchange is charging excessive fees, the Exchange would stand to lose not only connectivity revenues but also revenues associated with the execution of orders routed to it, and, to the extent applicable, market data revenues. The Exchange believes that this competitive dynamic imposes powerful restraints on the ability of any exchange to charge unreasonable fees for connectivity.

The Exchange believes that the proposed rule change would not burden intramarket competition because the purchase of Test Ports is optional and available to all Members and non-Members at rates that apply on a uniform basis.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

The Exchange has not solicited, and does not intend to solicit, comments on this proposed rule change. The Exchange has not received any unsolicited written comments from Members or other interested parties.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change has become effective pursuant to Section 19(b)(3)(A) of the Act[12] and Rule 19b–4(f)(2)[13] thereunder. At any time within 60 days of the filing of such proposed rule

[6] *See* EDGA, EDGA Exchange Fee Schedule, *https://www.directedge.com/Membership/FeeSchedule/EDGAFeeSchedule.aspx.*

[7] 15 U.S.C. 78f.

[8] 15 U.S.C. 78f(b)(4).

[9] *See, e.g.,* Securities Exchange Act Release No. 69077, 78 FR 18084 (March 25, 2013) (File No. S7–01–13) (proposing release for Regulation SCI stressing the importance of industry-wide testing to determine the behavior of automated systems under a variety of simulated conditions as a way to aid error prevention, including through the use of test facilities and test symbols).

[10] *See* BATS Exchange, Inc., BATS BZX Exchange Fee Schedule, *http://batstrading.com/FeeSchedule. See also* NASDAQ OMX Group, Inc., Price List-Trading & Connectivity, *http://www.nasdaqtrader.com/Trader.aspx?id=PriceListTrading2.*

[11] *Id.*

[12] 15 U.S.C. 78s(b)(3)(A).

[13] 17 CFR 240.19b–4(f)(2).

change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml);* or
- Send an email to *rule-comments@sec.gov*. Please include File Number SR–EDGA–2013–14 on the subject line.

Paper Comments

- Send paper comments in triplicate to Elizabeth M. Murphy, Secretary, Securities and Exchange Commission, 100 F Street NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–EDGA–2013–14. 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–2013–14 and should be submitted on or before June 26, 2013.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[14]

Kevin M. O'Neill,

Deputy Secretary.

[FR Doc. 2013–13285 Filed 6–4–13; 8:45 am]

BILLING CODE 8011–01–P

[14] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[File No. 500–1]

Order of Suspension of Trading

June 3, 2013.

3CI Complete Compliance Corp.
AHPC Holdings, Inc.
American Utilicraft Corp.
Austin Farms Inc.
BancPro, Inc.
Baxley Federal Savings Bank
CBR Brewing Co., Inc.
Centerpoint Bank (Bedford, NH)
China Renyuan International, Inc.
Compass Plastics & Technologies, Inc.
Devonshire Consolidated, Inc.
Edge Business Services Corp.
Egghead.com, Inc.
Environmental Corp. of America
Environmental Fiber Technologies, Inc.
Extreme Motorsports of California, Inc.
Fidelity First Financial Corp.
Fortune Market Media, Inc.
Franklin Ophthalmic Instruments Co., Inc.
Futurebiotics, Inc.
Geneva Financial Corp.
Globalnet Systems Ltd.
Icy Splash Food & Beverage, Inc.
Imaging Center Inc. (The)
InAmerica, Inc.
IndieMV Media Group, Inc.
Integrated Bio Energy Resources, Inc.
Interactive Brand Development, Inc.
ISI Technology Corp.
Isomet Corp.
Matinee Media Corp.
MediaBay, Inc.
Metricom, Inc.
Midnight Holdings Group, Inc.
Municipal Insurance Co. of America
Myriad Entertainment & Resorts, Inc.
Oxford Capital Corp.
PanAmerican BanCorp
Pennsylvania Warehousing & Safe Deposit Co.
Pipejoin Technologies, Inc.
Pogo! Products, Ltd.
PopMail.com, Inc.
Premium Energy Corp.
Relax Investments, Ltd.
Riptide Worldwide, Inc.
Rocket City Enterprises, Inc.
Rocketinfo, Inc.
Ronco Corp.
Silver Star Energy, Inc.
Sound Health Solutions, Inc.
Sovereign Exploration Associates International, Inc.
Sports Concepts, Inc.
Sports Media, Inc.
TMT Capital Corp.
UniMark Group, Inc. (The)
Verdant Brands, Inc.
Viking Power Services, Inc.
Vinings Investment Properties Trust
Washington Life Insurance Co. of America
Wi-Tron, Inc.
Zone Mining Ltd.

It appears to the Securities and Exchange Commission that there is a lack of current and accurate information concerning the securities of 3CI Complete Compliance Corp. because questions have arisen as to its operating status, if any. 3CI Complete Compliance Corp. is quoted on OTC Link operated by OTC Markets Group, Inc. under the ticker symbol ''TCCC.''

It appears to the Securities and Exchange Commission that there is a lack of current and accurate information concerning the securities of AHPC Holdings, Inc. because questions have arisen as to its operating status, if any. AHPC Holdings, Inc. is quoted on OTC Link operated by OTC Markets Group, Inc. under the ticker symbol ''GLOV.''

It appears to the Securities and Exchange Commission that there is a lack of current and accurate information concerning the securities of American Utilicraft Corp. because questions have arisen as to its operating status, if any. American Utilicraft Corp. is quoted on OTC Link operated by OTC Markets Group, Inc. under the ticker symbol ''AMUC.''

It appears to the Securities and Exchange Commission that there is a lack of current and accurate information concerning the securities of Austin Farms Inc. because questions have arisen as to its operating status, if any. Austin Farms Inc. is quoted on OTC Link operated by OTC Markets Group, Inc. under the ticker symbol ''AUFR.''

It appears to the Securities and Exchange Commission that there is a lack of current and accurate information concerning the securities of BancPro, Inc. because questions have arisen as to its operating status, if any. BancPro, Inc. is quoted on OTC Link operated by OTC Markets Group, Inc. under the ticker symbol ''BCPO.''

It appears to the Securities and Exchange Commission that there is a lack of current and accurate information concerning the securities of Baxley Federal Savings Bank because questions have arisen as to its operating status, if any. Baxley Federal Savings Bank is quoted on OTC Link operated by OTC Markets Group, Inc. under the ticker symbol ''BAXF.''

It appears to the Securities and Exchange Commission that there is a lack of current and accurate information

concerning the securities of CBR Brewing Co., Inc. because questions have arisen as to its operating status, if any. CBR Brewing Co., Inc. is quoted on OTC Link operated by OTC Markets Group, Inc. under the ticker symbol ''CBRAF.''

It appears to the Securities and Exchange Commission that there is a lack of current and accurate information concerning the securities of Centerpoint Bank (Bedford, NH) because questions have arisen as to its operating status, if any. Centerpoint Bank (Bedford, NH) is quoted on OTC Link operated by OTC Markets Group, Inc. under the ticker symbol ''CPOB.''

It appears to the Securities and Exchange Commission that there is a lack of current and accurate information concerning the securities of China Renyuan International, Inc. because questions have arisen as to its operating status, if any. China Renyuan International, Inc. is quoted on OTC Link operated by OTC Markets Group, Inc. under the ticker symbol ''CRNY.''

It appears to the Securities and Exchange Commission that there is a lack of current and accurate information concerning the securities of Compass Plastics & Technologies, Inc. because questions have arisen as to its operating status, if any. Compass Plastics & Technologies, Inc. is quoted on OTC Link operated by OTC Markets Group, Inc. under the ticker symbol ''CPTI.''

It appears to the Securities and Exchange Commission that there is a lack of current and accurate information concerning the securities of Devonshire Consolidated, Inc. because questions have arisen as to its operating status, if any. Devonshire Consolidated, Inc. is quoted on OTC Link operated by OTC Markets Group, Inc. under the ticker symbol ''DVNO.''

It appears to the Securities and Exchange Commission that there is a lack of current and accurate information concerning the securities of Edge Business Services Corp. because questions have arisen as to its operating status, if any. Edge Business Services Corp. is quoted on OTC Link operated by OTC Markets Group, Inc. under the ticker symbol ''EGBS.''

It appears to the Securities and Exchange Commission that there is a lack of current and accurate information concerning the securities of Egghead.com, Inc. because questions have arisen as to its operating status, if any. Egghead.com, Inc. is quoted on OTC Link operated by OTC Markets Group, Inc. under the ticker symbol ''EGHDQ.''

It appears to the Securities and Exchange Commission that there is a lack of current and accurate information concerning the securities of Environmental Corp. of America because questions have arisen as to its operating status, if any. Environmental Corp. of America is quoted on OTC Link operated by OTC Markets Group, Inc. under the ticker symbol ''ECAM.''

It appears to the Securities and Exchange Commission that there is a lack of current and accurate information concerning the securities of Environmental Fiber Technologies, Inc. because questions have arisen as to its operating status, if any. Environmental Fiber Technologies, Inc. is quoted on OTC Link operated by OTC Markets Group, Inc. under the ticker symbol ''EVFB.''

It appears to the Securities and Exchange Commission that there is a lack of current and accurate information concerning the securities of Extreme Motorsports of California, Inc. because questions have arisen as to its operating status, if any. Extreme Motorsports of California, Inc. is quoted on OTC Link operated by OTC Markets Group, Inc. under the ticker symbol ''EMOC.''

It appears to the Securities and Exchange Commission that there is a lack of current and accurate information concerning the securities of Fidelity First Financial Corp. because questions have arisen as to its operating status, if any. Fidelity First Financial Corp. is quoted on OTC Link operated by OTC Markets Group, Inc. under the ticker symbol ''FFIRD.''

It appears to the Securities and Exchange Commission that there is a lack of current and accurate information concerning the securities of Fortune Market Media, Inc. because questions have arisen as to its operating status, if any. Fortune Market Media, Inc. is quoted on OTC Link operated by OTC Markets Group, Inc. under the ticker symbol ''FTMK.''

It appears to the Securities and Exchange Commission that there is a lack of current and accurate information concerning the securities of Franklin Opthalmic Instruments Co., Inc. because questions have arisen as to its operating status, if any. Franklin Opthalmic Instruments Co., Inc. is quoted on OTC Link operated by OTC Markets Group, Inc. under the ticker symbol ''FKLN.''

It appears to the Securities and Exchange Commission that there is a lack of current and accurate information concerning the securities of Futurebiotics, Inc. because questions have arisen as to its operating status, if any. Futurebiotics, Inc. is quoted on OTC Link operated by OTC Markets Group, Inc. under the ticker symbol ''VITK.''

It appears to the Securities and Exchange Commission that there is a lack of current and accurate information concerning the securities of Geneva Financial Corp. because questions have arisen as to its operating status, if any. Geneva Financial Corp. is quoted on OTC Link operated by OTC Markets Group, Inc. under the ticker symbol ''GNVN.''

It appears to the Securities and Exchange Commission that there is a lack of current and accurate information concerning the securities of Globalnet Systems Ltd. because questions have arisen as to its operating status, if any. Globalnet Systems Ltd. is quoted on OTC Link operated by OTC Markets Group, Inc. under the ticker symbol ''ISDN.''

It appears to the Securities and Exchange Commission that there is a lack of current and accurate information concerning the securities of Icy Splash Food & Beverage, Inc. because questions have arisen as to its operating status, if any. Icy Splash Food & Beverage, Inc. is quoted on OTC Link operated by OTC Markets Group, Inc. under the ticker symbol ''IFBV.''

It appears to the Securities and Exchange Commission that there is a lack of current and accurate information concerning the securities of Imaging Center Inc. (The) because questions have arisen as to its operating status, if any. Imaging Center Inc. (The) is quoted on OTC Link operated by OTC Markets Group, Inc. under the ticker symbol ''TIGC.''

It appears to the Securities and Exchange Commission that there is a lack of current and accurate information concerning the securities of InAmerica, Inc. because questions have arisen as to its operating status, if any. InAmerica, Inc. is quoted on OTC Link operated by OTC Markets Group, Inc. under the ticker symbol ''INAX.''

It appears to the Securities and Exchange Commission that there is a lack of current and accurate information concerning the securities of IndieMV Media Group, Inc. because questions have arisen as to its operating status, if any. IndieMV Media Group, Inc. is quoted on OTC Link operated by OTC Markets Group, Inc. under the ticker symbol ''IDMV.''

It appears to the Securities and Exchange Commission that there is a lack of current and accurate information concerning the securities of Integrated Bio Energy Resources, Inc. because questions have arisen as to its operating status, if any. Integrated Bio Energy Resources, Inc. is quoted on OTC Link operated by OTC Markets Group, Inc. under the ticker symbol ''IBIE.''

It appears to the Securities and Exchange Commission that there is a lack of current and accurate information concerning the securities of Interactive Brand Development, Inc. because questions have arisen as to its operating status, if any. Interactive Brand Development, Inc. is quoted on OTC Link operated by OTC Markets Group, Inc. under the ticker symbol ''IBDI.''

It appears to the Securities and Exchange Commission that there is a lack of current and accurate information concerning the securities of ISI Technology Corp. because questions have arisen as to its operating status, if any. ISI Technology Corp. is quoted on OTC Link operated by OTC Markets Group, Inc. under the ticker symbol ''ISYI.''

It appears to the Securities and Exchange Commission that there is a lack of current and accurate information concerning the securities of Isomet Corp. because questions have arisen as to its operating status, if any. Isomet Corp. is quoted on OTC Link operated by OTC Markets Group, Inc. under the ticker symbol ''IOMT.''

It appears to the Securities and Exchange Commission that there is a lack of current and accurate information concerning the securities of Matinee Media Corp. because questions have arisen as to its operating status, if any. Matinee Media Corp. is quoted on OTC Link operated by OTC Markets Group, Inc. under the ticker symbol ''MNEM.''

It appears to the Securities and Exchange Commission that there is a lack of current and accurate information concerning the securities of MediaBay, Inc. because questions have arisen as to its operating status, if any. MediaBay, Inc. is quoted on OTC Link operated by OTC Markets Group, Inc. under the ticker symbol ''MBAY.''

It appears to the Securities and Exchange Commission that there is a lack of current and accurate information concerning the securities of Metricom, Inc. because questions have arisen as to its operating status, if any. Metricom, Inc. is quoted on OTC Link operated by OTC Markets Group, Inc. under the ticker symbol ''MCOMQ.''

It appears to the Securities and Exchange Commission that there is a lack of current and accurate information concerning the securities of Midnight Holdings Group, Inc. because questions have arisen as to its operating status, if any. Midnight Holdings Group, Inc. is quoted on OTC Link operated by OTC Markets Group, Inc. under the ticker symbol ''MHGI.''

It appears to the Securities and Exchange Commission that there is a lack of current and accurate information concerning the securities of Municpal Insurance Co. of America because questions have arisen as to its operating status, if any. Municpal Insurance Co. of America is quoted on OTC Link operated by OTC Markets Group, Inc. under the ticker symbol ''MPAL.''

It appears to the Securities and Exchange Commission that there is a lack of current and accurate information concerning the securities of Myriad Entertainment & Resorts, Inc. because questions have arisen as to its operating status, if any. Myriad Entertainment & Resorts, Inc., is quoted on OTC Link operated by OTC Markets Group, Inc. under the ticker symbol ''MYRA.''

It appears to the Securities and Exchange Commission that there is a lack of current and accurate information concerning the securities of Oxford Capital Corp. because questions have arisen as to its operating status, if any. Oxford Capital Corp. is quoted on OTC Link operated by OTC Markets Group, Inc. under the ticker symbol ''OXFO.''

It appears to the Securities and Exchange Commission that there is a lack of current and accurate information concerning the securities of PanAmerican BanCorp because questions have arisen as to its operating status, if any. PanAmerican BanCorp is quoted on OTC Link operated by OTC Markets Group, Inc. under the ticker symbol ''PABN.''

It appears to the Securities and Exchange Commission that there is a lack of current and accurate information concerning the securities of Pennsylvania Warehousing & Safe Deposit Co. because questions have arisen as to its operating status, if any. Pennsylvania Warehousing & Safe Deposit Co. is quoted on OTC Link operated by OTC Markets Group, Inc. under the ticker symbol ''PAWH.''

It appears to the Securities and Exchange Commission that there is a lack of current and accurate information concerning the securities of Pipejoin Technologies, Inc. because questions have arisen as to its operating status, if any. Pipejoin Technologies, Inc. is quoted on OTC Link operated by OTC Markets Group, Inc. under the ticker symbol ''PPJN.''

It appears to the Securities and Exchange Commission that there is a lack of current and accurate information concerning the securities of Pogo! Products, Ltd. because questions have arisen as to its operating status, if any. Pogo! Products, Ltd. is quoted on OTC Link operated by OTC Markets Group, Inc. under the ticker symbol ''PGOI.''

It appears to the Securities and Exchange Commission that there is a lack of current and accurate information concerning the securities of Popmail.com, Inc. because questions have arisen as to its operating status, if any. Popmail.com, Inc. is quoted on OTC Link operated by OTC Markets Group, Inc. under the ticker symbol ''POPM.''

It appears to the Securities and Exchange Commission that there is a lack of current and accurate information concerning the securities of Premium Energy Corp. because questions have arisen as to its operating status, if any. Premium Energy Corp. is quoted on OTC Link operated by OTC Markets Group, Inc. under the ticker symbol ''PPTL.''

It appears to the Securities and Exchange Commission that there is a lack of current and accurate information concerning the securities of Relax Investments, Ltd. because questions have arisen as to its operating status, if any. Relax Investments, Ltd. is quoted on OTC Link operated by OTC Markets Group, Inc. under the ticker symbol ''RLXI.''

It appears to the Securities and Exchange Commission that there is a lack of current and accurate information concerning the securities of Riptide Worldwide, Inc. because questions have arisen as to its operating status, if any. Riptide Worldwide, Inc. is quoted on OTC Link operated by OTC Markets Group, Inc. under the ticker symbol ''RTWW.''

It appears to the Securities and Exchange Commission that there is a lack of current and accurate information concerning the securities of Rocket City Enterprises, Inc. because questions have arisen as to its operating status, if any. Rocket City Enterprises, Inc. is quoted on OTC Link operated by OTC Markets Group, Inc. under the ticker symbol ''RCTY.''

It appears to the Securities and Exchange Commission that there is a lack of current and accurate information concerning the securities of Rocketinfo, Inc. because questions have arisen as to its operating status, if any. Rocketinfo, Inc. is quoted on OTC Link operated by OTC Markets Group, Inc. under the ticker symbol ''RKTI.''

It appears to the Securities and Exchange Commission that there is a lack of current and accurate information concerning the securities of Ronco Corp. because questions have arisen as to its operating status, if any. Ronco Corp. is quoted on OTC Link operated by OTC Markets Group, Inc. under the ticker symbol ''RNCP.''

It appears to the Securities and Exchange Commission that there is a lack of current and accurate information concerning the securities of Silver Star

Energy, Inc. because questions have arisen as to its operating status, if any. Silver Star Energy, Inc. is quoted on OTC Link operated by OTC Markets Group, Inc. under the ticker symbol ''SVSE.''

It appears to the Securities and Exchange Commission that there is a lack of current and accurate information concerning the securities of Sound Health Solutions, Inc. because questions have arisen as to its operating status, if any. Sound Health Solutions, Inc. is quoted on OTC Link operated by OTC Markets Group, Inc. under the ticker symbol ''SHSO.''

It appears to the Securities and Exchange Commission that there is a lack of current and accurate information concerning the securities of Sovereign Exploration Associates International, Inc. because questions have arisen as to its operating status, if any. Sovereign Exploration Associates International, Inc. is quoted on OTC Link operated by OTC Markets Group, Inc. under the ticker symbol ''SVXA.''

It appears to the Securities and Exchange Commission that there is a lack of current and accurate information concerning the securities of Sports Concepts, Inc. because questions have arisen as to its operating status, if any. Sports Concepts, Inc. is quoted on OTC Link operated by OTC Markets Group, Inc. under the ticker symbol ''SCPT.''

It appears to the Securities and Exchange Commission that there is a lack of current and accurate information concerning the securities of Sports Media, Inc. because questions have arisen as to its operating status, if any. Sports Media, Inc. is quoted on OTC Link operated by OTC Markets Group, Inc. under the ticker symbol ''SPTS.''

It appears to the Securities and Exchange Commission that there is a lack of current and accurate information concerning the securities of TMT Capital Corp. because questions have arisen as to its operating status, if any. TMT Capital Corp. is quoted on OTC Link operated by OTC Markets Group, Inc. under the ticker symbol ''TMTP.''

It appears to the Securities and Exchange Commission that there is a lack of current and accurate information concerning the securities of UniMark Group, Inc. (The) because questions have arisen as to its operating status, if any. UniMark Group, Inc. (The) is quoted on OTC Link operated by OTC Markets Group, Inc. under the ticker symbol ''UNMG.''

It appears to the Securities and Exchange Commission that there is a lack of current and accurate information concerning the securities of Verdant Brands, Inc. because questions have arisen as to its operating status, if any. Verdant Brands, Inc. is quoted on OTC Link operated by OTC Markets Group, Inc. under the ticker symbol ''VERD.''

It appears to the Securities and Exchange Commission that there is a lack of current and accurate information concerning the securities of Viking Power Services, Inc. because questions have arisen as to its operating status, if any. Viking Power Services, Inc. is quoted on OTC Link operated by OTC Markets Group, Inc. under the ticker symbol ''VKPW.''

It appears to the Securities and Exchange Commission that there is a lack of current and accurate information concerning the securities of Vinings Investment Properties Trust because questions have arisen as to its operating status, if any. Vinings Investment Properties Trust is quoted on OTC Link operated by OTC Markets Group, Inc. under the ticker symbol ''VIPPS.''

It appears to the Securities and Exchange Commission that there is a lack of current and accurate information concerning the securities of Washington Life Insurance Co. of America because questions have arisen as to its operating status, if any. Washington Life Insurance Co. of America is quoted on OTC Link operated by OTC Markets Group, Inc. under the ticker symbol ''WLIA.''

It appears to the Securities and Exchange Commission that there is a lack of current and accurate information concerning the securities of Wi-Tron, Inc. because questions have arisen as to its operating status, if any. Wi-Tron, Inc. is quoted on OTC Link operated by OTC Markets Group, Inc. under the ticker symbol ''WTRO.''

It appears to the Securities and Exchange Commission that there is a lack of current and accurate information concerning the securities of Zone Mining Ltd. because questions have arisen as to its operating status, if any. Zone Mining Ltd. is quoted on OTC Link operated by OTC Markets Group, Inc. under the ticker symbol ''ZMNL.''

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. EDT on June 3, 2013, through 11:59 p.m. EDT on June 14, 2013.

By the Commission.

Jill M. Peterson,

Assistant Secretary.

[FR Doc. 2013–13382 Filed 6–3–13; 11:15 am]

BILLING CODE 8011–01–P

DEPARTMENT OF STATE

[Public Notice 8349]

Culturally Significant Object Imported for Exhibition Determinations: ''Fauno Rosso''

SUMMARY: Notice is hereby given of the following determinations: Pursuant to the authority vested in me by the Act of October 19, 1965 (79 Stat. 985; 22 U.S.C. 2459), Executive Order 12047 of March 27, 1978, the Foreign Affairs Reform and Restructuring Act of 1998 (112 Stat. 2681, *et seq.;* 22 U.S.C. 6501 note, *et seq.*), Delegation of Authority No. 234 of October 1, 1999, and Delegation of Authority No. 236–3 of August 28, 2000 (and, as appropriate, Delegation of Authority No. 257 of April 15, 2003), I hereby determine that the object to be included in the exhibition ''Fauno Rosso,'' imported from abroad for temporary exhibition within the United States, is of cultural significance. The object is imported pursuant to a loan agreement with the foreign owner or custodian. I also determine that the exhibition or display of the exhibit object at the Nelson-Atkins Museum of Art, Kansas City, Missouri, from on or about June 20, 2013, until on or about September 29, 2013, and at possible additional exhibitions or venues yet to be determined, is in the national interest. I have ordered that Public Notice of these Determinations be published in the **Federal Register**.

FOR FURTHER INFORMATION CONTACT: For further information, including a description of the exhibit object, contact Paul W. Manning, Attorney-Adviser, Office of the Legal Adviser, U.S. Department of State (telephone: 202–632–6469). The mailing address is U.S. Department of State, SA–5, L/PD, Fifth Floor (Suite 5H03), Washington, DC 20522–0505.

Dated: May 21, 2013.

J. Adam Ereli,

Principal Deputy Assistant Secretary, Bureau of Educational and Cultural Affairs, Department of State.

[FR Doc. 2013–13317 Filed 6–4–13; 8:45 am]

BILLING CODE 4710–05–P

OFFICE OF THE UNITED STATES TRADE REPRESENTATIVE

[Docket No. USTR–2013–0023]

Identification of Ukraine as a Priority Foreign Country and Initiation of Section 301 Investigation

AGENCY: Office of the United States Trade Representative.

ACTION: Notice of identification of priority foreign country; initiation of investigation; proposed determination; request for written comment; and invitation to participate in public hearing.

SUMMARY: Pursuant to section 182(c)(1)(B) of the Trade Act of 1974, as amended (the Trade Act), in the May 1, 2013 Special 301 Report the United States Trade Representative (Trade Representative) identified Ukraine as a priority foreign country due to Ukraine's denial of adequate and effective protection of intellectual property rights and its denial of fair and equitable market access to persons that rely on intellectual property protection. Pursuant to section 302(b)(2) of the Trade Act, the Trade Representative is initiating a Section 301 investigation of the acts, policies, and practices of the Government of Ukraine that resulted in the identification of Ukraine as a priority foreign country. The Office of the United States Trade Representative (USTR) proposes a determination that these acts, policies, and practices are actionable under section 301(b). USTR invites interested persons to submit written comments and to participate in a public hearing concerning the issues covered in the investigation.

DATES: The identification of Ukraine as a priority foreign country was made in the May 1, 2013 Special 301 Report. The Trade Representative initiated the Section 301 investigation on May 30, 2013. Persons wishing to testify orally at the public hearing must provide written notification of their intention, as well as a summary of their hearing testimony, by June 27, 2013. A written version of hearing testimony is due by July 11, 2013. The public hearing will be held on July 18, 2013, beginning at 9:30 a.m., at Conference Rooms 1 and 2 at the offices of USTR, 1724 F Street NW., Washington, DC 20508. Persons wishing to provide written comments and/or rebuttal comments to the hearing testimony must do so by July 31, 2013.

ADDRESSES: Notifications of intent to testify, testimony summaries, written testimony, and comments should be submitted electronically via *www.regulations.gov,* docket number USTR–2013–0023. If you are unable to provide submissions at *www.regulations.gov,* please contact Gwendolyn Diggs, Staff Assistant to the Section 301 Committee, at (202) 395–3150, to arrange for an alternative method of transmission.

FOR FURTHER INFORMATION CONTACT: For procedural questions concerning submissions, please contact Gwendolyn Diggs at the above number. Questions regarding this investigation should be directed as appropriate to: Elizabeth Kendall, Director for Intellectual Property and Innovation, Office of the United States Trade Representative, at (202) 395–3580; Isabella Detwiler, Director for Europe, at (202) 395–6146; or Shannon Nestor, Assistant General Counsel, at (202) 395–3150. General questions regarding Section 301 investigations should be directed to William Busis, Deputy Assistant U.S. Trade Representative for Monitoring & Enforcement and Chair of the Section 301 Committee, at (202) 395–3150. Additional information on the investigation, including any changes in the time or location of the public hearing, will be posted at *www.ustr.gov,* under Trade Topics—Enforcement.

SUPPLEMENTARY INFORMATION:

1. Identification of Ukraine as a Priority Foreign Country

Section 182 of the Trade Act (19 U.S.C. 2242) authorizes the Trade Representative to identify foreign countries that deny adequate and effective protection of intellectual property rights (IPR) or that deny fair and equitable market access to persons that rely on intellectual property (IP) protection. Procedures under section 182 are commonly referred to as ''Special 301.'' In making Special 301 determinations, USTR chairs an interagency team that reviews information from many sources, and that consults with and makes recommendations to the Trade Representative on issues arising under Special 301.

Under section 182(b) of the Trade Act, countries that have the most onerous or egregious acts, policies, or practices that have the greatest adverse impact (actual or potential) on the relevant United States products must be identified as ''priority foreign countries,'' unless they are entering into good faith negotiations or are making significant progress in bilateral or multilateral negotiations to provide adequate and effective protection for IPR and fair and equitable market access for persons that rely on IP protection. Section 182 provides that identification of priority foreign countries shall take into account the history of intellectual property laws and practices of the foreign country, including any previous identifications as a priority foreign country; and the history of efforts of the United States to achieve adequate and effective protection and enforcement of IPR and fair and equitable market access for persons that rely on IP protection.

In the May 1, 2013 Special 301 Report, the Trade Representative identified Ukraine as a priority foreign country. The identification was the culmination of several years of growing concern over widespread IP theft, including the growing entrenchment of IPR infringement that is facilitated by government actors. During intensive bilateral engagement, Ukraine had made a series of commitments to make specific improvements in the areas of government use of pirated software, nontransparent administration of royalty collecting societies, and online piracy. Notably, Ukraine and the United States agreed to an IPR Action Plan in 2010, which Ukraine publicized in 2011. Implementation of this plan was the subject of intensive bilateral engagement in 2012, including through the Trade and Investment Council meeting. Unfortunately, the situation regarding Ukraine's protection of IPR has continued to deteriorate.

A full discussion of the basis for Ukraine's designation is set out in the May 1, 2013 Special 301 Report, which may be found on *www.ustr.gov* under 'Reports.' A summary of the basis for identification is set out below.

The first ground for the Trade Representative's identification of Ukraine as a priority foreign country is the unfair, nontransparent administration of the system for collecting societies, which are responsible for collecting and distributing royalties to U.S. and other rights holders. Ukraine has recognized that it has a significant problem with the operation of illegal or ''rogue'' collecting societies, *i.e.,* organizations that collect royalties by falsely claiming they are authorized to do so. Such organizations tend to operate without adequate transparency and rarely disburse sufficient funds that they collect to the rights holders entitled to the royalties. The government has not prosecuted several rogue collecting societies—even societies that the Government of Ukraine determined were collecting money without the necessary authorization.

Recent negative developments include the following: In May 2012, the State Intellectual Property Service of Ukraine revoked the authorization of the

Ukrainian Music Rights League, a collecting society that had disbursed royalties to rights holders. In August 2012, a Ukrainian court issued a ruling that invalidated Ukraine's procedure for accrediting collecting societies. Currently, there are no authorized collecting societies in Ukraine in important spheres such as public performance rights.

Second, there is widespread use of infringing software by Ukrainian government agencies. The Government of Ukraine acknowledges that a significant percentage of the software used by the government is unlicensed. The Government of Ukraine has further acknowledged the need for the government to use licensed software, and has issued repeated official documents calling for such use as far back as 2002, most recently in April 2013. To date, however, the government has not addressed this problem. Most recently, the Government of Ukraine budgeted 100 million UAH (equivalent to $12.3 million) for 2013 software licensing in state institutions. However, the Government of Ukraine has not disbursed these funds to rights holders or taken any other concrete steps toward addressing the use of unlicensed software.

Third, the Government of Ukraine has failed to implement an effective and systemic means to combat the widespread online infringement of copyright and related rights, including failures to institute transparent and predictable provisions on intermediary liability and liability for third parties that facilitate piracy; to introduce limitations on such liability for Internet Service Providers (ISPs); and to enforce takedown notices for infringing online content. Online piracy now has significant and growing consequences for both the Ukrainian market and for international trade. For example, several of Ukraine's BitTorrent sites are among the most popular in markets such as India, illustrating how Ukraine has become perceived as a safe haven for online piracy enterprises serving multiple markets.

There was not a single online piracy-related conviction in Ukraine in 2012. In late January 2012, the Government of Ukraine seized servers as part of a criminal investigation into one of Ukraine's most visited Web sites that was (and remains) a prolific source of infringing international music, software, and video. However, the site reopened shortly thereafter, and continues to monetize infringing content.

2. Initiation of Section 301 Investigation

Under Section 302(b)(2) of the Trade Act (19 U.S.C. 2412(b)(2)), the Trade Representative shall initiate an investigation under Chapter 1 of Title III of the Trade Act (commonly referred to as ''Section 301'') with respect to any act, policy, or practice that was the basis of the identification of a country as a priority foreign country under section 182 of the Trade Act. (Section 302(b)(2) provides exceptions where such acts, policies, and practices are already subject to investigation or action under Section 301, or where an investigation would not be in the national economic interest.)

Pursuant to Section 302(b)(2), and in accord with the advice of the interagency Section 301 Committee, on May 30, 2013, the Trade Representative initiated a Section 301 investigation of the acts, policies, and practices of Ukraine that resulted in the priority foreign country identification.

The investigation will examine whether these acts, policies, and practices are actionable under section 301(b) of the Trade Act, and, if so, what action the Trade Representative should take under Section 301(b). Acts, policies, or practices of a foreign country are actionable under section 301(b) if they are unreasonable and burden or restrict U.S. commerce. Under section 301(d)(3)(B)(i)(II) of the Trade Act, unreasonable acts, policies, or practices include any act, policy, or practice which denies fair and equitable provision of adequate and effective protection of intellectual property rights, notwithstanding the fact that the foreign country may be in compliance with the specific obligations of the Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPS Agreement). Furthermore, under section 301(d)(3)(B)(i)(III) of the Trade Act, unreasonable acts, policies, or practices also include any act, policy, or practice which denies fair and equitable nondiscriminatory market access opportunities for persons that rely upon intellectual property protection.

Section 303(a) of the Trade Act provides that on the date of initiation of a Section 301 investigation, the Trade Representative shall request consultations with the foreign country concerned regarding the issue involved in the investigation. In accordance with Section 303(a), by letter dated May 30, 2013, the Trade Representative requested consultations with the Government of Ukraine regarding the issues under investigation. Because the issues under investigation do not involve a trade agreement, the request for consultations does not involve formal dispute settlement procedures under a trade agreement.

USTR will seek information and advice from appropriate representatives provided for under section 135 of the Trade Act in preparing the U.S. presentations for such consultations.

3. Proposed Determination and Schedule for Investigation

USTR proposes a determination under sections 304(a)(1)(A) and 301(b) of the Trade Act that the acts, policies, and practices of Ukraine with respect to intellectual property rights (summarized above) that resulted in the identification of Ukraine as a priority foreign country under Special 301 are unreasonable and burden or restrict United States commerce. If the Trade Representative makes a final determination under 304(a)(1)(A) that these acts, policies, and practices are actionable under Section 301(b), the Trade Representative also will determine under Section 304(a)(1)(B) what action to take under Section 301(b).

Section 304(a)(3)(A) of the Trade Act provides that in an investigation initiated pursuant to a priority foreign country designation, and not involving a trade agreement, the Trade Representative shall make the determinations under section 304(a)(1)(A) and (B) no later than six months after the date of initiation. Under Section 304(a)(3)(B), in certain circumstances the Trade Representative may extend the investigation for an additional 3 months. In this investigation, unless extended under section 304(a)(3)(B), the determinations under section 304(a)(1)(A) and (B) would be made by no later than November 30, 2013.

4. Public Comments

a. Written Comments

The Section 301 Committee invites interested persons to submit written comments and to participate in a public hearing on the matters under investigation. The subject matter of any written comments and oral testimony may include comments on: (i) The acts, policies, and practices of the Government of Ukraine that are the subject of this investigation; (ii) the amount of burden or restriction on U.S. commerce caused by these acts, policies, and practices; (iii) whether—as described in the above proposed determination—the acts, policies, and practices of Ukraine are actionable under section 301(b); and (iv) what action the Trade Representative should take under section 301(b).

As noted above, interested persons should submit any written comments, as well as any rebuttal comments to the hearing testimony, by July 31, 2013.

b. Oral Testimony

A public hearing will be held on July 18 in Conference Rooms 1 and 2 at the offices of USTR, 1724 F Street NW., Washington, DC 20508. Persons wishing to testify at the hearing must provide written notification of their intention by June 27, 2013. The intent to testify notification must be made in the ''Type Comment'' field under docket number USTR–2013–0023 on the *www.regulations.gov* Web site and should include the name, address, and telephone number of the person intending to present testimony. A summary of the testimony must accompany the notification. After the Chairman of the Section 301 Committee considers the request to present oral testimony at the hearing, the Staff Assistant to the Section 301 Committee will notify the applicant of the time of his or her testimony. A full, written version of hearing testimony is due by July 11, 2013. Remarks at the hearing should be limited to no more than ten minutes to allow for possible questions from the Section 301 Committee.

c. Rebuttal Comments

To allow interested persons an opportunity to contest the information provided by other parties at the hearing, USTR will accept written rebuttal comments, which must be filed by July 31, 2013. Rebuttal comments should be limited to demonstrating errors of fact or analysis not pointed out in the hearing testimony and should be as concise as possible.

5. Requirements for Submissions

Persons submitting written comments, written hearing testimony, or rebuttal comments must do so in English and must identify (on the first page of the submission) the ''Ukraine Section 301 Investigation.'' Any comments that include quantitative discussions of burdens or restrictions on U.S. commerce should be accompanied by the methodology used in calculating such burdens or restrictions.

To ensure the timely receipt and consideration of comments, USTR strongly encourages interested persons to make on-line submissions, using the *www.regulations.gov* Web site. To submit comments via *www.regulations.gov,* enter docket number USTR–2013–0023 on the home page and click ''search.'' The site will provide a search-results page listing all documents associated with this docket. Find a reference to this notice and click on the link entitled ''Comment Now.'' (For further information on using the *www.regulations.gov* Web site, please consult the resources provided on the Web site by clicking on ''How to Use This Site'' on the left side of the home page).

The *www.regulations.gov* Web site allows users to provide comments by filling in a ''Type Comment'' field, or by attaching a document using an ''Upload File'' field. USTR prefers that comments be provided in an attached document. If a document is attached, it is sufficient to type ''See attached'' in the ''Type Comment'' field. USTR prefers submissions in Microsoft Word (.doc) or Adobe Acrobat (.pdf). If the submission is in another format, please indicate the name of the software application in the ''Type Comment'' field.

For any comments submitted electronically containing business confidential information, the file name of the business confidential version should begin with the characters ''BC''. Any page containing business confidential information must be clearly marked ''BUSINESS CONFIDENTIAL'' on the top of that page. Filers of submissions containing business confidential information must also submit a public version of their comments. The file name of the public version should begin with the character ''P''. The ''BC'' and ''P'' should be followed by the name of the person or entity submitting the comments. Filers submitting comments containing no business confidential information should name their file using the name of the person or entity submitting the comments.

Please do not attach separate cover letters to electronic submissions; rather, include any information that might appear in a cover letter in the comments themselves. Similarly, to the extent possible, please include any exhibits, annexes, or other attachments in the same file as the submission itself, not as separate files.

As noted, USTR strongly urges submitters to file comments through *www.regulations.gov,* if at all possible. Any alternative arrangements must be made with Gwendolyn Diggs in advance of transmitting a comment. Ms. Diggs should be contacted at (202) 395–3150.

6. Public Docket

Submissions will be placed in the docket and open to public inspection pursuant to 15 CFR 2006.13, except business confidential information exempt from public inspection in accordance with 15 CFR 2006.15. Submissions may be viewed on the *www.regulations.gov* Web site by entering docket number USTR–2013–0023 in the search field on the home page.

William Busis,

Chair, Section 301 Committee.

[FR Doc. 2013–13307 Filed 6–4–13; 8:45 am]

BILLING CODE 3290–F3–P

DEPARTMENT OF TRANSPORTATION

Office of the Secretary

National Freight Advisory Committee: Notice of Public Meeting

ACTION: Notice of Public Meeting.

SUMMARY: This notice announces a public meeting of the National Freight Advisory Committee (NFAC). The NFAC will provide information, advice, and recommendations to the U.S. Secretary of Transportation on matters relating to U.S. freight transportation, including implementation of the Moving Ahead for Progress in the 21st Century Act (MAP–21), Public Law 112–141.

DATES: The meeting will be held on June 25, 2013, from 9:00 a.m. to 5:30 p.m., Eastern Standard Time.

ADDRESSES: The meeting will be held at the U.S. Department of Transportation, 1200 New Jersey Avenue SE., Washington, DC 20590.

FOR FURTHER INFORMATION CONTACT: Tretha Chromey, Designated Federal Officer at (202) 366–1999 or *freight@dot.gov* or visit the NFAC Web site at *www.dot.gov/nfac* which is under construction.

Additional Information

Background: The NFAC is established under the authority of the U.S. Department of Transportation, in accordance with the provisions of the Federal Advisory Committee Act (5 U.S.C. App. 2). The Secretary of Transportation has determined that establishment of the committee is in the public interest. The NFAC provides advice and recommendations to the Secretary on matters related to freight transportation in the United States, including (1) Implementation of the freight transportation requirements of the Moving Ahead for Progress in the 21st Century Act (Pub. L. 112–141); (2) establishment of the National Freight Network; (3) development of a National Freight Strategic Plan; (4) development of strategies to help States implement State Freight Advisory Committees and State Freight Plans; and (5) development of measures of conditions and

performance in freight transportation; (6) development of freight transportation investment, data, and planning tools; and (7) legislative recommendations. Agenda: This will be the NFAC's inaugural meeting. The meeting agenda will be posted on the NFAC Web site at *www.dot.gov/nfac* in advance of the meeting.

Agenda: This will be the NFAC's inaugural meeting. Representatives from the U.S. Department of Transportation will provide an overview of MAP–21 freight provisions and an update of the Department's progress implementing them. The Committee will begin to develop a list of tasks to complete and prioritize those tasks for the Department to consider. The agenda will be posted on the NFAC Web site at *www.dot.gov/nfac* in advance of the meeting.

Public Participation: The meeting will be open to the public and press on a first-come, first served basis. Space is limited. The public meeting is physically accessible to people with disabilities. Individuals requiring accommodations, such as sign language interpretation or other ancillary aids, are asked to notify Ms. Tretha Chromey, at (202) 366–1999 or *freight@dot.gov* five (5) business days before the meeting.

Members of the public who wish to attend in person are asked to RSVP to *freight@dot.gov* with your name and affiliation no later than June 18, 2013, in order to facilitate entry and guarantee seating.

Written comments: Persons who wish to submit written comments for consideration by the Committee must email *freight@dot.gov* or send them to Ms. Tretha Chromey, Designated Federal Officer, National Freight Advisory Committee, 1200 New Jersey Avenue SE., W82–320, Washington, DC 20590 by June 18, 2013 to provide sufficient time for review. All other comments may be received at any time before or after the meeting.

Dated: May 30, 2013.

Tretha Chromey,

Designated Federal Officer.

[FR Doc. 2013–13301 Filed 6–4–13; 8:45 am]

BILLING CODE 4910–9X–P

DEPARTMENT OF TRANSPORTATION

Federal Transit Administration

[FTA Docket No. 2013–0028]

Notice of Request for Revisions of an Information Collection

AGENCY: Federal Transit Administration, DOT.

ACTION: Notice of request for comments.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, this notice announces the intention of the Federal Transit Administration (FTA) to request the Office of Management and Budget (OMB) to extend the following currently approved information collection: 49 U.S.C. 5330—Rail Fixed Guideway Systems, State Safety Oversight.

DATES: Comments must be submitted before August 5, 2013.

ADDRESSES: To ensure that your comments are not entered more than once into the docket, submit comments identified by the docket number by only one of the following methods:

1. *Web site: www.regulations.gov.* Follow the instructions for submitting comments on the U.S. Government electronic docket site. (**Note:** The U.S. Department of Transportation's (DOT's) electronic docket is no longer accepting electronic comments.) All electronic submissions must be made to the U.S. Government electronic docket site at *www.regulations.gov.* Commenters should follow the directions below for mailed and hand-delivered comments.

2. *Fax:* 202–493–2251.

3. *Mail:* U.S. Department of Transportation, 1200 New Jersey Avenue SE., Docket Operations, M–30, West Building, Ground Floor, Room W12–140, Washington, DC 20590–0001.

4. *Hand Delivery:* U.S. Department of Transportation, 1200 New Jersey Avenue SE., Docket Operations, M–30, West Building, Ground Floor, Room W12–140, Washington, DC 20590–0001 between 9:00 a.m. and 5:00 p.m., Monday through Friday, except federal holidays.

Instructions: You must include the agency name and docket number for this notice at the beginning of your comments. Submit two copies of your comments if you submit them by mail. For confirmation that FTA has received your comments, include a self-addressed stamped postcard. Note that all comments received, including any personal information, will be posted and will be available to Internet users, without change, to *www.regulations.gov.* You may review DOT's complete Privacy Act Statement in the **Federal Register** published April 11, 2000, (65 FR 19477), or you may visit *www.regulations.gov.* Docket: For access to the docket to read background documents and comments received, go to *www.regulations.gov* at any time. Background documents and comments received may also be viewed at the U.S. Department of Transportation, 1200 New Jersey Avenue SE., Docket Operations, M–30, West Building, Ground Floor, Room W12–140, Washington, DC 20590–0001 between 9:00 a.m. and 5:00 p.m., Monday through Friday, except federal holidays.

FOR FURTHER INFORMATION CONTACT: Mr. Richard Gerhart, Acting Director, Office of Transit Safety and Oversight, (202) 366–1651, or email: *richard.gerhart@dot.gov.*

SUPPLEMENTARY INFORMATION: Interested parties are invited to send comments regarding any aspect of this information collection, including: (1) The necessity and utility of the information collection for the proper performance of the functions of the FTA; (2) the accuracy of the estimated burden; (3) ways to enhance the quality, utility, and clarity of the collected information; and (4) ways to minimize the collection burden without reducing the quality of the collected information. Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval of this information collection.

Title: 49 U.S.C. 5330—Rail Fixed Guideway Systems, State Safety Oversight (OMB Number: 2132–0558)

Background: 49 U.S.C. 5330 requires States to designate a State Safety Oversight (SSO) agency to oversee the safety and security of each rail transit agency within the State's jurisdiction. To comply with Section 5330, SSO agencies must develop program standards which meet FTA's minimum requirements. In the Program Standard, which must be approved by FTA, each SSO agency must require each rail transit agency in the State's jurisdiction to prepare and implement a System Safety Program Plan (SSPP) and System Security Plan (SSP). The SSO agency also requires the rail transit agencies in its jurisdiction to conduct specific activities, such as accident investigation, implementation of a hazard management program, and the management of an internal safety and security audit process. SSO agencies review and approve the SSPPs and SSPs of the rail transit agencies. Once every three years, States conduct an on-site review of the rail transit agencies in their jurisdictions to assess SSPP/SSP implementation and to determine whether these plans are effective and if they need to be updated. SSO agencies develop final reports documenting the findings from these on-site reviews and require corrective actions. SSO agencies also review and approve accident investigation reports, participate in the rail transit agency's hazard management program, and oversee implementation of the rail transit agency's internal safety and security audit process. SSO

agencies review and approve corrective action plans and track and monitor rail transit agency activities to implement them.

Collection of this information enables each SSO agency to monitor each rail transit agency's implementation of the State's requirements as specified in the Program Standard approved by FTA. Without this information, States would not be able to oversee the rail transit agencies in their jurisdictions. Recommendations from the National Transportation Safety Board (NTSB) and the Government Accountability Office (GAO) have encouraged States and rail transit agencies to devote additional resources to these safety activities and safety oversight in general.

SSO agencies also submit an annual certification to FTA that the State is in compliance with Section 5330 and an annual report documenting the State's safety and security oversight activities. States also submit annual grant applications for Federal transit assistance and report quarterly on the progress of those activities. FTA uses the annual information submitted by the States to monitor implementation of the program. If a State fails to comply with Section 5330, FTA may withhold up to five percent of the funds appropriated for use in a State or urbanized area in the State under section 5307. The information submitted by the States ensures FTA's compliance with applicable federal laws, OMB Circular A–102, and 49 CFR Part 18, ''Uniform Administrative Requirements for Grants and Cooperative Agreements with State and Local Governments.''

Respondents: State and local government agencies.

Estimated Annual Burden on Respondents: Annually, each designated SSO agency devotes approximately 2,119 hours to information collection activities for each of the rail transit agencies in the State's jurisdiction. Combined, the SSO agencies spend approximately 59,322 hours on information collection activities each year, or roughly half of the total level of effort devoted to implement Section 5330 requirements in a given year. The local governments affected by Section 5330, including the rail transit agencies, spend an annual total of 118,498 hours on information collection activities to support implementation of Section 5330, or approximately 2,469 hours each. This amount also equals approximately half of the total level of effort devoted to implement Section 5330 requirements in a given year.

Estimated Total Annual Burden: 177,820 hours.

Frequency: Annual.

Issued: May 30, 2013.

Matthew Crouch,

Deputy Associate Administrator for Administration.

[FR Doc. 2013–13303 Filed 6–4–13; 8:45 am]

BILLING CODE P

DEPARTMENT OF TRANSPORTATION

Federal Transit Administration

Limitation on Claims Against Proposed Public Transportation Projects

AGENCY: Federal Transit Administration (FTA), DOT.

ACTION: Notice.

SUMMARY: This notice announces final environmental actions taken by the Federal Transit Administration (FTA) for projects in the following locations: Cleveland, OH and San Francisco, CA. The purpose of this notice is to announce publicly the environmental decisions by FTA on the subject projects and to activate the limitation on any claims that may challenge these final environmental actions.

DATES: By this notice, FTA is advising the public of final agency actions subject to Section 139(l) of Title 23, United States Code (U.S.C.). A claim seeking judicial review of the FTA actions announced herein for the listed public transportation project will be barred unless the claim is filed on or before November 1, 2013.

FOR FURTHER INFORMATION CONTACT: Nancy-Ellen Zusman, Assistant Chief Counsel, Office of Chief Counsel, (312) 353–2577 or Terence Plaskon, Environmental Protection Specialist, Office of Human and Natural Environment, (202) 366–0442. FTA is located at 1200 New Jersey Avenue SE., Washington, DC 20590. Office hours are from 9:00 a.m. to 5:30 p.m., Monday through Friday, except Federal holidays.

SUPPLEMENTARY INFORMATION: Notice is hereby given that FTA has taken final agency actions by issuing certain approvals for the public transportation projects listed below. The actions on the projects, as well as the laws under which such actions were taken, are described in the documentation issued in connection with the project to comply with the National Environmental Policy Act (NEPA) and in other documents in the FTA administrative record for the projects. Interested parties may contact either the project sponsor or the relevant FTA Regional Office for more information on the project. Contact information for FTA's Regional Offices may be found at *http://www.fta.dot.gov.*

This notice applies to all FTA decisions on the listed projects as of the issuance date of this notice and all laws under which such actions were taken, including, but not limited to, NEPA [42 U.S.C. 4321–4375], Section 4(f) of the Department of Transportation Act of 1966 [49 U.S.C. 303], Section 106 of the National Historic Preservation Act [16 U.S.C. 470f], and the Clean Air Act [42 U.S.C. 7401–7671q]. This notice does not, however, alter or extend the limitation period for challenges of project decisions subject to previous notices published in the **Federal Register**. The projects and actions that are the subject of this notice are:

1. *Project name and location:* Little Italy—University Circle Rapid Transit Station; Cleveland, OH. *Project sponsor:* Greater Cleveland Regional Transit Authority (GCRTA). *Project description:* The project consists of a new Little Italy—University Circle Rapid Transit Station with associated reconstruction of the Mayfield Road Rapid Transit Bridges. The station will be located on GCRTA's Red Line and will replace the current center platform station at East 120th/Euclid Avenue. *Final agency actions:* No use determination of Section 4(f) resources; Section 106 finding of no adverse effect; project-level air quality conformity, and Finding of No Significant Impact (FONSI), dated April 4, 2013. *Supporting documentation:* Environmental Assessment, dated February 2013.

2. *Project name and location:* Central Subway Project, San Francisco, CA. *Project sponsor:* San Francisco Municipal Transportation Authority (SFMTA). *Project description:* The Central Subway Project is a 1.7-mile light-rail line connecting the existing Third Street Light Rail Station at Fourth and King Streets north to an underground subway station in Chinatown at Stockton and Jackson Streets. SFMTA proposes to relocate the Tunnel Boring Machine retrieval and extraction site from Columbus Avenue in North Beach to 1731–1741 Powell Street (the Pagoda Theater). The Central Subway Project was previously the subject of a Record of Decision dated November 26, 2008. This notice only applies to the discrete actions taken by FTA at this time, as described below. Nothing in this notice affects FTA's previous decisions, or notice thereof, for this project. *Final agency actions:* FTA determination that neither a supplemental environmental impact statement nor a supplemental environmental assessment is necessary. *Supporting documentation:* Addendum to the Final Supplemental

Environmental Impact Report/ Supplemental Environmental Impact Statement, dated January 31, 2013, prepared by the City and County of San Francisco Planning Department pursuant to the California Environmental Quality Act and the environmental re-evaluation letter by SFMTA, dated April 17, 2013, and related documents evaluating any potential impacts.

Issued on: May 30, 2013.

Lucy Garliauskas,

Associate Administrator for Planning and Environment.

[FR Doc. 2013–13304 Filed 6–4–13; 8:45 am]

BILLING CODE P

DEPARTMENT OF TRANSPORTATION

Pipeline and Hazardous Materials Safety Administration

[Docket No. PHMSA–2013–0126, Notice No. 3–8]

Safety Advisory: Compressed Gas Cylinders That Have Not Been Tested Properly

AGENCY: Pipeline and Hazardous Materials Safety Administration (PHMSA), DOT.

ACTION: Safety Advisory Notice.

SUMMARY: PHMSA has concluded that Shasta Fire Equipment, Inc. of Redding, CA, certified DOT-specification, exemption, and special permit cylinders with Requalification Identification Number (RIN) D183, between March 6, 2013 and May 6, 2013, without performing proper requalification testing to verify the suitability of the cylinders for continued service, as required by the Hazardous Materials Regulations (HMR; 49 CFR Parts 171–180).

FOR FURTHER INFORMATION CONTACT: PHMSA, DOT, 3401 Centrelake Drive, Suite 550B, Ontario, CA 91761, Telephone (909) 522–1901, Ms. Shelly Negrete, PHMSA Investigator; or Shasta Fire Equipment, Inc., 3092 Crossroads Drive, Redding, CA 96003, Telephone (530) 223–2492, Mr. Danniel Hoose, President.

SUPPLEMENTARY INFORMATION: Shasta Fire Equipment, Inc. marked DOT-specification 3AA, 3AL, 3HT, and exemption (DOT–E) and special permit (DOT–SP) cylinders, with RIN D183 between March 6, 2013 and May 6, 2013, certifying that they were successfully requalified accordance with HMR. After an inspection of Shasta Fire Equipment Inc., PHMSA has concluded that during this period, Shasta Fire Equipment, Inc. failed to requalify cylinders in compliance with the HMR. As a result, any tests performed during this period were unreliable and invalid.

Cylinders that have not been properly requalified in accordance with the HMR pose an unreasonable safety risk. Cylinders that are not properly tested may not have the structural integrity to contain hazardous materials safely under pressure during normal transportation and use and may leak or rupture, resulting in property damage, injuries, or death. The affected cylinders are used primarily in oxygen service but may also be used for other hazardous materials.

Additionally, it is a violation of the HMR to ship hazardous materials in a packaging or container that does not conform to requalification testing requirements. Shipping or transporting hazardous materials in a cylinder that does not meet the requirements of the HMR is unauthorized, unless and until the cylinder passes proper testing in accordance with the HMR.

If you identify a cylinder that is subject to this notice, you are advised to remove it from service and submit it to an authorized retester for proper testing. A list of retesters that PHMSA authorizes to perform requalification testing on DOT-specification and special permit cylinders is available on PHMSA's Web site under ''Cylinder Requalifiers'' at *http://www.phmsa.dot.gov/hazmat/permits-approvals/pressure-vessels.* Any cylinder purchased from or serviced by Shasta Fire Equipment, Inc. and marked with RIN D183 between March 6, 2013 and the date of this notice must be retested in accordance with the HMR requalification requirements before it is used. Cylinders described in this safety advisory that are filled with an atmospheric gas should be vented or otherwise safely discharged. Cylinders that are filled with a material other than an atmospheric gas should not be vented but should be safely discharged by authorized personnel.

Issued in Washington, DC, on May 30, 2013.

Magdy El-Sibaie,

Associate Administrator for Hazardous Materials Safety, Pipeline and Hazardous Materials Safety Administration.

[FR Doc. 2013–13222 Filed 6–4–13; 8:45 am]

BILLING CODE 4910–60–P

DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

[Docket No. AB 586 (Sub-No. 3X)]

North Central Railway Association, Inc.—Abandonment Exemption—in Franklin and Hardin Counties, Iowa

North Central Railway Association, Inc. (NCRA), has filed a verified notice of exemption under 49 CFR part 1152 subpart F–*Exempt Abandonments* to abandon 10.46 miles of rail line between milepost 201.46 at or near Ackley, and milepost 191.0 at or near Geneva, in Franklin and Hardin Counties, Iowa. The line traverses United States Postal Service Zip Codes 50633 and 50601.

NCRA has certified that: (1) No local traffic has moved over the line for at least two years; (2) there is no overhead traffic on the line; (3) no formal complaint filed by a user of rail service on the line (or by a state or local government entity acting on behalf of such user) regarding cessation of service over the line either is pending with the Surface Transportation Board (Board) or with any U.S. District Court or has been decided in favor of complainant within the two-year period; and (4) the requirements at 49 CFR 1105.7(c) (environmental report), 49 CFR 1105.11 (transmittal letter), 49 CFR 1105.12 (newspaper publication), and 49 CFR 1152.50(d)(1) (notice to governmental agencies) have been met.

As a condition to this exemption, any employee adversely affected by the abandonment shall be protected under *Oregon Short Line Railroad—Abandonment Portion Goshen Branch Between Firth & Ammon, in Bingham & Bonneville Counties, Idaho,* 360 I.C.C. 91 (1979). To address whether this condition adequately protects affected employees, a petition for partial revocation under 49 U.S.C. 10502(d) must be filed.

Provided no formal expression of intent to file an offer of financial assistance (OFA) has been received, this exemption will be effective on July 5, 2013, unless stayed pending reconsideration. Petitions to stay that do not involve environmental issues,[1] formal expressions of intent to file an

[1] The Board will grant a stay if an informed decision on environmental issues (whether raised by a party or by the Board's Office of Environmental Analysis (OEA) in its independent investigation) cannot be made before the exemption's effective date. *See Exemption of Out-of-Serv. Rail Lines,* 5 I.C.C. 2d 377 (1989). Any request for a stay should be filed as soon as possible so that the Board may take appropriate action before the exemption's effective date.

OFA under 49 CFR 1152.27(c)(2),[2] and trail use/rail banking requests under 49 CFR. 1152.29 must be filed by June 17, 2013. Petitions to reopen or requests for public use conditions under 49 CFR. 1152.28 must be filed by June 25, 2013, with the Surface Transportation Board, 395 E Street, SW., Washington, DC 20423–0001.

A copy of any petition filed with the Board should be sent to NCRA'S representative: T. Scott Bannister, 111 Fifty-Sixth Street, Des Moines, IA 50312.

If the verified notice contains false or misleading information, the exemption is void *ab initio.*

NCRA has filed a combined environmental and historic report that addresses the effects, if any, of the abandonment on the environment and historic resources. OEA will issue an environmental assessment (EA) by June 10, 2013. Interested persons may obtain a copy of the EA by writing to OEA (Room 1100, Surface Transportation Board, Washington, DC 20423–0001) or by calling OEA at (202) 245–0305. Assistance for the hearing impaired is available through the Federal Information Relay Service at (800) 877–8339. Comments on environmental and historic preservation matters must be filed within 15 days after the EA becomes available to the public.

Environmental, historic preservation, public use, or trail use/rail banking conditions will be imposed, where appropriate, in a subsequent decision.

Pursuant to the provisions of 49 CFR 1152.29(e)(2), NCRA shall file a notice of consummation with the Board to signify that it has exercised the authority granted and fully abandoned the line. If consummation has not been effected by NCRA's filing of a notice of consummation by June 5, 2014, and there are no legal or regulatory barriers to consummation, the authority to abandon will automatically expire.

Board decisions and notices are available on our Web site at *www.stb.dot.gov.*

Decided: May 30, 2013.

By the Board, Rachel D. Campbell, Director, Office of Proceedings.

Raina S. White,

Clearance Clerk.

[FR Doc. 2013–13318 Filed 6–4–13; 8:45 am]

BILLING CODE 4915–01–P

[2] Each OFA must be accompanied by the filing fee, which is currently set at $1,600. *See* 49 CFR 1002.2(f)(25).

DEPARTMENT OF THE TREASURY

Office of the Comptroller of the Currency

Agency Information Collection Activities; Submission for OMB Review; Comment Request; Examination Questionnaire

AGENCY: Office of the Comptroller of the Currency (OCC), Treasury.

ACTION: Notice and Request for Comment.

SUMMARY: The OCC, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to comment on a continuing information collection, as required by the Paperwork Reduction Act of 1995 (44 U.S.C. chapter 35) (PRA).

Under the PRA, Federal agencies are required to publish notice in the **Federal Register** concerning each proposed collection of information, including each proposed extension of an existing collection of information.

In accordance with the requirements of the PRA, the OCC may not conduct or sponsor, and the respondent is not required to respond to, an information collection unless it displays a currently valid Office of Management and Budget (OMB) control number.

The OCC is soliciting comments concerning an information collection titled ''Examination Questionnaire.''

The OCC also is announcing that the proposed collection of information has been submitted to OMB for review and clearance under the PRA.

DATES: Comments must be submitted by July 5, 2013.

ADDRESSES: Because paper mail in the Washington, DC area and at the OCC is subject to delay, commenters are encouraged to submit comments by e-mail if possible. Comments may be sent to: Legislative and Regulatory Activities Division, Office of the Comptroller of the Currency, Attention: 1557–0199, 400 7th Street SW., Suite 3E–218, Mail Stop 9W–11, Washington, DC 20219. In addition, comments may be sent by fax to (571) 465–4326 or by electronic mail to *regs.comments@occ.treas.gov.* You may personally inspect and photocopy comments at the OCC, 400 7th Street SW., Washington, DC 20219. For security reasons, the OCC requires that visitors make an appointment to inspect comments. You may do so by calling (202) 649–6700. Upon arrival, visitors will be required to present valid government-issued photo identification and to submit to security screening in order to inspect and photocopy comments.

All comments received, including attachments and other supporting materials, are part of the public record and subject to public disclosure. Do not enclose any information in your comment or supporting materials that you consider confidential or inappropriate for public disclosure.

Additionally, please send a copy of your comments by mail to: OCC Desk Officer, 1557–0231, U.S. Office of Management and Budget, 725 17th Street NW., #10235, Washington, DC 20503, or by email to: *oira_submission@omb.eop.gov.*

FOR FURTHER INFORMATION CONTACT: You can request additional information of the collection from Johnny Vilela or Mary H. Gottlieb, Clearance Officers, (202) 649–5490, Legislative and Regulatory Activities Division (1557–0199), Office of the Comptroller of the Currency, 400 7th Street SW., Suite 3E–218, Mail Stop 9W–11, Washington, DC 20219.

SUPPLEMENTARY INFORMATION: In compliance with 44 U.S.C. 3507, the OCC has submitted the following proposed collection of information to OMB for review and clearance.

Examination Questionnaire (OMB Control Number 1557–0199)—Extension

Title: Examination Questionnaire.

OMB Control No.: 1557–0199.

Affected Public: Businesses or other for-profit.

Type of Review: Extension of a currently approved collection.

Abstract: The OCC has revised its Examination Survey and updated the estimated burden hours to adjust for the current number of national banks and thrifts in the OCC's supervisory system. Completed Examination Surveys provide the OCC with the information needed to properly evaluate the content and conduct of OCC examinations. Completed Examination Surveys also help measure the OCC's performance and progress in improving the supervisory experience and agency communications. The OCC will use the information to identify problems or trends that may impair the effectiveness of the examination process, to identify ways to improve its service to the banking industry, and to analyze staffing and training needs. A survey is provided to each national bank or Federal savings association at the conclusion of its supervisory cycle. Bankers will now be able to complete this survey using a secure web-based data collection tool.

The OCC is conducting an Exit Survey of banks and thrifts after they exit the

OCC's supervisory and examination system. Completed Exit Surveys will help the OCC understand the underlying reasons why banks and thrifts decide to leave the system. The OCC will use this information to improve its relationships with national banks and Federal savings associations and to identify problems that may impair the effectiveness of the examination and supervisory process. A survey is provided to each bank or thrift after they exit the OCC's supervisory system. Bankers will be able to complete this survey using a secure web-based data collection tool.

Burden Estimates (Examination Survey):

Estimated Number of Respondents: 1,307.

Estimated Number of Responses per Respondent per Year: 0.54.

Estimated Number of Responses: 706.

Estimated time per response: 10 minutes.

Estimated Annual Burden: 118 hours.

Burden Estimates (Exit Survey):

Estimated Number of Respondents: 50.

Estimated Number of Responses per Respondent per Year: 0.25.

Estimated Number of Responses: 12.

Estimated time per response: 5 minutes.

Estimated Annual Burden: 1 hour.

On March 27, 2013, the OCC published a 60-day notice in the **Federal Register** soliciting comments concerning this information collection. (78 FR 18678), The OCC received no comments in response to the notice.

Comments continue to be invited on:

(a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information has practical utility;

(b) The accuracy of the agency's estimate of the burden of the collection of information;

(c) Ways to enhance the quality, utility, and clarity of the information to be collected;

(d) Ways to minimize the burden of the collection on respondents, including through the use of automated collection techniques or other forms of information technology; and

(e) Estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

All comments will become a matter of public record. Written comments should address the accuracy of the burden estimates and ways to minimize burden including the use of automated collection techniques or the use of other forms of information technology as well as other relevant aspects of the information collection request.

Dated: May 30, 2013.

Michele Meyer,

Assistant Director, Legislative and Regulatory Activities Division.

[FR Doc. 2013–13306 Filed 6–4–13; 8:45 am]

BILLING CODE 4810–33–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Proposed Collection; Comment Request for Form 5306–A

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)). Currently, the IRS is soliciting comments concerning Form 5306–A, Application for Approval of Prototype Simplified Employee Pension (SEP) or Savings Incentive Match Plan for Employees of Small Employers (SIMPLE IRA Plan).

DATES: Written comments should be received on or before August 5, 2013 to be assured of consideration.

ADDRESSES: Direct all written comments to R. Joseph Durbala, Internal Revenue Service, Room 6129, 1111 Constitution Avenue NW., Washington, DC 20224.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the form and instructions should be directed to LaNita Van Dyke at Internal Revenue Service, Room 6513, 1111 Constitution Avenue NW., Washington, DC 20224, or at (202) 622–3215, or through the internet at *Lanita.VanDyke@irs.gov*.

SUPPLEMENTARY INFORMATION:

Title: Application for Approval of Prototype Simplified Employee Pension (SEP) or Savings Incentive Match Plan for Employees of Small Employers (SIMPLE IRA Plan).

OMB Number: 1545–0199.

Form Number: 5306–A.

Abstract: This form is used by banks, credit unions, insurance companies, and trade or professional associations to apply for approval of a simplified employee pension plan or a Savings Incentive Match Plan to be used by more than one employer. The data collected is used to determine if the prototype plan submitted is an approved plan.

Current Actions: There are no changes being made to the burden previously approved by OMB, at this time.

Type of Review: Extension of a currently approved collection.

Affected Public: Business or other for-profit organizations.

Estimated Number of Respondents: 5,000.

Estimated Time per Respondent: 19 hours, 22 minutes.

Estimated Total Annual Burden Hours: 96,850.

The following paragraph applies to all of the collections of information covered by this notice:

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number. Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

Request For Comments: Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record.

Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Approved: May 29, 2013.

R. Joseph Durbala,

IRS Supervisory Tax Analyst.

[FR Doc. 2013–13261 Filed 6–4–13; 8:45 am]

BILLING CODE 4830–01–P

U.S.-CHINA ECONOMIC AND SECURITY REVIEW COMMISSION

Notice of Open Public Hearing

AGENCY: U.S.-China Economic and Security Review Commission.

ACTION: Notice of open public hearing—June 6, 2013, Washington, DC.

SUMMARY: Notice is hereby given of the following hearing of the U.S.-China Economic and Security Review Commission.

Name: William A. Reinsch, Chairman of the U.S.-China Economic and Security Review Commission. The Commission is mandated by Congress to investigate, assess, and report to Congress annually on ''the national security implications of the economic relationship between the United States and the People's Republic of China.'' Pursuant to this mandate, the Commission will hold a public hearing in Washington, DC on June 6, 2013, ''China and the Middle East.''

Background: This is the sixth public hearing the Commission will hold during its 2013 report cycle to collect input from academic, industry, and government experts on national security implications of the U.S. bilateral trade and economic relationship with China. This hearing will explore patterns of Chinese investment in the U.S. and the implications of that investment for U.S. policymakers.

The hearing will be co-chaired by Commissioners Jeffrey L. Fiedler and Sen. James Talent. Any interested party may file a written statement by June 6, 2013, by mailing to the contact below. A portion of each panel will include a question and answer period between the Commissioners and the witnesses.

Location, Date and Time: Dirksen Senate Office Building, Room 608. Thursday, June 6, 2013, 9:00 a.m.–2:00 p.m. Eastern Time. A detailed agenda for the hearing is posted to the Commission's Web site at *www.uscc.gov*. Also, please check our Web site for possible changes to the hearing schedule. Reservations are not required to attend the hearing.

FOR FURTHER INFORMATION CONTACT: Any member of the public seeking further information concerning the hearing should contact Reed Eckhold, 444 North Capitol Street NW., Suite 602, Washington DC 20001; phone: 202–624–1496, or via email at *reckhold@uscc.gov*. Reservations are not required to attend the hearing.

Authority: Congress created the U.S.-China Economic and Security Review Commission in 2000 in the National Defense Authorization Act (Pub. L. 106–398), as amended by Division P of the Consolidated Appropriations Resolution, 2003 (Pub. L. 108–7), as amended by Public Law 109–108 (November 22, 2005).

Dated: May 29, 2013.

Michael Danis,

Executive Director, U.S.-China Economic and Security Review Commission.

[FR Doc. 2013–13266 Filed 6–4–13; 8:45 am]

BILLING CODE 1137–00–P

DEPARTMENT OF VETERANS AFFAIRS

[OMB Control No. 2900–0559]

Proposed Information Collection Activity: Proposed Collection; Comment Request

AGENCY: National Cemetery Administration, Department of Veterans Affairs.

ACTION: Notice.

SUMMARY: The National Cemetery Administration (NCA), Department of Veterans Affairs (VA), is announcing an opportunity for public comment on the proposed collection of certain information by the agency. Under the Paperwork Reduction Act (PRA) of 1995, Federal agencies are required to publish notice in the **Federal Register** concerning each proposed collection of information, including each proposed revision of a currently approved collection and allow 60 days for public comment in response to the notice. This notice solicits comments on the information needed to determine the number of interments conducted at State Veterans' cemeteries.

DATES: Written comments and recommendations on the proposed collection of information should be received on or before August 5, 2013.

ADDRESSES: Submit written comments on the collection of information through *www.Regulations.gov*; or to Mechelle Powell, National Cemetery Administration (43D1), Department of Veterans Affairs, 810 Vermont Avenue NW., Washington, DC 20420; or email: *mechelle.powell@va.gov*. Please refer to ''OMB Control No. 2900–0559'' in any correspondence. During the comment period, comments may be viewed online through the Federal Docket Management System (FDMS) at *www.Regulations.gov*.

FOR FURTHER INFORMATION CONTACT: Mechelle Powell at (202) 461–4114 or Fax (202) 273–6695.

SUPPLEMENTARY INFORMATION: Under the PRA of 1995 (Pub. L. 104–13; 44 U.S.C. 3501–3521), Federal agencies must obtain approval from the Office of Management and Budget (OMB) for each collection of information they conduct or sponsor. This request for comment is being made pursuant to Section 3506(c)(2)(A) of the PRA.

With respect to the following collection of information, NCA invites comments on: (1) Whether the proposed collection of information is necessary for the proper performance of NCA's functions, including whether the information will have practical utility; (2) the accuracy of NCA's estimate of the burden of the proposed collection of information; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or the use of other forms of information technology.

Title: State Cemetery Data Sheet and Cemetery Grant Documents.

OMB Control Number: 2900–0559.

Type of Review: Revision of a currently approved collection.

Abstract: VA Form 40–0241 is used to provide data regarding number of interments conducted at State Veterans' cemeteries each year. The State Cemetery Grants Services use the data collected to project the need for additional burial space and to demonstrate to the States (especially those without State Veterans' cemeteries) the viability of the program.

Affected Public: Federal Government, and State, Local or Tribal Government.

Estimated Annual Burden: 12,959.

Estimated Average Burden per Respondent: 60 minutes.

Frequency of Response: Annually.

Estimated Number of Respondents: 361.

Dated: May 30, 2013.

By direction of the Secretary.

Crystal Rennie,

Clearance Officer, Enterprise Records Service, Office of Information and Technology, Department of Veterans Affairs.

[FR Doc. 2013–13236 Filed 6–4–13; 8:45 am]

BILLING CODE 8320–01–P

DEPARTMENT OF VETERANS AFFAIRS

[OMB Control No. 2900–NEW]

Proposed Information Collection (Open Burn Pit Registry Airborne Hazard Self-Assessment Questionnaire) Activity: Comment Request

AGENCY: Veterans Health Administration, Department of Veterans Affairs.

ACTION: Notice.

SUMMARY: The Veterans Health Administration (VHA), Department of Veterans Affairs (VA), is announcing an opportunity for public comment on the proposed collection of certain information by the agency. Under the Paperwork Reduction Act (PRA) of 1995, Federal agencies are required to publish notice in the **Federal Register** concerning each proposed collection of information, including each proposed new collection, and allow 60 days for public comment in response to the notice. This notice solicits comments for information needed to ascertain and monitor the health effects of the exposure of members of the Armed Forces to toxic airborne chemicals and fumes caused by open burn pits.

DATES: Written comments and recommendations on the proposed collection of information should be received on or before August 5, 2013.

ADDRESSES: Submit written comments on the collection of information through the Federal Docket Management System (FDMS) at *www.Regulations.gov;* or to Cynthia Harvey-Pryor, Veterans Health Administration (10B4), Department of Veterans Affairs, 810 Vermont Avenue NW., Washington, DC 20420 or email: *cynthia.harvey-pryor@va.gov.* Please refer to ''OMB Control No. 2900–NEW, Open Burn Pit Registry Airborne Hazard Self-Assessment Questionnaire,'' in any correspondence. During the comment period, comments may be viewed online through FDMS.

FOR FURTHER INFORMATION CONTACT: Cynthia Harvey-Pryor at (202) 461–5870 or Fax (202) 495–5397.

SUPPLEMENTARY INFORMATION: Under the PRA of 1995 (Pub. L. 104–13; 44 U.S.C. 3501–3521), Federal agencies must obtain approval from the Office of Management and Budget (OMB) for each collection of information they conduct or sponsor. This request for comment is being made pursuant to Section 3506(c)(2)(A) of the PRA.

With respect to the following collection of information, VHA invites comments on: (1) Whether the proposed collection of information is necessary for the proper performance of VHA's functions, including whether the information will have practical utility; (2) the accuracy of VHA's estimate of the burden of the proposed collection of information; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or the use of other forms of information technology.

Title: Open Burn Pit Registry Airborne Hazard Self-Assessment Questionnaire, VA Form 10–10066.

OMB Control Number: 2900–NEW.

Type of Review: New data collection.

Abstract: Web-based data will be collected to provide outreach and quality health services to Open Burn Pit Registry participants and improve VA's ability to understand the health effects of exposure. Participant health concerns, demographics, deployment information, environmental monitoring data, self-reported exposures, health status, and health care utilization will be monitored of over time through routine and adhoc analysis to improve health care programs and develop hypotheses for health effects exposure.

Affected Public: Individuals or households.

Estimated Annual Burden: 25,000.

Estimated Average Burden per Respondent: 30 minutes.

Frequency of Response: Once.

Estimated Number of Respondents: 50,000.

Dated: May 30, 2013.

By direction of the Secretary.

Crystal Rennie,

Clearance Officer, Enterprise Records Service, Office of Information and Technology, Department of Veterans Affairs.

[FR Doc. 2013–13224 Filed 6–4–13; 8:45 am]

BILLING CODE 8320–01–P

FEDERAL REGISTER

Vol. 78 Wednesday,

No. 108 June 5, 2013

Part II

Department of the Interior

Bureau of Ocean Energy Management

Atlantic Wind Lease Sale 2 (ATLW2) Commercial Leasing for Wind Power on the Outer Continental Shelf Offshore Rhode Island and Massachusetts—Final Sale Notice and Commercial Wind Lease Issuance and Site Assessment Activities on the Atlantic Outer Continental Shelf (OCS) Offshore Rhode Island and Massachusetts; Notices

DEPARTMENT OF THE INTERIOR

Bureau of Ocean Energy Management

[Docket No. BOEM–2013–0014; MMAA104000]

Atlantic Wind Lease Sale 2 (ATLW2) Commercial Leasing for Wind Power on the Outer Continental Shelf Offshore Rhode Island and Massachusetts—Final Sale Notice

AGENCY: Bureau of Ocean Energy Management (BOEM), Interior.

ACTION: Final Sale Notice for Commercial Leasing for Wind Power on the Outer Continental Shelf Offshore Rhode Island and Massachusetts.

SUMMARY: This document is the Final Sale Notice (FSN) for the sale of two commercial wind energy leases on the Outer Continental Shelf (OCS) offshore Rhode Island and Massachusetts, pursuant to BOEM's regulations at 30 CFR 585.216. BOEM is offering Lease OCS–A 0486 (North Lease Area) and Lease OCS–A 0487 (South Lease Area) for sale simultaneously using a multiple factor auction format. The two lease areas together comprise the Rhode Island and Massachusetts Wind Energy Area (WEA) announced on February 24, 2012, (see ''Areas Offered for Leasing'' below for a description of the WEA and lease areas). The two lease areas are identical to those announced in the *Proposed Sale Notice (PSN) for Commercial Leasing for Wind Power on the Outer Continental Shelf (OCS) Offshore Rhode Island and Massachusetts,* which was published on December 3, 2012, in the **Federal Register** with a 60-day public comment period (77 FR 71612). This FSN contains information pertaining to the areas available for leasing, lease provisions and conditions, auction details, the lease form, criteria for evaluating competing bids, award procedures, appeal procedures, and lease execution. The issuance of the leases resulting from this lease sale would not constitute an approval of project-specific plans to develop offshore wind energy. Such plans, expected to be submitted by successful lessees, will be subject to subsequent environmental and public review prior to a decision to proceed with development.

DATES: BOEM will hold a mock auction for the eligible bidders on July 24, 2013. The nonmonetary phase of the auction will begin on July 29, 2013. The monetary phase of the auction will be held online and will begin at 10:30 a.m. on July 31, 2013. Additional details are provided in the section entitled, ''Deadlines and Milestones for Bidders.''

FOR FURTHER INFORMATION CONTACT: Jessica Bradley, BOEM Office of Renewable Energy Programs, 381 Elden Street, HM 1328, Herndon, Virginia 20170, (703) 787–1320 or *jessica.bradley@boem.gov*.

Authority: This FSN is published pursuant to subsection 8(p) of the OCS Lands Act (43 U.S.C. 1337(p)) (''the Act''), as amended by section 388 of the Energy Policy Act of 2005 (EPAct), and the implementing regulations at 30 CFR Part 585, including 30 CFR 585.211 and 585.216.

Background: The two lease areas offered in this FSN are the same areas as BOEM announced in the PSN on December 3, 2012 (77 FR 71612). BOEM received 82 comments in response to the PSN, which are available on BOEM's Web site at: *http://www.boem.gov/Renewable-Energy-Program/State-Activities/Rhode-Island.aspx*. BOEM has also posted a document containing responses to comments submitted during the PSN comment period and listing other changes that BOEM has implemented for this lease sale since publication of the PSN.

On July 3, 2012, BOEM published a Notice of Availability (NOA) (77 FR 39508) of an Environmental Assessment (EA) for commercial wind lease issuance and site assessment activities on the Atlantic OCS Offshore Rhode Island and Massachusetts with a 30-day public comment period. BOEM received 32 comments, which are available at *http://www.boem.gov/Renewable-Energy-Program/State-Activities/Rhode-Island.aspx*. BOEM has also concluded consultations under the Endangered Species Act (ESA), the Magnuson-Stevens Fishery Conservation and Management Act (MSFCMA), Section 106 of the National Historic Preservation Act (NHPA), and the Coastal Zone Management Act (CZMA).

Based on the public comments in response to the EA, the conclusion of required consultations, and public outreach and information meetings, BOEM decided to make certain revisions to the EA originally published in July 2012. Concurrent with this notice, BOEM is publishing a NOA for the revised EA and Finding of No Significant Impact (FONSI). The *Commercial Wind Lease Issuance and Site Assessment Activities on the Atlantic Outer Continental Shelf (OCS) Offshore Rhode Island and Massachusetts Revised Environmental Assessment (EA)* can be found at *http://www.boem.gov/Renewable-Energy-Program/Smart-from-the-Start/Index.aspx*.

The two lease areas offered in Atlantic Wind Lease Sale 2 (ATLW2) comprise the Rhode Island and Massachusetts WEA described as the proposed action and preferred alternative in the EA. Additional environmental reviews will be conducted upon receipt of the lessees' proposed project-specific plans, such as a Site Assessment Plan (SAP) or Construction and Operations Plan (COP).

List of Eligible Bidders: BOEM has determined that the following companies are legally, technically and financially qualified pursuant to 30 CFR 585.106 and 107, and are therefore eligible to participate in this lease sale as bidders.

Company name	Company No.
Deepwater Wind New England, LLC	15012
EDF Renewable Development, Inc	15027
Energy Management, Inc.	15015
Fishermen's Energy, LLC	15005
IBERDROLA RENEWABLES, Inc.	15019
Neptune Wind LLC	15011
Sea Breeze Energy LLC	15044
US Mainstream Renewable Power (Offshore) Inc.	15029
US Wind Inc.	15023

Deadlines and Milestones for Bidders: This section describes the major deadlines and milestones in the auction process from publication of this FSN to execution of leases pursuant to this sale.

- *Bidders Financial Form (BFF):* Each eligible bidder must submit a BFF to BOEM by June 12, 2013. Please note that the BFF has been updated since publication of the PSN. The updated BFF is available at *http://www.boem.gov/Renewable-Energy-Program/State-Activities/Rhode-Island.aspx*. Once this information has been processed by BOEM, bidders may log into pay.gov and leave bid deposits.
- *Bid Deposits:* Each bidder must submit an adequate bid deposit by July 17, 2013.
- *Non-Monetary Package:* Each bidder must submit a non-monetary package, if it is applying for a credit, by July 17, 2013.
- *Mock Auction:* BOEM will hold a Mock Auction on July 24, 2013. The Mock Auction is not an ''in-person'' event. BOEM will contact each eligible bidder and provide instructions for participation. Only bidders eligible to participate in this auction will be permitted to participate in the Mock Auction.
- *Panel Convenes to Evaluate Non-Monetary Packages:* On July 29, 2013, the panel described in the ''Auction

Procedures'' section will convene to consider non-monetary packages. The panel will send determinations of eligibility to BOEM, who will inform each bidder by email of the panel's determination with respect to them.

• *Monetary Auction:* On July 31, 2013, BOEM, through its contractor, will hold the monetary stage of the auction. The auction will start at 10:30 a.m. The auction will proceed electronically according to a schedule to be distributed by the BOEM Auction Manager at the time of the auction. BOEM anticipates that the auction will continue on consecutive business days, as necessary, until the auction ends according to the procedures described in the Auction Format section of this notice.

• *Announce Provisional Winners:* BOEM will announce the provisional winners of the lease sale after the auction ends.

• *Reconvene the Panel:* The panel will reconvene to verify auction results.

• *Department of Justice (DOJ) Review:* BOEM will afford the Department of Justice (DOJ) 30 days to conduct an antitrust review of the auction, pursuant to 43 U.S.C. 1337(c), which reads, in relevant part:

Antitrust review of lease sales. Following each notice of a proposed lease sale and before the acceptance of bids and the issuance of leases based on such bids, the Secretary [of the Interior] shall allow the Attorney General, in consultation with the Federal Trade Commission, thirty days to review the results of such lease sale, except that the Attorney General, after consultation with the Federal Trade Commission, may agree to a shorter review period.

• *Delivery of Leases:* BOEM will send three lease copies to each winner, with instructions on how to accept and execute the leases. The first 6-months of the first year's rent payment is due 45 days after the winner receives the lease for execution.

• *Return the Leases:* The auction winners will have ten days from receiving the lease copies in which to post financial assurance, pay any outstanding balance of their bonus bids, and sign and return the three copies.

• *Refund Non-Winners:* BOEM will return the bid deposits of any bidders that did not win leases in the lease sale with a written explanation of why the bidder did not win.

• *Execution of Leases:* Once BOEM has received the signed lease copies and verified that all required materials have been received, BOEM will make a final determination regarding its execution of the leases, and execute if appropriate.

Areas Offered For Leasing: The North and South Lease Areas offshore Rhode Island and Massachusetts comprise 13 whole OCS blocks and 26 sub-blocks encompassing 164,750 acres. The North Lease Area consists of 97,498 acres, and the South Lease Area consists of 67,252 acres. If there are adequate bids, two leases will be issued pursuant to this lease sale. A description of the lease areas and lease activities can be found in Addendum ''A'' of each lease, which BOEM has made available with this notice on its Web site at: *http://www.boem.gov/Renewable-Energy-Program/State-Activities/Rhode-Island.aspx*.

BOEM commissioned the Department of Energy's National Renewable Energy Laboratory (NREL) to evaluate BOEM's delineation of the lease areas that was published in the PSN. The final technical evaluation report is available on BOEM's Web site at: *http://www.boem.gov/Renewable-Energy-Program/State-Activities/Rhode-Island.aspx*. One conclusion of the report is that the North and South Lease Areas have significantly dissimilar attributes and that ''together these differing attributes tend to indicate that the North Lease area is a more competitive and cost effective area for near term commercial development.'' Still, the report concludes, ''the current RI/MA WEA delineation is logical in terms of providing two distinct developable leasing areas . . .''

Ascending bidding over the course of the auction will ensure that the relative values of the lease areas will determine the amount bidders will pay. BOEM has determined that the differences highlighted in the NREL report justify adjusting the minimum bids for the two lease areas. Accordingly, the minimum bid for the South Lease Area will be $1 per acre, or $67,252. The minimum bid for the North Lease Area will be $2 per acre, or $194,996.

Map of the Area Offered for Leasing: A map of the North and South Lease Areas and a table of the boundary coordinates in X, Y (eastings, northings) UTM Zone 18, NAD83 Datum and geographic X, Y (longitude, latitude), NAD83 Datum can be found at the following URL: *http://www.boem.gov/Renewable-Energy-Program/State-Activities/Rhode-Island.aspx*.

A large scale map of these areas, showing boundaries of the area with numbered blocks, is available from BOEM at the following address: Bureau of Ocean Energy Management, Office of Renewable Energy Programs, 381 Elden Street, HM 1328, Herndon, Virginia 20170, Phone: (703) 787–1320, Fax: (703) 787–1708.

Withdrawal of Blocks: BOEM reserves the right to withdraw areas from this lease sale prior to its execution of a lease.

Lease Terms and Conditions: BOEM has included specific terms, conditions, and stipulations for OCS commercial wind leases in the Rhode Island and Massachusetts WEA within Addendum ''C'' of each lease. BOEM reserves the right to apply additional terms and conditions to activities conducted on the lease incident to any future approval or approval with modifications of a SAP and/or COP. Each lease, including Addendum ''C'', is available on BOEM's Web site at: *http://www.boem.gov/Renewable-Energy-Program/State-Activities/Rhode-Island.aspx*. Each lease consists of an instrument with 18 sections and the following six attachments:

Addendum ''A'' (Description of Leased Area and Lease Activities);

Addendum ''B'' (Lease Term and Financial Schedule);

Addendum ''C'' (Lease Specific Terms, Conditions, and Stipulations);

Addendum ''D'' (Project Easement)

Addendum ''E'' (Rent Schedule); and

Appendix A to Addendum C (Incident Report: Protected Species Injury or Mortality).

Addenda ''A'', ''B'', and ''C'' provide detailed descriptions of lease terms and conditions.

Addenda ''D'' and ''E'' will be completed at the time of COP approval.

Plans: Pursuant to 30 CFR 585.601, the leaseholder must submit a SAP within 6 months of lease issuance. If the leaseholder intends to continue its commercial lease with an operations term, the leaseholder must submit a COP at least 6 months before the end of the site assessment term.

Pursuant to 30 CFR 585.629, a leaseholder may include in its COP a request to develop its commercial lease in phases. If a leaseholder requests and BOEM approves phased development, this approval will not affect the length of the preliminary, site assessment, or commercial terms offered under the lease. The COP must describe in sufficient detail the activities proposed for all phases of commercial development, including a schedule detailing the proposed timelines for phased development. Further, the COP must include the results of all site characterization surveys, as described in 30 CFR 585.626(a), necessary to support each phase of commercial development. The requirements of the SAP remain the same as they would under a non-phased development scenario, and must meet the requirements set forth in the regulatory provisions in 30 CFR 585.605–585.613 for the full commercial lease area.

Financial Terms and Conditions: This section provides an overview of the basic annual payments required of the Lessee, which will be fully described in each lease.

Rent: The first year's rent payment of $3 per acre for the entire lease area will be separated into two 6-month payments. The first 6-month payment is due within 45 calendar days of the date the Lessee receives the lease for execution. The second 6-month payment is due 6 months after the Effective Date of the lease. Thereafter, annual rent payments are due on the anniversary of the Effective Date of the lease, i.e., the Lease Anniversary. Once the first commercial operations under the lease begin, rent will be charged on the remaining part of the lease not authorized for Commercial Operations, i.e., not generating electricity. However, instead of geographically dividing the lease area into acreage that is ''generating'' and acreage that is ''non-generating,'' the fraction of the lease accruing rent is based on the fraction of the total nameplate capacity of the project that is not yet in operation. The fraction is the ratio of the actual nameplate capacity (as defined below) not yet authorized for commercial operations at the time payment is due divided by the maximum nameplate capacity authorized in the Lessee's most recent approved COP in any year of commercial operations on the lease. This fraction is then multiplied by the amount of rent that would be due for the Lessee's entire leased area at the rental rate of $3 per acre to obtain the annual rent due for a given year.

For example, for a lease the size of 164,750 acres (the size of the entire WEA), the amount of rent payment will be $494,250 per year if the entire leased area is not authorized for commercial operations. If the Lessee has 500 MW authorized under commercial operations and its most recent approved COP specifies a maximum project size of 1000 MW on the entire leased area in any year of commercial operations, the rent payment will be $247,125.

The Lessee also must pay rent for any project easement associated with the lease commencing on the date that BOEM approves the COP (or modification) that describes the project easement. Annual rent for a project easement, 200-feet wide and centered on the transmission cable, is $70.00 per statute mile. For any additional acreage required, the Lessee must also pay the greater of $5.00 per acre per year or $450.00 per year.

Operating Fee: The annual operating fee reflects a 2% operating fee rate applied to a proxy for the wholesale market value of electricity production. The initial payment is prorated to reflect the period between the start of commercial operations and the Lease Anniversary, and is due within 45 days of the start of commercial operations; thereafter, subsequent annual operating fee payments are due on or before each Lease Anniversary. The annual operating fee payment is calculated by multiplying the operating fee rate by the imputed wholesale market value of the projected annual electric power production. For the purposes of this calculation, the imputed market value is the product of the project's nameplate capacity, the total number of hours in the year (8,760), a capacity utilization factor, and the annual average price of electricity derived from a historical regional wholesale power price index.

Operating Fee Rate: The operating fee rate is set at 0.02 (i.e., 2%) during the entire life of commercial operations.

Nameplate Capacity: Nameplate capacity is the maximum rated electric output, expressed in megawatts (MW), that the turbines of the wind farm facility under commercial operations can produce at their rated wind speed as designated by the turbine's manufacturer. The nameplate capacity at the start of each year of commercial operations on the lease will be specified in the COP. For example, if a Lessee has 20 turbines under commercial operations rated by the design manufacturer at 5 MW of output each, the nameplate capacity of the wind farm facility at the rated wind speed of the turbines would be 100 MW.

Capacity Factor: Capacity factor represents the share of anticipated generation of the wind farm facility that is delivered to the interconnection grid (i.e., where the Lessee's facility interconnects with the electric grid) relative to the wind farm facility's generation at continuous full power operation at nameplate capacity, expressed as a decimal between zero and one. The capacity factor for the year in which the Commercial Operation Date occurs and for the first six full years of commercial operations on the lease is set to 0.4 (i.e., 40%) to allow for one year of installation and testing followed by five years at full availability. At the end of the sixth year, the capacity factor will be adjusted to reflect the performance over the previous five years based upon the actual metered electricity generation at the delivery point to the electrical grid. Similar adjustments to the capacity factor will be made once every five years thereafter. The maximum change in the capacity factor from one period to the next will be limited to plus or minus 10 percent of the previous period's value.

Wholesale Power Price Index: The wholesale power price, expressed in dollars per MW hour, is determined at the time each annual operating fee payment is due, based on the weighted average of the inflation-adjusted peak and off-peak spot price indices for the Northeast—Mass Hub power market for the most recent year of data available as reported by the Federal Energy Regulatory Commission (FERC) as part of its annual *State of the Markets Report* with specific reference to the summary entitled, ''Electric Market Overview: Regional Spot Prices.'' The wholesale power price is adjusted for inflation from the year associated with the published spot price indices to the year in which the operating fee is to be due based on the Lease Anniversary using annual implicit price deflators as reported by the U.S. Department of Commerce Bureau of Economic Analysis (BEA).

Financial Assurance: Within ten days after receiving the lease copies, the provisional winner must provide an initial lease-specific bond or other approved means of meeting the Lessor's initial financial assurance requirements in the amount of $100,000. BOEM will base the amount of all SAP, COP, and decommissioning financial assurance requirements on estimates of cost to meet all accrued lease obligations. The amount of supplemental and decommissioning financial assurance requirements will be determined on a case-by-case basis.

The financial terms can be found in Addendum ''B'' of the proposed lease, which BOEM has made available with this notice on its Web site at: *http://www.boem.gov/Renewable-Energy-Program/State-Activities/Rhode-Island.aspx*.

Bid Deposit and Minimum Bid: A bid deposit is an advance cash deposit submitted to BOEM in order to participate in the auction. No later than July 17, 2013, each bidder must have submitted a bid deposit of $450,000 per unit of desired initial eligibility. Each lease is worth one unit of bid eligibility in the auction. The required bid deposit for any participant intending to bid on both leases in the first round of the auction will be $900,000. Any participant intending to bid on only one of the leases during the auction must submit a bid deposit of $450,000. Any bidder that fails to submit the bid deposit by the deadline described herein may be prevented by BOEM from participating in the auction. Bid deposits will be accepted online via *pay.gov.*

Approximately 97,498 acres are offered for sale as Lease OCS–A 0486 (North Lease Area), and approximately 67,252 acres are offered as Lease OCS–A 0487 (South Lease Area) in this auction. The minimum bid is $1 per acre for the South Lease Area and $2 per acre for the North Lease Area. Therefore, the minimum acceptable bid, i.e., the opening asking price for the South Lease Area, will be $67,252, and for the North Lease Area, will be $194,996.

Each bidder must complete the Bidder's Financial Form that BOEM has made available with this notice on its Web site at: *http://www.boem.gov/Renewable-Energy-Program/State-Activities/Rhode-Island.aspx*. This form must be submitted by June 12, 2013, to BOEM, pursuant to the instructions posted with the form. Please note that the BFF has been updated since publication of the PSN. This form requests that each bidder designate an email address, which the bidder should use to create an account in *pay.gov*. After establishing the *pay.gov* account, bidders may use the Bid Deposit Form on the *pay.gov* Web site to leave a deposit.

Following the auction, bid deposits will be applied against any bonus bids or other obligations owed to BOEM. If the bid deposit exceeds the bidder's total financial obligation, the balance of the bid deposit will be refunded to the bidder. BOEM will refund the bid deposit to unsuccessful bidders.

Auction Procedures

Summary

For the sale of Lease OCS–A 0486 (''North'') and Lease OCS–A0487 (''South''), BOEM will use a multiple-factor auction format, with a multiple-factor bidding system. Under this system, BOEM may consider a combination of monetary and nonmonetary factors, or ''variables,'' in determining the outcome of the auction. BOEM has appointed a panel of three BOEM employees for the purposes of reviewing the non-monetary packages and verifying the results of the lease sale. BOEM reserves the right to change the composition of this panel prior to the date of the lease sale. The panel will meet to consider non-monetary packages on July 29, 2013. The panel will determine whether any bidder has earned a non-monetary credit to be used during the auction, and, if one or more bidders have earned such a credit, the percentage the credit will be worth. The monetary auction will take place on July 31, 2013. The auction will balance consideration of two variables—(1) a cash bid, and (2) a non-monetary credit, i.e., if a bidder holds a Power Purchase Agreement (PPA), or a Joint Development Agreement (JDA). In sum, these two variables comprise the ''As-Bid'' auction price, as reflected either in a bidder meeting BOEM's asking price or the bidder offering its own Intra-Round Bid price subject to certain conditions, as described more fully below. A multiple-factor auction, wherein both monetary and non-monetary bid variables are considered, is provided for under BOEM's regulations at 30 CFR 585.220(a)(4) and 585.221(a)(6).

Overview of the Multiple-Factor Bidding Format Proposed for this Sale

Under a multiple-factor bidding format, as set forth at 30 CFR 585.220(a)(4), BOEM may consider many factors as part of a bid. The regulation states that one bid proposal per bidder will be accepted, but does not further specify the procedures to be followed in the multiple-factor format. This multiple-factor format is intended to allow BOEM flexibility in administering the auction and in balancing the variables presented. The regulation leaves to BOEM the determination of how to administer the multiple-factor auction format in order to ensure receipt of a fair return under the Act, 43 U.S.C. 1337(p)(2)(A). BOEM has chosen to do this through an auction format that considers a non-monetary factor along with ascending bidding over multiple rounds, sharing certain useful information with bidders at the end of each auction round, such as the number of live bids associated with each Lease Area (LA), and ensuring that a bidder's live bid submitted in the final round of the auction will win the LAs included in that bid. This auction format enhances competition and reduces bidder uncertainty more effectively than other auction types that BOEM considered.

BOEM's regulations at 30 CFR 585.220(a)(4) provides for a multi-round auction in which each bidder may submit only one proposal per LA or for a set of LAs in each round of the auction. This formulation presents an administratively efficient auction process. It also takes advantage of the flexibility built into the regulations by enabling BOEM to benefit from both the consideration of more than one bidding factor and the price discovery involved in successive rounds of bidding.

The auction will be conducted in a series of rounds. At the start of each round, BOEM will state an asking price for the North LA and an asking price for the South LA. The asking price for a bid on both LAs is the sum of the asking prices for the North LA and the South LA. Each bidder will indicate whether it is willing to meet the asking price for one or both LAs. A bid submitted at the full asking price for one or both LAs in a particular round is referred to as a ''live bid.'' A bidder must submit a live bid for at least one of the LAs in each round to participate in the next round of the auction. As long as there is at least one LA that is included in two or more live bids, the auction continues, and the next round is held.

A bidder's As-Bid price must meet the asking price in order for it to be considered a live bid. A bidder may meet the asking price by submitting a monetary bid equal to the asking price, or, if it has earned a credit, by submitting a multiple-factor bid—that is, a live bid that consists of a monetary element and a non-monetary element, the sum of which equals the asking price. In particular, the multiple-factor bid would consist of the sum of a cash portion and any credit portion which the bidder has earned.

An uncontested bid is a live bid that does not overlap with other live bids in that round. For example, a bid for both the North and the South LAs is considered contested if any LA included in that bid is included in another bid—a bid cannot be ''partially uncontested.'' An uncontested bid represents the only apparent interest in that bid's LA(s) at the asking price for that round. If a bidder submits an uncontested bid consisting of one LA, and the auction continues for another round, BOEM automatically carries that same live bid forward as a live bid into the next round, and BOEM's asking price for the LA contained in the uncontested bid would remain unchanged from the previous round. In other words, BOEM assumes that the bidder is willing to pay that same price for the LA in that bid in the next round as it revealed it was willing to pay for it in the current round. If the price on the LA in that bid rises later in the auction because another bidder places a live bid on that LA, BOEM will stop automatically carrying forward the previously uncontested bid. Once the asking price goes up, the bidder that placed the previously carried-forward bid is free to bid on either lease area at the new asking prices.

Following each round in which either LA is contained in more than one live bid, BOEM will raise the asking price for that LA by an increment determined by BOEM. The auction concludes when neither the North nor the South LA is included in more than one live bid. The series of rounds and the rising asking prices set by BOEM will facilitate

consideration of the first variable—the cash portion of the bid.

The second variable—a credit of up to 25% of a monetary bid for holding a PPA or JDA—will be applied throughout the auction rounds as a form of imputed payment against the asking price for the highest priced LA in a bidder's multiple-factor bid. This credit serves to supplement the amount of a cash bid proposal made by a particular bidder in each round. A bidder holding a qualified PPA will receive a credit of up to 25%. A bidder holding a qualified JDA will receive a credit of 20%. The total percentage credit for each bidder is limited to 25% on a single LA in the auction to address concerns about creating too large an advantage to certain bidders in the auction, as discussed in BOEM's Auction Format Information Request (76 FR 76174). BOEM has considered the overall impact on competition and the relative strength of a PPA and JDA in enabling a lessee to install a viable project on the OCS in setting the credits. In the case of a bidder holding a credit and bidding on more than one LA, the credit will be applied only on the LA with the highest asking price. More details on the non-monetary factors are found in the ''Credit Factors'' section below.

By way of example, assume a bidder holds a qualified PPA for the sale of 400 MW, and its live bid consists of both the North and South LAs in the current round: the South LA having an asking price of $1,000,000 and the North LA having an asking price of $2,000,000. Suppose the bidder receives a 25% credit, which applies only against the North LA, the higher priced LA in that round, at $2,000,000. A live bid for these two LAs would require the bidder to submit an As-Bid price of $3,000,000 which would consist of a monetary payment of $1,500,000 for North, (25% less than the asking price), and $1,000,000 for South. Hence, the monetary portion of the live bid would be $2,500,000, and the credit portion would be $500,000. Each bid in each round will thus be considered based on both factors—the amount of the cash bid proposed and the amount of a potential credit for holding a qualified PPA or JDA.

BOEM's regulations at 30 CFR 585.222(d) require the use of a panel to weigh the variables and to determine the winner(s) of the auction. The regulations state that BOEM ''will determine the winning bid for proposals submitted under the multiple-factor bidding format on the basis of selection by the panel . . .'' 30 CFR 585.224(h). The panel will evaluate non-monetary packages consisting of any purported PPA or qualified JDA to determine whether it is acceptable to BOEM, and therefore whether it will qualify for a credit for its holder. It is possible that the panel will determine that no bidder qualifies for a non-monetary credit during the auction, in which case the auction will otherwise proceed as described in the FSN. The panel will determine the winning bids for each LA in accordance with the procedures described below.

Details of the Auction Process

Bidding—Live Bids

Each bidder is allowed to submit a live bid for one LA (North or South), or both LAs based on its ''eligibility'' at the opening of each round. A bidder's eligibility is either two, one, or zero LAs, and it corresponds to the maximum number of LAs that a bidder may include in a live bid during a single round of the auction. A bidder's initial eligibility is determined based on the amount of the bid deposit submitted by the bidder prior to the auction. To be eligible to offer a bid on one LA at the start of the auction, a bidder must submit a bid deposit of $450,000. To be eligible to offer a bid on both North and South in the first round of the auction, the bidder must submit a bid deposit of $900,000. A bidder's bid deposit will be used by BOEM as a down payment on any monetary obligations incurred by the bidder should it be awarded a lease.

As the auction proceeds, a bidder's eligibility is determined by the number of LAs included in its live bid submitted in the round prior to the current round. That is, if a bidder submitted a live bid on one LA in the previous round, that bidder may submit a bid that includes at most one LA in the current round. If a bidder submitted a live bid comprised of both LAs in the previous round, that bidder may submit a live bid that also includes these two LAs in the current round. In both cases, unless a bidder has an uncontested bid that is carried forward into the next round, the bidder also may choose to submit a live bid with fewer LAs than the maximum number it is eligible to include in its bid. Thus, eligibility in successive rounds may stay the same or go down, but it can never go up.

In the first round of the auction, bidders have the following options: A bidder with an initial eligibility of one (that is, a bidder who submitted a bid deposit of $450,000) may:

- Submit a live bid on the North LA or the South LA, or
- Submit nothing, and drop out of the auction.

A bidder with an initial eligibility of two (that is, a bidder who submitted a bid deposit of $900,000) may:

- Submit a live bid for both the North and South LAs,
- Submit a live bid for the North LA or the South LA, or
- Submit nothing, and drop out of the auction.

Before each subsequent round of the auction, BOEM will raise the asking price for any LA that was contained in more than one live bid in the previous round. BOEM will not raise the asking price for a LA that was in one or no live bids in the previous round.

Asking price increments will be determined by BOEM, in its sole discretion. BOEM will base asking price increments on a number of factors, including:

- Making the increments sufficiently large that the auction will not take an unduly long time to conclude;
- Decreasing the increments as the asking price of a LA nears its final price. Because the final price for a LA is not known until the entire auction has ended, the number of bids that have included the same LA in the most recent round may be used as an imperfect indicator of how close a LA's asking price is to its final price.

BOEM has reduced the minimum bids for both LAs in this auction compared to the minimum bids announced in the PSN. Because the minimum bids have been significantly reduced, BOEM believes that it would be appropriate to raise asking prices by greater bid increments in early rounds of the auction than originally suggested. BOEM intends to use bid increments in the range of 20% to 50% in early rounds of the auction. At some point, BOEM intends to reduce the bid increments to the 5% to 20% range. BOEM reserves the right during the auction to increase or decrease increments if it determines, in its sole discretion, that a different increment is warranted to enhance the efficiency of the auction process. Asking prices for the LAs included in multiple live bids in the previous round will be raised and rounded to the nearest whole dollar amount to obtain the asking prices in the current round.

A bidder must submit a live bid in each round of the auction (or have an uncontested live bid automatically carried forward by BOEM) for it to remain active and continue bidding in future rounds. All of the live bids submitted in any round of the auction will be preserved and considered binding until determination of the winning bids is made. Therefore, the bidders are responsible for payment of the bids they submit and can be held

accountable for up to the maximum amount of those bids determined to be winning bids during the final award procedures.

Between rounds, BOEM will release the following information:

- The level of demand for each LA in the previous round of the auction. The level of demand for a given LA is defined as the number of live bids that included the LA.
- The asking price for each LA in the upcoming round of the auction.

In any subsequent round of the auction, if a bidder's previous round bid was uncontested, and the auction continues for another round, then BOEM will automatically carry forward that bid as a live bid in the next round. A bidder whose bid is being carried forward will not have an opportunity to modify or drop its bid until some other bidder submits a live bid that overlaps with the LA in the carried forward bid. Note that in this sale a carried forward bid will always be for only one LA—if a live bid consisting of both North and South was uncontested, the auction would end. In particular, for rounds in which a bidder finds its uncontested bid is carried forward, the bidder will be unable to do the following:

- Switch to the other LA;
- Submit an Intra-Round Bid (see below for discussion of Intra-Round Bids); or
- Drop out of the auction.

In this scenario the bidder is effectively ''frozen'' through future auction rounds for as long as its bid for that LA remains uncontested. Moreover, the bidder may be bound by that bid or, indeed, for any other bid which BOEM determines is a winning bid in the award stage. Hence, the bidder cannot drop an uncontested bid, and in no scenario can the bidder be relieved of any of its bids from previous or future rounds until a determination is made in the award stage about the LAs won by the bidder.

If a bidder's bid is not being carried forward by BOEM, a bidder with an eligibility of one (that is, a bidder who submitted a live bid for either the North LA or the South LA in the previous round) may:

- Submit a live bid for either the North LA or the South LA,
- Submit an Intra-Round Bid for the same LA that the bidder submitted a live bid for in the previous round and exit the auction: Or
- Submit nothing, and drop out of the auction.

A bidder with an eligibility of two (that is, a bidder who submitted a live bid for both North and South in the previous round) may:

- Submit a live bid for both the North and South LAs,
- Submit a live bid for either the North LA or the South LA,
- Submit an Intra-Round Bid for both the North and South LAs, and a live bid for either the North LA or the South LA,
- Submit an Intra-Round Bid for both the North and South LAs, no live bids, and exit the auction; or
- Submit nothing, and drop out of the auction.

Subsequent auction rounds occur in this sale as long as either the North LA or the South LA is contested. The auction concludes at the end of the round in which neither the North LA nor the South LA is included in the live bid of more than one bidder, i.e., all live bids are uncontested.

Bidding—Intra-Round Bids

All asking prices and asking price increments will be determined by the BOEM Auction Manager. It is possible that multiple bidders will be willing to meet the previous round's asking price for a LA, while no bidders will be willing to meet the next round's asking price. Without some mechanism to resolve this situation, the auction could result in a tie for this LA.

Intra-Round Bidding is a mechanism to minimize the chance of ties. It also allows bidders to more precisely express the maximum price they are willing to offer for the North, South, or both LAs.

When submitting a live bid, a bidder simply indicates willingness or unwillingness to pay the asking price for each LA offered in the auction. The bidder's response is either yes or no. In contrast, when submitting an Intra-Round Bid, the bidder is indicating that it is not willing to meet the current round's asking price, but it is willing to pay more than the previous round's asking price. In particular, in an Intra-Round Bid, the bidder specifies the maximum (higher than the previous round's asking price and less than the current round's asking price) that it is willing to offer for the specific LA(s) in its previous round's live bid.

Because an Intra-Round Bid must consist of a single offer price for exactly the same LA(s) included in the bidder's live bid in the previous round, a bidder cannot submit a live bid on the North LA in the previous round and then offer an Intra-Round Bid on the South LA in the current round (or vice versa). Rather, an Intra-Round Bid from this bidder in the current round must be for the North. In the same way, if the bidder submitted a live bid which includes both the North and South LAs in the previous round, then an Intra-Round Bid in the current round must include both the North and South LAs.

The number of LAs in a bidder's live bid will determine that bidder's eligibility in the next round. If a bidder includes two LAs in a bid in round 1, that bidder can include up to two LAs in a live bid in round 2, if the bidder chooses not to submit an Intra-Round Bid. However, if the bidder does choose to submit an Intra-Round Bid in round 2, which must be for both LAs included in the bidder's previous round's live bid, any accompanying live bid must be for only one of the two LAs. Otherwise, the bidder would be duplicating its carried forward live bid at a different price. Accordingly, although an Intra-Round Bid is *not* a live bid, in the round in which a valid Intra-Round Bid is submitted for both LAs, the bidder's eligibility for a live bid in that same round and future rounds is permanently reduced from including two LAs to one LA. In other words, once an Intra-Round Bid is submitted, the bidder will never again have the opportunity to submit a live bid on as many LAs as it has bid in previous rounds.

Because Intra-Round Bids are not live bids, and since BOEM only raises asking prices on LAs that are included in multiple live bids, BOEM will not consider Intra-Round Bids for the purpose of determining either to increase the asking price for a particular LA or to end the auction. Also, BOEM will not count nor share with bidders between rounds the number of Intra-Round Bids received for each LA.

All of the Intra-Round Bids submitted during the auction will be preserved, and may be determined to be winning bids. Therefore, bidders are responsible for payment of the bids they submit and may be held accountable for up to the maximum amount of any Intra-Round Bids or live bids determined to be winning bids during the final award procedures.

Determining Provisional Winners

After the bidding ends, BOEM will determine provisionally winning bids in accordance with the process described in this section. This process consists of two stages: Stage 1 and Stage 2, which are described below. Once the auction itself ends, nothing further is required of bidders within or between Stages 1 and 2. In practice, the stages of the process will take place as part of the solution algorithm for analyzing the monetary and credit portion of the bids, determining provisional winners, finding the LAs won by the provisional winners, and calculating the applicable bid prices to be paid by the winners for the LAs they won. This evaluation will

be reviewed, checked and validated by the panel. The determination of provisional winners, in both stages, will be based on the two auction variables, as well as on a bidder's adherence to the rules of the auction, and the absence of conduct detrimental to the integrity of the competitive auction.

Stage 1

Live bids submitted in the final round of the auction are Qualified Bids. In Stage 1, a bidder with a Qualified Bid is provisionally guaranteed of winning the LA(s) included in its final round bid, regardless of any other prior-to-final round live bids or Intra-Round Bids in any round. This guarantee provides bidders assurance that as long as they stay active in the bidding for a LA until the last round when the auction closes, they cannot be outbid on that LA or unexpectedly lose that LA. Not only does this provision strengthen competition and fairness in the auction, it also limits opportunities for anti-competitive tactics.

If both LAs are awarded to bidders in Stage 1, the second award stage is not necessary. If the North LA or the South LA received a bid but was not awarded in Stage 1, BOEM will proceed to Stage 2 to award remaining leases.

Following the auction, all winning bidders must pay the price associated with their winning bids, which may consist of cash and non-monetary credits or just cash.

Stage 2

All bids are either Qualified Bids or Contingent Bids. Contingent bids include all of the live bids received before the final round, and any Intra-Round Bids received during the auction. In Stage 2, BOEM will consider Contingent Bids, to see if the unawarded LA(s) can be awarded without interfering with Stage 1 awards. BOEM will make Stage 2 awards to the bid(s) that maximize(s) the total As-Bid prices.

Any Contingent Bids that conflict with Qualified Bids will not be considered. That is, if there was a Qualified Bid for the North LA (i.e., a live bid in the final round for the North LA), BOEM will not consider any Contingent Bid that contains the North LA. Only one bid per bidder may win. Accordingly, BOEM will not consider a Contingent Bid from any bidder that received a Stage 1 award for submitting a Qualified Bid.

There is one notable exception to the rule described in the preceding paragraph. This exception allows BOEM to accept a Contingent Bid for both LAs notwithstanding the existence of a Qualified Bid by the same bidder, provided the acceptance of the Contingent Bid results in higher overall As-Bid prices than acceptance of only the Qualified Bid. Suppose, for example, that a bidder submitted an Intra-Round Bid for the North and South LAs, and a live bid in the same round for the South LA. Suppose as well that the live bid turned out to be the only live bid submitted in that round, i.e., it is a Qualified Bid because the auction closes at the conclusion of that round. Without the exception, the Intra-Round Bid for both the North and South LAs would not win, because the Qualified Bid (for the South LA) overlaps with part of the Contingent Intra-Round Bid (for the North and South LAs), so BOEM would award the bidder only the South LA based on its Qualified Bid as provisionally awarded in Stage 1. In cases such as this, and related ones where the same bidder's Contingent Bid occurs in other than the final auction round where it has submitted an overlapping Qualified Bid, there are sound reasons to prefer the Contingent Bid to the Qualified Bid if the Contingent Bid results in higher As-Bid prices.

Based on the bids received, if the bidder values the Contingent Bid on both LAs more than the Qualified Bid on one LA:

- Awarding the Qualified Bid could discourage bidders from submitting live bids that compete with their own Intra-Round Bids, and
- Awarding the Qualified Bid could result in undersell, if one of the LAs would otherwise not be awarded in Stage 2.

The exception discussed here would prevent these adverse results.

In the example, the Intra-Round Contingent Bid could prevail, in which case the bidder would win both the North and South LAs. Note that all winning bidders must pay the As-Bid price associated with the winning bid, which may consist of cash and non-monetary credits or just cash. This means that the bidder would be required to pay its Intra-Round Bid price associated with its Intra-Round Bid, even though it submitted a Qualified Bid that guaranteed the South LA would be provisionally awarded to that bidder. In other words, the guarantee (that the bidder that submitted a Qualified Bid will be awarded the LA(s) associated with that bid) does not extend to the price the bidder might have to pay for the South LA if that LA is ultimately awarded through a Stage 2 evaluation in which the South LA was a subset of the North and South LAs awarded provisionally to that bidder in Stage 2.

This exception represents the only situation in which BOEM will consider for award a Contingent Bid which overlaps a Qualified Bid, i.e., when a bidder's Contingent Bid overlaps its own Qualified Bid. In contrast, there is no situation in which one bidder's Contingent Bid will be considered for award if it overlaps with any LA that is included in another bidder's Qualified Bid.

If more than one combination of Contingent Bids exist that would yield the same highest As-Bid price total, while preserving the LAs originally awarded in Stage 1, the resulting tie in the allocation of these LAs would be settled by a random draw.

In the event a bidder submits a bid for a LA that the panel and BOEM determine to be a winning bid, the bidder is expected to timely sign the applicable lease documents and submit the full cash payment due. If the bidder fails to timely sign and pay for the lease, then BOEM will not issue the lease to that bidder, and the bidder will forfeit its bid deposit. BOEM may consider failure of the bidder to timely pay the full amount due an indication that a bidder is no longer financially qualified to participate in other lease sales under BOEM's regulations at 30 CFR 585.106 and 585.107.

Credit Factors

Prior to the auction, BOEM will convene a panel to evaluate bidders' non-monetary packages to determine whether and to what extent each bidder is eligible for a non-monetary credit applicable to the As-Bid auction price for one of the LAs in each round of the auction, as described below. Any single JDA or PPA cannot be used by more than one bidder in the auction.

The percentage credit is determined based on the panel's evaluation of required documentation submitted by the bidders as of July 17, 2013. Bidders will be informed by email before the monetary auction about the percentage credit applicable to their bids. The bid credit will be applicable to only one LA. Any non-monetary credit would only be applicable to the higher priced LA in a bid for both LAs. For an Intra-Round Bid containing both LAs, the higher priced LA will be determined using the previous round's asking prices. In each round, the auction system will display information showing how their As-Bid auction prices are affected by the credit imputed to their bid to determine their net monetary payment due to BOEM, should their bids prevail as winning bids in the award stages. Application of the credit percentage to the appropriate As-Bid auction price will be rounded to

the nearest whole dollar amount. This entire process is conceptually similar to one in which the multiple bid factors are combined into an aggregate score for the purpose of awarding LAs, but is more transparent to bidders and facilitates the bidding process in a dynamic, multiple-factor, multiple round auction process.

The bidder's imputed credit throughout the auction and award process is limited to the greater of 25% for a PPA or 20% for a JDA, applied to the highest priced LA related to the bidder's latest live bid or Intra-Round Bid. During each round, bidders are informed by the BOEM Auction Manager how the credit applies to their live bid and any Intra-Round Bid. In the case of a live bid for both LAs, the credit will apply only to the LA having the highest current round asking price. In the case of an Intra-Round Bid for both LAs, the credit will also apply only to the higher-priced LA, but the applicable price for calculating the credit will be based on the previous round's asking prices, not on any additional amount above the previous round's asking prices as reflected in the incremental amount associated with its Intra-Round Bid.

The reason for using the previous round asking price in this situation is the difficulty of determining the precise LA As-Bid price attributable to each individual LA in an Intra-Round Bid that contains both LAs. The amount of the Intra-Round Bid attributable to each LA is not directly available when the bidder makes an Intra-Round Bid on both LAs. The individual LA bid amounts are available at the previous round asking prices. For this reason, the imputed credit is calculated based on the highest asking price of a LA included in the Intra-Round Bid submitted in the round preceding the round in which the Intra-Round Bid was made.

The panel will review the non-monetary package submitted by each bidder, and determine whether bidders have established that they are qualified to receive a credit, and the percentage at which that credit will apply, based on the definitional information regarding the PPA and JDA. If the panel determines that no bidder has qualified for a non-monetary factor, the auction will proceed with each bidder registered with no imputed credit.

Credit Factor Definitions: The definitions below will apply to the factors for which bidders may earn a credit.

Power purchase agreement (PPA) is any legally enforceable long term contract negotiated between an electricity generator (Generator) and a power purchaser (Buyer) that identifies, defines, and stipulates the rights and obligations of one party to produce, and the other party to purchase, energy from an offshore wind project to be located in the lease sale area. The PPA must have been approved by a public utility commission or similar legal authority. The PPA must state that the Generator will sell to the Buyer and the Buyer will buy from the Generator capacity, energy, and/or environmental attribute products from the project, as defined in the terms and conditions set forth in the PPA. Energy products to be supplied by the Generator and the details of the firm cost recovery mechanism approved by the State's public utility commission or other applicable authority used to recover expenditures incurred as a result of the PPA must be specified in the PPA. In order to qualify, a PPA must contain the following terms or supporting documentation:

(i) A complete description of the proposed project;

(ii) Identification of both the electricity Generator and Buyer that will enter into a long term contract;

(iii) A time line for permitting, licensing, and construction;

(iv) Pricing projected under the long term contract being sought, including prices for all market products that would be sold under the proposed long term contract;

(v) A schedule of quantities of each product to be delivered and projected electrical energy production profiles;

(vi) The term for the long term contract;

(vii) Citations to all filings related to the PPA that have been made with state and Federal agencies, and identification of all such filings that are necessary to be made; and

(viii) Copies of or citations to interconnection filings related to the PPA.

The panel will assign a 25% non-monetary credit to any bidder that establishes in its non-monetary package that it meets the criteria described above for a PPA for the sale of 350 MW of power. The panel will assign a smaller percentage credit to any bidder that establishes in its non-monetary package that it meets the criteria described above for a PPA for the sale of less than 350 MW of power. The smaller percentage credit will be calculated according to the formula below:

$$\text{Partial Credit} = \frac{(\text{Full Credit} * \text{Partial PPA})}{\text{Full PPA}}$$

Where:

- Partial Credit = Percent credit for which a smaller PPA is eligible.
- Full PPA = 350 MW
- Full Credit = 25%
- Partial PPA = amount (less than 350 MW) of power under contract

Joint Development Agreement (JDA) is a binding agreement between a state and a legal entity that proposes to develop renewable (wind) energy, which sets forth the rights, obligations, and certain economic development activities of the parties in connection with the development of an offshore wind project. The legal entity named in a JDA must be selected through a competitive selection process, such as a request for proposals that is conducted by a state adjacent to the wind energy area issuing and entering into the JDA, where the subsequent submitted proposals are evaluated by a state agency, committee or public utility board. To apply for a non-monetary credit, the bidder must send the agreement to BOEM by July 17, 2013, in its non-monetary package. The JDA will qualify if the panel determines that the agreement includes the following identifiable factors: (1) Sufficient specificity to the size, timing, and location of the proposed project on the OCS; (2) the financial commitment of the state, the identified legal entity, and/or a third party (buyer of power), if applicable, included in the agreement; (3) the developmental, financial, and/or regulatory processes through which the state will support the identified legal entity that proposes to develop renewable (wind) energy; (4) significant project milestones; (5) the ramifications for not meeting said milestones; and (6) any exclusionary rights awarded to said identified legal entity. Please clearly designate all information that BOEM should treat as business confidential. The panel will assign each holder of a qualifying JDA a credit of 20%.

Additional Information Regarding the Auction

Non-Monetary Auction Procedures

All bidders seeking a non-monetary auction credit are required to submit a non-monetary auction package. If a bidder seeks a non-monetary auction credit, this submission must contain information sufficient to establish the bidder's eligibility to receive a non-monetary credit in the monetary phase of the auction. Further information on this subject can be found in the section of this notice entitled, ''Credit Factor Definitions.'' If a bidder does not submit a non-monetary package by July 17, 2013, to BOEM, then BOEM will assume that bidder is not seeking a non-monetary auction credit and the panel will not consider that bidder for a non-monetary auction credit.

Bidder Authentication

The Auction Manager will send several bidder authentication packages to each bidder shortly after BOEM has processed the Bidder Financial Forms. One package will contain tokens for each authorized individual. Tokens are digital authentication devices. The tokens will be mailed to the address of record that BOEM has on file for each company, care of the Primary Point of Contact indicated on the Bidder's Financial Form. This individual is responsible for distributing the tokens to the individuals authorized to bid for that company. Bidders are to ensure that each token is returned within three business days following the auction. An addressed, stamped envelope will be provided to facilitate this process.

The second package contains login credentials for authorized bidders. The login credentials will be mailed to the address provided in the Bidder's Financial Form for each authorized individual. Bidders can confirm these addresses by calling 703–787–1320. This package will contain user login information and instructions for accessing the Auction System Technical Supplement and Alternative Bidding Form. The login information, along with the tokens, will be tested during the mock auction.

Monetary Auction Times

This section will describe, from a bidder's perspective, how the monetary phase of the auction will take place. This information will be elaborated on and clarified in the Mock Auction to be held on July 24, 2013, and an Auction System Technical Supplement that will be made publicly available on BOEM's Web site at: *http://www.boem.gov/Renewable-Energy-Program/State-Activities/Rhode-Island.aspx.* The Auction System Technical Supplement describes auction procedures that are incorporated by reference in this notice, except where the procedures described in the Auction System Technical Supplement directly contradict this notice.

The monetary auction will begin at 10:30 a.m. on July 31, 2013. Bidders may log in as early as 8:30 a.m. on that day. We recommend that bidders log in no later than 9:30 a.m. on that day to ensure that any login issues have been resolved in time. Once bidders have logged in, they should review the auction schedule, which lists the start times, end times, and recess times of each round in the auction. Each round is structured as follows:

- Round 1 Bidding Begins;
- Bidders enter their bids;
- Round 1 Bidding Ends and the first Recess begins;
- Sometime during the first Recess, Round 1 results are posted;
- Bidders review the Round 1 results and prepare their Round 2 bids;
- Round 2 Bidding Begins * * *

The first round will last about 30 minutes, though subsequent rounds may be closer to 20 minutes in length. Recesses are anticipated to last approximately 10 minutes. The descriptions of the auction schedule and asking price increments included with this FSN are for informational purposes only. Bidders should consult the auction schedule on the bidding Web site for updated times. Bidding will continue until about 5 p.m. each day. BOEM anticipates the auction will last one or two business days, but bidders are advised to prepare to continue bidding for additional business days as necessary to resolve the auction.

The schedule and asking price increments are in BOEM's discretion, and are subject to change at any time before or during the auction.

BOEM and the auction contractors will use the auction platform messaging service to keep bidders informed on issues of interest during the auction. For example, BOEM may change the schedule at any time, including during the auction. If BOEM changes the schedule during the auction, it will use the messaging feature to notify bidders that a revision has been made, and direct bidders to the relevant page. BOEM will also use the messaging system for other changes and items of particular note during the auction.

Bidders may place bids at any time during the round. At the top of the bidding page, a countdown clock will show how much time remains in the round. Bidders have until the scheduled time to place bids. Bidders should do so according to the procedures described in the Auction System Technical Supplement, and practiced at the Mock Auction. No information about the round is available until the round has closed and results have been posted, so there should be no strategic advantage to placing bids early or late in the round.

Alternate Bidding Procedures

Any bidder who is unable to place a bid using the online auction should follow these instructions:

- Call BOEM/the BOEM Auction Manager at the help desk number that is listed in the Auction System Technical Supplement before the end of the round.
- BOEM will authenticate the caller to ensure he/she is authorized to bid on behalf of the company.
- Explain the problem.
- BOEM may, in its sole discretion, accept a bid using the Alternative Bidding Procedure.
- The Alternative Bidding Procedure enables a bidder who is having difficulties accessing the Internet to submit its bid via an Alternative Bidding Form that can be faxed to the auction manager.
  - ○ If the bidder has not placed a bid, but calls BOEM before the end of the round and notifies BOEM that it is preparing a bid using the Alternate Bidding Procedure, and submits the Alternate Bidding Form by fax before the round ends, BOEM will likely accept the bid, though acceptance or rejection of the bid is within BOEM's sole discretion.
  - ○ If the bidder calls during the round, but does not submit the bid until after the round ends (but before the round is posted), BOEM may or may not accept the bid, in part based on how much time remains in the recess. Bidders are strongly encouraged to submit the Alternative Bidding Form before the round ends.
  - ○ If the bidder calls during the recess following the round, but before the previous round's results have been posted, BOEM will likely reject its bid, even if it has otherwise complied with all of BOEM's Alternate Bidding Procedures.
  - ○ If the bidder calls to enter a bid after results have been posted, BOEM will reject the bid.

Except for bidders who have uncontested bids in the current round, failure to place a bid during a round will be interpreted as dropping out of the auction. It is possible that bids entered before the bidder stopped entering bids may be awarded one or

both LAs pursuant to BOEM's stage 2 procedures. Bidders are held accountable for all bids placed during the auction. This is true if they continued bidding in the last round, if they placed an Intra-Round Bid for a single LA in an earlier round, or if they stopped bidding during the auction.

Acceptance, Rejection or Return of Bids: BOEM reserves the right and authority to reject any and all bids. In any case, no lease will be awarded to any bidder, and no bid will be accepted, unless (1) The bidder has complied with all requirements of the FSN, applicable regulations and statutes, including, but not limited to, bidder qualifications, bid deposits, and adherence to the integrity of the competitive bidding process, (2) the bid conforms with the requirements and rules of the auction, and (3) the amount of the bid has been determined to be adequate by the authorized officer. Any bid submitted that does not satisfy any of these requirements may be returned to the bidder submitting that bid by the Program Manager of BOEM's Office of Renewable Energy Programs and not considered for acceptance.

Process for Issuing the Lease: If BOEM proceeds with lease issuance, it will issue three unsigned copies of the lease form to each winning bidder. Within 10 business days after receiving the lease copies, each winning bidder must:

1. Execute the lease on the bidder's behalf;
2. File financial assurance, as required under 30 CFR 585.515–537; and
3. Pay by EFT the balance of the bonus bid (bid amount less the bid deposit). BOEM requires bidders to use EFT procedures (not to include pay.gov) for payment of the balance of the bonus bid, following the detailed instructions contained in the ''Instructions for Making Electronic Payments'' available on BOEM's Web site at: *http://www.boem.gov/Renewable-Energy-Program/State-Activities/Rhode-Island.aspx.*

If a winning bidder does not meet these three requirements within 10 business days of receiving the lease copies as described above, or if a winning bidder otherwise fails to comply with applicable regulations or the terms of the FSN, the winning bidder will forfeit its bid deposit. BOEM may extend this 10 business-day time period if it determines the delay was caused by events beyond the winning bidder's control.

In the event that the provisional winner does not execute and return the leases according to the instructions in this notice, BOEM reserves the right to reconvene the panel to determine whether it is possible to identify a bid that would have won in the absence of the bid previously determined to be the winning bid. In the event that a new winning bid is selected by the panel, BOEM will follow the procedures in this section for the new winner(s).

BOEM will not execute a lease until the three requirements above have been satisfied, BOEM has accepted the winning bidder's financial assurance, and BOEM has processed the winning bidder's payment. The winning bidder may meet financial assurance requirements by posting a surety bond or by setting up an escrow account with a trust agreement giving BOEM the right to withdraw the money held in the account on demand by BOEM. BOEM may accept other forms of financial assurance on a case-by-case basis in accordance with its regulations. BOEM encourages provisionally winning bidders to discuss the financial assurance requirement with BOEM as soon as possible after the auction has concluded.

Within 45 calendar days of the date that the Lessee receives the lease copies, the Lessee must pay the first 6-months' rent using the pay.gov Renewable Energy Initial Rental Payment Form available at: *https://pay.gov/paygov/forms/formInstance.html?agencyFormId=27797604.* The Lessee must pay the remaining 6-months' rent by the first day of the seventh month following the effective date of the lease, following the detailed instructions contained in the ''Instructions for Making Electronic Payments'' available on BOEM's Web site at: *http://www.boem.gov/Renewable-Energy-Program/State-Activities/Rhode-Island.aspx.*

Anti-Competitive Behavior: In addition to the auction rules described in this notice, bidding behavior is governed by Federal antitrust laws designed to prevent anticompetitive behavior in the marketplace. Compliance with BOEM's auction procedures will not insulate a party from enforcement of the antitrust laws.

In accordance with the Act at 43 U.S.C. 1337(c), following the auction, and before the acceptance of bids and the issuance of leases, BOEM will ''allow the Attorney General, in consultation with the Federal Trade Commission, 30 days to review the results of the lease sale.''

If a bidder is found to have engaged in anti-competitive behavior or otherwise violated BOEM's rules in connection with its participation in the competitive bidding process, BOEM may reject the high bid.

Anti-competitive behavior determinations are fact specific. However, such behavior may manifest itself in several different ways, including, but not limited to:

- An agreement, either express or tacit, among bidders to not bid in an auction, or to bid a particular price;
- An agreement among bidders not to bid for a particular Lease Area;
- An agreement among bidders not to bid against each other; and
- Other agreements among bidders that have the effect of limiting the final auction price.

BOEM may decline to award a lease if doing so would otherwise create a situation inconsistent with the antitrust laws (*e.g.,* heavily concentrated market, etc.).

For more information on whether specific communications or agreements could constitute a violation of Federal antitrust law, please see: *http://www.justice.gov/atr/public/business-resources.html,* or consult counsel.

Post-Auction Certification: Each bidder is required to sign the self-certification, in accordance with 18 U.S.C. 1001 (Fraud and False Statements) in the Bidder's Financial Form, which can be found on BOEM's Web site: *http://www.boem.gov/Renewable-Energy-Program/State-Activities/Rhode-Island.aspx.* The form must be filled out and returned to BOEM in accordance with the ''Deadlines and Milestones for Bidders'' section of this notice.

Non-Procurement Debarment and Suspension Regulations: Pursuant to regulations at 43 CFR Part 42, Subpart C, an OCS renewable energy Lessee must comply with the U.S. Department of the Interior's non-procurement debarment and suspension regulations at 2 CFR parts 180 and 1400 and agree to communicate the requirement to comply with these regulations to persons with whom the Lessee does business as it relates to this lease, by including this term as a condition in their contracts and other transactions.

Force Majeure: The Program Manager of BOEM's Office of Renewable Energy Programs has the discretion to change any date, time, and/or location specified in the FSN in case of a force majeure event that the Program Manager deems may interfere with a fair and proper lease sale process. Such events may include, but are not limited to, natural disasters (e.g., earthquakes, hurricanes, floods), wars, riots, acts of terrorism, fire, strikes, civil disorder or other events of a similar nature. In case of such events, bidders should call 703–787–1320 or access the BOEM Web site at: *http://www.boem.gov/Renewable-Energy-Program/index.aspx.*

Appeals: The appeals procedures are provided in BOEM's regulations at 30

CFR 585.225 and 585.118(c). Pursuant to 30 CFR 585.225:

(a) If BOEM rejects your bid, BOEM will provide a written statement of the reasons, and refund any money deposited with your bid, without interest.

(b) You will then be able to ask the BOEM Director for reconsideration, in writing, within 15 business days of bid rejection, under 30 CFR 585.118(c)(1). We will send you a written response either affirming or reversing the rejection.

The procedures for appealing adverse final decisions with respect to lease sales are described in 30 CFR 585.118(c).

Protection of Privileged or Confidential Information: BOEM will protect privileged or confidential information that you submit as required by the Freedom of Information Act (FOIA). Exemption 4 of FOIA applies to trade secrets and commercial or financial information that you submit that is privileged or confidential. If you wish to protect the confidentiality of such information, clearly mark it and request that BOEM treat it as confidential. BOEM will not disclose such information, subject to the requirements of FOIA. Please label privileged or confidential information ''Contains Confidential Information'' and consider submitting such information as a separate attachment.

However, BOEM will not treat as confidential any aggregate summaries of such information or comments not containing such information. Additionally, BOEM may not treat as confidential the legal title of the commenting entity (e.g., the name of your company). Information that is not labeled as privileged or confidential will be regarded by BOEM as suitable for public release.

Dated: May 24, 2013.

Tommy P. Beaudreau,

Director, Bureau of Ocean Energy Management.

[FR Doc. 2013–13197 Filed 6–4–13; 8:45 am]

BILLING CODE 4310–MR–P

DEPARTMENT OF THE INTERIOR

Bureau of Ocean Energy Management

[Docket No. BOEM–2013–0008; MMAA104000]

Commercial Wind Lease Issuance and Site Assessment Activities on the Atlantic Outer Continental Shelf (OCS) Offshore Rhode Island and Massachusetts

AGENCY: Bureau of Ocean Energy Management (BOEM), Interior.

ACTION: Notice of the Availability of a revised Environmental Assessment and a Finding of No Significant Impact.

SUMMARY: BOEM has prepared a revised environmental assessment (EA) considering the reasonably foreseeable environmental and socioeconomic impacts of issuing renewable energy leases and subsequent site characterization activities (geophysical, geotechnical, archaeological, and biological surveys needed to develop specific project proposals on those leases) in an identified Wind Energy Area (WEA) on the OCS offshore Rhode Island (RI) and Massachusetts (MA). The revised EA also considers the reasonably foreseeable impacts associated with the approval of site assessment activities (including the installation and operation of meteorological towers and buoys) on the leases that may be issued in the identified WEA.

As a result of the analysis in the revised EA, BOEM issued a Finding of No Significant Impact (FONSI). The FONSI concluded that the reasonably foreseeable impacts associated with the preferred alternative would not significantly impact the environment; therefore, the preparation of an environmental impact statement (EIS) is not required.

The purpose of this notice is to inform the public of the availability of the revised EA and FONSI, which can be accessed online at: *http://www.boem.gov/Renewable-Energy-Program/Smart-from-the-Start/Index.aspx*.

Authority: This notice is published pursuant to 43 CFR 46.305.

FOR FURTHER INFORMATION CONTACT: Michelle Morin, BOEM Office of Renewable Energy Programs, 381 Elden Street, HM 1328, Herndon, Virginia 20170–4817, (703) 787–1340 or *michelle.morin@boem.gov*.

SUPPLEMENTARY INFORMATION: On July 3, 2012, BOEM published a Notice of Availability (NOA) for an EA, which requested public comments on alternatives considered in the 2012 EA, as well as measures (e.g., limitations on activities based on technology, distance from shore, or timing) that would mitigate impacts to environmental resources and socioeconomic conditions that could result from leasing, site characterization, and site assessment in and around the Call Area (76 FR 51391). The Call Area is located within the Area of Mutual Interest, as described in a Memorandum of Understanding between the Governors of RI and MA dated July 2010.

The 2012 EA considered the entire WEA for leasing and approval of site assessment plans (SAPs) as the proposed action under the National Environmental Policy Act (NEPA) (42 U.S.C. 4321–4370f). Comments received in response to the NOA can be viewed at: *http://www.regulations.gov* by searching for Docket ID BOEM–2012–0048.

Based on comments received and the results of required consultations (e.g., Endangered Species Act), BOEM has revised the 2012 EA. BOEM will use the revised EA to inform decisions to issue leases in the WEA and to subsequently approve SAPs on those leases. BOEM may issue one or more commercial wind energy leases in the WEA. The competitive lease process is set forth at 30 CFR 585.210–585.225, and the noncompetitive process is set forth at 30 CFR 585.230–585.232 (as amended by a rulemaking effective as of June 15, 2011).

A commercial lease, whether issued through a competitive or non-competitive process, gives the lessee the exclusive right to subsequently seek BOEM approval for the development of the leasehold. The lease does not grant the lessee the right to construct any facilities; rather, the lease grants the right to use the leased area to develop its plans, which BOEM must approve before the lessee may proceed to the next stage of the process. *See* 30 CFR 585.600 and 585.601. In the event that a particular lease is issued, and the lessee subsequently submits a SAP, BOEM would then determine whether the revised EA adequately considers the impacts of the activities proposed in the lessee's SAP. If BOEM determines that the analysis in the revised EA adequately considers these impacts, then no further analysis under NEPA would be required before BOEM could approve a SAP. If, on the other hand, BOEM determines that the analysis in this revised EA is inadequate for that purpose, BOEM would prepare additional NEPA analysis before it could approve the SAP.

If a lessee is prepared to propose a wind energy generation facility on its lease, it would submit a construction and operations plan (COP). BOEM then would prepare a separate site- and project-specific NEPA analysis of the proposed project. This analysis would likely take the form of an EIS and would provide the public and Federal officials with comprehensive information regarding the reasonably foreseeable environmental and socioeconomic impacts of the proposed project. This analysis would inform BOEM's decision to approve, approve with modification, or disapprove a lessee's COP pursuant to 30 CFR 585.628. This NEPA process also would provide additional opportunities for public involvement pursuant to NEPA and the White House Council on Environmental Quality's regulations at 40 CFR parts 1500–1508.

Dated: April 29, 2013.

Tommy P. Beaudreau,

Director, Bureau of Ocean Energy Management.

[FR Doc. 2013–13199 Filed 6–4–13; 8:45 am]

BILLING CODE 4310–MR–P

FEDERAL REGISTER

Vol. 78 Wednesday,

No. 108 June 5, 2013

Part III

Office of Personnel Management

5 CFR Parts 581, 582, 831, *et al.*
Phased Retirement; Proposed Rule

OFFICE OF PERSONNEL MANAGEMENT

5 CFR Parts 581, 582, 831, 838, 841, 842, 843, 848, 870 and 890

RIN 3206–AM71

Phased Retirement

AGENCY: Office of Personnel Management.

ACTION: Proposed rule.

SUMMARY: The Office of Personnel Management (OPM) is proposing to implement phased retirement, a new human resources tool that allows full-time employees to work a part-time schedule while beginning to draw retirement benefits. Section 100121 of the ''Moving Ahead for Progress in the 21st Century Act,'' or ''MAP–21,'' authorizes phased retirement under the Civil Service Retirement System and the Federal Employees' Retirement System and requires OPM to publish regulations implementing phased retirement. The purpose of phased retirement is to allow the Federal Government to continue to benefit from the services of experienced employees who might otherwise choose to retire. These proposed regulations inform agencies and employees about who may elect phased retirement, what benefits are provided in phased retirement, how an annuity is computed during and after phased retirement, and how employees fully retire from phased retirement.

DATES: We must receive your comments by August 5, 2013.

ADDRESSES: You may submit comments, identified by docket number and/or RIN number 3206–AM71 by any of the following methods:

- *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the instructions for submitting comments.
- *Email: combox@opm.gov.* Include RIN number 3206–AM71 in the subject line of the message.
- *Mail:* Kristine Prentice, Retirement Policy, Retirement Services, Office of Personnel Management, 1900 E Street NW., Washington, DC 20415–3200.

FOR FURTHER INFORMATION CONTACT: Kristine Prentice, (202) 606–0299.

SUPPLEMENTARY INFORMATION: OPM proposes to amend parts 581, 582, 831, 838, 841, 842, 843, 870 and 890, and add a new 5 CFR part 848 to implement phased retirement as required by section 100121, the ''Moving Ahead for Progress in the 21st Century Act,'' or ''MAP–21,'' Public Law 112–141.

Background

Phased retirement is a new human resources management tool made possible by section 100121 of MAP–21, which amended chapters 83 and 84 of title 5, United States Code, by adding provisions, at 5 U.S.C. 8336a and 8412a, for phased retirement. The phased retirement provisions of law require OPM to publish final regulations to implement phased retirement.

Phased retirement will in essence permit an individual to retire from part of his or her employment, while continuing employment on a part-time basis and continuing to earn additional retirement benefits proportionately based upon the additional part-time employment. An eligible employee who enters phased retirement, which requires the approval of an authorized agency official, will work half-time and will receive one half of what his or her annuity would have been had the individual retired completely from Federal service. During phased retirement, he or she is a part-time employee, not a reemployed annuitant.

Phased retirement will encourage the most experienced Federal employees to extend their contributions to the Nation, and will operate as a tool to ensure continuity of operations and to facilitate knowledge management. The main purpose of phased retirement is to enhance mentoring and training of the employees who will be filling the positions of more experienced employees who are preparing for full retirement. It is intended to encourage experienced employees to remain, in at least a part-time capacity, while less experienced employees are preparing to assume the duties of the employees who are planning to retire.

An effective phased retirement plan has been a long-sought goal. However, under prior law, the problem was that an individual who was retirement eligible but wished to continue employment on a part-time basis generally had little economic incentive to do so because an employee's potential retirement benefits would often be equal to or greater than his or her salary would be for part-time employment.

A person who enters phased retirement (hereafter a ''phased retiree,'') would receive more income than he or she would earn by simply changing to a part-time work schedule or by simply retiring, while continuing to share knowledge and expertise with the next generation of Federal leaders via mentoring and role-modeling. Once these individuals fully retire, they will be entitled to a greater annuity than if they had fully retired at the time of transition to phased retirement, but less than if they had continued employment on a full-time basis.

Eligibility

Participation is entirely voluntary, and requires the mutual consent of both the employee and employing agency. An employee does not have an entitlement to phased retirement. In order to participate, an individual must have been employed on a full-time basis for the preceding three years. Under the Civil Service Retirement System (CSRS), the individual must be eligible for immediate retirement with at least 30 years of service at age 55, or with 20 years of service at age 60. Under the Federal Employees' Retirement System (FERS), the individual must be eligible for immediate retirement with at least 30 years of service at MRA (minimum retirement age, which ranges between age 55 and 57 depending upon year of birth), or with 20 years of service at age 60.

The law provides that employees subject to mandatory retirement (including Law Enforcement Officers, Firefighters, Nuclear Materials Couriers, Air Traffic Controllers, Customs and Border Protection Officers, or members of the Capitol Police or Supreme Court Police) may not participate. However, certain employees who are exempt from mandatory separation and retirement (such as Customs and Border Protection Officers exempted from mandatory retirement when special retirement provisions for Customs and Border Protection Officers were first enacted) may participate. This exemption does not apply to individuals for whom mandatory retirement has been waived, but only to individuals not subject to mandatory retirement by statute.

It is noteworthy that while the statutory provisions concerning employees subject to mandatory retirement could have been more clearly drafted, the legislative history makes the intent both clear and specific. The language was taken directly from a different free-standing phased retirement bill, H.R. 4363, reported out of the House of Representatives Committee on Oversight and Government Reform on June 15, 2012. That report, H.R. Rep. No. 535, 112th Congress, 2nd Sess. 4 (2012), discussed this provision, with this explanation in the section-by-section analysis:

> *Subsection (a) of 5 U.S.C. 8336a* defines the terms that are used in the new section. Individuals subject to mandatory retirement, such as law enforcement, firefighters, nuclear materials couriers, air traffic controllers, customs and border protection officers, or members of the Capitol Police or Supreme Court Police, may not elect phased retirement.

Moreover, the Conference Report, H.R. Rep. No. 557, 112th Congress, 2nd Sess. 667 (2012), further describes details of the provisions including the exemption:

> The Senate amendment excludes from eligibility law enforcement officers, firefighters, nuclear materials couriers, air traffic controllers, customs and border protection officers, or members of the Capital Police or Supreme Court Police.
>
> * * * * *
>
> Second, the provision provides that certain law enforcement officers such as Customs and Border Protection Officers hired before 2008 (when they were granted law-enforcement type status which makes them ineligible for phased retirement under the Senate Amendment because they are subject to mandatory retirement) are eligible for phased retirement.

Withdrawing From Phased Retirement To Resume Regular Employee Status

After entering phased retirement, a phased retiree can end his or her phased retirement to return to being a regular full-time employee, if the employing agency agrees to the change. The phased retirement annuity will then terminate. Upon later full retirement, the individual's retirement will be calculated under the laws then in effect, with the period of phased retirement treated as part-time service. Once an individual has gone back to being a full-time employee, the individual cannot elect to go back into phased retirement.

Transition From Phased Retirement to Full Retirement

A phased retiree may voluntarily apply for full retirement in the same manner as other employees. The employee does not have to obtain the permission of his or her agency to fully retire.

Benefits and Computation

Eligible employees who enter phased retirement will work half-time and will receive additional credit for that service toward their full retirement. While working part-time during phased retirement, employees will also receive annuity payments, consistent with the retirement benefits they were entitled to prior to entering phased retirement status, divided by the ''phased retirement percentage'' (i.e., 50 percent).

Deposits and redeposits for service credit (including for military service) must be satisfied (either by payments or annuity reduction as applicable) prior to entry into phased retirement status; however, if an individual ends phased retirement status to return to regular employee status, deposits and redeposits for service credit would again be permitted. Any reduction in annuity or loss of service credit at the time of entry into phased retirement will be permanent for the employee, unless the individual ends phased retirement status by returning to full-time employment and has a new opportunity to make deposits or redeposits for service credit. Employees wishing to make a deposit or redeposit for civilian service may submit a request to make the service credit payment with their applications for phased retirement. They will then be given a final opportunity to pay the deposit or redeposit before processing of the phased retirement benefit is completed. No deposits or redeposits can be made by the employee after the phased retirement application has been processed (unless the employee elects to opt out of phased retirement status and return to regular employment). If a phased retiree dies while in phased employment status, the survivors can make deposits or redeposits on the same basis as if the decedent had not been a phased retiree.

Phased retirement annuities will be subject to court orders providing for division, allotment, assignment, execution, levy, attachment, garnishment, or other legal process on the same basis as other annuities. At the same time, phased retirees' pay from their half-time employment is subject to garnishment and other legal process on the same basis as other Federal employee pay.

During phased retirement, Federal Employee Health Benefits (FEHB) and Federal Employees' Group Life Insurance (FEGLI) enrollment will stay with the employing agency. FEGLI benefit coverage amounts will be based upon the full-time salary for the position. The FEHB employer contribution will be the same as for full-time employees.

When the phased retiree fully retires immediately after the phased retirement period, the individual will receive a ''composite retirement annuity.'' The composite retirement annuity will be the amount of phased retirement annuity as of the commencing date of full retirement, plus one-half of the amount of annuity that would have been payable at the time of full retirement if the individual had not elected phased retirement and as if the individual was employed on a full-time basis in the position occupied during the phased retirement period. If, at the time of full retirement, the employee meets the participation requirements to continue FEHB and FEGLI during retirement, his or her FEHB and FEGLI enrollments will transfer to OPM when the phased retiree enters full retirement.

No unused sick leave can be used in the computation of the phased retirement annuity. However, at full retirement the unused sick leave will be taken into account. While the computational provisions are somewhat complex, the value of the sick leave in that computation will be the same as for an individual retiring from a full-time position.

Survivor Benefits

No survivor benefits can be based upon a phased retirement annuity. If the phased retiree dies prior to full retirement, survivor benefits will be those applicable for an employee who died in service, with provision for minor computational adjustments necessitated by the unique nature of phased retirement. If the individual dies during phased retirement, the period of phased retirement will be treated as a period of part-time service in the computation of the survivor annuity. However, the FERS Basic Employee Death Benefit will be based upon the full-time salary of the position.

Garnishment and Phased Retirees

Garnishment orders for phased retirees will be treated much the same way as those for reemployed annuitants. The rules that typically apply to garnishment of annuities will continue to apply to the phased retirement annuity a phased retiree receives, and the rules that typically apply to pay will continue to apply to the salary a phased retiree receives during phased employment. For instance, phased retirement annuities, like regular Federal annuities, will not be subject to commercial garnishments under 5 CFR part 582, but the part-time pay received during phased employment will continue to be subject to commercial garnishment.

Section-by-Section Description of Proposed Regulations

Part 581—Processing Garnishment Orders for Child Support And/Or Alimony

Phased retirement annuities and pay are subject to the same rules for processing garnishment orders for child support and/or alimony as regular annuities and other Federal pay. Technical changes are made to add two definitions in § 581.102. Paragraph (l) adds a definition for ''phased retirement status'' and paragraph (m) adds a definition for ''phased retirement annuity.'' Both terms are defined by cross-reference to § 838.103, which

provides new terms for processing court orders for phased retirees.

The current § 581.306 explains the obligation of governmental entities when in receipt of a garnishment order for child support and/or alimony and when there is not money due to the employee-obligor or when the obligor moves to a different governmental entity. Paragraph (d) is added to § 581.306 to account for employees who enter phased retirement status. Governmental entities will still be obligated to honor the garnishment order as it pertains to ongoing part-time pay. However, paragraph (d) imposes an additional obligation on the governmental entity, similar to current paragraph (c), to notify the party who caused the legal process to be served that the obligor is now entitled to a phased retirement annuity and to direct the party to the designated agent at the Office of Personnel Management who is responsible for the disbursement of retirement benefits. The title of § 581.306 was also amended to add ''transfer of service of legal process to another governmental entity'' to account for the provisions in paragraphs (c) and (d).

Part 582—Commercial Garnishment of Federal Employees' Pay

Phased retirees' pay is treated the same way as other Federal pay for purposes of commercial garnishment orders. Technical changes are made to § 582.102, paragraph (2). In paragraph (2), the definition of ''employee or employee-obligor'' is amended to add ''individuals engaged in phased employment.''

Subpart Q of Part 831

OPM is proposing to add subpart Q to part 831 to set out the requirements for entering, exiting, and retiring under the new phased retirement option under CSRS. Subpart Q establishes the eligibility requirements for making an election of phased retirement, the procedures for electing phased retirement, the requirements for agencies to notify OPM of phased retirement actions, and the methodology OPM intends to use to compute phased retirement annuities under 5 U.S.C. 8336a.

Sections 831.1701 through 831.1703 explain the purpose and scope of the regulations, define terms used in subpart Q, and provide that the Director of OPM may issue implementing directives regarding the phased retirement program. In particular, § 831.1702 provides a definition of ''full-time.'' This definition does not include certain categories of full-time employees listed in the definition of ''full-time service'' in § 831.703—namely, certain firefighters compensated under 5 U.S.C. 5545b and certain employees with less-than-full-time schedules who are deemed to be full-time employees by express provision of law (e.g., nurses with special work schedules under 38 U.S.C. 7456 or 7456A). Employees with these special work schedules may not elect phased retirement, since regularly recurring part-time employment is not a possibility under the applicable law. (Almost all firefighters compensated under 5 U.S.C. 5545b would also be ineligible for phased retirement on the additional basis that they are eligible for an early and enhanced retirement with mandatory separation provisions.)

Section 831.1711 sets out the eligibility requirements for entering phased retirement. Eligibility for phased retirement is limited to employees who have been employed on a full-time basis for not less than the 3-year period ending on the effective date of the employee's election of phased retirement. Under CSRS, these employees must also be eligible for immediate retirement with at least 30 years of service at age 55, or with 20 years of service at age 60. Employees who do not meet these requirements will be excluded from electing phased retirement.

For the purposes of phased retirement, a retirement-eligible employee is an employee who, if separated from the service, would meet the requirements for retirement under subsection (a) or (b) of 5 U.S.C. 8336. As discussed above, a retirement-eligible employee in this context does not include an employee subject to mandatory retirement, with limited exceptions. There is no reason for such employees to wish to participate in phased retirement because 5 U.S.C. 8336a requires that the phased retirement computations are made using the general formula applicable to regular employee service.

In addition, since the phased retirement law requires that an employee be converted from full-time to part-time, § 831.1711 makes clear that phased retirement may not be elected by employees covered by a special work schedule authority that does not allow for a regularly recurring part-time schedule, such as a firefighter covered by 5 U.S.C. 5545b or a nurse covered by 38 U.S.C. 7456 or 7456A.

Section 831.1712 describes how ''working percentage'' would be defined. The law uses the term ''working percentage'' to refer to the percentage of a full-time schedule that a phased retiree would be scheduled to work. The statute permits a working percentage of 50 percent (i.e., a half-time work schedule) and contemplates additional working percentages, at OPM's discretion. Although a working percentage of 50 percent would be the only working percentage permitted under § 831.1712, the section has been drafted using general descriptive language to easily allow OPM to amend the regulations in the future to allow working percentages other than 50 percent, if and when OPM determines that such an amendment is appropriate. Unless and until OPM evaluates the phased retirement program and publishes regulations permitting a different ''working percentage,'' a phased retiree will not be permitted to have a working percentage other than 50 percent. Section 831.1712 defines ''working percentage'' as the percentage of full-time equivalent employment equal to the quotient obtained by dividing (1) the number of officially established hours per pay period to be worked by a phased retiree by (2) the number of hours per pay period to be worked by an employee serving in a comparable position on a full-time basis. In other words, the number of hours per pay period in a phased retiree's officially established part-time work schedule must equal one-half the number of hours the phased retiree would have worked had the phased retiree remained in a full-time work schedule and not elected to enter phased retirement status. The phased retiree's officially established part-time work schedule excludes any additional (excess) hours worked under the special exception authority in § 831.1715(h) (discussed below).

Sections 831.1713 through 831.1715 set out the requirements for an employee to elect phased retirement, establish the commencing date of the phased annuity (and therefore the effective date of the half-time work schedule, or what we are calling ''phased employment''), and state the effect of phased retirement. Section 831.1713 provides that an authorized agency official must give the potential phased retiree written approval for the change. Section 831.1713(d) allows an agency to establish a time limit on the phased retirement election of any employee as a condition of approving the election to phased retirement. To implement such a time limit, the agency and the employee requesting phased retirement must complete a written and signed agreement. The agency is responsible for drafting an agreement that meets the requirements enumerated

in § 831.1713(d)(3). The agency is also responsible for defending any challenges to an agreement made with an employee under § 831.1713(d). The election must be accompanied by a retirement application, in accordance with § 831.104.

Section 831.1715(a)(1) provides, consistent with 5 U.S.C. 8336a(i), that a phased retiree is deemed to be a full-time employee for the purpose of the Federal Employees Health Benefits Program. Section 831.1715(a)(2) has provisions for determining the amount of deemed basic pay and the deemed full-time schedule for determining Federal Employees' Life Insurance benefits and premiums. Any premium pay normally creditable as basic pay under 5 CFR 870.204 for overtime work outside of a full-time schedule may not be considered in determining a phased retiree's deemed annual rate of basic pay for life insurance purposes. A conforming change is also being made to 5 CFR 870.204. Section 831.1715(h) describes the conditions under which a phased retiree may, in rare and exceptional circumstances, work hours in excess of officially established hours, as well as related agency responsibilities and OPM authorities. The limitations and controls on excess hours are necessary and proper to carry out the intent of the phased retirement law and ensure that phased retirees do not work significant hours beyond the working percentage used to compute the phased retirement annuity. In promulgating § 831.1715(h), we are relying on OPM's broad regulatory authority in 5 U.S.C. 8347(a), as well as the authority in 5 U.S.C. 8336a(b)(1) to prescribe regulations governing the phased retirement resulting from employee elections.

Sections 831.1721 through 831.1723 describe how a phased retiree may return to regular employment status, the effective date of the decision to end phased retirement, and what happens to the phased annuity as a result of returning to a regular employment status. Section 831.1721(a) provides that an authorized agency official must give the phased retiree written permission to return to regular employment on a form prescribed by OPM. With an authorized agency official's approval, the employee may enter into any type of work schedule after returning to regular employment. When an individual in phased retirement status returns to regular employment status, the phased retirement annuity terminates; therefore, agencies are required to immediately notify OPM of a phased retiree's return to regular employee status to prevent improper payments. Section 831.1721(b) also includes provisions concerning the return of a phased retiree to regular employment status. For a phased retiree who returns to regular employment under § 831.1721(a) or (b), § 831.1723 provides that the period of phased employment will be treated as a period of part-time service under subchapter III, chapter 83, of title 5, United States Code. Consistent with 5 U.S.C. 8336a(g)(3), the phased retirement period will be deemed to have been a period of part-time employment with the work schedule described in § 831.1712. The part-time proration adjustment will be based upon the individual's officially established part-time work schedule, with no credit for extra hours worked. In determining the individual's deemed rate of basic pay during the phased retirement period, only basic pay for hours within the individual's officially established part-time work schedule may be considered. No pay received for other hours during the phased retirement period may be included as part of basic pay for the purpose of computing retirement benefits, notwithstanding the normally applicable rules. A phased retiree who returns to regular employee status would not be entitled to a composite retirement annuity upon subsequent retirement; the employee's rights under subchapter III of chapter 83 or chapter 84 of title 5, United States Code, would be determined based on the law in effect at the time of any subsequent separation from service.

Sections 831.1731 and 831.1732 describe how an employee may elect to fully retire and how OPM will determine the commencing date of the employee's composite retirement annuity. These sections also discuss how OPM will treat an employee who has separated from phased employment and the criteria by which OPM will either continue to pay a phased retirement annuity or terminate payment as required by law.

Sections 831.1741 through 831.1744 establish how OPM intends to compute the phased retirement annuity and the composite annuity payable at full retirement under CSRS. Section 831.1741 provides that, subject to any adjustments for unpaid deposits of retirement contributions and Social Security old-age benefits, the phased retirement annuity equals (1) the amount of annuity computed under 5 U.S.C. 8339 that would have been payable to the phased retiree if, on the date on which the phased retiree enters phased retirement status, the phased retiree had separated from service and retired, (2) adjusted by the phased retirement percentage for the phased retiree. Phased retirement annuities will be increased by cost-of-living adjustments. Section 831.1742 establishes the computation of the composite retirement annuity. Subject to any reduction to provide a survivor annuity and adjustments for unpaid deposits of retirement contributions and Social Security old-age benefits, the composite retirement annuity consists of the phased retirement annuity, increased by cost-of-living adjustments, plus the ''fully retired phased component.'' The ''fully retired phased component'' is (1) the amount of an annuity computed under 5 U.S.C. 8339 that would have been payable at the time of full retirement if the individual had not elected phased retirement status and as if the individual was employed on a full-time basis in the position occupied during the phased retirement period and before any reduction for survivor annuity multiplied by (2) the working percentage. Section 831.1742(b) establishes rules for deemed full-time and deemed basic pay for the purposes of computing the ''fully retired phased component.'' The law requires phased retirees to be deemed to be full-time for the purpose of determining basic pay for life insurance and composite annuity, and also limits pay subject to retirement deductions based on the concept of full-time. For those purposes, we have taken a consistent approach of defining full-time to be 40 hours a week and to exclude overtime hours; thus, any pay for overtime hours (hours beyond the full-time schedule—which normally should not be worked by a phased retiree) is not considered basic pay for life insurance or retirement purposes. The deemed full-time schedule is five 8-hour workdays each workweek, resulting in a 40-hour workweek, consistent with other provisions in the regulations. In determining the individual's deemed rate of basic pay during phased retirement, only basic pay for hours within the deemed full-time schedule will be considered for the computation of the composite retirement annuity at full retirement. Similarly, §§ 831.1721 and 831.1761 include provisions concerning deemed part-time (see discussion of those sections).

Sections 831.1751 through 831.1753 describe how OPM intends to treat civilian deposits and redeposits, as well as military service deposits. Section 831.1751 outlines the process OPM will follow with regard to deposits for civilian service for which no retirement deductions were withheld and for redeposits owed for civilian service previously refunded to the employee.

Deposits and redeposits will not be possible at the point where a phased retiree elects to enter full retirement status. Section 831.1752 refers specifically to how OPM will treat military service deposits, whether for military service prior to phased retirement or military service after phased retirement begins. Section 831.1753 describes how OPM intends to treat civilian and military service of individual employees affected by erroneous retirement coverage determinations.

Sections 831.1761 through 831.1763 set out how OPM plans to administer death benefits for employees who die while in phased retirement and for employees who die after separation from phased employment without having submitted an application for a composite retirement annuity. Consistent with 5 U.S.C. 8336a(h)(2), § 831.1761(a)(2) provides that when a phased retiree dies in service, the phased retiree is deemed to have had a part-time schedule consistent with the working percentage. Any hours beyond that part-time schedule and any pay associated with such hours would not be creditable for retirement purposes.

Section 831.1771 addresses reemployment of an individual who has separated from phased employment and who dies before submitting an application for a composite retirement annuity.

Section 831.1781, as provided by MAP–21, requires a phased retiree (other than an employee of the U.S. Postal Service) to spend at least 20 percent of his or her working hours in mentoring activities. It is up to the phased retiree's employing agency to determine what types of mentoring activities satisfy this requirement and how to ensure this requirement is being fulfilled. The phased retiree may mentor one or more employees of the agency and need not mentor the same employees throughout the period of phased retirement. Although it would clearly be desirable in many instances for the phased retiree to mentor the employee or employees who are expected to assume his or her duties when the phased retiree fully retires, the law does not provide that this is the only way to implement the mentoring requirement. An authorized agency official may waive the mentoring requirement in the event of an emergency or other unusual circumstances that would make it impracticable, such as when the individual is called to active-duty military service. OPM expects waivers of the mentoring requirement to be very rare.

Part 848—Federal Employees' Retirement System

Part 848 is being added to 5 CFR, to set out the requirements for entering, exiting, and retiring under the new phased retirement option under the Federal Employees' Retirement System (FERS). Part 848 establishes the eligibility requirements for making an election of phased retirement, the procedures for electing phased retirement, the requirements for agencies to notify OPM of phased retirement actions, and the methodology OPM intends to use to compute phased retirement annuities under 5 U.S.C. 8412a.

Sections 848.101 through 848.103 explain the purpose and scope of the regulations, define terms used in part 848, and provide that the Director of OPM may issue implementing directives regarding the phased retirement program. In particular, § 848.102 provides a definition of ''full-time.'' This definition does not include certain categories of full-time employees listed in the definition of ''full-time service'' in § 842.402—namely, certain firefighters compensated under 5 U.S.C. 5545b and certain employees with less-than-full-time schedules who are deemed to be full-time employees by express provision of law (e.g., nurses with special work schedules under 38 U.S.C. 7456 or 7456A). Employees with these special work schedules may not elect phased retirement, since regularly recurring part-time employment is not a possibility under the applicable law. (Almost all firefighters compensated under 5 U.S.C. 5545b would also be ineligible for phased retirement on the additional basis that they are eligible for an early and enhanced retirement with mandatory separation provisions.)

Section 848.201 sets out the eligibility requirements for entering phased retirement. Eligibility for phased retirement is limited to employees who have been employed on a full-time basis for not less than the 3-year period ending on the effective date of the employee's election of phased retirement. Under FERS, these employees must also be eligible for immediate retirement with at least 30 years of service at their minimum retirement age, or with 20 years of service at age 60. Employees who do not meet these requirements will be excluded from electing phased retirement.

For the purposes of phased retirement, a retirement-eligible employee is an employee who, if separated from the service, would meet the requirements for retirement under subsection (a) or (b) of 5 U.S.C. 8412. As discussed above, a retirement-eligible employee will not include an employee subject to mandatory retirement, with limited exceptions. There is no reason for such employees to wish to participate in phased retirement because 5 U.S.C. 8412a requires that the phased retirement computations be made using the general formula applicable to regular employee service.

In addition, since the phased retirement law requires that an employee be converted from full-time to part-time, § 848.201 makes clear that phased retirement may not be elected by employees covered by a special work schedule authority that does not allow for a regularly recurring part-time schedule, such as a firefighter covered by 5 U.S.C. 5545b or a nurse covered by 38 U.S.C. 7456 or 7456A.

Section 848.202 describes how ''working percentage'' would be defined. The law uses the term ''working percentage'' to refer to the percentage of a full-time schedule that a phased retiree would be scheduled to work. The statute permits a working percentage of 50 percent– that is, a half-time work schedule—and contemplates additional working percentages, at OPM's discretion. Although a working percentage of 50 percent would be the only working percentage permitted under § 848.202, the section has been drafted using general descriptive language to easily allow OPM to amend the regulations in the future to allow working percentages other than 50 percent, if and when OPM determines that such an amendment is appropriate. Unless and until OPM evaluates the phased retirement program and publishes regulations permitting a different ''working percentage,'' a phased retiree will not be permitted to have a working percentage other than 50 percent. Section 848.202 defines ''working percentage'' as the percentage of full-time equivalent employment equal to the quotient obtained by dividing (1) the number of officially established hours per pay period to be worked by a phased retiree by (2) the number of hours per pay period to be worked by an employee serving in a comparable position on a full-time basis. In other words, the number of hours per pay period in a phased retiree's officially established part-time work schedule must equal one-half the number of hours the phased retiree would have worked had the phased retiree remained in a full-time work schedule and not elected to enter phased retirement status. The phased retiree's officially established part-time work schedule excludes any additional

(excess) hours worked under the special exception authority in § 848.205(j).

Sections 848.203 through 848.205 set out the requirements for an employee to elect phased retirement, establish the effective date of phased employment and the commencing date of phased annuity, and state the effect of phased retirement. Section 848.203 provides that an authorized agency official must give the potential phased retiree written approval for the change. Section 848.203(d) allows an agency to establish a time limit on the phased retirement election of any employee as a condition of approving the election to phased retirement. To implement such a time limit, the agency and the employee requesting phased retirement must complete a written and signed agreement. The agency is responsible for drafting an agreement that meets the requirements enumerated in § 848.203(d)(3). The agency is also responsible for defending any challenges to an agreement made with an employee under § 848.203(d). The election must be accompanied by a retirement application, in accordance with § 841.202.

Section 848.205(a)(1) provides, consistent with 5 U.S.C. 8412a(i), that a phased retiree is deemed to be a full-time employee for the purpose of the Federal Employees Health Benefits Program. Section 848.205(a)(2) has provisions for determining the amount of deemed basic pay and the deemed full-time schedule for determining Federal Employees' Life Insurance benefits and premiums. Any premium pay normally creditable as basic pay under 5 CFR 870.204 for overtime work outside of a full-time schedule may not be considered in determining a phased retiree's deemed annual rate of basic pay for life insurance purposes. A conforming change is also being made to 5 CFR 870.204. Section 848.205(j) describes the conditions under which a phased retiree may, in rare and exceptional circumstances, work hours in excess of officially established hours, as well as related agency responsibilities and OPM authorities. The limitations and controls on excess hours are necessary and proper to carry out the intent of the phased retirement law and ensure that phased retirees do not work significant hours beyond the working percentage used to compute the phased retirement annuity. In promulgating § 848.205(j), we are relying on OPM's broad regulatory authority in 5 U.S.C. 8461(g), as well as the authority in 5 U.S.C. 8412a(b)(1) to prescribe regulations governing the phased retirement resulting from employee elections.

Sections 848.301 through 848.303 describe how a phased retiree may return to regular employment status, the effective date of the decision to end phased retirement, and what happens to the phased annuity as a result of returning to a regular employment status. Section 848.301(a) provides that an authorized agency official must give the phased retiree written permission to return to regular employment on a form prescribed by OPM. With an authorized agency official's approval, the employee may enter into any type of work schedule after returning to regular employment. When an individual in phased retirement status returns to regular employment status, the phased retirement annuity terminates; therefore, agencies are required to immediately notify OPM of these changes to prevent improper payments. Section 848.301(b) also includes provisions concerning the return of a phased retiree to regular employment status. For a phased retiree who returns to regular employment under § 848.301(a) and (b), § 848.303 provides that the period of phased employment will be treated as a period of part-time service under chapter 84 of title 5, United States Code. Consistent with 5 U.S.C. 8412a(g)(3), the phased retirement period will be deemed to have been a period of part-time employment with the work schedule described in § 848.202. The part-time proration adjustment will be based upon the individual's officially established part-time work schedule, with no credit for extra hours worked. In determining the individual's deemed rate of basic pay during the phased retirement period, only basic pay for hours within the individual's officially established part-time work schedule may be considered. No pay received for other hours during the phased retirement period may be included as part of basic pay for the purpose of computing retirement benefits, notwithstanding the normally applicable rules. A phased retiree who returns to regular employee status would not be entitled to a composite retirement annuity upon subsequent retirement; the employee's rights under subchapter III of chapter 83 or chapter 84 of title 5, United States Code, would be determined based on the law in effect at the time of any subsequent separation from service.

Sections 848.401 and 848.402 describe how an employee may elect to fully retire and how OPM will determine the commencing date of the employee's composite retirement annuity. These sections also discuss how OPM will treat an employee who has separated from phased employment and the criteria by which OPM will either continue to pay a phased retirement annuity or terminate payment as required by law.

Sections 848.501 through 848.503 cover how OPM intends to compute the phased retirement annuity and the composite annuity payable at full retirement under FERS. Section 848.501 provides that the phased retirement annuity equals (1) the amount of annuity computed under 5 U.S.C. 8412 that would have been payable to the phased retiree if, on the date on which the phased retiree enters phased retirement status, the phased retiree had separated from service and retired, (2) adjusted by the phased retirement percentage for the phased retiree. Phased retirement annuities will be subject to FERS cost-of-living adjustment provisions. Section 848.502 establishes the computation of the composite retirement annuity. Subject to any reduction to provide a survivor annuity, the composite retirement annuity consists of the phased retirement annuity, increased by cost-of-living adjustments, plus the ''fully retired phased component.'' The ''fully retired phased component'' is (1) the amount of an annuity computed under 5 U.S.C. 8412 that would have been payable at the time of full retirement if the individual had not elected phased retirement status and as if the individual was employed on a full-time basis in the position occupied during the phased retirement period and before any reduction for survivor annuity multiplied by (2) the working percentage. Section 831.502(b) establishes rules for deemed full-time and deemed basic pay for the purposes of computing the ''fully retired phased component.'' The law requires phased retirees to be deemed to be full-time for the purpose of determining basic pay for life insurance and composite annuity, and also limits pay subject to retirement deductions based on the concept of full-time. For those purposes, we have taken a consistent approach of defining full-time to be 40 hours a week and to exclude overtime hours; thus, any pay for overtime hours (hours beyond the full-time schedule—which normally should not be worked by a phased retiree) is not considered basic pay for life insurance or retirement purposes. The deemed full-time schedule is five 8-hour workdays each workweek, resulting in a 40-hour workweek, consistent with other provisions in the regulations. In determining the individual's deemed rate of basic pay during phased retirement, only basic pay for hours within the deemed full-

time schedule will be considered for the computation of the composite retirement annuity at full retirement. Similarly, §§ 848.301 and 848.701 include provisions concerning deemed part-time (see discussion of those sections).

Section 848.504 specifically states that FERS phased retirees will not receive an annuity supplement under 5 U.S.C. 8421.

Sections 848.601 and 848.602 describe how OPM intends to treat civilian deposits and redeposits as well as military service deposits. Section 848.601 states that deposits for civilian service for which no retirement deductions were withheld and redeposits owed for civilian service previously refunded to the employee must be paid within 30 days of the employee receiving OPM's notice. Deposits and redeposits will not be possible at the point where a phased retiree elects to enter full retirement status. Section 848.602 refers specifically to how OPM will treat military service deposits, whether for military service prior to phased retirement or military service after phased retirement begins.

Sections 848.701 through 848.703 set out how OPM plans to administer death benefits for employees who die while in phased retirement and for employees who die after separation from phased employment without having submitted an application for a composite retirement annuity. Consistent with 5 U.S.C. 8412a(h)(2), § 848.701(a)(2) provides that when a phased retiree dies in service, the phased retiree is deemed to have had a part-time schedule consistent with the working percentage. Any hours beyond that part-time schedule and any pay associated with such hours would not be creditable for retirement purposes.

Section 848.801 addresses reemployment of an individual who has separated from phased employment and who dies before submitting an application for a composite retirement annuity.

Section 848.901, as provided by MAP–21, requires a FERS phased retiree (other than an employee of the U.S. Postal Service) to spend at least 20 percent of his or her working hours in mentoring activities. It is up to the phased retiree's employing agency to determine what types of mentoring activities satisfy this requirement and how to ensure this requirement is being fulfilled. The phased retiree may mentor one or more employees of the agency and need not mentor the same employees throughout the period of phased retirement. Although it would clearly be desirable in many instances for the phased retiree to mentor the employee or employees who are expected to assume his or her duties when the phased retiree fully retires, the law does not provide that this is the only way to implement the mentoring requirement. An authorized agency official may waive the mentoring requirement in the event of an emergency or other unusual circumstances that would make it impracticable (such as when the phased retiree is called to active duty military service). OPM expects waivers of the mentoring requirement to be very rare.

Other Technical Conforming Amendments to Existing Regulations

Because a phased retiree is both an annuitant and an employee, and is treated as an annuitant for some purposes, but an employee for others, certain regulatory changes are necessary to inform agencies and employees about how phased retirement is structured, how the phased retirement annuity and the composite annuity will be computed, and how certain benefits and obligations will be treated during and after phased retirement.

Part 831

The Civil Service Retirement System (CSRS) regulations located in part 831 are being updated where specific references to phased retirement are necessary as a result of the passage of MAP–21. The authority to update part 831 is found in title 5, United States Code, section 8336a. Therefore, OPM is updating certain definitions and cross-references to the new phased retirement provisions which will be located in subpart Q.

In § 831.402 we propose to revise the definition of ''applicant for retirement'' and add a definition of ''phased retiree.'' Section 831.501, pertaining to the time for filing applications for retirement, is amended to include a reference to subpart Q for employees and agencies considering phased retirement. We also are inserting in § 831.701 a cross-reference regarding the effective date of an annuity with a phased retirement component. In § 831.703, under which we compute part-time service, we propose to clarify the definition of ''full-time service'' by specifically describing categories of full-time employees. While this definition is outside the phased retirement area, we are taking this opportunity to make applicable paragraphs consistent with the clearer language in the definition of ''full-time'' in the phased retirement regulations in subpart Q. (See § 831.1702.)

Part 838

OPM is proposing amendments to 5 CFR part 838, concerning court orders affecting retirement benefits, to allow a court order acceptable for processing that is directed at employee annuity to apportion phased retirement annuity or composite retirement annuity between an employee and his or her former spouse.

Section 838.103 would be amended by changing and adding definitions relating to phased retirement. These changes include (1) defining ''employee annuity'' to include recurring payments of phased retirement annuity and composite retirement annuity; (2) defining ''gross annuity,'' ''net annuity,'' and ''self-only annuity'' as including phased retirement annuity amounts paid to phased retirees; and (3) defining ''retiree'' to include a phased retiree who has entered full retirement status.

Section 838.211 would be amended by adding paragraph (b), which would subject phased retirement annuity to division by a court order acceptable for processing.

Sections 838.222, 838.232, 838.233, and 838.237 are being amended by including references to phased retirees and phased retirement.

Section 838.242(b) would be amended to conform to the rule at §§ 831.1742 and 848.502 concerning crediting unused sick leave in the computation of a composite retirement annuity.

Section 838.305(e) would be amended by adding language providing that a court order directed at the division of phased retirement annuity or composite retirement annuity is not a court order acceptable for processing if it includes unacceptable instructions concerning the computation of an employee's salary or average salary.

Section 838.306 would be revised to allow a court order to include express provisions specifically directed at division of phased retirement annuity, composite retirement annuity, or annuity payable to an employee who retires without having elected phased retirement status. Paragraph (b) of § 838.306 would be amended to provide that, unless a court order otherwise directs, OPM will apply to gross annuity a formula, percentage, or fraction directed at annuity payable to either a retiree or a phased retiree. Paragraph (c)(2) of § 838.306 would provide that for a court order to separately provide for division of phased retirement annuity or composite retirement annuity, a provision of a court order must expressly state that it is directed at ''phased retirement annuity'' or ''composite retirement annuity,'' and

should state the type of annuity to be divided (e.g., ''net phased retirement annuity''). If such a provision is unclear as to whether it is directed at gross, net, or self-only phased retirement annuity or composite retirement annuity, the provision will be applied to gross phased retirement annuity or gross composite retirement annuity, as described in § 838.306(b). Paragraph (c)(3) of § 838.306 would provide that unless a court order expressly states that phased retirement annuity or composite retirement annuity is not to be divided, a court order meeting the requirements of § 838.306(a) and that generally provides for division of annuity without meeting the requirements of paragraph (c)(2), regarding the specific type of annuity being divided, will be applied to divide any employee annuity, including phased retirement annuity and composite retirement annuity. Thus, paragraph (c)(3) of § 838.306 would allow OPM to honor provisions in court orders on file with OPM, which were issued before MAP–21 was enacted. Parties to a divorce could also submit a new court order providing for a different apportionment of annuity than provided under § 838.306(c)(3).

Sections 838.612, 838.621, and 838.622 would be amended to add references to phased retirement annuity and composite retirement annuity.

Section 838.623 would be amended to add references to phased retirement annuity and composite retirement annuity. Paragraph (e) of § 838.623 would provide that a court order directed at phased retirement annuity or a composite retirement annuity cannot limit the computation and division of a phased retirement annuity or composite retirement annuity to a particular period of employment or service. The amount of service that is included in the computation of phased retirement annuity and composite retirement annuity is established by statute. Any adjustment in a court order of the division of annuity will have to be accomplished through other means.

Appendix A to subpart F of 5 CFR part 838, has been amended by adding model paragraphs for dividing phased retirement annuity and composite retirement annuity.

Section 838.803 would be amended by adding paragraph (c), which would provide that a court order that attempts to award a former spouse survivor annuity based on a phased retirement annuity or to reduce a phased retirement annuity to provide survivor benefits is not a court order acceptable for processing.

Section 838.806(d)(2) would be amended to allow a former spouse survivor annuity to be awarded or a change to an award of a former spouse survivor annuity during an employee's phased retirement status, before the commencing date of a composite retirement annuity.

Section 838.807 would be amended to make it clear that only employee annuity payable to a retiree and not a phased retiree is subject to reduction to provide a survivor annuity.

Sections 838.1111 would be amended to make phased retirement annuities subject to child abuse judgment enforcement orders.

Part 841

The Federal Employees' Retirement System (FERS) regulations located in parts 841, 842, and 843 are being updated where specific references to phased retirement are necessary as a result of the passage of MAP–21. The authority for these updates is found in title 5, United States Code, section 8412a. Therefore, OPM is updating certain definitions and cross-references to the new phased retirement provisions which will be located in part 848.

In § 841.102, we add references to parts 848 and part 850. In § 841.104 we revise how we define special terms throughout the regulations pertaining to FERS in parts 841 through 850.

Part 842

The definition of ''full-time service'' in § 842.402, under which we compute part-time service, would be clarified by specifically describing categories of full-time employees. While this definition is outside the phased retirement area, we are taking this opportunity to make applicable paragraphs consistent with the clearer language in the definition of ''full-time'' in the phased retirement regulations in part 848. (See § 848.102.)

Part 843

In § 843.202 we are revising paragraph (b) to reflect the change in law affecting the consequences of employee refunds.

Part 870

The change to § 870.101 clarifies that, for FEGLI purposes, the date of retirement for a phased retiree is the date the individual enters full retirement status.

The proposed rules provide in § 870.204, for a phased retiree, the annual rate of pay used to calculate Basic and Optional coverage amounts is the full-time basic pay rate as fixed by applicable law and regulation for the position in which the individual serves.

Part 890

The changes to § 890.101 provide that in the case of a phased retiree, a composite retirement annuity is an immediate annuity for purposes of eligibility to continue FEHB into retirement. This clarifies that a phased retiree who retires on a composite retirement annuity must meet the requirement to retire on an immediate annuity in order to continue FEHB coverage into retirement.

The proposed rules provide that, for a phased retiree, the FEHB Government contribution amount is the full-time employer contribution as fixed by applicable law and regulation for the position in which the individual serves. These changes can be found in § 890.501(h).

Executive Order 13563 and Executive Order 12866

The Office of Management and Budget has reviewed this rule in accordance with E.O. 13563 and E.O. 12866.

Regulatory Flexibility Act

I certify that this regulation will not have a significant economic impact on a substantial number of small entities because the regulation will only affect retirement payments to Federal employees who elect phased retirement status.

List of Subjects

5 CFR Part 581

Alimony, Child support, Government employees, Wages.

5 CFR Part 582

Claims, Government employees, Wages.

5 CFR Part 831

Administrative practice and procedure, Alimony, Claims, Disability benefits, Firefighters, Government employees, Income taxes, Intergovernmental relations, Law enforcement officers, Pensions, Reporting and recordkeeping requirements, Retirement.

5 CFR Part 838

Alimony, Claims, Courts, Government employees, Pensions, Retirement.

5 CFR Part 841

Administrative practice and procedure, Air traffic controllers, Claims, Disability benefits, Firefighters, Government employees, Income taxes, Intergovernmental relations, Law enforcement officers, Pensions, Retirement.

5 CFR Part 842

Air traffic controllers, Alimony, Firefighters, Government employees,

Law enforcement officers, Pensions, Retirement.

5 CFR Part 843

Air traffic controllers, Disability benefits, Firefighters, Government employees, Law enforcement officers, Pensions, Retirement.

5 CFR Part 848

Air traffic controllers, Alimony, Firefighters, Government employees, Law enforcement officers, Pensions, Retirement.

5 CFR Part 870

Administrative practice and procedure, Government employees, Hostages, Iraq, Kuwait, Lebanon, Life insurance, Retirement.

5 CFR Part 890

Administrative practice and procedure, Government employees, Health facilities, Health insurance, Health professions, Hostages, Iraq, Kuwait, Lebanon, Military personnel, Reporting and recordkeeping requirements, Retirement.

Office of Personnel Management.

Elaine Kaplan,

Acting Director.

For the reasons discussed in the preamble, the Office of Personnel Management is proposing to amend 5 CFR parts 581, 582, 831, 838, 841, 842, 843, 870, and 890 and add a new part 848 as follows:

PART 581—PROCESSING GARNISHMENT ORDERS FOR CHILD SUPPORT AND/OR ALIMONY

■ 1. The authority citation for part 581 is revised to read as follows:

Authority: 42 U.S.C. 659; 15 U.S.C. 1673; E.O. 12105 (43 FR 59465 and 3 CFR 262)(1979). Secs. 581.102 and 581.306 also issued under 5 U.S.C. 8336a and 8412a.

■ 2. Amend § 581.102 to add paragraphs (l) and (m) to read as follows:

§ 581.102 Definitions.

* * * * *

(l) *Phased retirement status* has the same meaning given that term in § 838.103 of this chapter; and

(m) *Phased retirement annuity* has the same meaning given that term in § 838.103 of this chapter.

■ 3. Amend § 581.306 by revising the section heading and by adding paragraph (d) to read as follows:

§ 581.306 Lack of moneys due from, or payable by, a governmental entity served with legal process; transfer of service of legal process to another governmental entity.

* * * * *

(d) In instances where an employee obligor, who is employed by a governmental entity which is honoring a continuing legal process, enters phased retirement status in accordance with part 831, subpart Q, and part 848 of this chapter, the entity must inform the party who caused the legal process to be served, or the party's representative, and the court or other authority, that remuneration for employment will continue at a reduced rate and that the employee obligor will be receiving a phased retirement annuity. The governmental entity must provide the party with the designated agent at the Office of Personnel Management who is responsible for the disbursement of retirement benefits.

PART 582—COMMERCIAL GARNISHMENT OF FEDERAL EMPLOYEES' PAY

■ 4. The authority citation for part 582 is revised to read as follows:

Authority: 5 U.S.C. 5520a; 15 U.S.C. 1673; E.O. 12897; Sec. 582.102 also issued under 5 U.S.C. 8336a and 8412a.

■ 5. Amend § 582.102 by revising paragraph (2) to read as follows:

§ 582.102 Definitions.

* * * * *

(2) *Employee or employee-obligor* means an individual who is employed by an *agency* as defined in this section, including a reemployed annuitant, an individual engaged in phased employment as defined in part 831, subpart Q, and part 848 of this chapter, and a retired member of the uniformed services who is employed by an agency. *Employee* does not include a retired employee, a member of the uniformed services, a retired member of the uniformed services, or an individual whose service is based on a contract, including an individual who provides personal services based on a contract with an agency.

* * * * *

PART 831—RETIREMENT

■ 6. The authority citation for part 831 is revised to read as follows:

Authority: 5 U.S.C. 8347; Sec. 831.102 also issued under 5 U.S.C. 8334; Sec. 831.106 also issued under 5 U.S.C. 552a; Sec. 831.108 also issued under 5 U.S.C. 8336(d)(2); Sec. 831.114 also issued under 5 U.S.C. 8336(d)(2), and Sec. 1313(b)(5) of Pub. L. 107–296, 116 Stat. 2135; Sec. 831.201(b)(1) also issued under 5 U.S.C. 8347(g); Sec. 831.201(b)(6) also issued under 5 U.S.C. 7701(b)(2); Sec. 831.201(g) also issued under Secs. 11202(f), 11232(e), and 11246(b) of Pub. L. 105–33, 111 Stat. 251; Sec. 831.201(g) also issued under Secs. 7(b) and (e) of Pub. L. 105–274, 112 Stat. 2419; Sec. 831.201(i) also issued under Secs. 3 and 7(c) of Pub. L. 105–274, 112 Stat. 2419; Sec. 831.204 also issued under Sec. 102(e) of Pub. L. 104–8, 109 Stat. 102, as amended by Sec. 153 of Pub. L. 104–134, 110 Stat. 1321; Sec. 831.205 also issued under Sec. 2207 of Pub. L. 106–265, 114 Stat. 784; Sec. 831.206 also issued under Sec. 1622(b) of Pub. L. 104–106, 110 Stat. 515; Sec. 831.301 also issued under Sec. 2203 of Pub. L. 106–265, 114 Stat. 780; Sec. 831.303 also issued under 5 U.S.C. 8334(d)(2) and Sec. 2203 of Pub. L. 106–235, 114 Stat. 780; Sec. 831.502 also issued under 5 U.S.C. 8337, and under Sec. 1(3), E.O. 11228, 3 CFR 1965–1965 Comp. p. 317; Sec. 831.663 also issued under 5 U.S.C. 8339(j) and (k)(2); Secs. 831.663 and 831.664 also issued under Sec. 11004(c)(2) of Pub. L. 103–66, 107 Stat. 412; Sec. 831.682 also issued under Sec. 201(d) of Pub. L. 99–251, 100 Stat. 23; Sec. 831.912 also issued under Sec. 636 of Appendix C to Pub. L. 106–554, 114 Stat. 2763A–164; Subpart P also issued under Sec. 535(d) of Title V of Division E of Pub. L. 110–161, 121 Stat. 2042; Subpart Q also issued under 5 U.S.C. 8336a; Subpart V also issued under 5 U.S.C. 8343a and Sec. 6001 of Pub. L. 100–203, 101 Stat. 1330–275; Sec. 831.2203 also issued under Sec. 7001(a)(4) of Public Law 101–508, 104 Stat. 1388–328.

■ 7. Amend § 831.303 by revising paragraph (c)(1) to read as follows:

§ 831.303 Civilian service.

* * * * *

(c)(1)(i) An employee or Member whose retirement is based on a separation before October 28, 2009, and who has not completed payment of a redeposit for refunded deductions based on a period of service that ended before October 1, 1990, will receive credit for that service in computing the nondisability annuity for which the individual is eligible under subchapter III of chapter 83 of title 5, United States Code, provided the nondisability annuity commences after December 1, 1990; and

(ii) An employee or Member whose retirement is based on a separation on or after October 28, 2009, and who has not completed payment of a redeposit for refunded deductions based on a period of service that ended before March 1, 1991, will receive credit for that service in computing the nondisability annuity for which the individual is eligible under subchapter III of chapter 83 of title 5, United States Code.

* * * * *

■ 8. Amend § 831.402 to revise the definition of ''applicant for retirement'' and to add the definitions of ''full

retirement status'', and ''phased retiree'' in alphabetical order as follows:

§ 831.402 Definitions.

* * * * *

Applicant for retirement means a person who is currently eligible to retire under CSRS on an immediate or deferred annuity, and who has filed an application to retire, other than an application for phased retirement status, that has not been finally adjudicated.

* * *

Full retirement status means the status of a phased retiree who has ceased employment and is entitled, upon application, to a composite retirement annuity.

* * *

Phased retiree means a retirement-eligible employee who—

(1) Has entered phased retirement status under subpart Q of this part; and

(2) Has not entered full retirement status.

* * * * *

■ 9. Amend § 831.403 by revising paragraph (a) to read as follows:

§ 831.403 Eligibility to make voluntary contributions.

(a) Voluntary contributions may be made only by—

(1) Employees (including phased retirees) or Members currently subject to CSRS, and

(2) Applicants for retirement, including phased retirees who apply for full retirement status under subpart Q of this part.

* * * * *

■ 10. Revise § 831.501 to read as follows:

§ 831.501 Time for filing application.

An employee or Member who is eligible for retirement must file a retirement application with his or her agency. A former employee or Member who is eligible for retirement must file a retirement application with OPM. The application should not be filed more than 60 days before becoming eligible for benefits. If the application is for disability retirement, the applicant and the employing agency should refer to subpart L of this part. If the application is for phased retirement status, the employee and the employing agency should refer to subpart Q of this part.

■ 11. Amend § 831.701 as follows:

■ a. Revise paragraph (a) introductory text;

■ b. Redesignate paragraphs (d) through (f) as paragraphs (e) through (g);

■ c. Add paragraph (d).

§ 831.701 Effective dates of annuities.

(a) Except as provided in paragraphs (b) through (d) of this section, an annuity of an employee or Member commences on the first day of the month after—

* * * * *

(d) A phased retirement annuity and a composite retirement annuity granted to an employee under section 8336a of title 5, United States Code, and defined under § 831.1702, commences as provided in subpart Q of this part.

* * * * *

■ 12. Amend § 831.703 to revise the definition of ''full-time service'' in paragraph (b) as follows:

§ 831.703 Computation of annuities for part-time service.

* * * * *

(b) * * *

Full-time service means service performed by an employee who has—

(1) An officially established recurring basic workweek consisting of 40 hours within the employee's administrative workweek (as established under § 610.111 of this chapter or similar authority);

(2) An officially established recurring basic work requirement of 80 hours per biweekly pay period (as established for employees with a flexible or compressed work schedule under 5 U.S.C. chapter 61, subchapter II, or similar authority);

(3) For a firefighter covered by 5 U.S.C. 5545b(b) who does not have a 40-hour basic workweek, a regular tour of duty averaging at least 106 hours per biweekly pay period; or

(4) A work schedule that is considered to be full-time by express provision of law, including a work schedule established for certain nurses under 38 U.S.C. 7456 or 7456A that is considered by law to be a full-time schedule for all purposes.

* * * * *

■ 13. Add subpart Q to part 831 to read as follows:

Subpart Q—Phased Retirement

Sec.
831.1701 Applicability and purpose.
831.1702 Definitions.
831.1703 Implementing directives.

Entering Phased Retirement

831.1711 Eligibility.
831.1712 Working percentage and officially established hours for phased employment.
831.1713 Application for phased retirement.
831.1714 Effective date of phased employment and phased retirement annuity commencing date.
831.1715 Effect of phased retirement.

Returning to Regular Employment Status

831.1721 Ending phased retirement status to return to regular employment status.
831.1722 Effective date of end of phased retirement status to return to regular employment status.
831.1723 Effect of ending phased retirement status to return to regular employment status.

Entering Full Retirement Status

831.1731 Application for full retirement status.
831.1732 Commencing date of composite retirement annuity.

Computation of Phased Retirement Annuity at Phased Retirement and Composite Retirement Annuity at Full Retirement

831.1741 Computation of phased retirement annuity.
831.1742 Computation of composite annuity at final retirement.
831.1743 Cost-of-living adjustments.

Opportunity of a Phased Retiree to Pay a Deposit or Redeposit for Civilian or Military Service

831.1751 Deposit for civilian service for which no retirement deductions were withheld and redeposit for civilian service for which retirement deductions were refunded to the individual.
831.1752 Deposit for military service.
831.1753 Civilian and military service of an individual affected by an erroneous retirement coverage determination.

Death Benefits

831.1761 Death of phased retiree during phased employment.
831.1762 Death of an individual who has separated from phased employment and who dies before submitting an application for a composite retirement annuity.
831.1763 Lump-sum credit.

Reemployment After Separation From Phased Retirement Status

831.1771 Reemployment of an individual who has separated from phased employment and who dies before submitting an application for a composite retirement annuity.

Mentoring

831.1781 Mentoring.

Subpart Q—Phased Retirement

§ 831.1701 Applicability and purpose.

This subpart contains the regulations implementing provisions of 5 U.S.C. 8336a authorizing phased retirement. This subpart establishes the eligibility requirements for making an election to enter phased retirement status, the procedures for making an election, the record-keeping requirements, and the methods to be used for certain computations not addressed elsewhere in part 831.

§ 831.1702 Definitions.

In this subpart—

Authorized agency official means—

(1) For the executive branch agencies, the head of an Executive agency as defined in 5 U.S.C. 105;

(2) For the legislative branch, the Secretary of the Senate, the Clerk of the House of Representatives, or the head of any other legislative branch agency;

(3) For the judicial branch, the Director of the Administrative Office of the U.S. Courts;

(4) For the Postal Service, the Postmaster General;

(5) For any other independent establishment that is an entity of the Federal Government, the head of the establishment; or

(6) An official who is authorized to act for an official named in paragraphs (1) through (5) of this definition in the matter concerned.

Composite retirement annuity means the annuity computed when a phased retiree attains full retirement status.

Director means the Director of the Office of Personnel Management.

Full retirement status means that a phased retiree has ceased employment and is entitled, upon application, to a composite retirement annuity.

Full-time means—

(1) An officially established recurring basic workweek consisting of 40 hours within the employee's administrative workweek (as established under § 610.111 of this chapter or similar authority); or

(2) An officially established recurring basic work requirement of 80 hours per biweekly pay period (as established for employees with a flexible or compressed work schedule under 5 U.S.C. chapter 61, subchapter II, or similar authority).

Phased employment means the less-than-full-time employment of a phased retiree.

Phased retiree means a retirement-eligible employee who—

(1) With the concurrence of an authorized agency official, enters phased retirement status; and

(2) Has not entered full retirement status.

Phased retirement annuity means the annuity payable under 5 U.S.C. 8336a before full retirement.

Phased retirement percentage means the percentage which, when added to the working percentage for a phased retiree, produces a sum of 100 percent.

Phased retirement period means the period beginning on the date on which an individual becomes entitled to receive a phased retirement annuity and ending on the date on which the individual dies or separates from phased employment.

Phased retirement status means that a phased retiree is concurrently employed in phased employment and eligible to receive a phased retirement annuity.

Working percentage has the meaning given that term in § 831.1712(a).

§ 831.1703 Implementing directives.

The Director may prescribe, in the form he or she deems appropriate, such detailed procedures as are necessary to carry out the purpose of this subpart.

Entering Phased Retirement

§ 831.1711 Eligibility.

(a) A retirement-eligible employee, as defined in paragraphs (b) and (c), may elect to enter phased retirement status if the employee has been employed on a full-time basis for not less than the 3-year period ending on the effective date of phased retirement status, under § 831.1714(a).

(b) Except as provided in paragraph (c) of this section, a retirement-eligible employee means an employee who, if separated from the service, would meet the requirements for retirement under subsection (a) or (b) of 5 U.S.C. 8336.

(c) A retirement-eligible employee does not include—

(1) A member of the Capitol Police or Supreme Court Police, or an employee occupying a law enforcement officer, firefighter, nuclear materials courier, air traffic controller, or customs and border protection officer position, except a customs and border protection officer who is exempt from mandatory separation and retirement under 5 U.S.C. 8335 pursuant to section 535(e)(2)(A) of Division E of the Consolidated Appropriations Act, 2008, Public Law 110–161;

(2) An individual eligible to retire under 5 U.S.C. 8336(c), (m), or (n); or

(3) An employee covered by a special work schedule authority that does not allow for a regularly recurring part-time schedule, such as a firefighter covered by 5 U.S.C. 5545b or a nurse covered by 38 U.S.C. 7456 or 7456A.

§ 831.1712 Working percentage and officially established hours for phased employment.

(a) For the purpose of this subpart, *working percentage* means the percentage of full-time equivalent employment equal to the quotient obtained by dividing—

(1) The number of officially established hours per pay period to be worked by a phased retiree, as described in paragraph (b) of this section; by

(2) The number of hours per pay period to be worked by an employee serving in a comparable position on a full-time basis.

(b) The number of officially established hours per pay period to be worked by an employee in phased retirement status must equal one-half the number of hours the phased retiree would have been scheduled to work had the phased retiree remained in a full-time work schedule and not elected to enter phased retirement status. These hours make up the officially established part-time work schedule of the phased retiree and exclude any additional hours worked under § 831.1715(h).

§ 831.1713 Application for phased retirement.

(a) To elect to enter phased retirement status, a retirement-eligible employee covered by § 831.1711 must—

(1) Submit to an authorized agency official a written and signed request to enter phased employment, on a form prescribed by OPM;

(2) Obtain the signed written approval of an authorized agency official to enter phased employment; and

(3) File an application for phased retirement, in accordance with § 831.104.

(b) Except as provided in paragraph (c) of this section, an applicant for phased retirement may withdraw his or her application any time before the election becomes effective, but not thereafter.

(c) An applicant for phased retirement may not withdraw his or her application after OPM has received a certified copy of a court order (under part 581 or part 838 of this chapter) affecting the benefits.

(d) (1) An employee and an agency approving official may agree to a time limit to the employee's period of phased employment as a condition of approval of the employee's request to enter phased employment and phased retirement, or by mutual agreement after the employee enters phased employment status.

(2) To enter into such an agreement, the employee and the approving official must complete a written and signed agreement.

(3) The written agreement must include the following:

(i) The date the employee's period of phased employment will terminate;

(ii) A statement that the employee can request the approving official's permission to return to regular employment status at any time as provided in § 831.1721; the agreement must also explain how returning to regular employment status would affect the employee, as described in §§ 831.1721 through 831.1723.

(iii) A statement that the employee has a right to elect to fully retire at any time as provided in § 831.1731;

(iv) A statement that the employee may accept a new appointment at

another agency, with or without the new agency's approval of phased employment, at any time before the expiration of the agreement or within 3 days of the expiration of the agreement; the agreement must also explain how accepting an appointment at a new agency as a regular employee would affect the employee, as described in §§ 831.1721 through 831.1723;

(v) An explanation that when the agreed term of phased employment ends, the employee will be separated from employment and that such separation will be considered voluntary based on the written agreement; and

(vi) An explanation that if the employee is separated from phased employment and is not employed within 3 days (i.e., the employee has a break in service of greater than 3 days), the employee will be deemed to have elected full retirement.

(4) The agency approving official and the employee may rescind an existing agreement, or enter into a new agreement to extend or reduce the term of phased employment agreed to in an existing agreement, by entering into a new written agreement meeting the requirements of this paragraph, before the expiration of the agreement currently in effect.

§ 831.1714 Effective date of phased employment and phased retirement annuity commencing date.

(a) Phased employment is effective the first day of the first pay period beginning after phased employment is approved by the authorized agency official under § 831.1713(a), or the first day of a later pay period specified by the employee with an authorized agency official's concurrence.

(b) The commencing date of a phased retirement annuity (i.e., the beginning date of the phased retirement period) is the first day of the first pay period beginning after phased employment is approved by an authorized agency official under § 831.1713(a), or the first day of a later pay period specified by the employee with the authorized agency official's concurrence.

§ 831.1715 Effect of phased retirement.

(a)(1) A phased retiree is deemed to be a full-time employee for the purpose of 5 U.S.C. chapter 89 and 5 CFR part 890 (related to health benefits), as required by 5 U.S.C. 8336a(i). The normal rules governing health benefits premiums for part-time employees in 5 U.S.C. 8906(b)(3) do not apply.

(2) A phased retiree is deemed to be receiving basic pay at the rate applicable to a full-time employee holding the same position for the purpose of determining a phased retiree's annual rate of basic pay used in calculating premiums (employee withholdings and agency contributions) and benefits under 5 U.S.C. chapter 87 and 5 CFR part 870 (dealing with life insurance), as required by 5 U.S.C. 8336a(n). The deemed full-time schedule will consist of five 8-hour workdays each workweek, resulting in a 40-hour workweek. Only basic pay for hours within the deemed full-time schedule will be considered, consistent with 5 U.S.C. 8336a(n) and the definition of ''full-time'' in § 831.1702. Any premium pay creditable as basic pay for life insurance purposes under 5 CFR 870.204 for overtime work or hours outside the full-time schedule that an employee was receiving before phased retirement, such as standby duty pay under 5 U.S.C. 5545(c)(1) or customs officer overtime pay under 19 U.S.C. 267(a), may not be considered in determining a phased retiree's deemed annual rate of basic pay under this paragraph.

(b) A phased retiree may not be appointed to more than one position at the same time.

(c) A phased retiree may move to another position in the agency or another agency during phased retirement status only if the change would not result in a change in the working percentage. To move to another agency during phased retirement status and continue phased employment and phased retirement status, the phased retiree must submit a written and signed request and obtain the signed written approval, in accordance with § 831.1713(a)(1) and (2), of the authorized agency official of the agency to which the phased retiree is moving. Notwithstanding the provisions of § 831.1714, if the authorized agency official approves the request, the phased retiree's phased employment and phased retirement status will continue without interruption at the agency to which the phased retiree moves. If the authorized agency official at the agency to which the phased retiree moves does not approve the request, phased employment and phased retirement status terminates in accordance with § 831.1722(b).

(d) A phased retiree may be detailed to another position or agency, subject to 5 CFR part 300, subpart C, if the working percentage of the position to which detailed is the same as the working percentage of the phased retiree's position of record.

(e) A retirement-eligible employee who makes an election under this subpart may not elect an alternative annuity under 5 U.S.C. 8343a.

(f) If the employee's election of phased retirement status becomes effective, the employee is barred from electing phased retirement status again. Ending phased retirement status or entering full retirement status does not create a new opportunity for the individual to elect phased retirement status.

(g) Except as otherwise expressly provided by law or regulation, a phased retiree is treated as any other employee on a part-time tour of duty for all other purposes.

(h)(1) A phased retiree may not be assigned hours of work in excess of the officially established part-time schedule (reflecting the working percentage), except under the conditions specified in paragraph (h)(2) of this section.

(2) An authorized agency official may order or approve a phased retiree to perform hours of work in excess of the officially established part-time schedule only in rare and exceptional circumstances meeting all of the following conditions:

(i) The work is necessary to respond to an emergency posing a significant, immediate, and direct threat to life or property;

(ii) The authorized agency official determines that no other qualified employee is available to perform the required work;

(iii) The phased retiree is relieved from performing excess work as soon as reasonably possible (e.g., by management assignment of work to other employees); and

(iv) When an emergency situation can be anticipated in advance, agency management made advance plans to minimize any necessary excess work by the phased retiree.

(3) Employing agencies must inform each phased retiree and his or her supervisor of—

(i) The limitations on hours worked in excess of the officially established part-time schedule;

(ii) The requirement to maintain records documenting that exceptions met all required conditions;

(iii) The fact that, by law and regulation, any basic pay received for hours outside the employee's officially established part-time work schedule (as described in § 831.1712(a)(1) and (b)) is subject to retirement deductions and agency contributions, in accordance with 5 U.S.C. 8336a(d), but is not used in computing retirement benefits; and

(iv) The fact that, by law and regulation, any premium pay received for overtime work or hours outside the full-time schedule, that would otherwise be basic pay for retirement, such as customs officer overtime pay

under 19 U.S.C. 267(a), will not be subject to retirement deductions or agency contributions, in accordance with 5 U.S.C. 8336a(d), and that any such premium pay received will not be included in computing retirement benefits.

(4) Employing agencies must maintain records documenting that exceptions granted under paragraph (h)(2) of this section meet the required conditions. These records must be retained for at least 6 years and be readily available to auditors. OPM may require periodic agency reports on the granting of exceptions and of any audit findings.

(5) If OPM finds that an agency (or subcomponent) is granting exceptions that are not in accordance with the requirements of this paragraph (h), OPM may administratively withdraw the agency's (or subcomponent's) authority to grant exceptions and require OPM approval of any exception.

(6) If OPM finds that a phased retiree has been working a significant amount of excess hours beyond the officially established part-time schedule to the degree that the intent of the phased retirement law is being undermined, OPM may require that the agency end the individual's phased retirement by unilateral action, notwithstanding the normally established methods of ending phased retirement. This finding does not need to be based on a determination that the granted exceptions failed to meet the required conditions in paragraph (h)(2) of this section. With the ending of an individual's phased retirement, that individual must be returned to regular employment status on the same basis as a person making an election under § 831.1721—unless that individual elects to fully retire as provided under § 831.1731.

(7) A phased retiree must be compensated for excess hours of work in accordance with the normally applicable pay rules.

(8) Any premium pay received for overtime work or hours outside the full-time schedule that would otherwise be basic pay for retirement, such as customs officer overtime pay under 19 U.S.C. 267(a), is not subject to retirement deductions or agency contributions, in accordance with 5 U.S.C. 8336a(d).

(i) A phased retiree is deemed to be an annuitant for the purpose of subpart S of this part.

Returning to Regular Employment Status

§ 831.1721 Ending phased retirement status to return to regular employment status.

(a) *Election to end phased retirement status to return to regular employment status.* (1) A phased retiree may elect, with the permission of an authorized agency official, to end phased employment at any time to return to regular employment status. The election is deemed to meet the requirements of 5 U.S.C. 8336a(g) regardless of the employee's work schedule. The employee is not subject to any working percentage limitation (i.e., full-time, 50 percent of full-time, or any other working percentage) upon electing to end phased retirement status.

(2) To elect to end phased retirement status to return to regular employment status, a phased retiree must—

(i) Submit to the authorized agency official, on a form prescribed by OPM, a written and signed request to end phased retirement status to return to regular employment status; and

(ii) Obtain the signed written approval of the authorized agency official for the request.

(3) An employee may cancel an approved election to end phased retirement status to return to regular employment status by submitting a signed written request to the agency and obtaining the approval of an authorized agency official before the effective date of return to regular employment status.

(4) The employing agency must notify OPM that the employee's phased retirement status has ended by submitting to OPM a copy of the completed election to end phased retirement status to return to regular employment status within 15 days of its approval.

(b) *Mandated return to regular employment status.* A phased retiree may be returned to regular employment status as provided under § 831.1715(h)(6).

(c) *Bar on reelection of phased retirement.* Once an election to end phased retirement status to return to regular employment status is effective, the employee may not reelect phased retirement status.

§ 831.1722 Effective date of end of phased retirement status to return to regular employment status.

(a) (1) Except as provided in paragraph (b) of this section, if a request to end phased retirement status to return to regular employment status is approved by an authorized agency official under § 831.1721 on any date on or after the first day of a month through the fifteenth day of a month, the phased retiree's resumption of regular employment status is effective the first day of the first full pay period of the month following the month in which the election to end phased retirement status to return to regular employment status is approved.

(2) If a request to end phased retirement status to return to regular employment status is approved by an authorized agency official under § 831.1721 on any date on or after the sixteenth day of a month through the last day of a month, the phased retiree's resumption of regular employment status is effective on the first day of the first full pay period of the second month following the month in which the election to end phased retirement status to return to regular employment status is approved.

(3) The phased retirement annuity terminates on the date determined under paragraph (a)(1) or (2) of this section.

(b) When a phased retiree moves from the agency that approved his or her phased employment and phased retirement status to another agency and the authorizing official at the agency to which the phased retiree moves does not approve a continuation of phased employment and phased retirement status, phased employment and phased retirement status terminates when employment ends at the current employing agency.

§ 831.1723 Effect of ending phased retirement status to return to regular employment status.

(a) After phased retirement status ends under § 831.1722, the employee's rights under subchapter III of chapter 83 or chapter 84 of title 5, United States Code, are determined based on the law in effect at the time of any subsequent separation from service.

(b) After an individual ends phased retirement status to return to regular employment status, for the purposes of subchapter III of chapter 83 or chapter 84 of title 5, United States Code, at the time of the subsequent separation from service, the phased retirement period will be treated as if it had been a period of part-time employment with the work schedule described in § 831.1712(a)(1) and (b). The part-time proration adjustment for the phased retirement period will be based upon the individual's officially established part-time work schedule, with no credit for extra hours worked. In determining the individual's deemed rate of basic pay during the phased retirement period, only basic pay for hours within the

individual's officially established part-time work schedule may be considered. No pay received for other hours during the phased retirement period may be included as part of basic pay for the purpose of computing retirement benefits, notwithstanding the normally applicable rules.

(c) The restrictions in §§ 831.1751 and 831.1752 regarding when an individual must complete a deposit for civilian service, a redeposit for civilian service that ended on or after March 1, 1991, or a deposit for military service do not apply when a phased retiree ends phased retirement status to return to regular employment status under this section.

(d) When a phased retiree whose phased retirement annuity was subject to an actuarial reduction for unpaid redeposit service, in accordance with § 831.303(c) and (d), ends phased retirement status to return to regular employment status, the annuity the individual becomes entitled to at retirement is subject to the actuarial reduction, increased by cost-of-living adjustments under § 831.1743(d). For the purpose of applying the provisions of § 831.1743(d) under this paragraph, cost-of-living adjustments are applied through the annuity commencing date.

Entering Full Retirement Status

§ 831.1731 Application for full retirement status.

(a) *Election of full retirement.* (1) A phased retiree may elect to enter full retirement status at any time by submitting to OPM an application for full retirement in accordance with § 831.104. This includes an election made under § 831.1715(h)(6) in lieu of a mandated return to regular employment status. Upon making such an election, a phased retiree is entitled to a composite retirement annuity.

(2) A phased retiree may cancel an election of full retirement status and withdraw an application for full retirement by submitting a signed written request with the agency and obtaining the approval of an authorized agency official before the commencing date of the composite retirement annuity.

(b) *Deemed election of full retirement.* A phased retiree who is separated from phased employment for more than 3 days enters full retirement status. The individual's composite retirement annuity will begin to accrue on the commencing date of the composite annuity as provided in § 831.1732, and payment will be made after he or she submits an application in accordance with § 831.104 for the composite retirement annuity.

(c) *Survivor election provisions.* An individual applying for full retirement status under this section is subject to the survivor election provisions of subpart F of this part.

§ 831.1732 Commencing date of composite retirement annuity.

(a) The commencing date of the composite retirement annuity of a phased retiree who enters full retirement status is the day after separation.

(b) A phased retirement annuity terminates upon separation from service.

Computation of Phased Retirement Annuity at Phased Retirement and Composite Retirement Annuity at Full Retirement

§ 831.1741 Computation of phased retirement annuity.

(a) Subject to adjustments described in paragraphs (b) and (c) of this section, a phased retiree's phased retirement annuity equals the product obtained by multiplying—

(1) The amount of annuity computed under 5 U.S.C. 8339, including any reduction for any unpaid deposit for non-deduction service performed before October 1, 1982, but excluding reduction for survivor annuity, that would have been payable to the phased retiree if, on the date on which the phased retiree enters phased retirement status, the phased retiree had separated from service and retired under 5 U.S.C. 8336(a) or (b); by

(2) The phased retirement percentage for the phased retiree.

(b)(1) The monthly installment of annuity derived from the computation of the annuity under paragraph (a) of this section is reduced by any actuarial reduction for unpaid redeposit service in accordance with § 831.303(c) and (d).

(2) For the purpose of applying § 831.303(c) and (d) in paragraph (b)(1) of this section, the term ''time of retirement'' in § 831.303(c)(2) and (d)(2)(i) means the commencing date of the phased retiree's phased retirement annuity.

(c) The monthly installment of annuity derived from the computation of the annuity under paragraph (a) of this section is also subject to any offset under § 831.1005, adjusted by multiplying the offset that would otherwise apply had the phased retiree fully retired under 5 U.S.C. 8336(a) or (b) by the phased retirement percentage.

§ 831.1742 Computation of composite annuity at final retirement.

(a) Subject to the adjustment described in paragraph (c) of this section, a phased retiree's composite retirement annuity at final retirement equals the sum obtained by adding—

(1) The amount computed under § 831.1741(a) without adjustment under § 831.1741(b) and (c), increased by cost-of-living adjustments under § 831.1743(c); and

(2) The ''fully retired phased component'' computed under paragraph (b) of this section.

(b)(1) Subject to the requirements described in paragraphs (b)(2) and (b)(3) of this section, a ''fully retired phased component'' equals the product obtained by multiplying—

(i) The working percentage; by

(ii) The amount of an annuity computed under 5 U.S.C. 8339 that would have been payable at the time of full retirement if the individual had not elected phased retirement status and as if the individual was employed on a full-time basis in the position occupied during the phased retirement period and before any reduction for survivor annuity.

(2) In applying paragraph (b)(1)(ii) of this section, the individual must be deemed to have a full-time schedule during the period of phased retirement. The deemed full-time schedule will consist of five 8-hour workdays each workweek, resulting in a 40-hour workweek. In determining the individual's deemed rate of basic pay during phased retirement, only basic pay for hours within the deemed full-time schedule will be considered, consistent with the definition of ''full-time'' in § 831.1702. Any premium pay creditable as basic pay for retirement purposes for overtime work or hours outside the full-time schedule that an employee was receiving before phased retirement, such as standby duty pay under 5 U.S.C. 5545(c)(1) or customs officer overtime pay under 19 U.S.C. 267(a), may not be considered in determining a phased retiree's deemed rate of basic pay during phased retirement.

(3) In computing the annuity amount under paragraph (b)(1) of this section—

(i) The amount of unused sick leave equals the result of dividing the days of unused sick leave to the individual's credit at separation for full retirement by the working percentage; and

(ii) The reduction for any unpaid deposit for non-deduction service performed before October 1, 1982, is based on the amount of unpaid deposit, with interest computed to the commencing date of the composite annuity.

(c) The composite retirement annuity computed under paragraph (a) of this section is adjusted by applying any

reduction for any survivor annuity benefit.

(d) The monthly installment derived from a composite retirement annuity computed under paragraph (a) of this section and adjusted under paragraph (c) is adjusted by any—

(1) Actuarial reduction applied to the phased retirement annuity under § 831.1741(b), increased by cost-of-living adjustments under § 831.1743(d); and

(2) Offset under § 831.1005 (i.e., the offset based on all service, including service during the phased retirement period, performed by the individual that was subject to mandatory Social Security coverage).

§ 831.1743 Cost-of-living adjustments.

(a) The phased retirement annuity under § 831.1741 is increased by cost-of-living adjustments in accordance with 5 U.S.C. 8340.

(b) A composite retirement annuity under § 831.1742 is increased by cost-of-living adjustments in accordance with 5 U.S.C. 8340, except that 5 U.S.C. 8340(c)(1) does not apply.

(c)(1) For the purpose of computing the amount of phased retirement annuity used in the computation under § 831.1742(a)(1), the initial cost-of-living adjustment applied is prorated in accordance with 5 U.S.C. 8340(c)(1).

(2) If the individual enters full retirement status on the same day as the effective date of a cost-of-living adjustment (usually December 1st), that cost-of-living adjustment is applied to increase the phased retirement annuity used in the computation under § 831.1742(a)(1).

(d)(1) For the purpose of computing the actuarial reduction used in the computation under § 831.1742(d)(1), the initial cost-of-living adjustment applied is prorated in accordance with 5 U.S.C. 8340(c)(1).

(2) If the individual enters full retirement status on the same day as the effective date of a cost-of-living adjustment (usually December 1st), that cost-of-living adjustment is applied to increase the actuarial reduction used in the computation under § 831.1742(d)(1).

(3) When applying each cost-of-living adjustment to the actuarial reduction used in the computation under § 831.1742(d)(1), the actuarial reduction is rounded up to the next highest dollar.

Opportunity of a Phased Retiree To Pay a Deposit or Redeposit for Civilian or Military Service

§ 831.1751 Deposit for civilian service for which no retirement deductions were withheld and redeposit for civilian service for which retirement deductions were refunded to the individual.

(a)(1) Any deposit an employee entering phased retirement status wishes to make for civilian service for which no retirement deductions were withheld (i.e., ''non-deduction'' service) must be paid within 30 days from the date OPM notifies the employee of the amount of the deposit, during the processing of the employee's application for phased retirement. The deposit amount will include interest under § 831.105, computed to the effective date of phased retirement.

(2) No deposit payment may be made by the phased retiree when entering full retirement status.

(3) As provided under § 831.1741(a)(1), for the computation of phased retirement annuity, the amount of any unpaid deposit for non-deduction service performed before October 1, 1982, including interest computed to the effective date of phased retirement annuity, will be the basis for reduction of the phased retirement annuity for such unpaid deposit.

(4) As provided under § 831.1742(b)(2), the amount of any unpaid deposit for non-deduction service performed before October 1, 1982, including interest computed to the commencing date of the composite annuity, will be the basis for reduction of the ''fully retired phased component'' for such unpaid deposit.

(b)(1) Any redeposit an employee entering phased retirement status wishes to make for civilian service for which retirement deductions were refunded to the employee must be paid within 30 days from the date OPM notifies the employee of the amount of the redeposit, during the processing of the employee's application for phased retirement. The redeposit amount will include interest under § 831.105 computed to the effective date of phased retirement.

(2) No redeposit payment may be made by the phased retiree when entering full retirement status.

(3) As provided under § 831.1741(b), for the computation of monthly installment of phased retirement annuity, the amount of any unpaid redeposit at phased retirement, or unpaid balance thereof, including interest computed to the effective date of phased retirement, will be the basis, along with the phased retiree's age, for any actuarial reduction of the monthly installment of phased retirement annuity for such unpaid redeposit.

(4) As provided under § 831.1742(d)(1), any actuarial reduction for unpaid redeposit service applied to the monthly installment of phased retirement annuity, as described in paragraph (b)(3) of this section and § 831.1741(b), is increased by cost-of-living adjustments and applied to the monthly installment derived from the composite retirement annuity.

§ 831.1752 Deposit for military service.

(a) A phased retiree who wishes to make a military service credit deposit under § 831.2104(a) for military service performed prior to entering phased retirement status must complete such a deposit no later than the day before the effective date of his or her phased employment and the commencing date of the phased retirement annuity. A military service credit deposit for military service performed prior to an individual's entry into phased retirement status cannot be made after the effective date of phased employment and the commencing date of phased retirement annuity.

(b) A phased retiree who wishes to make a military service credit deposit under § 831.2104(a) for military service performed after the effective date of phased employment and the commencing date of the phased retirement annuity and before the effective date of the composite retirement annuity (e.g., due to the call-up of the employee for active military service) must complete such a deposit no later than the day before the effective date of his or her composite retirement annuity.

§ 831.1753 Civilian and military service of an individual affected by an erroneous retirement coverage determination.

(a) For the purpose of crediting service for which actuarial reduction of annuity is permitted under § 831.303(d) for an employee who enters phased retirement, the deposit amounts under § 831.303(d) form the basis, along with the phased retiree's age, for any actuarial reduction of the phased retirement annuity for such unpaid deposits.

(b) No deposit payment for service described under § 831.303(d) may be made by the phased retiree when entering full retirement status.

(c) As provided under § 831.1741(b), the amount of any deposit under § 831.303(d) at the commencing date of the individual's phased retirement annuity, or unpaid balance thereof, including interest computed to the

effective date of phased retirement annuity, will be the basis, along with the phased retiree's age, for any actuarial reduction of the phased retirement annuity for such unpaid deposit.

(d) As provided under § 831.1742(d)(1), any actuarial reduction for any unpaid deposit service under § 831.303(d) applied to the phased retirement annuity, as described in § 831.1741(b), is increased by cost-of-living adjustments and applied to the monthly installment derived from the composite retirement annuity.

Death Benefits

§ 831.1761 Death of phased retiree during phased employment.

(a) For the purpose of 5 U.S.C. 8341—

(1) The death of a phased retiree is deemed to be a death in service of an employee; and

(2) The phased retirement period is deemed to have been a period of part-time employment with the work schedule described in § 831.1712(a)(1) and (b) for the purpose of determining survivor benefits. The part-time proration adjustment for the phased retirement period will be based upon the employee's officially established part-time work schedule, with no credit for extra hours worked. In determining the employee's deemed rate of basic pay during the phased retirement period, only basic pay for hours within the employee's officially established part-time work schedule may be considered. No pay received for other hours during the phased retirement period may be included as part of basic pay for the purpose of computing retirement benefits, notwithstanding the normally applicable rules.

(b) If a phased retiree elects not to make a deposit described in 5 U.S.C. 8334(d)(1), such that his or her annuity is actuarially reduced under 5 U.S.C. 8334(d)(2) and § 831.1741(b), and that individual dies in service as a phased retiree, the amount of any deposit upon which such actuarial reduction was to have been based will be deemed to have been fully paid.

§ 831.1762 Death of an individual who has separated from phased employment and who dies before submitting an application for a composite retirement annuity.

(a) For the purpose of 5 U.S.C. 8341, an individual who dies after separating from phased employment and before submitting an application for composite retirement annuity is deemed to have filed an application for full retirement status, and composite retirement annuity, with OPM.

(b) Unless an individual described in paragraph (a) of this section was reemployed with the Federal Government after separating from phased employment, the composite retirement annuity of an individual described in paragraph (a) of this section is deemed to have accrued from the day after separation through the date of death. Any composite annuity accrued during such period of time, minus any phased annuity paid during that period, will be paid as a lump-sum payment of accrued and unpaid annuity, in accordance with 5 U.S.C. 8342(c) and (f).

§ 831.1763 Lump-sum credit.

If an individual performs phased employment, the lump-sum credit will be reduced by any annuity that is paid or accrued during phased employment.

Reemployment After Separation From Phased Retirement Status

§ 831.1771 Reemployment of an individual who has separated from phased employment and who dies before submitting an application for a composite retirement annuity.

(a) Unless eligibility for annuity terminates under 5 U.S.C. 8344, a phased retiree who has been separated from employment for more than 3 days and who has entered full retirement status, but who has not submitted an application for composite retirement annuity, is deemed to be an annuitant receiving annuity from the Civil Service Retirement and Disability Fund during any period of employment in an appointive or elective position in the Federal Government.

(b) A phased retiree described in paragraph (a) of this section whose entitlement to a composite retirement annuity terminates under 5 U.S.C. 8344 due to the employment, is an employee effective upon employment. The individual is not entitled to a phased retirement annuity (i.e., phased retirement annuity does not resume) during the period of employment, and the individual's entitlement to a composite retirement annuity terminates effective on the date of employment.

Mentoring

§ 831.1781 Mentoring.

(a) A phased retiree, other than an employee of the United States Postal Service, must spend at least 20 percent of his or her working hours in mentoring activities as defined by an authorized agency official. For purposes of this section, mentoring need not be limited to mentoring of an employee who is expected to assume the phased retiree's duties when the phased retiree fully retires.

(b) An authorized agency official may waive the requirement under paragraph (a) of this section in the event of an emergency or other unusual circumstances (including active duty in the armed forces) that, in the authorized agency official's discretion, would make it impracticable for a phased retiree to fulfill the mentoring requirement.

PART 838—COURT ORDERS AFFECTING RETIREMENT BENEFITS

■ 14. The authority citation for part 838 continues to read as follows:

Authority: 5 U.S.C. 8347(a) and 8461(g). Subparts B, C, D, E, J, and K also issued under 5 U.S.C. 8345(j)(2) and 8467(b). Sections 838.221, 838.422, and 838.721 also issued under 5 U.S.C. 8347(b).

■ 15. Amend § 838.103 as follows:

■ a. Revise the definitions of ''employee'', ''employee annuity'', ''gross annuity'', ''net annuity'', ''retiree'', and ''self-only annuity'';

■ b. Add the definitions of ''composite retirement annuity'', ''full retirement'', ''phased employment'', ''phased retiree'', ''phased retirement annuity'', ''phased retirement status,'' ''retirement'' and ''retires'' in alphabetical order.

§ 838.103 Definitions.

* * * * *

Composite retirement annuity means the annuity computed when a phased retiree attains full retirement status.

* * * * *

Employee means an employee or Member covered by CSRS or FERS and a phased retiree as defined under this part.

Employee annuity means the recurring payments under CSRS or FERS made to a retiree, the recurring phased retirement annuity payments under CSRS or FERS made to a phased retiree in phased retirement status, and recurring composite retirement annuity payments under CSRS or FERS made to a phased retiree when he or she attains full retirement status. *Employee annuity* does not include payments of accrued and unpaid annuity after the death of a retiree or phased retiree under 5 U.S.C. 8342(g) or 8424(h).

* * * * *

Full retirement status means that a phased retiree has ceased employment and is entitled, upon application, to a composite retirement annuity, as provided under subpart Q of 5 CFR part 831 or 5 CFR part 848.

Gross annuity means the amount of monthly annuity payable to a retiree or phased retiree after reducing the self-

only annuity to provide survivor annuity benefits, if any, but before any other deduction. Unless the court order expressly provides otherwise, *gross annuity* also includes any lump-sum payments made to the retiree under 5 U.S.C. 8343a or 8420a.

* * * * *

Net annuity. (1) *Net annuity* means the amount of monthly annuity payable to a retiree or phased retiree after deducting from the gross annuity any amounts that are—

(i) Owed by the retiree to the United States;

(ii) Deducted for health benefits premiums under 5 U.S.C. 8906 and 5 CFR 891.401 and 891.402;

(iii) Deducted for life insurance premiums under 5 U.S.C. 8714a(d);

(iv) Deducted for Medicare premiums;

(v) Properly withheld for Federal income tax purposes, if the amounts withheld are not greater than they would be if the retiree claimed all dependents he or she was entitled to claim;

(vi) Properly withheld for State income tax purposes, if the amounts withheld are not greater than they would be if the retiree claimed all dependents he or she was entitled to claim; or

(vii) Already payable to another person based on a court order acceptable for processing or a child abuse judgment enforcement order.

(2) Unless the court order expressly provides otherwise, *net annuity* also includes any lump-sum payments made to the retiree under 5 U.S.C. 8343a or 8420a.

Phased employment means the less-than-full-time employment of a phased retiree, as provided under 5 CFR part 831, subpart Q, or part 848.

Phased retiree. (1) Phased retiree means a retirement-eligible employee who—

(i) With the concurrence of an authorized agency official, enters phased retirement status in accordance with 5 CFR part 831, subpart Q, or part 848; and

(ii) Has not entered full retirement status;

(2) For the purpose of this part, when the term *employee* is used it also refers to a *phased retiree.*

Phased retirement annuity means the annuity payable under 5 U.S.C. 8336a or 8412a, and 5 CFR part 831, subpart Q, or part 848, before full retirement.

Phased retirement status means that a phased retiree is concurrently employed in phased employment and eligible to receive a phased retirement annuity.

* * * * *

Retiree means a former employee, including a phased retiree who has entered full retirement status, or a Member who is receiving recurring payments under CSRS or FERS based on his or her service as an employee or Member. *Retiree* does not include an employee receiving a phased retirement annuity or a person receiving an annuity only as a current spouse, former spouse, child, or person with an insurable interest.

Retirement means a retirement other than a phased retirement.

Retires means enters retirement other than a phased retirement.

Self-only annuity means the recurring unreduced payments under CSRS or FERS to a retiree with no survivor annuity payable to anyone. *Self-only annuity* also includes the recurring unreduced phased retirement annuity payments under CSRS or FERS to a phased retiree before any other deduction. Unless the court order expressly provides otherwise, *self-only annuity* also includes any lump-sum payments made to the retiree under 5 U.S.C. 8343a or 8420a.

* * * * *

§ 838.136 [Removed]

■ 16. Remove § 838.136.

■ 17. Amend § 838.211 by revising paragraph (a)(1) introductory text, redesignating paragraph (b) as paragraph (a)(4), and by adding a new paragraph (b) to read as follows:

§ 838.211 Amounts subject to court orders.

(a)(1) Employee annuities other than phased retirement annuities are subject to court orders acceptable for processing only if all of the conditions necessary for payment of the employee annuity to the former employee have been met, including, but not limited to—

* * * * *

(b)(1) Phased retirement annuities are subject to court orders acceptable for processing only if all of the conditions necessary for payment of the phased retirement annuity to the phased retiree have been met, including, but not limited to—

(i) Entry of the employee into phased retirement status under 5 CFR part 831, subpart Q, or part 848 of this chapter, respectively;

(ii) Application for payment of the phased retirement annuity by the phased retiree; and

(iii) The phased retiree's entitlement to a phased retirement annuity.

(2) Money held by an employing agency or OPM that may be payable at some future date is not available for payment under court orders directed at phased retirement annuities.

(3) OPM cannot pay a former spouse a portion of a phased retirement annuity before the employee annuity begins to accrue.

(4) Payment to a former spouse under a court order may not exceed the phased retirement annuity.

* * * * *

■ 18. Amend § 838.222 by revising paragraph (a)(2) introductory text and paragraphs (b), (c)(1)(ii) and (c)(2) introductory text, and paragraph (d) introductory text to read as follows:

§ 838.222 OPM action on receipt of a court order acceptable for processing.

(a) * * *

(2) The retiree or phased retiree—

* * * * *

(b) If OPM receives a court order acceptable for processing that is directed at an employee annuity but the employee has died, or if a retiree or phased retiree dies after payments from the retiree or phased retiree to a former spouse have begun, OPM will inform the former spouse that the employee, or retiree, or phased retiree has died and that OPM can only honor court orders dividing employee annuities during the lifetime of the retiree or phased retiree.

(c) * * *

(1) * * *

(ii) That benefits cannot begin to accrue until the employee retires, or enters phased retirement status; * * *

(2) The employee, separated employee, retiree, or phased retiree—

* * * * *

(d) The failure of OPM to provide, or of the employee, separated employee, retiree, phased retiree or the former spouse to receive, the information specified in this section prior to the commencing date of a reduction or accrual does not affect—

* * * * *

■ 19. Revise § 838.232 to read as follows:

§ 838.232 Suspension of payments.

(a) Payments from employee annuities under this part will be discontinued whenever the employee annuity payments are suspended or terminated. If employee annuity payments to the retiree or phased retiree are restored, payments to the former spouse will also resume, subject to the terms of any court order acceptable for processing in effect at that time.

(b) Paragraph (a) of this section will not be applied to permit a retiree or phased retiree to deprive a former spouse of payment by causing suspension of payment of employee annuity.

■ 20. Amend § 838.233 by revising paragraph (d) to read as follows:

§ 838.233 Termination of payments.

* * * * *

(d) The last day of the month immediately preceding the month in which the retiree or phased retiree dies; or

* * * * *

■ 21. Amend § 838.237 by revising paragraphs (a) and (b)(4) to read as follows:

§ 838.237 Death of the former spouse.

(a) Unless the court order acceptable for processing expressly provides otherwise, the former spouse's share of an employee annuity terminates on the last day of the month immediately preceding the death of the former spouse, and the former spouse's share of employee annuity reverts to the retiree or phased retiree.

(b) * * *

(4) One or more of the retiree's or phased retiree's children as defined in 5 U.S.C. 8342(c) or 8424(d).

■ 22. Amend § 838.242 by revising paragraph (b) to read as follows:

§ 838.242 Computing length of service.

* * * * *

(b) Unused sick leave is counted as ''creditable service'' on the date of separation for an immediate CSRS annuity. The unused sick leave of a phased retiree is counted as ''creditable service'' on the date of separation of the phased retiree to enter full retirement status. Unused sick leave is not apportioned over the time when earned.

■ 23. Amend § 838.305 by revising paragraph (e) introductory text to read as follows:

§ 838.305 OPM computation of formulas.

* * * * *

(e) A court order directed at employee annuity is not a court order acceptable for processing if the court order directs OPM to determine a rate of employee annuity that would require OPM to determine a salary or average salary, other than a salary or average salary actually used in computing the employee annuity, as of a date prior to the date of the employee's entry into phased retirement or separation and to adjust that salary for use in computing the former spouse share unless the adjustment is by—

* * * * *

■ 24. Revise § 838.306 to read as follows:

§ 838.306 Specifying type of annuity for application of formula, percentage or fraction.

(a) A court order directed at an employee annuity that states the former spouse's share of employee annuity as a formula, percentage, or fraction is not a court order acceptable for processing unless OPM can determine the type of annuity (i.e., phased retirement annuity, composite retirement annuity, net annuity, gross annuity, or self-only annuity) on which to apply the formula, percentage, or fraction.

(b) The standard types of annuity to which OPM can apply the formula, percentage, or fraction are phased retirement annuity of a phased retiree, or net annuity, gross annuity, or self-only annuity of a retiree. Unless the court order otherwise directs, OPM will apply to gross annuity the formula, percentage, or fraction directed at annuity payable to either a retiree or a phased retiree. Section 838.625 contains information on other methods of describing these types of annuity.

(c)(1) A court order may include provisions directed at:

(i) Phased retirement annuity payable to a phased retiree, to address the possibility that an employee will enter phased retirement status;

(ii) Composite retirement annuity payable to a phased retiree at entry into full retirement status, to address the possibility that an employee will enter phased retirement status and then enter full retirement status; and

(iii) Annuity payable to an employee who retires without having elected phased retirement status.

(2) To separately provide for division of phased retirement annuity or composite retirement annuity, a provision of a court order must expressly state that it is directed at ''phased retirement annuity'' or ''composite retirement annuity,'' and must meet the requirements of paragraph (a) of this section. That is, it must state the type of annuity to be divided (e.g., ''net phased retirement annuity''). If such a provision is unclear as to whether it is directed at gross, net, or self-only phased retirement annuity or composite retirement annuity, the provision will be applied to gross phased retirement annuity or gross composite retirement annuity, as described in paragraph (b) of this section.

(3) Unless a court order expressly states that phased retirement annuity or composite retirement annuity is not to be divided, a court order meeting the requirements of paragraph (a) of this section and that generally provides for division of annuity, without meeting the requirements of paragraph (c)(2) of this section, regarding the specific type of annuity being divided, will be applied to divide any employee annuity, including phased retirement annuity and composite retirement annuity.

■ 25. Revise § 838.612 to read as follows:

§ 838.612 Distinguishing between annuities and contributions.

(a) A court order that uses terms such as ''annuities,'' ''pensions,'' ''retirement benefits,'' or similar terms, without distinguishing between phased retirement annuity payable to a phased retiree, or composite retirement annuity payable to a phased retiree upon entry into full retirement status, and employee annuity payable to a retiree, satisfies the requirements of §§ 838.303(b)(2) and 838.502(b)(2) for purposes of dividing any employee annuity or a refund of employee contributions.

(b)(1) A court order using ''contributions,'' ''deductions,'' ''deposits,'' ''retirement accounts,'' ''retirement fund,'' or similar terms satisfies the requirements of § 838.502(b)(2) and may be used only to divide the amount of contributions that the employee has paid into the Civil Service Retirement and Disability Fund.

(2) Unless the court order specifically states otherwise, when an employee annuity is payable, a court order using the terms specified in paragraph (b)(1) of this section satisfies the requirements of § 838.303(b)(2) and awards the former spouse a benefit to be paid in equal monthly installments at 50 percent of the gross annuity beginning on the date the employee annuity commences or the date of the court order, whichever comes later, until the specific dollar amount is reached.

■ 26. Amend § 838.621 by revising paragraphs (a) and (c) to read as follows:

§ 838.621 Pro rata share.

(a) *Pro rata share* means one-half of the fraction whose numerator is the number of months of Federal civilian and military service that the employee performed during the marriage and whose denominator is the total number of months of Federal civilian and military service performed by the employee through the day before the effective date of phased retirement or separation for retirement, as applicable to the annuity calculation. In the computation of the division of phased retirement annuity and a composite retirement annuity, a pro rata share will be computed through the day before the effective date of an employee's phased retirement for the computation of the

division of a phased retirement annuity and then recomputed for division of the composite retirement annuity under § 831.1742 and § 848.502.

* * * * *

(c) A court order that awards a portion of an employee annuity as of a specified date before the employee's phased retirement or retirement awards the former spouse a pro rata share as defined in paragraph (a) of this section.

* * * * *

■ 27. Amend § 838.622 by revising paragraphs (a) and (c)(2) to read as follows:

§ 838.622 Cost-of-living and salary adjustments.

(a)(1) A court order that awards adjustments to a former spouse's portion of an employee annuity stated in terms such as ''cost-of-living adjustments'' or ''COLA's'' occurring after the date of the decree but before the date of phased retirement or retirement provides increases equal to the adjustments described in or effected under 5 U.S.C. 8340 or 8462.

(2) A court order that awards adjustments to a former spouse's portion of an employee annuity stated in terms such as ''salary adjustments'' or ''pay adjustments'' occurring after the date of the decree provides increases equal to the adjustments described in or effected under 5 U.S.C. 5303, until the date the individual enters phased retirement status or retires.

* * * * *

(c) * * *

(2)(i) Except as provided in paragraph (b) of this section, a court order that requires OPM to compute a benefit as of a specified date before the employee's phased retirement or retirement, and specifically instructs OPM not to apply salary adjustments after the specified date in computing the former spouse's share of an employee annuity, provides that the former spouse is entitled to the application of cost-of-living adjustments after the date the individual enters phased retirement status or retires (if the employee does not enter phased retirement status first), in the manner described in § 838.241.

(ii) To award cost-of-living adjustments between a specified date and the employee's phased retirement or retirement, the court order must specifically instruct OPM to adjust the former spouse's share of the employee annuity by any cost-of-living adjustments occurring between the specified date and the date the employee enters phased retirement status or retires (if the employee does not enter phased retirement status first).

(iii) To prevent the application of cost-of-living adjustments that occur after the employee annuity begins to accrue to the former spouse's share of the employee annuity, the decree must either state the exact dollar amount of the award to the former spouse or specifically instruct OPM not to apply cost-of-living adjustments occurring after the date the employee enters phased retirement status or retires (if the employee does not enter phased retirement status first).

■ 28. Amend § 838.623 by revising paragraphs (c)(1), (c)(2) introductory text, (d)(1), and (d)(2) introductory text, and by adding paragraph (e) to read as follows:

§ 838.623 Computing lengths of service.

* * * * *

(c)(1) When a court order directed at employee annuity (other than a phased retirement annuity or a composite retirement annuity) contains a formula for dividing employee annuity that requires a computation of service worked as of a date prior to separation and using terms such as ''years of service,'' ''total service,'' ''service performed,'' or similar terms, the time attributable to unused sick leave will not be included.

(2) When a court order directed at employee annuity other than a phased retirement annuity or a composite retirement annuity contains a formula for dividing employee annuity that requires a computation of ''creditable service'' (or some other phrase using ''credit'' or its equivalent) as of a date prior to retirement, unused sick leave will be included in the computation as follows:

* * * * *

(d)(1) General language such as ''benefits earned as an employee with the U.S. Postal Service * * *'' provides only that CSRS or FERS retirement benefits are subject to division and does not limit the period of service included in the computation (i.e., service performed with other Government agencies will be included).

(2) To limit the computation of benefits other than a phased retirement annuity or a composite retirement annuity to a particular period of employment, the court order must—

* * * * *

(e) A court order directed at a phased retirement annuity or a composite retirement annuity cannot limit the computation and division of a phased retirement annuity or composite retirement annuity to a particular period of employment or service. A phased retirement annuity is based on an employee's service as of phased retirement and a ''fully retired phased component,'' described in §§ 831.1742 and 848.502, of a composite retirement annuity is based on a phased retiree's service as of his or her full retirement. A court order that attempts to limit the computation of a phased retirement annuity or a composite retirement annuity to a particular period of employment or service is not a court order acceptable for processing. If the former spouse's award of a portion of phased retirement annuity or a composite retirement annuity is to be limited, the limitation of the division must be accomplished in a manner other than by limiting the service to be used in the computation.

■ 29. Amend Appendix A to subpart F of part 838 by revising the table of contents, adding model paragraphs 212–217, and by revising model paragraph 232 and the introductory text for the 300 series paragraphs to read as follows:

Appendix A to Subpart F of Part 838—Recommended Language for Court Orders Dividing Employee Annuities

* * * * *

Table of Contents

000 Series—Special technical provisions.
¶001 Language required in Qualified Domestic Relations Orders.
100 Series—Identification of the benefits and instructions that OPM pay the former spouse.
¶101 Identifying retirement benefits and directing OPM to pay the former spouse.
¶102–110 [Reserved]
¶111 Protecting a former spouse entitled to military retired pay.
200 Series—Computing the amount of the former spouse's benefit.
¶¶ 201–211—General award of employee annuity.
¶201 Award of a fixed monthly amount.
¶202 Award of a percentage.
¶203 Award of a fraction.
¶204 Award of a pro rata share.
¶205–210 [Reserved]
¶211 Award based on a stated formula.
¶¶212–217 Award of phased retirement annuity or composite retirement annuity.
¶212 Award of phased retirement annuity and composite retirement annuity while providing for the possibility that the employee retires in the usual manner without entering phased retirement status before fully retiring.
¶213 Award of composite retirement annuity while providing for the possibility that the employee retires in the usual manner without entering phased retirement status, but not providing for award of phased retirement annuity.
¶214 Award of employee annuity when the employee retires in the usual manner, without providing for the possibility that the employee enters phased retirement status and full retirement status.

¶215 Award of phased retirement annuity and composite retirement annuity, without providing for the possibility that the employee retires in the usual manner without having entered phased retirement status and full retirement status.

¶216 Award of only phased retirement annuity, but not awarding composite retirement annuity when the employee enters full retirement status or providing for the possibility that the employee retires in the usual manner without entering phased retirement status before fully retiring.

¶217 Award of only composite retirement annuity when employee enters full retirement status following phased retirement, but not awarding phased retirement annuity when the employee enters phased retirement status or providing for the possibility that the employee retires in the usual manner without entering phased retirement status before fully retiring.

¶218–230 [Reserved]

¶¶231–232 Awarding or excluding COLA's.

¶231 Awarding COLA's on fixed monthly amounts.

¶232 Excluding COLA's on awards other than fixed monthly amounts.

300 Series—Type of annuity.

¶301 Awards based on benefits actually paid.

¶302–310 [Reserved]

¶311 Awards of earned annuity in cases where the actual annuity is based on disability.

400 Series—Refunds of employee contributions.

¶401 Barring payment of a refund of employee contributions.

¶402 Dividing a refund of employee contributions.

500 Series—Death of the former spouse.

¶501 Full annuity restored to the retiree.

¶502 Former spouse share paid to children.

¶503 Former spouse share paid to the court.

* * * * *

200 Series—Computing the amount of the former spouse's benefits.

* * * * *

¶¶212–217 Award of phased retirement annuity or composite retirement annuity.

A court order may include an award directed at phased retirement annuity payable to a phased retiree, to address the possibility that an employee will enter phased retirement status; composite retirement annuity payable to a phased retiree at entry into full retirement status, to address the possibility that an employee will enter phased retirement status and then enter full retirement status; or annuity payable to an employee who retires without having elected phased retirement status.

A general non-specific award will apply to any employee annuity payable, including phased retirement annuity and composite retirement annuity (*see* ¶¶ 201–211). For example, an award dividing employee annuity that uses terms such as ''annuities,'' ''pensions,'' ''retirement benefits,'' or similar general terms, would apply to all types of employee annuity.

To separately provide for division of phased retirement annuity or composite retirement annuity, a provision of a court order must expressly state that it is directed at ''phased retirement annuity'' or ''composite retirement annuity,'' and must indicate the share of employee annuity as a formula, percentage, or fraction. That is, it must state the type of annuity to be divided (e.g., ''net phased retirement annuity''). If such a provision is unclear as to whether it is directed at gross, net, or self-only phased retirement annuity or composite retirement annuity, the provision will be applied to gross phased retirement annuity or gross composite retirement annuity.

It should be noted that a former spouse survivor annuity cannot be awarded from a phased retirement annuity; therefore, a phased retirement annuity is not subject to reduction to provide a former spouse survivor annuity. As a consequence, an award dividing either ''self-only phased retirement annuity'' or a ''gross phased retirement annuity'' would be directed at identical annuities. However, a former spouse survivor annuity can be awarded from a composite retirement annuity payable to a phased retiree at entry into full retirement status (i.e., when the ''phased retiree'' enters full retirement status and becomes a ''retiree''); therefore, there would be a difference between an award of a share of ''self-only composite retirement annuity'' and an award of a share of ''gross composite retirement annuity.''

Due to the complexity of the benefits, care should be taken in drafting separate awards of phased retirement annuity or composite retirement annuity. It should also be noted, for example, that an award directed only at the division of phased retirement annuity or composite retirement annuity payable to a phased retiree will not be effective to divide annuity payable to an employee who retires in the usual manner, without having entered phased retirement status first. If separate awards of phased retirement annuity or composite retirement annuity are to be provided, consideration should be given to including provisions in the paragraph addressing the possibility that the employee may retire in the usual manner without entering phased retirement status before fully retiring. Similarly, if employee annuity is only to be awarded in the event the employee retires in the usual manner, without entering phased retirement status before fully retiring, consideration should be given to including specific language to that effect.

¶212 Award of phased retirement annuity and composite retirement annuity while providing for the possibility that the employee retires in the usual manner without entering phased retirement status before fully retiring.

Using the following paragraph will award phased retirement annuity and composite retirement annuity and provides for the possibility that the employee retires in the usual manner without entering phased retirement status:

''[Employee] is (or will be) eligible for retirement benefits under the Civil Service Retirement System based on employment with the United States Government. If [employee] enters phased retirement status, the [former spouse] is entitled to a [insert description of percentage, fraction, formula, or insert term 'pro rata share'] of [employee]'s [insert 'gross,' 'net,' or 'self-only'] monthly phased retirement annuity under the Civil Service Retirement System. When [employee] enters full retirement status and receives a composite retirement annuity, [former spouse] is awarded [insert language awarding fraction, formula, or 'pro rata share'] of [employee]'s monthly [insert ''gross,'' ''net'' or ''self-only''] composite retirement annuity under the Civil Service Retirement System. If [employee] retires from employment with the United States Government without entering phased retirement status before fully retiring, [former spouse] is entitled to [insert appropriate language from 200 series or 300 series paragraphs] under the Civil Service Retirement System. The marriage began on [insert date]. The United States Office of Personnel Management is directed to pay [former spouse]'s share directly to [former spouse].''

¶213 Award of composite retirement annuity while providing for the possibility that the employee retires in the usual manner without entering phased retirement status, but not providing for award of phased retirement annuity.

Using the following will award composite retirement annuity when an employee enters phased retirement status and subsequently enters full retirement status, and provides for the possibility that the employee retires in the usual manner without having entered phased retirement status; however, the paragraph will not award a phased retirement annuity when the employee enters phased retirement status:

''[Employee] is (or will be) eligible for retirement benefits under the Civil Service Retirement System based on employment with the United States Government. If [employee] enters phased retirement status and subsequently enters full retirement status, the [former spouse] is entitled to a [insert description of percentage, fraction, formula, or insert term 'pro rata share'] of [employee]'s [insert 'gross,' 'net,' or 'self-only'] monthly composite retirement annuity under the Civil Service Retirement System. If [employee] retires from employment with the United States Government without entering phased retirement status before fully retiring, [former spouse] is entitled to [insert appropriate language from 200 series or 300 series paragraphs] under the Civil Service Retirement System. The marriage began on [insert date]. The United States Office of Personnel Management is directed to pay [former spouse]'s share directly to [former spouse].''

¶214 Award of employee annuity when the employee retires in the usual manner, without providing for the possibility that the employee enters phased retirement status and full retirement status.

Use the following paragraph if the former spouse is only to be awarded a portion of the employee's annuity when the employee retires in the usual manner, without an award of a portion of the employee's phased

retirement annuity or composite retirement annuity in the event that the employee enters phased retirement status. It should be noted, however, that if this conditional clause provided below is used in an appropriate 200 or 300 series paragraph without a conditional award of a portion of phased retirement annuity and composite retirement annuity, the former spouse will not receive a portion of the employee's annuity if the employee enters phased retirement status and then enters full retirement status:

''If [employee] retires from employment with the United States Government without entering phased retirement status before fully retiring, [former spouse] is awarded [insert remaining language for the paragraph from the appropriate 200 series or 300 series] . . . The marriage began on [insert date]. The United States Office of Personnel Management is directed to pay [former spouse]'s share directly to [former spouse].''

¶215 Award of phased retirement annuity and composite retirement annuity, without providing for the possibility that the employee retires in the usual manner without having entered phased retirement status and full retirement status.

Use the following paragraph to award only phased retirement annuity and composite retirement annuity. This paragraph will not award benefits if the employee retires in the usual manner without entering phased retirement status:

''[Employee] is (or will be) eligible for retirement benefits under the Civil Service Retirement System based on employment with the United States Government. If [employee] enters phased retirement status, the [former spouse] is entitled to a [insert description of percentage, fraction, formula, or insert term 'pro rata share'] of [employee]'s monthly [insert 'gross,' 'net,' or 'self-only'] phased retirement annuity under the Civil Service Retirement System. When [employee] enters full retirement status and receives a composite retirement annuity, [former spouse] is awarded [insert language awarding percentage, fraction, formula, or pro rata share] of [employee]'s monthly [insert ''gross,'' ''net'' or ''self-only''] composite retirement annuity under the Civil Service Retirement System. The marriage began on [insert date]. The United States Office of Personnel Management is directed to pay [former spouse]'s share directly to [former spouse].''

¶216 Award of only phased retirement annuity, but not awarding composite retirement annuity when the employee enters full retirement status or providing for the possibility that the employee retires in the usual manner without entering phased retirement status before fully retiring.

Using the following will award only phased retirement annuity. This paragraph will not award composite retirement annuity when the employee enters full retirement status nor will it provide for the possibility that the employee retires in the usual manner without entering phased retirement status. It should be noted that if this paragraph is used, the former spouse will not receive a portion of the employee's annuity benefits if the employee retires in the usual manner without entering phased retirement status first:

''[Employee] is (or will be) eligible for retirement benefits under the Civil Service Retirement System based on employment with the United States Government. If [employee] enters phased retirement status, the [former spouse] is entitled to a [insert description of percentage, fraction, formula, or insert term 'pro rata share'] of [employee]'s [insert 'gross,' 'net,' or 'self-only'] monthly phased retirement annuity under the Civil Service Retirement System. The marriage began on [insert date]. The United States Office of Personnel Management is directed to pay [former spouse]'s share directly to [former spouse].''

¶217 Award of only composite retirement annuity when employee enters full retirement status following phased retirement, but not awarding phased retirement annuity when the employee enters phased retirement status or providing for the possibility that the employee retires in the usual manner without entering phased retirement status before fully retiring.

Using the following will award only composite retirement annuity when the employee enters full retirement status following phased retirement. This paragraph will not award phased retirement annuity when the employee enters phased retirement status nor will it provide for the possibility that the employee retires in the usual manner without entering phased retirement status. It should be noted that if this paragraph is used, the former spouse will not receive a portion of the employee's annuity benefits if the employee retires without entering full retirement status from phased retirement status:

''[Employee] is (or will be) eligible for retirement benefits under the Civil Service Retirement System based on employment with the United States Government. If [employee] enters phased retirement status and enters full retirement status, the [former spouse] is entitled to a [insert description of percentage, fraction, formula, or insert term 'pro rata share'] of [employee]'s [insert 'gross,' 'net,' or 'self-only'] monthly composite retirement annuity under the Civil Service Retirement System. The marriage began on [insert date]. The United States Office of Personnel Management is directed to pay [former spouse]'s share directly to [former spouse].''

¶218–230 [Reserved]

¶¶231–232 Awarding or excluding COLA's.

* * * * *

¶232 Excluding COLA's on awards other than fixed monthly amounts.

Using the following paragraph will prevent application of COLA's to a former spouse's share of an employee annuity in cases where the former spouse has been awarded a percentage, fraction or pro rata share of the employee annuity, rather than a fixed dollar amount.

''[Employee] is (or will be) eligible for retirement benefits under the Civil Service Retirement System based on employment with the United States Government. [Insert language for computing the former spouse's share from ¶ 202, ¶ 203, ¶ 204, ¶ 211, or ¶¶ 212–217 of this appendix.] The United States Office of Personnel Management is directed to determine the amount of [former spouse]'s share on the date [insert 'when [employee] retires or enters phased retirement status' or if the employee has not retired or entered phased retirement status, or 'of this order' if the employee is already retired or entered phased retirement status] and not to apply COLA's to that amount. The United States Office of Personnel Management is directed to pay [former spouse]'s share directly to [former spouse].''

300 Series—Type of Annuity

Awards of employee annuity to a former spouse (other than awards of fixed dollar amounts) must specify whether OPM will use the ''phased retirement annuity,'' ''composite retirement annuity,'' ''gross annuity,'' ''net annuity,'' or ''self-only annuity'' as defined in § 838.103 (see also § 838.306) in determining the amount of the former spouse's entitlement. The court order may contain a formula that has the effect of creating other types of annuity, but the court order may only do this by providing a formula that starts from ''phased retirement annuity,'' ''composite retirement annuity,'' ''gross annuity,'' ''net annuity,'' or ''self-only annuity'' as defined in § 838.103.

* * * * *

■ 30. Amend § 838.803 by adding paragraph (c) to read as follows:

§ 838.803 Language not acceptable for processing.

* * * * *

(c) A court order that attempts to award a former spouse survivor annuity based on a phased retirement annuity or to reduce a phased retirement annuity to provide survivor benefits is not a court order acceptable for processing.

■ 31. Amend § 838.806 by revising paragraph (d)(2) to read as follows:

§ 838.806 Amended court orders.

* * * * *

(d) * * *

(2) The effective commencing date for the employee's annuity other than the commencing date of a phased retirement annuity.

* * * * *

■ 32. Amend § 838.807 by revising paragraphs (a), (b)(1), (b)(2), and (c), and adding paragraph (b)(3) to read as follows:

§ 838.807 Cost must be paid by annuity reduction.

(a) A court order awarding a former spouse survivor annuity is not a court order acceptable for processing unless it permits OPM to collect the annuity reduction required by 5 U.S.C. 8339(j)(4) or 8419 from annuity paid by OPM to a retiree. OPM will not honor a court order that provides for the retiree or former spouse to pay OPM the amount of the annuity reduction by any other means.

(b) * * *

(1) By reduction of the former spouse's entitlement under a court order acceptable for processing that is directed at employee annuity payable to a retiree;

(2) By reduction of the employee annuity payable to a retiree; or

(3) By actuarial reduction of the former spouse survivor annuity in the event the reduction of the employee annuity is not made for any reason prior to the death of the annuitant.

(c) Unless the court order otherwise directs, OPM will collect the annuity reduction required by 5 U.S.C. 8339(j)(4) or 8419 from the employee annuity payable to a retiree.

■ 33. Amend § 838.1111 by redesignating paragraph (b) as paragraph (c), by revising paragraph (a)(1) introductory text, and by adding new paragraph (b) to read as follows:

§ 838.1111 Amounts subject to child abuse judgment enforcement orders.

(a)(1) Employee annuities, other than phased retirement annuities, and refunds of employee contributions are subject to child abuse enforcement orders only if all of the conditions necessary for payment of the employee annuity or refund of employee contributions to the former employee have been met, including, but not limited to—

* * * * *

(b)(1) Phased retirement annuities are subject to child abuse enforcement orders only if all of the conditions necessary for payment of the phased retirement annuity to the phased retiree have been met, including, but not limited to—

(i) Entry of the employee into phased retirement status under subpart Q of part 831 of this chapter or part 848 of this chapter, respectively;

(ii) Application for payment of the phased retirement annuity by the phased retiree; and

(iii) The phased retiree's immediate entitlement to a phased retirement annuity.

(2) Money held by an employing agency or OPM that may be payable at some future date is not available for payment under child abuse judgment enforcement orders.

(3) OPM cannot pay a child abuse creditor a portion of a phased retirement annuity before the employee annuity begins to accrue.

* * * * *

PART 841—FEDERAL EMPLOYEES RETIREMENT SYSTEM—GENERAL ADMINISTRATION

■ 34. The authority citation for part 841 continues to read as follows:

Authority: 5 U.S.C. 8461; Sec. 841.108 also issued under 5 U.S.C. 552a; Secs. 841.110 and 841.111 also issued under 5 U.S.C. 8470(a); subpart D also issued under 5 U.S.C. 8423; Sec. 841.504 also issued under 5 U.S.C. 8422; Sec. 841.507 also issued under section 505 of Pub. L. 99–335; subpart J also issued under 5 U.S.C. 8469; Sec. 841.506 also issued under 5 U.S.C. 7701(b)(2); Sec. 841.508 also issued under section 505 of Pub. L. 99–335; Sec. 841.604 also issued under Title II, Pub. L. 106–265, 114 Stat. 780.

■ 35. Amend § 841.102 as follows:

■ a. Add paragraph (b)(6), and

■ b. Redesignate paragraphs (c)(6) through (11) as paragraphs (c)(7) through (12), and

■ c. Add new paragraph (c)(6).

§ 841.102 Regulatory structure for the Federal Employees Retirement System.

* * * * *

(b) * * *

(6) Part 848 of this chapter contains information about phased retirement under FERS.

(c) * * *

(6) Part 850 of this chapter contains information about CSRS and FERS electronic retirement processing.

* * * * *

■ 36. Amend § 841.104 by revising paragraph (a) and paragraph (b) introductory text to read as follows:

§ 841.104 Special terms defined.

(a) Unless otherwise defined for use in any subpart, as used in connection with FERS (parts 841 through 850 of this chapter), terms defined in 5 U.S.C. 8401 have the same meanings assigned to them by that section.

(b) Unless otherwise defined for use in any subpart, as used in connection with FERS (parts 841 through 850 of this chapter)—

* * * * *

PART 842—FEDERAL EMPLOYEES RETIREMENT SYSTEM— BASIC ANNUITY

■ 37. The authority citation for part 842 continues to read as follows:

Authority: 5 U.S.C. 8461(g); Secs. 842.104 and 842.106 also issued under 5 U.S.C. 8461(n); Sec. 842.104 also issued under Secs. 3 and 7(c) of Pub. L. 105–274, 112 Stat. 2419; Sec. 842.105 also issued under 5 U.S.C. 8402(c)(1) and 7701(b)(2); Sec. 842.106 also issued under Sec. 102(e) of Pub. L. 104–8, 109 Stat. 102, as amended by Sec. 153 of Pub. L. 104–134, 110 Stat. 1321–102; Sec. 842.107 also issued under Secs. 11202(f), 11232(e), and 11246(b) of Pub. L. 105–33, 111 Stat. 251, and Sec. 7(b) of Pub. L. 105–274, 112 Stat. 2419; Sec. 842.108 also issued under Sec. 7(e) of Pub. L. 105–274, 112 Stat. 2419; Sec. 842.109 also issued under Sec. 1622(b) of Public Law 104–106, 110 Stat. 515; Sec. 842.208 also issued under Sec. 535(d) of Title V of Division E of Pub. L. 110–161, 121 Stat. 2042; Sec. 842.213 also issued under 5 U.S.C. 8414(b)(1)(B) and Sec.1313(b)(5) of Pub. L. 107–296, 116 Stat. 2135; Secs. 842.304 and 842.305 also issued under Sec. 321(f) of Pub. L. 107–228, 116 Stat. 1383, Secs. 842.604 and 842.611 also issued under 5 U.S.C. 8417; Sec. 842.607 also issued under 5 U.S.C. 8416 and 8417; Sec. 842.614 also issued under 5 U.S.C. 8419; Sec. 842.615 also issued under 5 U.S.C. 8418; Sec. 842.703 also issued under Sec. 7001(a)(4) of Pub. L. 101–508, 104 Stat. 1388; Sec. 842.707 also issued under Sec. 6001 of Pub. L. 100–203, 101 Stat. 1300; Sec. 842.708 also issued under Sec. 4005 of Pub. L. 101–239, 103 Stat. 2106 and Sec. 7001 of Pub. L. 101–508, 104 Stat. 1388; Subpart H also issued under 5 U.S.C. 1104; Sec. 842.810 also issued under Sec. 636 of Appendix C to Pub. L. 106–554 at 114 Stat. 2763A–164; Sec. 842.811 also issued under Sec. 226(c)(2) of Public Law 108–176, 117 Stat. 2529; Subpart J also issued under Sec. 535(d) of Title V of Division E of Pub. L. 110–161, 121 Stat. 2042.

■ 38. Amend § 842.402 to revise the definition of ''full-time service'' as follows:

§ 842.402 Definitions.

* * * * *

Full-time service means service performed by an employee who has—

(1) An officially established recurring basic workweek consisting of 40 hours within the employee's administrative workweek (as established under § 610.111 of this chapter or similar authority);

(2) An officially established recurring basic work requirement of 80 hours per biweekly pay period (as established for employees with a flexible or compressed work schedule under 5 U.S.C. chapter 61, subchapter II, or similar authority);

(3) For a firefighter covered by 5 U.S.C. 5545b(b) who does not have a 40-hour basic workweek, a regular tour of duty averaging at least 106 hours per biweekly pay period; or

(4) A work schedule that is considered to be full-time by express provision of law, including a work schedule established for certain nurses under 38 U.S.C. 7456 or 7456A that is considered by law to be a full-time schedule for all purposes.

* * * * *

PART 843—FEDERAL EMPLOYEES RETIREMENT SYSTEM—DEATH BENEFITS AND EMPLOYEE REFUNDS

■ 39. The authority citation for part 843 continues to read as follows:

Authority: 5 U.S.C. 8461; §§ 843.205, 843.208, and 843.209 also issued under 5 U.S.C. 8424; § 843.309 also issued under 5 U.S.C. 8442; § 843.406 also issued under 5 U.S.C. 8441.

■ 40. Amend § 843.202 by revising paragraph (b) to read as follows:

§ 843.202 Eligibility for payment of the unexpended balance to a separated employee.

* * * * *

(b)(1) For a retirement based on a separation before October 28, 2009, periods of service for which employee contributions have been refunded are not creditable service in determining whether the employee has sufficient service to have title to an annuity or for any other purpose.

(2) For a retirement based on a separation on or after October 28, 2009, periods of service for which employee contributions have been refunded are—

(i) Creditable service in determining whether the employee has sufficient service to have title to an annuity; and

(ii) Not creditable without deposit for any other purpose, except for average pay computation purposes.

■ 41. Add part 848 to read as follows:

PART 848—PHASED RETIREMENT

Subpart A—General Provisions

Sec.
848.101 Applicability and purpose.
848.102 Definitions.
848.103 Implementing directives.

Subpart B—Entering Phased Retirement

848.201 Eligibility.
848.202 Working percentage and officially established hours for phased employment.
848.203 Application for phased retirement.
848.204 Effective date of phased employment and phased retirement annuity commencing date.
848.205 Effect of phased retirement.

Subpart C—Returning to Regular Employment Status

848.301 Ending phased retirement status to return to regular employment status.
848.302 Effective date of end of phased retirement status to return to regular employment status.
848.303 Effect of ending phased retirement status to return to regular employment status.

Subpart D—Entering Full Retirement Status

848.401 Application for full retirement status.
848.402 Commencing date of composite retirement annuity.

Subpart E—Computation of Phased Retirement Annuity at Phased Retirement and Composite Retirement Annuity at Full Retirement

848.501 Computation of phased retirement annuity.
848.502 Computation of composite annuity at final retirement.
848.503 Cost-of-living adjustments.
848.504 Non-eligibility for annuity supplement.

Subpart F—Opportunity of a Phased Retiree to Pay Deposit or Redeposit for Civilian or Military Service

848.601 Deposit for civilian service for which no retirement deductions were withheld and redeposit for civilian service for which retirement deductions were refunded to the individual.
848.602 Deposit for military service.

Subpart G—Death Benefits

848.701 Death of phased retiree during phased employment.
848.702 Death of an individual who has separated from phased employment and who dies before submitting an application for a composite retirement annuity.
848.703 Lump-sum credit.

Subpart H—Reemployment After Separation From Phased Retirement Status

848.801 Reemployment of an individual who has separated from phased employment and who dies before submitting an application for a composite retirement annuity.

Subpart I—Mentoring

848.901 Mentoring.

Authority: 5 U.S.C. 8461; 5 U.S.C. 8412a.

Subpart A—General Provisions

§ 848.101 Applicability and purpose.

This subpart contains the regulations implementing provisions of 5 U.S.C. 8412a authorizing phased retirement. This subpart establishes the eligibility requirements for making an election to enter phased retirement status, the procedures for making an election, the record-keeping requirements, and the methods to be used for certain computations not addressed elsewhere in parts 841–843 and 845.

§ 848.102 Definitions.

In this subpart—

Authorized agency official means—

(1) For the executive branch agencies, the head of an Executive agency as defined in 5 U.S.C. 105;

(2) For the legislative branch, the Secretary of the Senate, the Clerk of the House of Representatives, or the head of any other legislative branch agency;

(3) For the judicial branch, the Director of the Administrative Office of the U.S. Courts;

(4) For the Postal Service, the Postmaster General;

(5) For any other independent establishment that is an entity of the Federal Government, the head of the establishment; or

(6) An official who is authorized to act for an official named in paragraphs (1)–(5) in the matter concerned.

Composite retirement annuity means the annuity computed when a phased retiree attains full retirement status.

Director means the Director of the Office of Personnel Management.

Full retirement status means that a phased retiree has ceased employment and is entitled, upon application, to a composite retirement annuity.

Full-time means—

(1) An officially established recurring basic workweek consisting of 40 hours within the employee's administrative workweek (as established under § 610.111 of this chapter or similar authority); or

(2) An officially established recurring basic work requirement of 80 hours per biweekly pay period (as established for employees with a flexible or compressed work schedule under 5 U.S.C. chapter 61, subchapter II, or similar authority).

Phased employment means the less-than-full-time employment of a phased retiree.

Phased retiree means a retirement-eligible employee who—

(1) With the concurrence of an authorized agency official, enters phased retirement status; and

(2) Has not entered full retirement status;

Phased retirement annuity means the annuity payable under 5 U.S.C. 8412a before full retirement.

Phased retirement percentage means the percentage which, when added to the working percentage for a phased retiree, produces a sum of 100 percent.

Phased retirement period means the period beginning on the date on which an individual becomes entitled to receive a phased retirement annuity and ending on the date on which the individual dies or separates from phased employment.

Phased retirement status means that a phased retiree is concurrently employed in phased employment and eligible to receive a phased retirement annuity.

Working percentage has the meaning given that term in § 848.202(a).

§ 848.103 Implementing directives.

The Director may prescribe, in the form he or she deems appropriate, such detailed procedures as are necessary to carry out the purpose of this subpart.

Subpart B—Entering Phased Retirement

§ 848.201 Eligibility.

(a) A retirement-eligible employee, as defined in paragraphs (b) and (c), may elect to enter phased retirement status if the employee has been employed on a full-time basis for not less than the 3-year period ending on the effective date of phased retirement status under § 848.203.

(b) Except as provided in paragraph (c) of this section, a retirement-eligible employee means an employee who, if separated from the service, would meet the requirements for retirement under subsection (a) or (b) of 5 U.S.C. 8412.

(c) A retirement-eligible employee does not include—

(1) A member of the Capitol Police or Supreme Court Police, or an employee occupying a law enforcement officer, firefighter, nuclear materials courier, air traffic controller, or customs and border protection officer position, except a customs and border protection officer who is exempt from mandatory separation and retirement under 5 U.S.C. 8325 pursuant to section 535(e)(2)(A) of Division E of the Consolidated Appropriations Act, 2008, Public Law 110–161;

(2) An individual eligible to retire under 5 U.S.C. 8412(d) or (e): or

(3) An employee covered by a special work schedule authority that does not allow for a regularly recurring part-time schedule, such as a firefighter covered by 5 U.S.C. 5545b or a nurse covered by 38 U.S.C. 7456 or 7456A.

§ 848.202 Working percentage and officially established hours for phased employment.

(a) For the purpose of this subpart, *working percentage* means the percentage of full-time equivalent employment equal to the quotient obtained by dividing—

(1) The number of officially established hours per pay period to be worked by a phased retiree, as described in paragraph (b) of this section; by

(2) The number of hours per pay period to be worked by an employee serving in a comparable position on a full-time basis.

(b) The number of officially established hours per pay period to be worked by an employee in phased retirement status must equal one-half the number of hours the phased retiree would have been scheduled to work had the phased retiree remained in a full-time work schedule and not elected to enter phased retirement status. These hours make up +- the officially established part-time work schedule of the phased retiree and exclude any additional hours worked under § 848.205(j).

§ 848.203 Application for phased retirement.

(a) To elect to enter phased retirement status, a retirement-eligible employee covered by § 848.201 must—

(1) Submit to an authorized agency official a written and signed request to enter phased employment, on a form prescribed by OPM;

(2) Obtain the signed written approval of an authorized agency official to enter phased employment; and

(3) File an application for phased retirement, in accordance with § 841.202.

(b) Except as provided in paragraph (c) of this section, an applicant for phased retirement may withdraw his or her application any time before the election becomes effective, but not thereafter.

(c) An applicant for phased retirement may not withdraw his or her application after OPM has received a certified copy of a court order (under part 581 or part 838 of this chapter) affecting the benefits.

(d) (1) An employee and an agency approving official may agree to a time limit to the employee's period of phased employment as a condition of approval of the employee's request to enter phased employment and phased retirement, or by mutual agreement after the employee enters phased employment status.

(2) To enter into such an agreement, the employee and the approving official must complete a written and signed agreement.

(3) The written agreement must include the following:

(i) The date the employee's period of phased employment will terminate;

(ii) A statement that the employee can request the approving official's permission to return to regular employment status at any time or within three days after the expiration of the agreement as provided in § 848.301. The agreement must also explain how returning to regular employment status would affect the employee, as described in §§ 848.301–848.302.

(iii) A statement that the employee has a right to elect to fully retire at any time as provided in § 848.401;

(iv) A statement that the employee may accept a new appointment at another agency, with or without the new agency's approval of phased employment, at any time before the expiration of the agreement or within 3 days of the expiration of the agreement; the agreement must also explain how accepting an appointment at a new agency as a regular employee would affect the employee, as described in §§ 848.301–848.302;

(v) An explanation that when the agreed term of phased employment ends, the employee will be separated from employment and that such separation will be considered voluntary, based on the written agreement; and

(vi) An explanation that if the employee is separated from phased employment and is not employed within 3 days (i.e., the employee has a break in service of greater than 3 days), the employee will be deemed to have elected full retirement.

(4) The agency approving official and the employee may rescind an existing agreement, or enter into a new agreement to extend or reduce the term of phased employment agreed to in an existing agreement, by entering into a new written agreement meeting the requirements of this paragraph, before the expiration of the agreement currently in effect.

§ 848.204 Effective date of phased employment and phased retirement annuity commencing date.

(a) Phased employment is effective the first day of the first pay period beginning after phased employment is approved by an authorized agency official under § 848.203(a), or the first day of a later pay period specified by the employee with the authorized agency official's concurrence.

(b) The commencing date of a phased retirement annuity (i.e., the beginning date of the phased retirement period) is the first day of the first pay period beginning after phased employment is approved by an authorized agency official under § 848.203(a), or the first day of a later pay period specified by the employee with the authorized agency official's concurrence.

§ 848.205 Effect of phased retirement.

(a)(1) A phased retiree is deemed to be a full-time employee for the purpose of 5 U.S.C. chapter 89 and 5 CFR part 890 (related to health benefits), as required by 5 U.S.C. 8412a(i). The normal rules governing health benefits premiums for part-time employees in 5 U.S.C. 8906(b)(3) do not apply.

(2) A phased retiree is deemed to be receiving basic pay at the rate applicable to a full-time employee holding the same position for the purpose of determining a phased retiree's annual rate of basic pay used in calculating premiums (employee withholdings and agency contributions) and benefits under 5 U.S.C. chapter 87 and 5 CFR part 870 (dealing with life insurance), as required by 5 U.S.C. 8412a(o). The deemed full-time schedule will consist of five 8-hour workdays each workweek, resulting in a 40-hour workweek. Only basic pay for hours within the deemed full-time schedule will be considered, consistent with 5 U.S.C. 8412a(o) and the definition of ''full-time'' in § 848.102. Any premium pay creditable as basic pay for life insurance purposes under 5 CFR 870.204 for overtime work or hours outside the full-time schedule that an employee was receiving before

phased retirement, such as standby duty pay under 5 U.S.C. 5545(c)(1) or customs officer overtime pay under 19 U.S.C. 267(a), may not be considered in determining a phased retiree's deemed annual rate of basic pay under this paragraph.

(b) A phased retiree may not be appointed to more than one position at the same time.

(c) A phased retiree may move to another position in the agency or another agency during phased retirement status only if the change would not result in a change in the working percentage. To move to another agency during phased retirement status and continue phased employment and phased retirement status, the phased retiree must submit a written and signed request and obtain the signed written approval, in accordance with § 848.203(a)(1) and (2), of the authorized agency official to which the phased retiree is moving. Notwithstanding the provisions of § 848.204, if the authorized agency official approves the request, the phased retiree's phased employment and phased retirement status will continue without interruption at the agency to which the phased retiree moves. If the authorized agency official at the agency to which the phased retiree moves does not approve the request, phased employment and phased retirement status terminates in accordance with § 848.302(b).

(d) A phased retiree may be detailed to another position or agency if the working percentage of the position to which detailed is the same as the working percentage of the phased retiree's position of record.

(e) A retirement-eligible employee who makes an election under this subpart may not elect an alternative annuity under 5 U.S.C. 8420a.

(f) If the employee's election of phased retirement status becomes effective, the employee is barred from electing phased retirement status again. Ending phased retirement status or entering full retirement status does not create a new opportunity for the individual to elect phased retirement status.

(g) With the exception of § 841.803(f), a phased retiree is deemed to be an annuitant for the purpose of subpart H of 5 CFR part 841.

(h) A phased retiree is deemed to be an annuitant for the purpose of subpart J of 5 CFR part 841.

(i) Except as otherwise expressly provided by law or regulation, a phased retiree is treated as any other employee on a part-time tour of duty for all other purposes.

(j)(1) A phased retiree may not be assigned hours of work in excess of the officially established part-time schedule (reflecting the working percentage), except under the conditions specified in paragraph (j)(2) of this section.

(2) An authorized agency official may order or approve a phased retiree to perform hours of work in excess of the officially established part-time schedule only in rare and exceptional circumstances meeting all of the following conditions:

(i) The work is necessary to respond to an emergency posing a significant, immediate, and direct threat to life or property;

(ii) The authorized agency official determines that no other qualified employee is available to perform the required work;

(iii) The phased retiree is relieved from performing excess work as soon as reasonably possible (e.g., by management assignment of work to other employees); and

(iv) When an emergency situation can be anticipated in advance, agency management made advance plans to minimize any necessary excess work by the phased retiree.

(3) Employing agencies must inform each phased retiree and his or her supervisor of—

(i) The limitations on hours worked in excess of the officially established part-time schedule;

(ii) The requirement to maintain records documenting that the exceptions met all required conditions;

(iii) The fact that, by law and regulation, any basic pay received for hours outside the employee's officially established part-time work schedule (as described in § 848.202(a)(1) and (b)) is subject to retirement deductions and agency contributions, in accordance with 5 U.S.C. 8412a(d), but is not used in computing retirement benefits; and

(iv) The fact that, by law and regulation, any premium pay received for overtime work or hours outside the full-time schedule that would otherwise be basic pay for retirement, such as customs officer overtime pay under 19 U.S.C. 267(a), will not be subject to retirement deductions or agency contributions, in accordance with 5 U.S.C. 8412a(d), and that any such premium pay received will not be included in computing retirement benefits.

(4) Employing agencies must maintain records documenting that exceptions granted under paragraph (j)(2) of this section meet the required conditions. These records must be retained for at least 6 years and be readily available to auditors. OPM may require periodic agency reports on the granting of exceptions and of any audit findings.

(5) If OPM finds that an agency (or subcomponent) is granting exceptions that are not in accordance with the requirements of this paragraph (j), OPM may administratively withdraw the agency's (or subcomponent's) authority to grant exceptions and require OPM approval of any exception.

(6) If OPM finds that a phased retiree has been working a significant amount of excess hours beyond the officially established part-time schedule to the degree that the intent of the phased retirement law is being undermined, OPM may require that the agency end the individual's phased retirement by unilateral action, notwithstanding the normally established methods of ending phased retirement. This finding does not need to be based on a determination that the granted exceptions failed to meet the required conditions in paragraph (j)(2) of this section. With the ending of an individual's phased retirement, that individual must be returned to regular employment status on the same basis as a person making an election under § 848.301—unless that individual elects to fully retire as provided under § 848.401.

(7) A phased retiree must be compensated for excess hours of work in accordance with the normally applicable pay rules.

(8) Any premium pay received for overtime work or hours outside the full-time schedule that would otherwise be basic pay for retirement, such as customs officer overtime pay under 19 U.S.C. 267(a), is not subject to retirement deductions or agency contributions, in accordance with 5 U.S.C. 8412a(d).

Subpart C—Returning to Regular Employment Status

§ 848.301 Ending phased retirement status to return to regular employment status.

(a) *Election to end phased retirement status to return to regular employment status.* (1) A phased retiree may elect, with the permission of an authorized agency official, to end phased employment at any time to return to regular employment status. The election is deemed to meet the requirements of 5 U.S.C. 8412a(g) regardless of the employee's work schedule. The employee is not subject to any working percentage limitation (i.e., full-time, 50 percent of full-time, or any other working percentage) upon electing to end phased retirement status.

(2) To elect to end phased retirement status to return to regular employment status, a phased retiree must—

(i) Submit to an authorized agency official, on a form prescribed by OPM, a written and signed request to end phased retirement status to return to regular employment status; and

(ii) Obtain the signed written approval of an authorized agency official for the request.

(3) An employee may cancel an approved election to end phased retirement status to return to regular employment status by submitting a signed written request to the agency and obtaining the approval of an authorized agency official before the effective date of return to regular employment status.

(4) The employing agency must notify OPM that the employee's phased retirement status has ended by submitting to OPM a copy of the completed election to end phased retirement status to return to regular employment status within 15 days of its approval.

(b) *Mandated return to regular employment status.* A phased retiree may be returned to regular employment status as provided under § 848.205(j)(6).

(c) *Bar on reelection of phased retirement.* Once an election to end phased retirement status to return to regular employment status is effective, the employee may not reelect phased retirement status.

§ 848.302 Effective date of end of phased retirement status to return to regular employment status.

(a) (1) Except as provided in paragraph (b) of this section, if a request to end phased retirement status to return to regular employment status is approved by an authorized agency official under § 848.301 on any date on or after the first day of a month through the fifteenth day of a month, the phased retiree's resumption of regular employment status is effective the first day of the first full pay period of the month following the month in which the election to end phased retirement status to return to regular employment status is approved.

(2) If a request to end phased retirement status to return to regular employment status is approved by an authorized agency official under § 848.301 on any date on or after the sixteenth day of a month through the last day of a month, the phased retiree's resumption of regular employment status is effective on the first day of the first full pay period of the second month following the month in which the election to end phased retirement status to return to regular employment status is approved.

(3) The phased retirement annuity terminates on the date determined under paragraph (a)(1) or (2) of this section.

(b) When a phased retiree moves from the agency that approved his or her phased employment and phased retirement status to another agency and the authorizing official at the agency to which the phased retiree moves does not approve a continuation of phased employment and phased retirement status, phased employment and phased retirement status terminates when employment ends at the current employing agency.

§ 848.303 Effect of ending phased retirement status to return to regular employment status.

(a) After phased retirement status ends under § 848.302, the employee's rights under subchapter III of chapter 83 or chapter 84 of title 5, United States Code, are determined based on the law in effect at the time of any subsequent separation from service.

(b) After an individual ends phased retirement status to return to regular employment status, for the purposes of subchapter III of chapter 83 or chapter 84 of title 5, United States Code, at the time of the subsequent separation from service, the phased retirement period will be treated as if it had been a period of part-time employment with the work schedule described in § 848.202(a)(1) and (b). The part-time proration adjustment for the phased retirement period will be based upon the individual's officially established part-time work schedule, with no credit for extra hours worked. In determining the individual's deemed rate of basic pay during the phased retirement period, only basic pay for hours within the individual's officially established part-time work schedule may be considered. No pay received for other hours during the phased retirement period may be included as part of basic pay for the purpose of computing retirement benefits, notwithstanding the normally applicable rules.

(c) The restrictions in §§ 848.601 and 848.602 regarding when an individual must complete a deposit for civilian service, a redeposit for civilian service, or a deposit for military service do not apply when a phased retiree ends phased retirement status to return to regular employment status under this section.

Subpart D—Entering Full Retirement Status

§ 848.401 Application for full retirement status.

(a) *Election of full retirement.* (1) A phased retiree may elect to enter full retirement status at any time by submitting to OPM an application for full retirement in accordance with § 841.202. This includes an election made under § 848.205(j)(6) in lieu of a mandated return to regular employment status. Upon making such an election, a phased retiree is entitled to a composite retirement annuity.

(2) A phased retiree may cancel an election of full retirement status and withdraw an application for full retirement by submitting a signed written request with the agency and obtaining the approval of an authorized agency official before the commencing date of the composite retirement annuity.

(b) *Deemed election of full retirement.* A phased retiree who is separated from phased employment for more than 3 days enters full retirement status. The individual's composite retirement annuity will begin to accrue on the commencing date of the composite annuity, as provided in § 848.402, and payment will be made after he or she submits an application in accordance with § 841.202 of this chapter for the composite retirement annuity.

(c) *Survivor election provisions.* An individual applying for full retirement status under this section is subject to the survivor election provisions of subpart F of 5 CFR part 842.

§ 848.402 Commencing date of composite retirement annuity.

(a) The commencing date of the composite retirement annuity of a phased retiree who enters full retirement status is the day after separation.

(b) A phased retirement annuity terminates upon separation from service.

Subpart E—Computation of Phased Retirement Annuity at Phased Retirement and Composite Retirement Annuity at Full Retirement

§ 848.501 Computation of phased retirement annuity.

A phased retiree's phased retirement annuity equals the product obtained by multiplying the amount of annuity computed under 5 U.S.C. 8415, excluding reduction for survivor annuity, that would have been payable to the phased retiree if, on the date on which the phased retiree enters phased retirement, the phased retiree had separated from service and retired under 5 U.S.C. 8412(a) or (b), by the phased retirement percentage for the phased retiree.

§ 848.502 Computation of composite annuity at final retirement.

(a) Subject to the adjustment described in paragraph (c) of this section, a phased retiree's composite retirement annuity at final retirement equals the sum obtained by adding—

(1) The amount computed under § 848.501(a), increased by cost-of-living adjustments under § 848.503(c); and

(2) The ''fully retired phased component'' computed under paragraph (b) of this section.

(b)(1) Subject to the requirements described in paragraphs (b)(2) and (b)(3) of this section, a ''fully retired phased component'' equals the product obtained by multiplying—

(i) The working percentage; by

(ii) The amount of an annuity computed under 5 U.S.C. 8415 that would have been payable at the time of full retirement if the individual had not elected phased retirement status and as if the individual was employed on a full-time basis in the position occupied during the phased retirement period and before any reduction for survivor annuity.

(2) In applying paragraph (b)(1)(ii) of this section, the individual must be deemed to have a full-time schedule during the period of phased retirement. The deemed full-time schedule will consist of five 8-hour workdays each workweek, resulting in a 40-hour workweek. In determining the individual's deemed rate of basic pay during phased retirement, only basic pay for hours within the deemed full-time schedule will be considered, consistent with the definition of ''full-time'' in § 848.102. Any premium pay creditable as basic pay for retirement purposes for overtime work or hours outside the full-time schedule that an employee was receiving before phased retirement, such as standby duty pay under 5 U.S.C. 5545(c)(1) or customs officer overtime pay under 19 U.S.C. 267(a), may not be considered in determining a phased retiree's deemed rate of basic pay during phased retirement.

(3) In computing the annuity amount under paragraph (b)(1) of this section, the amount of unused sick leave credit equals the result of dividing the applicable percentage under 5 U.S.C. 8415(l) of the days of unused sick leave to the employee's credit at separation for full retirement, by the working percentage.

(c) The composite retirement annuity computed under paragraph (a) of this section is adjusted by applying any reduction for any survivor annuity benefit.

§ 848.503 Cost-of-living adjustments.

(a) The phased retirement annuity under § 848.501 is increased by cost-of-living adjustments in accordance with 5 U.S.C. 8462.

(b) A composite retirement annuity under § 848.502 is increased by cost-of-living adjustments in accordance with 5 U.S.C. 8462, except that 5 U.S.C. 8462(c)(1) does not apply.

(c)(1) For the purpose of computing the amount of phased retirement annuity used in the computation under § 848.502(a)(1), the initial cost-of-living adjustment applied is prorated in accordance with 5 U.S.C. 8462(c)(1).

(2) If the individual enters full retirement status on the same day as the effective date of a cost-of-living adjustment (usually December 1st), that cost-of-living adjustment, if applicable under 5 U.S.C. 8462, is applied to increase the phased retirement annuity used in the computation under § 848.502(a)(1).

§ 848.504 Non-eligibility for annuity supplement.

A phased retiree is not eligible to receive an annuity supplement under 5 U.S.C. 8421.

Subpart F—Opportunity of a Phased Retiree to Pay Deposit or Redeposit for Civilian or Military Service

§ 848.601 Deposit for civilian service for which no retirement deductions were withheld and redeposit for civilian service for which retirement deductions were refunded to the individual.

Any deposit under § 842.304 and § 842.305 of this chapter, or redeposit under 5 U.S.C. 8422(i), that an employee entering phased retirement wishes to make for civilian service must be paid within 30 days from the date OPM notifies the employee of the amount of the deposit or redeposit, during the processing of the employee's application for phased retirement. The deposit or redeposit amount will include interest, computed to the effective date of phased retirement. No deposit or redeposit payment may be made by the phased retiree when entering full retirement status.

§ 848.602 Deposit for military service.

(a) A phased retiree who wishes to make a military service credit deposit under § 842.307 of this chapter for military service performed prior to entering phased retirement status must complete such a deposit no later than the day before the effective date of his or her phased employment and the commencing date of the phased retirement annuity. A military service credit deposit for military service performed prior to an individual's entry into phased retirement status cannot be made after the effective date of phased employment and the commencing date of phased retirement annuity.

(b) A phased retiree who wishes to make a military service credit deposit under § 842.307 of this chapter for military service performed after the effective date of phased employment and the commencing date of phased retirement annuity and before the effective date of the composite retirement annuity (e.g., due to the call-up of the employee for active military service) must complete such a deposit no later than the day before the effective date of his or her composite retirement annuity.

Subpart G—Death Benefits

§ 848.701 Death of phased retiree during phased employment.

For the purpose of 5 U.S.C. chapter 84, subchapter IV—

(a) The death of a phased retiree is deemed to be a death in service of an employee; and

(b) The phased retirement period is deemed to have been a period of part-time employment with the work schedule described in § 848.202(a)(1) and (b) for the purpose of determining survivor benefits. The part-time proration adjustment for the phased retirement period will be based upon the employee's officially established part-time work schedule, with no credit for extra hours worked. In determining the employee's deemed rate of basic pay during the phased retirement period, only basic pay for hours within the employee's officially established part-time work schedule may be considered. No pay received for other hours during the phased retirement period may be included as part of basic pay for the purpose of computing retirement benefits, notwithstanding the normally applicable rules.

§ 848.702 Death of an individual who has separated from phased employment and who dies before submitting an application for a composite retirement annuity.

(a) For the purpose of 5 U.S.C. chapter 84, subchapter IV, an individual who dies after separating from phased employment and before submitting an application for composite retirement annuity is deemed to have filed an application for composite retirement annuity with OPM.

(b) The composite retirement annuity of a phased retiree described in paragraph (a) of this section is deemed to have accrued from the day after separation through the date of death. Any unpaid composite annuity accrued

during such period, minus any phased retirement annuity paid during that period, will be paid as a lump-sum payment of accrued and unpaid annuity, in accordance with 5 U.S.C. 8424(d) and (g).

§ 848.703 Lump-sum credit.

If an individual performs phased employment, the lump-sum credit as defined in 5 U.S.C. 8401(19) will be reduced by any annuity that is paid or accrued during phased employment.

Subpart H—Reemployment After Separation from Phased Retirement Status

§ 848.801 Reemployment of an individual who has separated from phased employment and who dies before submitting an application for a composite retirement annuity.

A phased retiree who has been separated from employment for more than 3 days and who has entered full retirement status, but who has not submitted an application for composite retirement annuity, is deemed to be an annuitant receiving annuity from the Civil Service Retirement and Disability Fund during any period of employment in an appointive or elective position in the Federal Government.

Subpart I—Mentoring

§ 848.901 Mentoring.

(a) A phased retiree, other than an employee of the United States Postal Service, must spend at least 20 percent of his or her working hours in mentoring activities as defined by an authorized agency official. For purposes of this section, mentoring need not be limited to mentoring of an employee who is expected to assume the phased retiree's duties when the phased retiree fully retires.

(b) An authorized agency official may waive the requirement under paragraph (a) of this section in the event of an emergency or other unusual circumstances (including active duty in the armed forces) that, in the authorized agency official's discretion, would make it impracticable for a phased retiree to fulfill the mentoring requirement.

PART 870—FEDERAL EMPLOYEES' GROUP LIFE INSURANCE PROGRAM

■ 42. The authority citation for part 870 continues to read as follows:

Authority: 5 U.S.C. 8716; Subpart J also issued under section 599C of Pub. L. 101–513, 104 Stat. 2064, as amended; Sec. 870.302(a)(3)(ii) also issued under section 153 of Pub. L. 104–134, 110 Stat. 1321; Sec. 870.302(a)(3) also issued under sections 11202(f), 11232(e), and 11246(b) and (c) of Pub. L. 105–33, 111 Stat. 251, and section 7(e) of Pub. L. 105–274, 112 Stat. 2419; Sec. 870.302(a)(3) also issued under section 145 of Pub. L. 106–522, 114 Stat. 2472; Secs. 870.302(b)(8), 870.601(a), and 870.602(b) also issued under Pub. L. 110–279, 122 Stat. 2604; Subpart E also issued under 5 U.S.C. 8702(c); Sec. 870.601(d)(3) also issued under 5 U.S.C. 8706(d); Sec. 870.703(e)(1) also issued under section 502 of Pub. L. 110–177, 121 Stat. 2542; Sec. 870.705 also issued under 5 U.S.C. 8714b(c) and 8714c(c); Public Law 104–106, 110 Stat. 521.

■ 43. Amend § 870.101 by revising the definition of ''date of retirement'' to read as follows:

§ 870.101 Definitions.

* * * * *

Date of retirement, as used in 5 U.S.C. 8706(b)(1)(A), means the starting date of annuity. For phased retirees, as defined in 5 U.S.C. 8336a and 8412a, the date of retirement is the date the individual enters full retirement status.

* * * * *

■ 44. Amend § 870.204 by adding paragraph (h) to read as follows:

§ 870.204 Annual rates of pay.

* * * * *

(h) Notwithstanding any other provision of this section, the annual pay for a phased retiree, as defined in 5 U.S.C. 8336a and 8412a, is deemed to be the rate of a full-time employee in the position to which the phased retiree is appointed, as determined under 5 CFR 831.1715(a)(2) or 848.205(a)(2), as applicable.

PART 890—FEDERAL EMPLOYEES HEALTH BENEFITS PROGRAM

■ 45. The authority citation for part 890 continues to read as follows:

Authority: 5 U.S.C. 8913; Sec. 890.301 also issued under sec. 311 of Pub. L. 111–03, 123 Stat. 64; Sec. 890.111 also issued under section 1622(b) of Pub. L. 104–106, 110 Stat. 521; Sec. 890.112 also issued under section 1 of Pub. L. 110–279, 122 Stat. 2604; 5 U.S.C. 8913; Sec. 890.803 also issued under 50 U.S.C. 403p, 22 U.S.C. 4069c and 4069c–1; subpart L also issued under sec. 599C of Pub. L. 101–513, 104 Stat. 2064, as amended; Sec. 890.102 also issued under sections 11202(f), 11232(e), 11246(b) and (c) of Pub. L. 105–33, 111 Stat. 251; and section 721 of Pub. L. 105–261, 112 Stat. 2061.

■ 46. Amend § 890.101 by revising the definition of ''immediate annuity'' to read as follows:

§ 890.101 Definitions; time computations.

* * * * *

Immediate annuity means an annuity which begins to accrue not later than 1 month after the date enrollment under a health benefits plan would cease for an employee or member of family if he or she were not entitled to continue enrollment as an annuitant. Notwithstanding the foregoing, an annuity which commences on the birth of the posthumous child of an employee or annuitant is an immediate annuity. For an individual who separates from service upon meeting the requirements for an annuity under § 842.204(a)(1) of this chapter, immediate annuity includes an annuity for which the commencing date is postponed under § 842.204(c). For phased retirees, as defined in 5 U.S.C. 8336a and 8412a, a composite retirement annuity is an immediate annuity.

* * * * *

■ 47. Amend § 890.501 by adding paragraph (h) to read as follows:

§ 890.501 Government contributions.

* * * * *

(h) Notwithstanding 5 U.S.C. 8906, the Government contribution for phased retirees, as defined in 5 U.S.C. 8336a and 8412a, is the same as that for employees and annuitants as fixed by paragraphs (a) and (b) of this section.

[FR Doc. 2013–13182 Filed 6–4–13; 8:45 am]

BILLING CODE 6325–39–P

FEDERAL REGISTER

Vol. 78 Wednesday,

No. 108 June 5, 2013

Part IV

The President

Memorandum of May 31, 2013—Delegation of Functions Under Subsection 804(h)(2)(A) of the Foreign Narcotics Kingpin Designation Act

Executive Order 13645—Authorizing the Implementation of Certain Sanctions Set Forth in the Iran Freedom and Counter-Proliferation Act of 2012 and Additional Sanctions With Respect to Iran

Federal Register
Vol. 78, No. 108
Wednesday, June 5, 2013

Presidential Documents

Title 3—

The President

Memorandum of May 31, 2013

Delegation of Functions Under Subsection 804(h)(2)(A) of the Foreign Narcotics Kingpin Designation Act

Memorandum for the Secretary of the Treasury

By the authority vested in me as President by the Constitution and the laws of the United States of America, including section 301 of title 3, United States Code, I hereby delegate the functions conferred upon the President by section 804(h)(2)(A) of the Foreign Narcotics Kingpin Designation Act (21 U.S.C. 1903(h)(2)(A)), to the Secretary of the Treasury.

You are authorized and directed to publish this memorandum in the **Federal Register**.

THE WHITE HOUSE,
Washington, May 31, 2013

[FR Doc. 2013–13512
Filed 6–4–13; 11:15 am]
Billing code 4811–33

Presidential Documents

Executive Order 13645 of June 3, 2013

Authorizing the Implementation of Certain Sanctions Set Forth in the Iran Freedom and Counter-Proliferation Act of 2012 and Additional Sanctions With Respect To Iran

By the authority vested in me as President by the Constitution and the laws of the United States of America, including the International Emergency Economic Powers Act (50 U.S.C. 1701 *et seq.*) (IEEPA), the National Emergencies Act (50 U.S.C. 1601 *et seq.*), the Comprehensive Iran Sanctions, Accountability, and Divestment Act of 2010 (Public Law 111–195) (22 U.S.C. 8501 *et seq.*) (CISADA), the Iran Freedom and Counter-Proliferation Act of 2012 (subtitle D of title XII of Public Law 112–239) (22 U.S.C. 8801 *et seq.*) (IFCA), section 212(f) of the Immigration and Nationality Act of 1952 (8 U.S.C. 1182(f)), and section 301 of title 3, United States Code, and in order to take additional steps with respect to the national emergency declared in Executive Order 12957 of March 15, 1995,

I, BARACK OBAMA, President of the United States of America, hereby order:

Section 1. (a) The Secretary of the Treasury, in consultation with the Secretary of State, is hereby authorized to impose on a foreign financial institution the sanctions described in subsection (b) of this section upon determining that the foreign financial institution has, on or after the effective date of this order:

(i) knowingly conducted or facilitated any significant transaction related to the purchase or sale of Iranian rials or a derivative, swap, future, forward, or other similar contract whose value is based on the exchange rate of the Iranian rial; or

(ii) maintained significant funds or accounts outside the territory of Iran denominated in the Iranian rial.

(b) With respect to any foreign financial institution determined by the Secretary of the Treasury in accordance with this section to meet the criteria set forth in subsection (a)(i) or (a)(ii) of this section, the Secretary of the Treasury may:

(i) prohibit the opening, and prohibit or impose strict conditions on the maintaining, in the United States of a correspondent account or a payable-through account by such foreign financial institution; or

(ii) block all property and interests in property that are in the United States, that hereafter come within the United States, or that are or hereafter come within the possession or control of any United States person (including any foreign branch) of such foreign financial institution, and provide that such property and interests in property may not be transferred, paid, exported, withdrawn, or otherwise dealt in.

(c) The prohibitions in subsection (b) of this section apply except to the extent provided by statutes, or in regulations, orders, directives, or licenses that may be issued pursuant to this order, and notwithstanding any contract entered into or any license or permit granted prior to the effective date of this order.

Sec. 2. (a) The Secretary of the Treasury, in consultation with the Secretary of State, is hereby authorized to impose on a person the measures described in subsection (b) of this section upon determining:

(i) that the person has materially assisted, sponsored, or provided financial, material, or technological support for, or goods or services to or in support of, any Iranian person included on the list of Specially Designated Nationals and Blocked Persons maintained by the Office of Foreign Assets Control (SDN List) (other than an Iranian depository institution whose property and interests in property are blocked solely pursuant to Executive Order 13599 of February 5, 2012) or any other person included on the SDN List whose property and interests in property are blocked pursuant to this paragraph or Executive Order 13599 (other than an Iranian depository institution whose property and interests in property are blocked solely pursuant to Executive Order 13599); or

(ii) pursuant to authority delegated by the President and in accordance with the terms of such delegation, that sanctions shall be imposed on such person pursuant to section 1244(c)(1)(A) of IFCA.

(b) With respect to any person determined by the Secretary of the Treasury in accordance with this section to meet the criteria set forth in subsection (a)(i) or (a)(ii) of this section, all property and interests in property that are in the United States, that hereafter come within the United States, or that are or hereafter come within the possession or control of any United States person (including any foreign branch) of such person are blocked and may not be transferred, paid, exported, withdrawn, or otherwise dealt in.

(c) The prohibitions in subsection (b) of this section apply except to the extent provided by statutes, or in regulations, orders, directives, or licenses that may be issued pursuant to this order, and notwithstanding any contract entered into or any license or permit granted prior to the effective date of this order.

Sec. 3. (a) The Secretary of the Treasury, in consultation with the Secretary of State, is hereby authorized to impose on a foreign financial institution the sanctions described in subsection (b) of this section upon determining that the foreign financial institution has knowingly conducted or facilitated any significant financial transaction:

(i) on behalf of any Iranian person included on the SDN List (other than an Iranian depository institution whose property and interests in property are blocked solely pursuant to Executive Order 13599) or any other person included on the SDN List whose property and interests in property are blocked pursuant to subsection 2(a)(i) of this order or Executive Order 13599 (other than an Iranian depository institution whose property and interests in property are blocked solely pursuant to Executive Order 13599); or

(ii) on or after the effective date of this order, for the sale, supply, or transfer to Iran of significant goods or services used in connection with the automotive sector of Iran.

(b) With respect to any foreign financial institution determined by the Secretary of the Treasury in accordance with this section to meet the criteria set forth in subsection (a)(i) or (a)(ii) of this section, the Secretary of the Treasury may prohibit the opening, and prohibit or impose strict conditions on the maintaining, in the United States of a correspondent account or a payable-through account by such foreign financial institution.

(c) Subsection (a)(i) of this section shall apply with respect to a significant financial transaction conducted or facilitated by a foreign financial institution for the purchase of petroleum or petroleum products from Iran only if:

(i) the President determines under subparagraphs (4)(B) and (C) of subsection 1245(d) of the National Defense Authorization Act for Fiscal Year 2012 (Public Law 112–81) (2012 NDAA) (22 U.S.C. 8513a) that there is a sufficient supply of petroleum and petroleum products from countries other than Iran to permit a significant reduction in the volume of petroleum and petroleum products purchased from Iran by or through foreign financial institutions; and

(ii) an exception under subparagraph 4(D) of subsection 1245(d) of the 2012 NDAA from the imposition of sanctions under paragraph (1) of that subsection does not apply.

(d) Subsection (a)(i) of this section shall not apply with respect to a significant financial transaction conducted or facilitated by a foreign financial institution for the sale, supply, or transfer to or from Iran of natural gas only if the financial transaction is solely for trade between the country with primary jurisdiction over the foreign financial institution and Iran, and any funds owed to Iran as a result of such trade are credited to an account located in the country with primary jurisdiction over the foreign financial institution.

(e) Subsection (a)(i) of this section shall not apply to any person for conducting or facilitating a transaction for the provision of agricultural commodities, food, medicine, or medical devices to Iran.

(f) The prohibitions in subsection (b) of this section apply except to the extent provided by statutes, or in regulations, orders, directives, or licenses that may be issued pursuant to this order, and notwithstanding any contract entered into or any license or permit granted prior to the effective date of this order.

Sec. 4. Subsections 2(a) and 3(a)(i) of this order shall not apply with respect to any person for conducting or facilitating a transaction involving a project described in subsection (a) of section 603 of the Iran Threat Reduction and Syria Human Rights Act of 2012 (Public Law 112–158) (22 U.S.C. 8701 *et seq.*) to which the exception under that section applies.

Sec. 5. The Secretary of State, in consultation with the Secretary of the Treasury, the Secretary of Commerce, the Secretary of Homeland Security, and the United States Trade Representative, and with the President of the Export-Import Bank, the Chairman of the Board of Governors of the Federal Reserve System, and other agencies and officials as appropriate, is hereby authorized to impose on a person any of the sanctions described in section 6 or 7 of this order upon determining that the person:

(a) on or after the effective date of this order, knowingly engaged in a significant transaction for the sale, supply, or transfer to Iran of significant goods or services used in connection with the automotive sector of Iran;

(b) is a successor entity to a person determined by the Secretary of State in accordance with this section to meet the criteria in subsection (a) of this section;

(c) owns or controls a person determined by the Secretary of State in accordance with this section to meet the criteria in subsection (a) of this section, and had knowledge that the person engaged in the activities referred to in that subsection; or

(d) is owned or controlled by, or under common ownership or control with, a person determined by the Secretary of State in accordance with this section to meet the criteria in subsection (a) of this section, and knowingly participated in the activities referred to in that subsection.

Sec. 6. When the Secretary of State, in accordance with the terms of section 5 of this order, has determined that a person meets any of the criteria described in subsections (a)–(d) of that section and has selected any of the sanctions set forth below to impose on that person, the heads of relevant agencies, in consultation with the Secretary of State, as appropriate, shall take the following actions where necessary to implement the sanctions imposed by the Secretary of State:

(a) the Board of Directors of the Export-Import Bank shall deny approval of the issuance of any guarantee, insurance, extension of credit, or participation in an extension of credit in connection with the export of any goods or services to the sanctioned person;

(b) agencies shall not issue any specific license or grant any other specific permission or authority under any statute that requires the prior review

and approval of the United States Government as a condition for the export or reexport of goods or technology to the sanctioned person;

(c) with respect to a sanctioned person that is a financial institution:

(i) the Chairman of the Board of Governors of the Federal Reserve System and the President of the Federal Reserve Bank of New York shall take such actions as they deem appropriate, including denying designation, or terminating the continuation of any prior designation of, the sanctioned person as a primary dealer in United States Government debt instruments; or

(ii) agencies shall prevent the sanctioned person from serving as an agent of the United States Government or serving as a repository for United States Government funds;

(d) agencies shall not procure, or enter into a contract for the procurement of, any goods or services from the sanctioned person;

(e) the Secretary of State shall deny a visa to, and the Secretary of Homeland Security shall exclude from the United States, any alien that the Secretary of State determines is a corporate officer or principal of, or a shareholder with a controlling interest in, a sanctioned person; or

(f) the heads of the relevant agencies, as appropriate, shall impose on the principal executive officer or officers, or persons performing similar functions and with similar authorities, of a sanctioned person the sanctions described in subsections (a)–(e) of this section, as selected by the Secretary of State.

(g) The prohibitions in subsections (a)–(f) of this section apply except to the extent provided by statutes, or in regulations, orders, directives, or licenses that may be issued pursuant to this order, and notwithstanding any contract entered into or any license or permit granted prior to the effective date of this order.

Sec. 7. (a) When the Secretary of State or the Secretary of the Treasury, pursuant to authority delegated by the President and in accordance with the terms of such delegation, has determined that sanctions shall be imposed on a person pursuant to section 1244(d)(1)(A), 1245(a)(1), or 1246(a)(1) of IFCA (including in each case as informed by section 1253(c)(2) of IFCA) or when the Secretary of State, in accordance with the terms of section 5 of this order, has determined that a person meets any of the criteria described in subsections (a)–(d) of that section, such Secretary may select one or more of the sanctions set forth below to impose on that person, and the Secretary of the Treasury, in consultation with the Secretary of State, shall take the following actions where necessary to implement the sanctions selected and maintained by the Secretary of State or the Secretary of the Treasury:

(i) prohibit any United States financial institution from making loans or providing credits to the sanctioned person totaling more than $10,000,000 in any 12-month period, unless such person is engaged in activities to relieve human suffering and the loans or credits are provided for such activities;

(ii) prohibit any transactions in foreign exchange that are subject to the jurisdiction of the United States and in which the sanctioned person has any interest;

(iii) prohibit any transfers of credit or payments between financial institutions or by, through, or to any financial institution, to the extent that such transfers or payments are subject to the jurisdiction of the United States and involve any interest of the sanctioned person;

(iv) block all property and interests in property that are in the United States, that hereafter come within the United States, or that are or hereafter come within the possession or control of any United States person (including any foreign branch) of the sanctioned person, and provide that such

property and interests in property may not be transferred, paid, exported, withdrawn, or otherwise dealt in;

(v) prohibit any United States person from investing in or purchasing significant amounts of equity or debt instruments of a sanctioned person;

(vi) restrict or prohibit imports of goods, technology, or services, directly or indirectly, into the United States from the sanctioned person; or

(vii) impose on the principal executive officer or officers, or persons performing similar functions and with similar authorities, of a sanctioned person the sanctions described in subsections (a)(i)–(a)(vi) of this section, as selected by the Secretary of State or the Secretary of the Treasury, as appropriate.

(b) The prohibitions in subsection (a) of this section apply except to the extent provided by statutes, or in regulations, orders, directives, or licenses that may be issued pursuant to this order, and notwithstanding any contract entered into or any license or permit granted prior to the effective date of this order.

Sec. 8. (a) All property and interests in property that are in the United States, that hereafter come within the United States, or that are or hereafter come within the possession or control of any United States person (including any foreign branch) of the following persons are blocked and may not be transferred, paid, exported, withdrawn, or otherwise dealt in: any person determined by the Secretary of the Treasury, in consultation with or at the recommendation of the Secretary of State:

(i) to have engaged, on or after January 2, 2013, in corruption or other activities relating to the diversion of goods, including agricultural commodities, food, medicine, and medical devices, intended for the people of Iran;

(ii) to have engaged, on or after January 2, 2013, in corruption or other activities relating to the misappropriation of proceeds from the sale or resale of goods described in subsection (a)(i) of this section;

(iii) to have materially assisted, sponsored, or provided financial, material, or technological support for, or goods or services to or in support of, the activities described in subsection (a)(i) or (a)(ii) of this section or any person whose property and interests in property are blocked pursuant to this section; or

(iv) to be owned or controlled by, or to have acted or purported to act for or on behalf of, directly or indirectly, any person whose property and interests in property are blocked pursuant to this section.

(b) The prohibitions in subsection (a) of this section apply except to the extent provided by statutes, or in regulations, orders, directives, or licenses that may be issued pursuant to this order, and notwithstanding any contract entered into or any license or permit granted prior to the effective date of this order.

Sec. 9. I hereby determine that, to the extent section 203(b)(2) of IEEPA (50 U.S.C. 1702(b)(2)) may apply, the making of donations of the types of articles specified in such section by, to, or for the benefit of any person whose property and interests in property are blocked pursuant to this order would seriously impair my ability to deal with the national emergency declared in Executive Order 12957, and I hereby prohibit such donations as provided by subsections 1(b)(ii), 2(b), 7(a)(iv), and 8(a) of this order.

Sec. 10. The prohibitions in subsections 1(b)(ii), 2(b), 7(a)(iv), and 8(a) of this order include but are not limited to:

(a) the making of any contribution or provision of funds, goods, or services by, to, or for the benefit of any person whose property and interests in property are blocked pursuant to this order; and

(b) the receipt of any contribution or provision of funds, goods, or services from any such person.

Sec. 11. I hereby find that the unrestricted immigrant and nonimmigrant entry into the United States of aliens who meet one or more of the criteria in subsection 2(a), section 5, and subsection 8(a) of this order would be detrimental to the interests of the United States, and I hereby suspend the entry into the United States, as immigrants or nonimmigrants, of such persons. Such persons shall be treated as persons covered by section 1 of Proclamation 8693 of July 24, 2011 (Suspension of Entry of Aliens Subject to United Nations Security Council Travel Bans and International Emergency Economic Powers Act Sanctions).

Sec. 12. The Secretary of the Treasury, in consultation with the Secretary of State, is hereby authorized to take such actions, including the promulgation of rules and regulations, and to employ all powers granted to the President by IEEPA as may be necessary to carry out the purposes of this order, other than the purposes described in sections 5, 6, and 11 of this order. The Secretary of the Treasury may redelegate any of these functions to other officers and agencies of the United States Government consistent with applicable law.

Sec. 13. (a) Any transaction that evades or avoids, has the purpose of evading or avoiding, causes a violation of, or attempts to violate any of the prohibitions set forth in this order is prohibited.

(b) Any conspiracy formed to violate any of the prohibitions set forth in this order is prohibited.

Sec. 14. For the purposes of this order:

(a) the term ''automotive sector of Iran'' means the manufacturing or assembling in Iran of light and heavy vehicles including passenger cars, trucks, buses, minibuses, pick-up trucks, and motorcycles, as well as original equipment manufacturing and after-market parts manufacturing relating to such vehicles.

(b) the term ''entity'' means a partnership, association, trust, joint venture, corporation, group, subgroup, or other organization;

(c) the term ''financial institution,'' as used in sections 6 and 7 of this order, includes:

(i) a depository institution (as defined in section 3(c)(1) of the Federal Deposit Insurance Act) (12 U.S.C. 1813(c)(1)), including a branch or agency of a foreign bank (as defined in section 1(b)(7) of the International Banking Act of 1978) (12 U.S.C. 3101(7));

(ii) a credit union;

(iii) a securities firm, including a broker or dealer;

(iv) an insurance company, including an agency or underwriter; and

(v) any other company that provides financial services;

(d) the term ''foreign financial institution,'' as used in sections 1 and 3 of this order, means any foreign entity that is engaged in the business of accepting deposits, making, granting, transferring, holding, or brokering loans or credits, or purchasing or selling foreign exchange, securities, commodity futures or options, or procuring purchasers and sellers thereof, as principal or agent. It includes but is not limited to depository institutions, banks, savings banks, money service businesses, trust companies, securities brokers and dealers, commodity futures and options brokers and dealers, forward contract and foreign exchange merchants, securities and commodities exchanges, clearing corporations, investment companies, employee benefit plans, dealers in precious metals, stones, or jewels, and holding companies, affiliates, or subsidiaries of any of the foregoing. The term does not include the international financial institutions identified in 22 U.S.C. 262r(c)(2), the International Fund for Agricultural Development, the North American Development Bank, or any other international financial institution so notified by the Secretary of the Treasury;

(e) the term ''Government of Iran'' includes the Government of Iran, any political subdivision, agency, or instrumentality thereof, including the Central

Bank of Iran, and any person owned or controlled by, or acting for or on behalf of, the Government of Iran;

(f) the term ''Iran'' means the Government of Iran and the territory of Iran and any other territory or marine area, including the exclusive economic zone and continental shelf, over which the Government of Iran claims sovereignty, sovereign rights, or jurisdiction, provided that the Government of Iran exercises partial or total de facto control over the area or derives a benefit from economic activity in the area pursuant to international arrangements;

(g) the term ''Iranian depository institution'' means any entity (including foreign branches), wherever located, organized under the laws of Iran or any jurisdiction within Iran, or owned or controlled by the Government of Iran, or in Iran, or owned or controlled by any of the foregoing, that is engaged primarily in the business of banking (for example, banks, savings banks, savings associations, credit unions, trust companies, and bank holding companies);

(h) the term ''Iranian person,'' as used in sections 2 and 3 of this order, means an individual who is a citizen or national of Iran or an entity organized under the laws of Iran or otherwise subject to the jurisdiction of the Government of Iran;

(i) the terms ''knowledge'' and ''knowingly,'' with respect to conduct, a circumstance, or a result, mean that a person has actual knowledge, or should have known, of the conduct, the circumstance, or the result;

(j) the term ''person'' means an individual or entity;

(k) the term ''petroleum'' (also known as crude oil) means a mixture of hydrocarbons that exists in liquid phase in natural underground reservoirs and remains liquid at atmospheric pressure after passing through surface separating facilities;

(l) the term ''petroleum products'' includes unfinished oils, liquefied petroleum gases, pentanes plus, aviation gasoline, motor gasoline, naphtha-type jet fuel, kerosene-type jet fuel, kerosene, distillate fuel oil, residual fuel oil, petrochemical feedstocks, special naphthas, lubricants, waxes, petroleum coke, asphalt, road oil, still gas, and miscellaneous products obtained from the processing of: crude oil (including lease condensate), natural gas, and other hydrocarbon compounds. The term does not include natural gas, liquefied natural gas, biofuels, methanol, and other non-petroleum fuels;

(m) the term ''sanctioned person'' means a person that the Secretary of State or the Secretary of the Treasury, pursuant to authority delegated by the President and in accordance with the terms of such delegation, has determined is a person on whom sanctions shall be imposed pursuant to section 1244(d)(1)(A), 1245(a)(1), or 1246(a)(1) of IFCA (including in each case as informed by section 1253(c)(2) of IFCA), and on whom the Secretary of State or the Secretary of the Treasury has imposed any of the sanctions in section 6 or 7 of this order or a person on whom the Secretary of State, in accordance with the terms of section 5 of this order, has determined to impose sanctions pursuant to section 5;

(n) for the purposes of this order, the term ''subject to the jurisdiction of the Government of Iran'' means a person organized under the laws of Iran or any jurisdiction within Iran, ordinarily resident in Iran, or in Iran, or owned or controlled by any of the foregoing;

(o) the term ''United States financial institution'' means a financial institution as defined in subsection (c) of this section (including its foreign branches) organized under the laws of the United States or any jurisdiction within the United States or located in the United States; and

(p) the term ''United States person'' means any United States citizen, permanent resident alien, entity organized under the laws of the United States or any jurisdiction within the United States (including foreign branches), or any person in the United States.

Sec. 15. For those persons whose property and interests in property are blocked pursuant to this order who might have a constitutional presence in the United States, I find that because of the ability to transfer funds or other assets instantaneously, prior notice to such persons of measures to be taken pursuant to this order would render those measures ineffectual. I therefore determine that for these measures to be effective in addressing the national emergency declared in Executive Order 12957, there need be no prior notice of an action taken pursuant to subsection 1(b)(ii), 2(b), 7(a)(iv), or 8(a) of this order.

Sec. 16. Executive Order 13622 of July 30, 2012, is hereby amended as follows:

(a) Subsection (a)(ii) of section 1 is amended by replacing ''for the purchase or acquisition of petroleum or petroleum products from Iran'' with ''for the purchase, acquisition, sale, transport, or marketing of petroleum or petroleum products from Iran''.

(b) Subsection (a)(iii) of section 1 is amended by replacing ''for the purchase or acquisition of petrochemical products from Iran'' with ''for the purchase, acquisition, sale, transport, or marketing of petrochemical products from Iran''.

(c) Subsection (a)(i) of section 2 is amended by replacing ''knowingly, on or after the effective date of this order, engaged in a significant transaction for the purchase or acquisition of petroleum or petroleum products from Iran'' with ''knowingly, on or after the effective date of this order, engaged in a significant transaction for the purchase, acquisition, sale, transport, or marketing of petroleum or petroleum products from Iran''.

(d) Subsection (a)(ii) of section 2 is amended by replacing ''knowingly, on or after the effective date of this order, engaged in a significant transaction for the purchase or acquisition of petrochemical products from Iran'' with ''knowingly, on or after the effective date of this order, engaged in a significant transaction for the purchase, acquisition, sale, transport, or marketing of petrochemical products from Iran''.

(e) Subsection (e) of section 10 is amended by inserting the words ''dealers in precious metals, stones, or jewels,'' after the words ''employee benefit plans,''.

Sec. 17. All agencies of the United States Government are hereby directed to take all appropriate measures within their authority to carry out the provisions of this order.

Sec. 18. This order is not intended to, and does not, create any right or benefit, substantive or procedural, enforceable at law or in equity by any party against the United States, its departments, agencies, or entities, its officers, employees, or agents, or any other person.

Sec. 19. The measures taken pursuant to this order are in response to actions of the Government of Iran occurring after the conclusion of the 1981 Algiers Accords, and are intended solely as a response to those later actions.

Sec. 20. This order is effective at 12:01 a.m. eastern daylight time on July 1, 2013.

THE WHITE HOUSE,
June 3, 2013.

[FR Doc. 2013–13523
Filed 6–4–13; 11:15 am]
Billing code 3295–F3

Reader Aids

Federal Register

Vol. 78, No. 108

Wednesday, June 5, 2013

CUSTOMER SERVICE AND INFORMATION

Federal Register/Code of Federal Regulations	
General Information, indexes and other finding aids	**202–741–6000**
Laws	**741–6000**
Presidential Documents	
Executive orders and proclamations	**741–6000**
The United States Government Manual	**741–6000**
Other Services	
Electronic and on-line services (voice)	**741–6020**
Privacy Act Compilation	**741–6064**
Public Laws Update Service (numbers, dates, etc.)	**741–6043**
TTY for the deaf-and-hard-of-hearing	**741–6086**

ELECTRONIC RESEARCH

World Wide Web

Full text of the daily Federal Register, CFR and other publications is located at: **www.fdsys.gov.**

Federal Register information and research tools, including Public Inspection List, indexes, and links to GPO Access are located at: **www.ofr.gov.**

E-mail

FEDREGTOC-L (Federal Register Table of Contents LISTSERV) is an open e-mail service that provides subscribers with a digital form of the Federal Register Table of Contents. The digital form of the Federal Register Table of Contents includes HTML and PDF links to the full text of each document.

To join or leave, go to **http://listserv.access.gpo.gov** and select *Online mailing list archives, FEDREGTOC-L, Join or leave the list (or change settings);* then follow the instructions.

PENS (Public Law Electronic Notification Service) is an e-mail service that notifies subscribers of recently enacted laws.

To subscribe, go to **http://listserv.gsa.gov/archives/publaws-l.html** and select *Join or leave the list (or change settings);* then follow the instructions.

FEDREGTOC-L and **PENS** are mailing lists only. We cannot respond to specific inquiries.

Reference questions. Send questions and comments about the Federal Register system to: **fedreg.info@nara.gov**

The Federal Register staff cannot interpret specific documents or regulations.

Reminders. Effective January 1, 2009, the Reminders, including Rules Going Into Effect and Comments Due Next Week, no longer appear in the Reader Aids section of the Federal Register. This information can be found online at **http://www.regulations.gov.**

CFR Checklist. Effective January 1, 2009, the CFR Checklist no longer appears in the Federal Register. This information can be found online at **http://bookstore.gpo.gov/.**

FEDERAL REGISTER PAGES AND DATE, JUNE

32979–33192 3
33193–33688 4
33689–33954 5

CFR PARTS AFFECTED DURING JUNE

At the end of each month the Office of the Federal Register publishes separately a List of CFR Sections Affected (LSA), which lists parts and sections affected by documents published since the revision date of each title.

3 CFR

Executive Orders:
13622 (Amended by EO 13645) 33945
13645 33945
Administrative Orders:
Memorandums:
Memorandum of May 31, 2011 33943

5 CFR

Proposed Rules:
581 33912
582 33912
831 33912
838 33912
841 33912
842 33912
843 33912
848 33912
870 33912
890 33912

6 CFR

1000 33689

7 CFR

457 33690
Proposed Rules:
1710 ..... 33755, 33757

10 CFR

30 33691
40 33691
70 33691
170 33691
171 33691
Proposed Rules:
20 33008
431 33263

14 CFR

39 ..... 33193, 33197, 33199, 33201, 33204, 33206
95 32979
Proposed Rules:
39 ..... 33010, 33012, 33764, 33766, 33768, 33770
71 ..... 33015, 33016, 33017, 33019, 33263, 33265, 33772

15 CFR

740 33692
742 33692
748 32981
774 33692
902 33243

17 CFR

37 ..... 33476, 33606
38 ..... 32988, 33606

21 CFR

522 33698

22 CFR

41 33699
42 32989

26 CFR

54 33158

29 CFR

2590 33158

31 CFR

Proposed Rules:
1010 33774

32 CFR

706 33208
2402 33209

33 CFR

100 ..... 32990, 33216, 33219, 33221, 33700
117 33223
165 ..... 32990, 33224, 33703
Proposed Rules:
151 33774

34 CFR

Ch. III 33228

36 CFR

212 33705
214 33705
215 33705
222 33705
228 33705
241 33705
254 33705
292 33705

40 CFR

52 ..... 33230, 33726
81 33230
180 ..... 33731, 33736, 33744, 33748
Proposed Rules:
49 33266
52 33784
180 33785
300 33276

42 CFR

433 32991

45 CFR

146 33158
147 33158
155 33233
156 33233

47 CFR

1 33634
2 33634
54 32991
95 33634

Proposed Rules:

1 33654
2 33654
15 33654
24 33654
25 33654
27 33654
73 33654
90 33654
95 33654
97 33654
101 33654

49 CFR

214 33754

50 CFR

300 ....33240, 33243
622 ....32995, 33255, 33259
665 32996
679 33243

Proposed Rules:

17 ....33282, 33790
224 33300
648 33020
679 33040

LIST OF PUBLIC LAWS

This is a continuing list of public bills from the current session of Congress which have become Federal laws. It may be used in conjunction with "P L U S" (Public Laws Update Service) on 202–741–6043. This list is also available online at *http://www.archives.gov/federal-register/laws*.

The text of laws is not published in the **Federal Register** but may be ordered in "slip law" (individual pamphlet) form from the Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402 (phone, 202–512–1808). The text will also be made available on the Internet from GPO's Federal Digital System (FDsys) at *http://www.gpo.gov/fdsys*. Some laws may not yet be available.

H.R. 258/P.L. 113–12
Stolen Valor Act of 2013 (June 3, 2013; 127 Stat. 448)
S. 982/P.L. 113–13
Freedom to Fish Act (June 3, 2013; 127 Stat. 449)
Last List May 29, 2013

Public Laws Electronic Notification Service (PENS)

PENS is a free electronic mail notification service of newly enacted public laws. To subscribe, go to *http://listserv.gsa.gov/archives/publaws-l.html*

Note: This service is strictly for E-mail notification of new laws. The text of laws is not available through this service. **PENS** cannot respond to specific inquiries sent to this address.